

DECISION OF THE COMPETITION COUNCIL
no. 164 from 31.08.2005

regarding the state aid notified by the Authority for State Asset Resolution to be granted to
S.C. ROSTRAMO S.A. Targu Jiu

THE COMPETITION COUNCIL,

Having before us:

The provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members;

The provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of 30.04.1996, amended and completed by GEO no. 121/2003, approved by Law no. 184/2004;

The provisions of the State aid Law no. 143/1999, published in the Official Gazette, Part I, no. 370, of 3.08.1999, as subsequently modified and completed;

The provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993;

The provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 17.12.2004, as subsequently modified and completed;

The provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members;

Based on the following reasons,

1. THE NOTIFICATION PROCEDURE

- (1) Through the address no. VP4/2090/18.07.2005, recorded by the Competition Council under. RS-AS 69/18.07.2005, the Authority for State Asset Resolution (hereinafter named AVAS) notified the individual state aid for the restructuring of SC ROSTRAMO SA Tg. Jiu in the privatization procedure, in accordance with Article 6 of Law no. 143/1999 on state aid, with subsequent modifications and completions.
- (2) The Competition Council requested additional information from AVAS through letter no. DAAS/847/26.07.2005. AVAS sent the answer to the additional information

through letter VP4/2422/04.08.2005. The notification became effective when the information were exact and complete, respectively 09.08.2005.

2. LEGAL BASIS FOR THE STATE AID MEASURE

- Law no. 137/2002 on measures to accelerate privatizations;
- G.D. no. 577/2002 (Article 281) for the approval of the Methodological Norms for the enforcement of GED 88/1997 on the privatization of the commercial companies, as subsequently modified and completed, and of Law 137/2002 on measures to accelerate privatizations;
- Law no. 442/2004 for the approval of the G.E.O. no. 26/2004 regarding some measures for finalizing the privatization of the companies under AVAS portfolio and consolidation of some privatizations.

3. DESCRIPTION

3.1. The beneficiary – SC ROSTRAMO SA Tg. Jiu

- (3) SC ROSTRAMO SA Tg. Jiu started business in 1959 under the name Industrial Wood Complex Tg Jiu, and became a stock company through GD no. 1224/1990. The company's principal office is in Tg Jiu and is registered at the Trade Register under no. J18/59/1991, under Single Registration Code R2165390.
- (4) The trading company had, before privatization, a registered capital of ROL 31,735 mill. at the Trade Register, divided into 1,269,403 shares, with a face value of 25,000 Lei, divided as below:
- | | |
|----------------------|----------|
| - A.V.A.S. | 53.95 %; |
| - SIF Banat Crisana | 34.31%; |
| - PPM | 11.32%; |
| - other shareholders | 0.42%. |
- (5) S.C. ROSTRAMO S.A. Tg. Jiu was privatized through the stock buying-selling contract no. 15/28.06.2002 between AVAS and the Employees' Association Tg Jiu. The transfer of ownership rights over the stock took place on 09.07.2002.
- (6) S.C. ROSTRAMO S.A. Tg. Jiu is a trading company that manufactures plywood, modulated units, artistic furnish, wooded splinter plates (PAL), timber and wooden by-products made of beech wood, furniture units, small furniture and chairs (curved, colonial, carpenter-like).
- (7) The company's activities are focussed on 5 production areas: Plywood, Timber, Chairs, Furniture and PAL, which are designed so that no part of the wooden material entered is lost in the manufacturing process. To perform its business, the company utilizes a maintenance and – repairs section, which provides the main utilities for the production sections, and at the same time it has facilities for transporting and storing the raw materials.

- (8) The company's main manufactured products are :
- Plywood;
 - PAL;
 - Timber;
 - Furniture: chairs, tables, drawers, desks, living rooms, children rooms, small furniture, bedrooms.
- (9) The economic and financial results recorded by S.C. ROSTRAMO S.A. Tg. Jiu prior to privatization shows the following:

Table no. 1 SC ROSTRAMO SA economic and financial results between 2000-2001

2000	2001
Turnover (ROL thousand)	
212,083,010	248,496,061
Profit/Loss (ROL thousand)	
630,624	-2,609,395

Source: Notification form

The data show that the company recorded a loss of ROL 2.6 bill in 2001.

- (10) In 2002, upon privatization, the company had 1,641 employees, and a turnover of ROL 299,826 mill., i.e. Euro 9.6 mill. Thus, the company qualifies as a large company.

3.2. Relevant markets

- (11) S.C. ROSTRAMO S.A. does business on the wood processing market, and its main products are: (see paragraph 8 above). The company's products are traded both domestically and exported.
- (12) [...] ¹
- (13) The market for PAL is dominated by KRONOSPAN SEPAL S.A. which holds 85% of the market. In order to compete with this company, S.C. ROSTRAMO S.A. diversified its product range of PAL, e.g. reduced sizes for PAL of 4, 5 and 6 mm; humidity resistant PAL and fixed formats PAL.
- (14) The domestic market for plywood has decreased over the period 1999-2001, this is mainly due to insufficient supply of raw material i.e high quality logs. Besides Rostramo, the main plywood producers from Romania are: Sigstrat S.A. Sighet, Alprom Pitesti, Stratus Mob S.A. Blaj, Elvilla S.A. Ramnicu Valcea branch.

¹ Confidential data.

- (15) On the market for timber products and wood by-products, S.C. ROSTRAMO S.A.'s market share is 1%. The notification form indicates that 90% of these products are used as raw material for the company's own furniture production. The company sells on the domestic market only low quality timber which cannot be valued in the furniture industry. S.C. ROSTRAMO S.A.'s competitors on this market are: Forest S.A. Suceava, Silvania Forest S.A. Satu Mare, BRAFOR S.A. Braşov, Sargația S.A. Deva.
- (16) On the domestic furniture market, S.C. ROSTRAMO S.A. holds about 1%; the bulk of the company's productive capacity is exported to European and American markets. In order to preserve these markets, the company adapted its products based on the market preferences. In the main this entails providing high quality furniture made of beech, oak and cheery wood. The main furniture producer competitors in Romania are: Alprom S.A. Piteşti, Mobirrom S.A. Caransebeş, Anteco S.A. Ploieşti and C.D. Pîncota S.A.
- (17) [...]².
- (18) The market study shows that S.C. ROSTRAMO S.A.'s products hold small market shares. An increase in market demand is forecasted on the various market segments that the company operates in (see paragraph 8 above).

3.3. Financial situation of S.C. ROSTRAMO S.A. upon privatization

- (19) The economic- financial situation of S.C. ROSTRAMO S.A. prior to the privatization is also showed by the evolution of the following economic- financial indicators:

Table no.2 *The evolution of S.C. ROSTRAMO S.A. main economic-financial indicators during 1999-2001*

INDICATORS	1999	2000	2001
Turnover in comparable prices 1999 (ROL thousand)	136,483,105	150,734,193	135,567,955
Net result (ROL thousand) ³	-74,747,659	-130,515,648	-183,475,851
Stocks (ROL thousand)	33,606,585	47,883,650	89,908,907
Number of stocking days (days)	88.64	81.28	130.25
Total debts (ROL thousand)	137,219,409	218,831,938	316,338,500
Indebtness degree	478.1	722.2	1,298.6

² Confidential data.

³ The results were calculated taking into consideration the majorities and delay penalties registered in extra-balance sheet accounts

(%)			
Intermediary liquidity	0.17	0.16	0.10

Source: Notification form

From the data presented in the table it results that the company is confronted with: increase of losses, dropping turnover in real terms, increase of stocks, raising debts, raise of financial burdens, high indebtness degree and a liquidity much lower than the normal limits.

- (20) The following led to the company's difficulties:
- outdated technology/equipment, involving very large energy consumption;
 - insufficient funds for supply of raw material and resources for the normal development of the production process;
 - the high maintenance costs paid by the company for certain activities that don't participate any more at the accomplishment of the company's main activity object;
 - the insufficient promotion of the company's products;
 - over-staffing.
- (21) Given the company's difficult situation, AVAS decided to privatize it and to grant incentives, subject to the condition of implementing several restructuring measures. According to the notification, the presentation file of the privatization included details of the incentives to be granted for arrears payments, all of which were brought to the attention of potential investors.

3.4. Financial measures for S.C. ROSTRAMO S.A.

- (22) Thus, upon privatization, SC ROSTRAMO SA Tg. Jiu was promised to be granted fiscal incentives in amount of ROL 381,726,617,336, consisting of:

Table no. 3 Incentives benefiting S.C. ROSTRAMO S.A. Tg. Jiu

No.	Incentive	Amount granted (Lei)	Legal basis
1.	100% write-offs of budget obligations, outstanding upon 31.12.2001	4,602,098,604	Law no.137/2002
2.	Write off of interest rates and penalties for late payment related to budget obligations outstanding upon 31.12.2001, cf.	9,438,692,689	Law no. 137/2002
3.	Write off of obligations to the state national insurance and to the unemployment budget, due and unpaid upon transfer of ownership over the shares	72,258,536,766	G.E.O. no. 26/2004 ; Law no. 442/2004
4.	Write off of payment for interest	228,382,839,876	G.E.O. no.

	rates and penalties for late payments related to the outstanding debts state to the national insurance and to the unemployment budget		26/2004 ; Law no. 442/2004
5.	Relief through debenture conversion of budget debts constituting the Contribution to the single national fund for national health insurance due upon the transfer of ownership over the shares, and of budget debts, recorded by the company, due upon the transfer of ownership over the shares constituting the individual contribution to national insurance	6,479,261,553 ⁴	G.E.O. no. 26/2004 ; Law no. 442/2004
6.	Write-off of payment for interest rates and penalties of any kind related to debenture conversion upon date of conversion	56,646,987,711	G.E.O. no. 26/2004 ; Law no. 442/2004
7.	Rescheduling of payment of state obligations upon 31.12.2001	3,918,200,137	Law no.137/2002
	Total	381,726,617,336	

Source: Notification form and additional information

3.5. Description of the privatization process

- (23) AVAS decided to privatize the company using the direct negotiation method. The privatization process started on 29.03.2002 through publication in central and local media, and on the internet, of the announcement to sell 684,835 shares, i.e. 53.95% of the company's registered capital, and through posting the selling offer at AVAS headquarters.
- (24) In the presentation file drafted in view of selling the lot of shares held by AVAS in S.C. ROSTRAMO S.A., information were submitted on the economic and financial status, and on the legal and environment situation of the company, as well as on the debts which were to be exempted, rescheduled or converted after signing the contract. Also, the selling offer provided the likelihood that potential investor may audit the company themselves, in order to get the necessary information to have a real image on it, and to be able to draft their bid.

⁴ The total value of converted debt is ROL 29,307,316,596. The shares resulting from conversion are sold to the buyer at the same price per share as the price in the share buying-selling contract ; thus, we considered that the incentive the company benefits from is the difference between the face value of the share (25,000 ROL /share) and the selling price of the share (19,473 ROL/share).

- (25) After the publicity two presentation files were bought and two bids were submitted on behalf of Sorin Mihai Ileana and the Rostramo's Employees' Association. The two bidders met the terms required by AVAS in the presentation file.
- (26) AVAS started negotiations with both bidders, and requested that the initial bids and business plan should be enhanced. On 28.06.2002 the final bids were submitted. Since the bid submitted by the Employees' Association obtained the highest score, this was declared the winner. This consisted of the payment of 19,473 ROL/share, respectively ROL 13.3 mill for the majority share package, and endorsing a investment program amounting at 1,524,000 USD, and environment investments amounting at Euro 70,000.
- (27) The privatization process ended by signing the stock buying-selling contract no. 15/28.06.2002 with the Employees' Association, and the date of transfer of ownership over the stock (when the buyer enters possession of the shares) was 09.07.2002.
- (28) AVAS deems that the privatization process was achieved under non-discriminatory and transparent terms.

3.6. The restructuring program

- (29) The following restructuring plan for the period 2002 - 2008 (which has been agreed by AVAS and the company that is aimed at eliminating the causes of the company's difficulties) is based on a market study by the Transylvania University in Brasov.
- (30) The strategy for restructuring of S.C. ROSTRAMO S.A. focuses on several major areas:
- product diversification and adaptation to market requirements;
 - increasing product quality;
 - reduction of levels of consumption of raw material, energy, fuels by a new technological product design;
 - modernizing existing technologies according to the agreed investment program;
 - increase in work productivity by training the staff and by introducing new technologies.
- (31) The restructuring program conveyed by AVAS includes both the causes that led to S.C. ROSTRAMO S.A.'s difficult financial status, and the measures able to ensure the company's long term viability. By applying the restructuring program, AVAS estimates that the company will become profitable and will have its own financial resources in order to properly do its business, without debts to the state budget.
- (32) In brief, these are the measures in the restructuring plan:

*Table no. 4 Synthesis of measures in the restructuring plan of S.C. ROSTRAMO S.A.
- ROL mill -*

No.	Measures	Evaluation of implementation costs			
		Total cost per measure	Own sources	Investor's sources	State Aid
1.	Organizational measures	26,793	26,075	718	-
2.	Technical measures	47,781	3,675	44,106	-
3.	Environment protection measures	2,559	-	2,559	-
4.	Financial restructuring measures	583,660	179,105	22,828	381,727
	TOTAL RESTRUCTURING COST	660,793	208,855	70,211	381,727

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

- (33) In order to accomplish the restructuring plan, ROL 660,793 mill are necessary. Under the stock buying-selling contract, the investor committed to make a contribution of ROL 70,211 mill. to the achievement of the Restructuring Program of S.C. ROSTRAMO S.A. The contribution of the state to the company's financial restructuring is ROL 381,727 mill.

3.6.1 Organizational restructuring

- (34) The organizational restructuring includes the following measures:

Table no. 5 Measures on organizational and management restructuring

- mill. Lei -

No.	Measure	Deadline	Implementation effort	Financing		State aid
				ROSTRAMO's own sources	Buyer's sources	
1.	Lay off of 179 employees	April 2003	1,346	1,346	-	-
2.	Sale of the asset "Furniture Plant 2"	Oct. 2002	827	827	-	-
3.	Sale of single dormitories for Rostramo's staff	March 2003	175	175	-	-
4.	Motor vehicle equipment necessary for commodity transport	April 2003	1,090	372	718	-
5.	Modernization workings for access ways, consolidations of buildings and production halls	Dec. 2006	15,500	15,500	-	-
6.	Construction of an exhibition pavilion and promotion of company products on the domestic and int'l market	Dec. 2006	7,000	7,000	-	-
7.	Sale of railroad and scarp iron	June 2005	250	250	-	-
8.	Sale of land	Oct. 2006	605	605	-	-
	TOTAL		26,793	26,075	718	

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

- (35) The reorganization of the company's production imposed the lay-off of 179 employees. In view of reducing the losses, the management decided to sell Furniture Plant no. 2 and the single dormitories. After the reorganization, a part of the company assets is dismantled. This has two objectives: reduce internal costs and acquire funds to continue the restructuring measures. The redundant assets, assessed by independent

assessors⁵ in amount of ROL 18,200 mill, consist in: Furniture Plant no. 2, single dormitories, railway and land. These have a residual value and to be sold as scrap iron (Furniture Plant no. 2, railway) and as assets (single dormitories, land).

3.6.2. Technical restructuring

(36) The technical investments included in the restructuring plan amount at [...]⁶, from which [...]⁷ stand for investment that the Buyer committed to through the stock buying-selling contract. The necessity to make these investments was revealed by a detailed technical analysis of the status quo of machines and installations in the company.

(37) The technical investments included in the restructuring program have the following objectives: enhancing the physical, mechanical and operational characteristics of the products, increase of manufacturing and work productivity yield, reduction of energy consumption – all having as an effect the decrease of losses and obtaining additional profit from operational activities.

[...]⁸

3.6.3. Environment protection restructuring

(38) Through the stock buying-selling contract, the Buyer committed to an environment protection investment of Euro 70,000, namely ROL 2,559 mill, for a one-year period as of the transfer of ownership rights over the shares. The implementation of these measures aims at eliminating the urtheo-formaldehydic noxious substances from the pressing process.

Table no. 7 Measures on environment restructuring

- ROL mill. –

No.	Measure	Deadline	Implementation effort	Financing		State aid
				ROSTRAMO's own sources	Buyer's sources	
1.	Outfitting Furniture Plant no. 3 with ecological oil heating system - 90 KW	Oct. 2002	497	-	497	-
2.	Outfitting the PAL plant with ecological insulation press	April 2003	2,062	-	2,062	-
	Total		2,559	-	2,559	

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

3.6.4. Financial restructuring

⁵ The assessment of dismantled assets was made by the independent assessor Mrs Ghica Elena.

⁶ Confidential data.

⁷ Confidential data.

⁸ Confidential data.

- (39) At the moment of privatization, the company needed financial restructuring in order to operate at normal production parameters, besides the other restructuring measures enforced through the restructuring plan.
- (40) For S.C. ROSTRAMO S.A., financial restructuring includes the state financial support granted upon privatization, consisting in write-offs and delays for payments of due debts to the state budget, rescheduling and debenture conversion, incentives granted under Law 137/2002, in total amount of ROL 381,727 mill. Also, in view of the financial restructuring, the company contributed by ROL 189,605 mill, by contracting several credits⁹ on the Romanian capital market, under market conditions.
- (41) The financial restructuring includes the following measures:

Table no. 8 Measures of financial restructuring

- ROL mill. –

No.	Measure	Deadline	Implementation effort	Financing		State aid
				ROSTRAMO's own sources	ROSTRAMO's own sources	
1.	Relief of payment of budget obligation	Dec. 2005	371,330	-	-	371,329
2.	Rescheduling for budget debt arrears	Dec. 2004	3,918	-	-	3,918
3.	Debenture conversion	Dec. 2005	29,307	-	22,828	6,479
4.	Contracting credits on the Romanian capital market, under market conditions	Feb. 2007	179,105	179,105	-	-
	Total		594,160	-	2,559	

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

The Restructuring Plan, through the financial restructuring component, gives the possibility to increase the cash-flow and provide constant cash-flow that will make easier the financial activity of the company. Thus, the company will be able to pay the current debts towards the State and to allocate the necessary liquidities for carrying out the investments planned and necessary, in view of developing and sustaining the production program in the future.

4. ASSESSMENT OF THE STATE AID MEASURES

4.1. State aid nature of the notified measures

- (42) The criteria that allow us to establish whether a measure is state aid are presented under Art.2 par. 1 of *Law 143/1999 on state aid*. Under the law, any measure of support granted by the State or by local administrative authorities, from the resources of the State or of the local administrative authorities, or by other bodies which administer resources of the state or of local communities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment.

⁹ Commercial banks BCR and BRD have given loans to the company, taking into account that the company benefited of State aid. Therewith these banks agreed to continue to grant loans to the company.

- (43) The financial support to be granted to S.C. ROSTRAMO S.A., notified by AVAS, consists in foregoing incomes by the state, and consequently, state resources are involved.
- (44) The financial support granted in accordance with Law 137/2002 on measures to accelerate privatizations apply only to undertakings which are going to be privatized, among which S.C. ROSTRAMO S.A. Thus, the financial supported granted to this company has a selective nature.
- (45) Through the granting the financial support to S.C. ROSTRAMO S.A., premises for a likely distortion of competition on the relevant markets are created, since it creates some financial advantages, which are discriminatory for the other undertakings. Also, there are no doubts that the financial support to be granted to S.C. ROSTRAMO S.A. may affect trade with the EU Member States, since part of the products manufactured by the company are exported.
- (46) Taking into account that the facilities are granted within the privatization process, in order to determine whether or not they give an economic advantage to S.C. ROSTRAMO S.A., it must be compared the state's behaviour with that of a private investor in the same situation (the private prudent investor's test). The state's behaviour can be assimilated with a private prudent investor, if it proves that it obtains the best price from the sale of its shares.
- (47) As shown at point 3.5 in the present decision, S.C. ROSTRAMO S.A.'s privatization was made by negotiation based on final, improved and irrevocable biddings. The Competition Council notes that the privatization procedure was conditioned by the implementing of certain retechnologizing measures and by making certain investments to fulfil the environment standards, to assume all the obligations in the collective employment contract, the company to obtain 70% of the turnover from its main activity, etc.
- (48) The price paid by the buyer to acquire the main shares package is of ROL 13,335.8 mil. The Competition Council notes that this value is much smaller than the amount of the facilities granted at S.C. ROSTRAMO S.A.'s privatization, respectively ROL 381,727 mill. A private investor aims to sell the shares for a positive price, while, in this case, taking into account all the engagements assumed by the Romanian state, the finale price is negative.
- (49) A private investor could have accepted a negative price only if the liquidation costs exceed the costs related to the privatization. AVAS informed the Competition Council that prior to the privatization was not made a comparative analysis between the company's liquidation cost and its privatization cost. Taking into account the social effects produced by the employees' dismissal if the company is liquidated, the state acted directly for its privatization, assuming the granting of facilities if the process would be finalised.

- (50) Related to the above presented facts, the Competition Council considers that the private investor's test is not applicable in this case.
- (51) Through the granted measures of financial support, an economic advantage is being created in favour of S.C. ROSTRAMO S.A., as the company is exempted from the payment of some debts toward budget creditors, and of interest rates and penalties for late payment related to outstanding budget obligations. These facilities have a favourable effect over the economic and financial results and the cash flow. Thus, the company has an advantage, and it is favoured vis-à-vis its competitors.
- (52) To conclude, the financial measures of support are considered state aids and they are covered by Law 143/1999.

4.2. Compatibility of the state aid with the state aid legislation

- (53) Article 2 of Law 143/1999 provides that state aids granted by the state or from state resources, which distort or threaten to distort competition and affect trade with the Member States are incompatible with a normal competitive environment.
- (54) The objective of the state aid is the restructuring of S.C. ROSTRAMO S.A. in terms of achieving the restoration of the company's viability at the end of the restructuring period.
- (55) The Competition Council assesses the state aid to be granted to S.C. ROSTRAMO S.A., in accordance with the criteria in the *Regulation on state aid for rescue and restructuring firms in difficulty*, published in the GO no. 1215/17.12.2004 (hereinafter called the Regulation). In order to be deemed compatible with a normal competition environment, state aid must meet all the criteria in the Regulation.
- (56) The restructuring aid is conditional on the implementation of a feasible and coherent restructuring plan, that will restore the company's long-term viability. In this regard, the Regulation provides that restructuring usually involves one or several of these elements: reorganization and rationalization of company business on a most efficient basis, usually involving withdrawal from loss-making business, restructuring of existent business which may become again competitive and sometimes their diversification with a view to new and profitable business. Industrial restructuring must be usually accompanied by the financial restructuring (capital injections, reduction of leverage).
- (57) The incentives granted at privatization is deemed restructuring state aid and they are conditional to the implementation of a Restructuring Program for 2002-2008, jointly drafted by AVAS and the buyer; its objective is company restoration until the end of implementation period.

- (58) The Competition Council assesses the state aid to S.C. ROSTRAMO S.A. Tg. Jiu according to the criteria of the Regulation, seeking:
- restoration of long term viability
 - prevention of excessive distortion of competition
 - the aid must be limited to the minimum necessary i.e; aid proportionality;
 - observing the principle ‘one time, last time’;
 - ensuring that the objectives in the Restructuring Plan are met, and permanent monitoring of the way the plan is implemented;
 - assessment of the beneficiary as a member of a group of companies, if applicable.

4.2.1. Eligibility of S.C. ROSTRAMO S.A. Tg Jiu– Firm in difficulty

- (59) In order to benefit from state aid, pursuant to the Regulation, the company must be in difficulty. For the purposes of the regulation, the Competition Council deems that a firm is in difficulty when it is capable, either through own resources, or through the resources that it can get from owners/shareholders or creditor, to cover its losses, and which, absent an external intervention from public authorities, it is almost certain to go out of business in the short or medium term.
- (60) For the purposes of Art.2 par. (2) sections b) and c) of the Regulation, a stock company is in difficulty when more than half of the company’s own capital is lost, as proved by the balance sheets, and more than a quarter of this capital was lost in the previous 12 months, and a company, regardless of its legal status is deemed to be in difficulty when it meets the criteria to undergo the procedure provided in the legislation on judicial reorganization and bankruptcy.
- (61) In this regard, the Competition Council holds that in 2001, on a registered capital of ROL 31,735 mill, the company recorded a loss of ROL 183,476 mill., which is 5.78 times greater than the registered capital.
- (62) From the data presented in par. (19) it results that the company presents the usual characteristics for a firm in difficulty as presented in art.2 align.(3) in the Regulation.
- (63) Upon privatisation SC ROSTRAMO SA was registered losses (see point 3.3.) and was confronted with the impossibility to insure the liquidities necessary to pay its current debts.
- (64) Given the above arguments, the Competition Council concludes that S.C. ROSTRAMO S.A. Tg. Jiu is a company in difficulty, accordingly to the definition in the Regulation.

4.2.2. Restoration of the long-term viability of the company

- (65) The difficulties faced by S.C. ROSTRAMO S.A. led to a drastic reduction of its business, simultaneously with cumulation of debts to the state budget, which also, in

- time, cumulated increases and penalties for late payments, which exceed by far the value of due and unpaid debts.
- (66) After the privatization in 2002, the restructuring plan for 2002-2008 was drafted. The synthesis of the restructuring plan measures for S.C. ROSTRAMO S.A. was presented in Chapter 3.6.
 - (67) The analysis of the restructuring plan and of the way it will restore long term viability for S.C. ROSTRAMO S.A. is made under Art. 13 of the Regulation.
 - (68) According to the above-mentioned article, the granting of the restructuring aid is made conditional to the implementation of the restructuring plan which is at the basis of the Competition Council assessment. The restructuring plan, whose duration must be as short as possible, must include cessation of loss-making production activities and offer the company long-term viability, and allow it to operate from its own resources. The restructuring plan must be based on a realistic estimation of market terms, and the restored viability must mainly result from the internal measures, and from considering external factors such as price and demand variation, over which the company has no substantial influence.
 - (69) S.C. ROSTRAMO S.A.'s Restructuring Plan starts from the technical and economical data that reflect the company's business in the period prior to privatization. This plan was drawn up following an analysis of the strengths and weaknesses of the company and the circumstances which led to the difficulties faced by the company. There were also taken into consideration the opportunities and the threats that could arise.
 - (70) S.C. ROSTRAMO S.A.'s strategy seeks to preserve the company's strengths, namely: trained personnel, company's location right near the raw material source, capacity of rapid adaptation to market demands; well-established environment protection targets. At the same time, the strategy seeks to limit and properly counterattack the company's weaknesses, such as: outdated technology in some production sections, large company surface with wide distances among production sections, high expenses due to the increased price for raw material and electricity, gas and fuel.
 - (71) As indicated by the Restructuring Plan, the company will give up the loss-making activities, such as Furniture Plant no. 2. The company's production will be focused on producing the new products required by the market, such as massive panel furniture units, thus repositioning business toward profit-making market areas, without obtain a strong position in this particular submarket, to the detriment of competitors, as it is shown by the market analysis presented at point 3.2.
 - (72) After privatization, the new company's management introduced dozens of new products into the production process, requested both on the domestic and on the international market. Thus, the company ceased to produce colonial curved chairs, since marketing studies showed that the market primarily favours carpenter-like chairs, which is why the company started producing this type of products. At the same time, through the technology investment included in the restructuring plan, S.C.

ROSTRAMO S.A. will manage to produce separate unit and interchangeable furniture, as requested on the external markets.

- (73) S.C. ROSTRAMO S.A. engaged in a series of objectives, so that to reach viability after the implementation of the restructuring plan, namely:
- modernization of existing technology according to the restructuring plan;
 - more efficient business through cost reduction (e.g. natural gas consumption will be reduced from 8 mill c.m. to 2.75 mill c.m.; consumption of paints by 30%;
 - increase of work productivity by acquisition of high quality machines, of last generation and by enhancing the work conditions;
 - diversification of products;
 - enhancing the commercial and marketing strategy by building an exhibition pavilion and attending fairs and exhibitions;
 - raising the level of utilization of production capacities.

- (74) While applying the measures from the restructuring plan, through the contribution of the company and the Buyer, on the one hand, and of the state, on the other, the economic and financial indexes are estimated to increase as shown below:

Table no. 9 *Foreseen evolution of economical and financial index*

Name of index		-ROL mill. -						
		2002	2003	2004	2005	2006	2007	2008
1	Total incomes, of which :	395,792	392,428	437,711	459,222	495,702	545,305	599,837
	- Operational incomes	393,567	389,373	436,374	457,794	494,233	543,690	598,078
	- Net turnover	305,823	284,030	313,761	345,137	379,651	417,617	458,377
	- Financial incomes	2,225	3,065	1,337	1,428	1,469	1,616	1,758
	- Extraordinary incomes	-	-	-	-	-	-	-
2	Total expenses, of which:	396,637	392,085	437,485	458,907	491,805	540,986	595,083
	a) operational	390,801	385,874	430,289	451,257	484,155	532,571	585,826
	b) financial	5,836	6,211	7,196	7,650	7,650	8,415	9,257
	c) extraordinary	-	-	-	-	-	-	-
3	Gross profit (+) / Loss (-)	-845	343	226	315	3,897	4,319	4,753
4	Net profit (+)/Loss (-)	-845	221	109	197	3,359	3,723	4,097

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

- (75) Thus, the proposed restructuring program is expressed by obtaining profit from the business operation, which, in 2008 is expected to reach ROL 12,252 mill, by 4.4 larger than the 2002 profit level. However, the operation profit is much lowered by the large expenses related to the unfavourable differences of exchange rate, and by financial expenses, thus reaching a gross profit related to 2008 of ROL 4,753 mill.
- (76) Taking into account that the state aid assessment was made ex-post, the Competition Council notes that the company records a positive evolution for 2002, 2003 and 2004, as below:
- in 2002 (the first year of restructuring), the company recorded losses in amount of ROL 828 mill; their causes were, on the one hand, investment costs, and on the other hand external factors over which the company had no influence, such as increased price for raw material, materials and utilities;

- in 2003 and 2004, the company tried to recover the backlog from previous years, so that it obtained a profit of ROL 217 mill., and ROL 107 mill, respectively; the cause for this was largely the investment efforts in the restructuring plan, but also company withdrawal from loss-generating business.

- (77) After the measures in the restructuring plan are achieved, in 2008, the company foresees reaching the target-indexes, as below:

Table no. 10 *Economic and financial target-indexes*

1. Net profit	mill. Lei	4.097
2. Turnover	mill. Lei	450.370
3. Own capital	mill. Lei	87.000
4. Duration of debt recovery	days	26,71
5. Duration of debt payment	days	63,26
6. Economic profitability	%	1,86
7. Financial profitability	%	5,35
8. Cash flow	mill. Lei	605
9. Number of employees	persons	1.300

Source: S.C. ROSTRAMO S.A. Tg. Jiu restructuring program

- (78) Considering the above, the Competition Council deems that the restructuring plan will lead to restoring S.C. ROSTRAMO S.A.'s viability on the long term.

4.2.3. Prevention of any excessive distortion of competition (compensatory measures)

- (79) According to the Regulation, in view of minimizing the state aid negative effects over competition on the relevant markets, compensatory measures are necessary. These measures will be proportionate to the distorting effects caused by the aid, and, especially, to the company's size and relative importance on the relevant markets. Reduction of company presence on the market is set based on the market study attached to the notification, and on any relevant information, and it shall be part of the restructuring plan.
- (80) According to the supplementary information, in order to restore viability, the company reduces production capacity for furniture by closing and dismantling the Furniture Plant no. 2. This capacity reduction will contribute to the elimination of loss-making business, and is absolutely necessary for viability restoration.
- (81) The compensatory measures that will be taken by S.C. ROSTRAMO S.A. in order to avoid distortion of competition, consist in irreversible reductions of production capacities, namely directly productive fixed assets and means. Thus, by the end of 2006, the following equipment and tools will be dismantled which take part at achieving the company's main line of business:

[...] ¹⁰

¹⁰ Confidential data.

- (82) The irreversible reductions of capacities are an integral part of the restructuring plan and consist in the reduction of the total production capacity, compared to 2001 on the following markets:[...] ¹¹.
- (83) [...] ¹².
- (84) Here are the production capacities in place and their utilization level between 1999-2001:[...] ¹³.
- (85) By applying the restructuring measures, the company does not increase its production capacities, but will accomplish a higher level of utilization of the ones still in operation. [...] ¹⁴
- (86) Considering the above, the Competition Council ascertains that the state aid will only be used in order to restore company viability, not allowing the beneficiary, during the implementation of the restructuring plan, to expand its production capacity.

4.2.4. Aid limited to minimum necessary (aid proportionality)

- (87) According to the provisions of Art. 15 of the Regulation, the state aid amount and intensity must be limited to the strictly necessary, in order to allow restructuring within the limit of the existing financial resources of the company and of the shareholders. The state aid beneficiary must bring a significant contribution to the restructuring plan from own resources, including from asset sales inessential for the survival of the enterprise, or from external financing under market terms. Under art. 15 of the Regulation, for large enterprises, a contribution of at least 50% is considered a proper contribution.
- (88) In accordance with Art. 20 of the Regulation, in the deprived areas, the conditions to authorize an aid may be less strict regarding the accomplishment of the compensatory measures and the size of the beneficiary's contribution.
- (89) The total restructuring cost of S.C. ROSTRAMO S.A. is ROL 660,793 mill and is made of:
- | | |
|-------------------------------------|-------------------|
| - organizational restructuring cost | ROL 26,793 mill; |
| - technology restructuring cost | ROL 47,781 mill; |
| - environment restructuring cost | ROL 2,559 mill; |
| - financial restructuring cost | ROL 583,660 mill. |
- (90) S.C. ROSTRAMO S.A.'s restructuring cost, amounting at ROL 660,793 mill, is upheld by the following sources:
- | | |
|--------------------------------------|-------------------|
| - S.C. ROSTRAMO S.A.'s own resources | ROL 208,855 mill; |
|--------------------------------------|-------------------|

¹¹ Confidential data.

¹² Confidential data.

¹³ Confidential data.

¹⁴ Confidential data.

- investor's capital injection	ROL 70,211 mill;
- state aid	ROL 381,727 mill;

- (92) The company's own contribution of ROL 279,066 mill. stands for 42.23% of the restructuring costs and is insured through: capital injection of the majority shareholder 'Employee's Association', in amount of ROL 70,211 mill¹⁵; sales of assets assessed by certified experts in amount of ROL 18,200 mill; depreciation of ROL 11,550 mill; bank credits under market conditions in amount of ROL 179,105 mill.
- (93) According to art. 15 of the Regulation, the aid amount and intensity must be strictly limited to the minimum necessary restructuring costs, in order to allow restructuring within the limits of existing financial resources of the company, its shareholders or the group it belongs to. For S.C. ROSTRAMO S.A., the aid intensity, computed as a ratio between the aid value and the total restructuring cost, is 57.77%.
- (94) The Competition Council ascertains that S.C. ROSTRAMO S.A. Tg Jiu is located in the South-West Oltenia development region, where the level of unemployment is above the country average (e.g. on 31.12.2004, the average unemployment level in the Gorj county was 7.8%, compared to 6.8% national average). While the aid beneficiary company maintains its business, almost 1400 jobs will be maintained for the employees and their families, who live in a region where most of the trading companies are in reorganization or under judicial liquidation procedure (e.g. S.C. GRIMEX S.A., Unirea S.A., MIRFO S.A., Uzina Reparatii S.A., UREX Rovinari, TPSUT Rovinari, etc). Moreover, the Gorj county is mono-industrial which does not trigger absorption of the labour force which would be laid off if S.C. ROSTRAMO S.A. Tg Jiu were closed.
- (95) Under these circumstances, the Competition Council deems as acceptable the beneficiary's own contribution of 42.23% to the implementation of the restructuring plan. This proves the trust in the practical value of restructuring, and the fact that the aid amount and intensity were strictly limited in order to allow restructuring within the limits of the existing financial resources of the company and its shareholders. Thus, we avoid that the company may receive a surplus of cash flow which might be used for aggressive distorting activities on the market.

4.2.5. Observance of the "one time, last time" principle

- (96) S.C. ROSTRAMO S.A. Tg Jiu did not receive any other restructuring state aid, which is in observance of Art. 24 of the Regulation, which stipulates that the restructuring aid should be granted only once.

4.2.6. Membership to a group

¹⁵ The sources of the majority shareholder Employee's Association come from a monthly withdrawal of 10% from the gross salary of employees during restructuring period.

- (97) Under the provisions of Art. 2 par. 5 of the Regulation, a company belonging to a group is not normally eligible for rescue and restructuring aid, except the case where it can be demonstrated that the company's difficulties are its own, and they do not result from an arbitrary cost allocation within the group, and that the difficulties are too serious to be solved by the group.
- (98) The new majority shareholder of S.C. ROSTRAMO S.A. Tg Jiu is the Employees' Association, made up of the company's employees and of management members. Thus the company, post privatisation, is not a member of any group of companies.

4.2.7. Annual monitoring and reporting

- (99) In accordance with Art. 18 of the Regulation, the Competition Council monitors on a permanent basis the way the restructuring plan is implemented, so that the objectives may be reached.
- (100) The Competition Council shall monitor the implementation of the restructuring plan until the end of the period in order to make sure there are no increases of production capacities, major deviations from achieving the restructuring measures, and that the state aid will not create additional cash flow which may be used for activities other than the ones in the privatization program.

5. Conclusion

- (101) Given the above-mentioned arguments, the Competition Council ascertains that the individual state aid to be granted to S.C. ROSTRAMO S.A. is compatible with a normal competition environment, and does not significantly affect trade with the EU Member States.

DECIDES

Art. 1. The measure notified by the Authority for State Asset Recovery for S.C. ROSTRAMO S.A. Tg. Jiu constitutes state aid for the purposes of art. 2 par. 1 of Law no 143/1999, with subsequent modifications and completions.

Art. 2. Pursuant to Art. 12 par. 2 section c read in conjunction with Art. 14 par 1 section e of Law 143/1999 with subsequent modifications and completions, we authorize the state aid for restructuring to S.C. ROSTRAMO S.A. Tg. Jiu upon its privatisation on the condition that Arts. 3 and 4 of this Decision are observed.

Art. 3. The company is compelled to fully implement the restructuring plan it incurred.

Art. 4. The company shall reduce its production capacities until 2006, according to the restructuring plan as incurred.

Art. 5. In case the conditions imposed in this decision are violated, the provisions of Art. 13 in Law 143/1999 with subsequent modifications and completions shall be applied.

Art. 6. The value of the state aid to be granted is ROL 381,726,617,336, respectively RON 38,172,661.7.

Art. 7. This decision becomes applicable as of its communication.

Art. 8. In accordance with the provisions of Article 24 of Law no. 143/1999 on State aid, as subsequently amended and completed, the Authority for Authority for State Asset Resolution shall submit to the Competition Council information on the State aid granted to the company, in order to inventory and monitor. In addition, the Authority for State Asset Resolution Authority for State Asset Resolution shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following report shall have to indicate that the company observed the compensatory measures related to the reduction of production capacity as imposed through this decision.

Art. 9. In accordance with the provisions of Article 29 of Law no. 143/1999 on State aid, as subsequently amended and completed, this decision can be appealed by the interested parties in the Court of Appeal Bucharest, Administrative Contentious Department, within 30 days from the communication.

Art. 10. This decision shall be communicated by the Secretary General of the Competition Council to:

- The Authority for State Asset Recovery, 50 Cpt. Av. Alexandru Serbanescu Street, sector 1, Bucharest;
- S.C. ROSTRAMO S.A., str. Ec. Teodoroiu, nr.354, Targu Jiu, jud. Gorj, postal code 210101.

Art. 11. The Secretary General and the Department for State Aid Authorization of the Competition Council shall see that this decision is enforced.

PRESIDENT

MIHAI BERINDE