

DECISION OF THE COMPETITION COUNCIL
no. 176 of 15.09.2005

on the state aid notified by the Authority for State Assets Resolution
granted to S.C. Tremag S.A. Tulcea

THE COMPETITION COUNCIL,

Having regard to the provisions of the Decree no. 57/2004 for the appointment of the members of the Competition Council;

Having regard to the provisions of the Law no. 21/1996, published in the Official Gazette of Romania, Part I, no. 88 of 30.04.1996, amended and completed by E.G.O. no. 121/2003 approved by Law no. 184/2004;

Having regard to the provisions of the Law no. 143/1999 regarding the State aid, published in the Official Gazette of Romania, Part I, no. 370 of 3.08.1999, modified and completed by Law no. 603/2003;

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

Having regard the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette of Romania, Part I, no. 1215 of 17.12.2004;

Based on the following reasons,

1. THE NOTIFICATION PROCEDURE

(1) By address no. DCS/3641/18.07.2005, registered with the Competition Council by RS-AS no. 70/18.07.2005, the Authority for State Assets Resolution (AVAS) notified, on behalf of the state aid grantors, on the basis of Art. 6 of the Law no. 143/1999 on state aid, with subsequent modifications and completions, the individual state aid for restructuring S.C. TREMAG S.A. Tulcea, in the context of its privatisation. The state aid grantors are AVAS, the Ministry of Public Finances and Tulcea Local Council.

(2) By note DAAS/838/25.07.2005 supplementary information were requested from AVAS concerning the market share of beneficiary and its competitors, the proof of the way in which the measures comprised in the restructuring plan shall contribute to the elimination of negative circumstances which led to the company being in difficulty, the detailed description of the beneficiary's resources, the proof that the company's difficulties are its own and too serious to be dealt with within the group and other data referring to the restructuring program of S.C.

TREMAG S.A. Tulcea. As the answer which was received did not fully clarify all envisaged aspects, supplementary information was requested through address no. DAAS/880/02.08.2005.

(3) Also, by the above-mentioned notes, details were requested from AVAS regarding the state aid in amount of ROL 6,205,408,506, of which S.C. TREMAG S.A. Tulcea benefited in 2002.

(4) In connection to this, AVAS submitted the response no. DCS/4055/15.08.2005, registered by the Competition Council by no. DAAS/937/15.08.2005, by which the Competition Council was informed that part of the state aid mentioned in paragraph (3) shall be reimbursed by the company as far as it exceeds the *de minimis* threshold. [...] ¹.

(5) The notification became effective on the 18.08.2005, when supplementary information were received from AVAS.

2. DESCRIPTION OF THE STATE AID MEASURES

2.1. Legal basis for the grant of the state aid

- Law no.137/2002, on measures to accelerate privatisation;
- Decision no. 577/2002, to approve the Enforcement Guidelines of the Government Emergency Ordinance no. 88/1997 on the privatisation of companies, with subsequent amendments and completions;
- Government Emergency Ordinance no. 26/2004, on measures to finalize the privatisation of companies in the portfolio of the Authority for Privatisation and Management of State Ownership and the consolidation of some privatisations;
- Government Decision no. 1233/2002, on the approval of the list of companies in the APAPS portfolio, which benefit from the extension of payment facilities provided for under art. 18 of the Law no. 137/2002.

2.2. Financial incentives granted to S.C. TREMAG S.A. Tulcea

(6) The measures of financial support notified by AVAS are granted in the context of the privatisation of S.C. TREMAG S.A. Tulcea. The company will benefit from the facilities provided for under Law no. 137/2002 and mentioned in the presentation file and in the share sale-purchase contract, namely exemption from outstanding obligations and debt rescheduling to the state consolidated budget and AVAS.

(7) Thus, at the moment of privatisation, S.C. TREMAG S.A. Tulcea benefited from measures of financial support, in total amount of ROL 114,231,929,918, consisting of:

Table no. 1 Measures of financial support granted at the privatization of S.C. TREMAG S.A.

[...] ²

Source: Notification form

¹ Confidential data

² Confidential data

(8) [...]³.

(9) [...]⁴.

3. BENEFICIARY OF THE STATE AID MEASURE - S.C. TREMAG S.A. TULCEA

3.1. Preamble

(10) S.C. TREMAG S.A. Tulcea was set up in 1991 under the Romanian law as stock company by the divestiture of the Metal Works Tulcea. The company's headquarters is in Tulcea, Tulcea county and it is registered at the Trade Registrar under J36/32/1991 Single Registration Code R2361559.

(11) Prior to the privatization, the trading company had at the Trade Registrar a registered capital of ROL 19,189.2 mill., divided in 767,567 shares with a face value of ROL 25,000, distributed as below:

-APAPS (AVAS)	-50.97%;
-SIF II MOLDOVA	- 5.11%;
-Other shareholders	-43.92%. ⁵

(12) TREMAG SA Tulcea was privatized through Stock Buying-Selling Contract no. 63/23.12.2003. The transfer of ownership of the stock took place on 24.03.2004. TREMAG SA Tulcea's new shareholders became S.C. RECETA TRADING S.R.L. and S.C. COMPRO Spol s.r.o. (Slovakia) owning between them 50.97% of the shares. These companies are both liable to ensure compliance with the obligations as provided in the Stock Buying-Selling Contract.

(13) Consequent to the transfer of ownership rights over the shares, the ownership structure of S.C. TREMAG S.A. Tulcea is shown below:

- SC RECETA TRADING Bucuresti	- 195,614 shares	- 25.49%;
- COMPRO SPOL s.r.o. Bratislava	- 195,613 shares	- 25.48%;
- SIF MOLDOVA SA	- 39,236 shares	- 5.11%;
- Others	- 337,104 shares	- 43.92%.

(14) SC TREMAG SA's main line of business consists of the production and trading of refractories, mainly for the domestic market. In 2003, the domestic market consisted of 99.45% of the company's total turnover. The company also engages in other business activities i.e. treatment and cover of metal, production of measurement, regulation and control devices for industrial processes.

(15) S.C. TREMAG S.A. produces and trades the following range of bricks:

³ Confidential data

⁴ Confidential data

⁵ These shareholders hold insignificant blocks of shares (lower than 5% of the registered capital).

a) shaped products, such as: magnesium limestone bricks, magnesium chrome iron bricks, chrome magnesium limestone bricks, magnesium spinel bricks, magnesium carbon bricks, silicon-aluminium bricks;

b) non-shaped products, such as: basic striking compounds, basic gunite compounds, basic and silicon aluminium mortars, heat-resistant cements, heat-resistant concrete.

(16) The company's normal productive capacity was curtailed by a series of internal and external factors, i.e.o:

- overuse of plant and machineries, which decrease the machineries' production capacities but increase the operational costs;
- difficulties in debt collection from the clients due to the scarce cash flow of the main beneficiaries;
- price fluctuation for raw materials, fuel and utilities;
- strong company decapitalization;
- lack of financial resources to ensure supply with raw material;
- the national economical situation: financial freeze, high inflation rate.

(17) The above factors triggered difficulties in the company's finances. The debts to the state were unpaid, which triggered interest and penalties for late payments. In 2003 the production process was frozen, which meant that the company lost a significant part of the markets.

(18) This precarious situation is also reflected by the results of an analysis of the main economic and financial values of the company:

Table no. 2 SC TREMAG SA economic and financial results between 2001-2003

2001	2002	2003
Turnover (ROL mill)		
364,081.9	262,618	144,933.4
Profit/Loss (ROL mill.)		
-5,518	-40,621.3	-29,380
Number of employees		
484	477	456

Source: Notification form

(19) As shown in these data, the company recorded annual losses before privatization.

(20) Given this difficult situation, AVAS decided to grant incentives for the company's privatization on the condition that the company implements restructuring measures. According to the information in AVAS's notification, the presentation file drafted upon privatization informed the potential investors on all the incentives, i.e. debt rescheduling and cancellation of budget payments. These incentives were discussed during negotiations with the bidder.

(21) Just prior to privatization, the company had 456 employees and a turnover of ROL 144,933.4 mill., the equivalent of 3,594,311 Euro, which qualifies it as a large enterprise.

3.2. Relevant markets

(22) TREMAG manufactures and trades in heat-resistant products used in embedding thermal aggregates (electrical ovens, convertors, secondary treatment vessel, lime ovens) that operate at very high temperatures (1500°C-1700°C).

(23) According to the market study attached to SC TREMAG SA's restructuring program, the company's market shares on the domestic market are:

Table no. 3 Market shares of S.C. TREMAG S.A. and main competitors

[...]⁶

Source: Notification form

(24) The market study points to the fact that the product market is developing and the demand of refractories from the consumer-side is increasing.

(25) Competition on the product market for refractories is very strong, and several domestic producers went bankrupt because they were unable to face the ever increasing demands of quality and volume of their clients. On the other hand, new producers have emerged, who own new technologies and offer competitive products.

(26) Also, in the recent period, imports of refractories have increased – having a good quality-price ratio – and now own an important share of the market - 35.44%.

(27) The main beneficiaries on the domestic market of SC Tremag SA Tulcea products are : S.M.R. Bals, Alum Tulcea, Mittal Steel Galati, Mechel Trading Bucuresti, Cuprom Baia Mare, Feral Tulcea, Simcor Var Medgidia, Elnav Galati, Orion Campina etc.

(28) With regard to exporting, their share of the total volume of sales is insignificant – 0.55%.

(29) The market study points to the fact that, given the existing opportunities, SC TREMAG SA will not be able to continue in business without implementing the Restructuring Program, while focuses on the following areas: technology investment, organizational and financial restructuring.

3.3. Description of the privatization process

(30) The privatization of S.C. TREMAG S.A. Tulcea started by the publication on 04.06.2003 in the central newspapers (the daily 'Ziua') and the local ones (the newspaper 'Acum'), and online, of the advertisement for sale, by negotiations, based on final, enhanced and irrevocable bids, of the controlling interest, consisting of 50.97% of the registered capital.

(31) In the presentation file drafted for the sale of the block of shares held by AVAS in S.C. TREMAG S.A. Tulcea, the following information were submitted: the economic, financial,

⁶ Confidential data

legal and environment status of the company, including the incentives that the company may enjoy if the contract was to be signed. Also, the selling bid provided the likelihood that potential investor can conduct their own auditing in the company.

(32) Two presentation files were bought by S.C. COMPRO Spol s.r.o. – Slovakia and BERNHARD JACB – Germany. Upon the time limit, 03.11.2003, a single offer was submitted, belonging to S.C. COMPRO Spol s.r.o. – Slovakia, which was declared the winner. Before the date of the ownership transfer (24.03.2004), the Contract also included S.C. RECETA TRADING S.R.L., as this company entered a partnership agreement with S.C. COMPRO Spol s.r.o. According to this Contract, the two undertakings agreed to equally share the buying costs of the stock held by AVAS in SC TREMAG SA Tulcea and to equally incur the obligations under the stock buying-selling contract.

(33) The price paid by the buyer (S.C. COMPRO spol s.r.o. and S.C. RECETA TRADING S.R.L.) to acquire 50.97% of the company's registered capital, namely 391,227 shares, is 175,000 EURO, respectively ROL 7,057 mill., standing for 0.447 EURO/share (18,024.4 ROL/share).⁷

(34) The liabilities incurred by the buyer during the process of privatization consisted of :

- 500,000 Euro working capital, one year after the transfer of ownership over stock ;
- technological investment of 1,050,000 EURO – with a 5-year time limit for performance as of the date of transfer of stock ownership ;
- investments of 220,000 EURO for environment protection to be achieved between 2005-2007, in order to meet the environment obligations and measures in the programs regarding the environment certification for privatizations.

(35) The analysis of the notification form shows that the shares of S.C. COMPRO spol s.r.o. Slovakia are held by four individuals who have each between 13% and 38% of the registered capital and therefore do not exercise overall control over COMPRO. [...] ⁸.

(36) Information submitted by AVAS indicates that the shares of S.C. RECETA TRADING S.R.L. are held by Mircea Stefan, i.e. 80%. [...] ⁹.

4. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(37) Having in mind the current status of the company at the time of the privatization and aiming to eliminate the causes that triggered the company's difficulties, the buyers of the controlling interest, together with the company and AVAS drafted a restructuring plan for the period 2004-2009 consisting of organizational, technological, environment and financial measures, based on a market study and taking into consideration the demand and supply on the

⁷ The used exchange rate was the NBR rate of 23.12.2003 (the date the Buying-Selling Contract was signed) i.e. 1Euro=ROL 40,323.

⁸ Confidential data

⁹ Confidential data

relevant product market and its evolution, as well as focusing on the strengths and seeking to eliminate its weaknesses.

(38) The action to restructure SC TREMAG SA has the following major objectives:

- business efficiency increase through company reorganization ;
- modernization of products existing in the manufacturing profile, increase of quality resulting from investments ;
- updating and modernization existing technologies pursuant to the incurred investment program, which will enhance yield, profitability and product quality ;
- training staff.

(39) The restructuring plan sent by AVAS includes both the causes that triggered the difficulties of SC TREMAG SA and the measures to ensure the company's long-term viability. By applying the restructuring measures it is anticipated by the parties that the company will return to profit and generate sufficient resources to conduct proper business with minimum liabilities to the central or local state budget.

(40) The restructuring program jointly drafted with the Buyer and AVAS covers the period 2004-2009. Briefly, these are the measures in the restructuring plan:

Table no. 4 Synthesis of SC TREMAG SA's restructuring measures

[...] ¹⁰

Source: SC TREMAG SA Tulcea Restructuring Program

(41) Implementing the restructuring program will cost ROL 231,409 mill. This plan will restore viability for SC TREMAG SA Tulcea in 2009 (at the end of the restructuring period).

4.1. Organizational restructuring

(42) The organizational restructuring will implement the following measures:

Table no. 5 Measures of organizational restructuring

[...] ¹¹

Source: SC TREMAG SA Tulcea Restructuring Program

(43) In letter no. DCS/4048/17.08.2005, registered at the Competition Council under no. DAAS/948/18.08.2005, AVAS stated that by the time the restructuring plan is fully implemented, only 240 employees will remain. This reduction of the staff number is not accompanied by additional costs, the reduction being achieved through retirement.

¹⁰ Confidential data

¹¹ Confidential data

4.2. Technological restructuring

(44) The technical investments of the restructuring program amount at ROL 45,809 mill. [...] ¹².

(45) The technological restructuring measures aim at counterattacking some of the main causes that triggered the difficulties of the company, and especially those relating to the age of the plant and machineries. The condition of the company's machineries has contributed to the low production capacities and high costs, as well as poor quality products.

(46) Modernization of plant and equipments via these investments is crucial to enable the company to compete. The investment will stem productive losses and generate profit.

Table no. 6 Measures regarding the technical and technological restructuring

[...] ¹³

Source: SC TREMAG SA Tulcea Restructuring Program

4.3. Restructuring measures of environment protection

(47) The restructuring measures regarding environment protection [...] ¹⁴ are dedicated to meeting the environment obligations from the programs regarding the environment certification. The measures relating to environment protection will focus on identify and eliminate noxious substances that are a by-product of the current productive process.

4.4. Financial Restructuring

(48) The main focus of the restructuring plan is financial. The main components are cancellation and rescheduling of debts in total amount of ROL 114,232 mill.

(49) Also, the Restructuring Plan comprises measures consisting in selling stocks and recyclable materials as well as supplementing the working capital through the buyer's contribution and loans engagement. [...] ¹⁵.

(50) On the other hand, the beneficiary of state aid adopted a new policy regarding the recovery of the overdue receivables consisting of suing debtor clients in court. [...] ¹⁶.

(51) The Restructuring Plan, through the financial restructuring component, provides for the increasing of the cash-flow and for a steady cash-flow, which will alleviate the financial activity of the company. Thus, the company will be able to pay the current debts to the State and to allocate the necessary liquidities for carrying out the necessary investments planned, in order to further develop and sustain the production program.

¹² Confidential data

¹³ Confidential data

¹⁴ Confidential data

¹⁵ Confidential data

¹⁶ Confidential data

(52) The financial restructuring covers the following measures :

Table no. 7 Financial restructuring measures

[...] ¹⁷

Source: SC TREMAG SA Tulcea Restructuring Program

(53) By the Restructuring Plan, the company forecasted in a realistic way the sources for financial restructuring for the next period, based on its own sources on one hand and on the buyer's sources, on the other hand, which will ensure investments in technology and environment absolutely necessary for the activity.

(54) Through the implementation of the above measures, the company is expected to return to viability by 2009.

5. STATE AID ASSESSMENT– ARE THE MEASURES STATE AID?

(55) The criteria allowing to establish if a measure represents state aid are provided for under Art. 2 par. (1) of *Law no. 143/1999 on state aid, with subsequent modifications and completions*. According to the law, state aid is defined by any support measure enacted by the state or local authorities, by state resources or resources of the local administration, regardless of the form, which distorts or threatens to distort competition, by favoring certain undertakings, the production of certain goods or the provision of some services or which affects trade between Romania and EU Member States, considered incompatible with the normal competitive environment.

(56) The financial support to be granted to SC TREMAG SA Tulcea by AVAS consists of revenues foregone by the state, therefore state resources are involved.

(57) The financial support granted under *Law 137/2002 regarding measures to accelerate privatization*, covers only undertakings that will be privatized, among which is SC TREMAG SA. Thus, the financial support granted to SC TREMAG SA has selective character.

(58) Through the measures of financial support, an economic advantage for SC TREMAG SA is created, as the company is exempted from payment of debts toward state creditors, and from payment of interest rates and penalties for late payments related to outstanding debts to the state budget. These facilities have a favorable effect over the economic and financial indexes and the company's cash flow. Thus, the company has an advantage, and is favored vis-à-vis its competitors.

(59) Through the granting of incentives to SC TREMAG SA, the premises for a likely distortion of competition on the relevant markets are created, as the company will afford to remain on these markets. Also, there is no doubt that the financial support to be granted to SC TREMAG SA may affect trade with the EU Member States, since the products manufactured

¹⁷ Confidential data

by the company do compete, mainly on the Romanian market, with similar products manufactured in the EU.

(60) The simple assumption that a debt write-off or debt rescheduling represents an advantage normally applies in the context of non-privatization. Where such facilities are granted within privatization one normally applies the private creditor/investor test.

(61) AVAS underlined that SC TREMAG SA's privatization took place through negotiations, based on final, enhanced and irrevocable offers. All the potential bidders had reasonable time to make a correct evaluation of the company as a basis for their offer, and SC TREMAG SA was sold to the only investor who submitted a firm bid to acquire the company.

(62) [...] ¹⁸.

(63) The price paid by the buyer to acquire 50.97% of the company's registered capital is 175,000 Euro, ROL 7,057 mill. This value is much lower than the amount of incentives granted upon privatization, i.e. ROL 114,232 mill.

(64) Taking into account the above-mentioned, one can note that an analysis of the private/creditor test is not possible because AVAS informed the Competition Council that prior to the privatization, no comparative analysis was made between the company's liquidation costs and the cost of its privatization. Consequently, taking into consideration the social effects and costs of liquidating the company, the state took direct action in the privatization, incurring granting these incentives, when the privatization was accomplished.

(65) As a conclusion on the above, the Competition Council holds that the fiscal measures of support granted for SC TREMAG SA's privatization do constitute state aid, and they are subject to the State Aid Law 143/1999.

(66) [...] ¹⁹.

(67) [...] ²⁰.

6. COMPATIBILITY WITH THE STATE AID LEGAL BASE

(68) The second article of the *Law no. 143/1999 on state aid, with subsequent amendments and completions*, provides that state aids granted by the State or from the State resources that distorts or threatens to distort competition or affects the trade between Romania and the Member States of the European Union, are considered incompatible with a normal competition environment.

¹⁸ Confidential data

¹⁹ Confidential data

²⁰ Confidential data

(69) The state aid objective is the restructuring of SC TREMAG SA in order to restore the company's viability at the end of the restructuring process. If the conditions set out in the *Regulation on state aid for rescuing and restructuring firms in difficulty* are observed, the state aid can be deemed compatible.

(70) The restructuring aid must be based on a feasible, coherent and far-reaching plan to restore the firm's long-term viability. In this regard, the *Regulation* provides that usually, restructuring involves one or more of the following elements: the reorganization and rationalization of the firm's activities on a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that could be made competitive again and, if possible, their diversification in the direction of new and viable activities. Usually, financial restructuring (capital injections, debt reduction) has to accompany the industrial restructuring.

(71) The Competition Council assesses the state aid granted to SC TREMAG SA according to the criteria set out in the *Regulation on state aid for rescuing and restructuring the firms in difficulty*, published in the Official Gazette, no.1215/17.12.2004, issued in application of the *Law no.143/1999 on state aid, with subsequent amendments and completions*. In order to be deemed compatible with a normal competition environment, the state aid must meet all the criteria set out in the above-mentioned Regulation.

7. CRITERIA TO BE FULFILLED FOR GRANTING STATE AID FOR RESTRUCTURING

(72) The aid granted to SC TREMAG SA is considered as individual state aid and is granted for the purpose of restructuring, on the basis of a restructuring program, elaborated by the company with the Buyer and AVAS and totally assumed by the investors, which has as principal objective restoring the viability of the company at the end of the implementation period.

(73) Thus, the Competition Council will assess the state aid granted to SC TREMAG SA and its Restructuring Plan in accordance with the criteria stipulated in the *Regulation on state aid for rescuing and restructuring firms in difficulty* (herein after Regulation), on the following basis:

- the firm's eligibility: firm in difficulty;
- restoring the firm's long-term viability;
- preventing any excessive distortion of the competition;
- aid limited to what it is absolutely necessary; the aid proportionality;
- meeting the principle: "first time, last time";
- ensuring the compliance with the objectives envisaged in the Restructuring Plan and continuous monitoring of its execution;
- membership of a group of companies.

7.1. The eligibility of SC Tremag SA Tulcea – firm in difficulty

(74) A company is eligible for rescue or restructuring aid provided that it is qualified as a firm in difficulty within the meaning of the *Regulation on state aid for rescuing and restructuring firms in difficulty*. In accordance with this Regulation, the Competition Council regards a firm as being in difficulty if it is not able to cover its losses, through its own resources or with the funds obtained from its owners/shareholders or creditors, and which, without outside intervention by the public authorities, it is almost certain to go out of business in the short or medium term.

(75) Art.2 (2) b) and c) of the *Regulation on state aid for rescuing and restructuring firms in difficulty*, states that a joint-stock company is regarded as being in difficulty when more than half of its registered capital, as shown in the accounting statements of the company was lost, and more than a quarter of that capital has been lost over the preceding 12 months. Whatever its legal status may be, a company which meets the criteria for being the subject of collective insolvency and bankruptcy proceedings is also considered to be a firm in difficulty.

(76) In this respect, Competition Council notes that in 2002, when it was decided to privatize the company, it had a registered capital of ROL 19,189.2 mill; later in the year the company recorded a loss of ROL 40,621.3 mill, thereby exceeding the registered capital's value 2.12 times. A series of other financial-economic indicators, such as the increase of losses, decrease of the turnover in real terms, the increase of the stocks volume, of debts, of financial burdens etc. confirm the difficult situation the company was facing at that moment.

(77) Also, the state aid grantor specifies, in the notification form, that the disastrous financial-economic situation of S.C. TREMAG S.A. describes all the aspects of a company which actually faces insolvability, meeting all the requirements that could trigger the proceedings set out in the *Law no.64/1995 on the insolvency and bankruptcy procedures*, with subsequent amendments and completions.

(78) Thus, the Competition Council concludes that the condition in article 2 (2) of the Regulation was fulfilled, according to which SC TREMAG SA was at the time a "firm in difficulty".

7.2. Restoring long term viability of the company

(79) Difficulties faced by SC TREMAG SA led to a drastic restraint of its activity, together with accumulation of debts owed to the State budget, to which, in time, supplementary charges for payment delay and delay penalties, which exceed by far the overdue and unpaid debts, were added.

(80) The analysis of the Restructuring Plan and its contribution to the long - term restoring of the viability of SC TREMAG SA is based on the provisions of art. 13 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*.

(81) According to art. 13 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, the granting of the restructuring aid depends on the implementation of the Restructuring Plan which is the base for the Competition Council' assessment on the state aid. The Restructuring Plan, which has to last as shortly as possible, must provide for the withdrawal from loss-making activities and for the long term viability of the company,

ensuring the functioning through its own resources. The Restructuring Plan should rely on a realistic assessment of market conditions. The restoring of the viability could result mainly from the internal measures covered by the Plan, by taking also into consideration the external factors, such as prices and demand fluctuation, on which the company has no determinant influence.

(82) The restructuring plan at SC TREMAG SA starts from the technical data that reflects the activities of the company before the privatization. This plan was constructed after an analysis of the weaknesses and the strengths of the company and the circumstances that lead to the difficulties of the company.

(83) The company committed itself numerous objectives which make possible the viability as a result of the restructuring plan implementation, respectively:

- to reach an operational balance, for obtaining profit;
- re-technology and modernization of the existing technologies as provided by the assumed investment programme;
- to make the activity efficient by cost reduction;
- to increase the efficiency of the activity;
- to improve the working conditions for all employees;
- to increase the usage degree of the production capacities;
- to intensify the collection of receivables together with decreasing the arrears;
- to observe international standards for environment protection and total elimination of polluting factors produced by the company.

(84) The strategy of SC TREMAG SA aims at maintaining the strong points, respectively: experience in the field, technical capacity to diversify the production range, quality management system implemented and certified, diversified clients portfolio.

(85) At the same time, the strategy of SC TREMAG SA aims at counteracting with appropriate measures the weak points, such as: the limitation of the access of the company to clients with reputation, due to the difficult situation prior to the privatization; the usage of black oil in the brick burning process; the high turn-over of qualified personnel; the high degree of obsolescence of the technical park.

(86) As part of the Restructuring Plan, the company intends to withdraw from certain loss-making activities. [...] ²¹.

(87) By applying the measures of the restructuring plan – to which both company and the Buyer will contribute, with their own resources, as well as the State, through facilities granted to the company for paying the budgetary obligations – for the period 2004 – 2009, it is forecasted an improvement of the economic and financial indicators, as follows:

Table no.8 The forecasted evolution of the economic and financial indicators, following the application of the restructuring measures.

[...] ²²

Source: Restructuring Plan of SC TREMAG SA Tulcea

²¹ Confidential data

²² Confidential data

(88) The economic and financial results of the Restructuring Plan aim mainly at making the production process efficient by improving the technological efficiency following the modernization of machines and new equipment procurement. Thus, in comparison with 2004, the main economic and financial indicators have the following evolution:

- total incomes and turnover have an ascending evolution;
- operating expenditures ensure an ascending trend through the restructuring plan, in accordance with the development of the company's activity based on labor productivity increase and modernization of technology;
- the analysis of the economic and financial indicators shows the correlation between indicators and the real status of the company and the appropriate and realistic planning of the production programme, which will ensure the company's restoration.

(89) Even the data from the balance sheet show the company's positive evolution. Thus, at the end of 2004, the company succeeded in recovering a good part of the backlogs from the previous years, [...] ²³ due to the restructuring measures already implemented which determined an improvement of the company's efficiency.

(90) Following the application of the restructuring measures, the company forecasts to reach the main indicators at the end of the restructuring period, as follows:

Table no. 9 Main economic and financial indicators

No.	Indicator	M.U.	2004	2005	2006	2007	2008	2009
1.	Interim liquidity		0.2	1.6	1.5	1.4	1.5	1.3
2.	Stock speed rotation (days)	days	101	39	45	45	45	45
3.	Duration of debt payment (days)	days	76	47	47	47	43	47
4.	Weight of arrears (%)	%	67	-	-	-	-	-
5.	Economic profitability (%)	%	-	4	5	6	8	9
6.	Financial profitability (%)	%	-	5	6	8	10	12
7.	Expenditures to ROL 1000 operating income	ROL	1011	967	958	952	943	938

Source: Restructuring Plan of SC TREMAG SA Tulcea

(91) From the above mentioned, the Competition Council notices that the restructuring plan of SC TREMAG SA is based on the technical and economic data which reflect its activity during the period prior to privatization and the causes that led to difficulties the company is facing. The restructuring plan was drawn up taking into account the market analysis, SWOT analysis and real assessment as regards the future functioning conditions.

(92) The implementation of the proposed restructuring plan will lead to the restoration of the long term viability of SC TREMAG SA, viability which results mainly from internal measures, contained in the restructuring plan and is not based on external factors such as the prices' fluctuation and market demand. The implementation of the restructuring plan will assure a massive change which will permit, after finalizing the restructuring the full coverage of costs and competition with its own powers on the free market.

²³ Confidential data

7.3. Prevention of excessive distortion of the competition (compensatory measures)

(93) According to the stipulations of the *Regulation regarding state aid for rescuing and restructuring firms in difficulty*, in view of minimizing the negative effects due the state aid on competition on relevant markets, compensatory measures are necessary. These measures will be proportionate with the distorting effects due the state aid and, especially, with the size and relative importance of the company on relevant markets. The reduction of the company's presence on the market is established based on a market study, attached to the notification, as well as any other relevant information and will be included in the restructuring plan.

(94) According to the notification, SC TREMAG SA Tulcea has approximately 7.88% on the market for refractory products. As a consequence, having in regard the provisions of art. 14 of the *Regulation regarding the State aid for rescue and restructuring the firms in difficulty*, in which it is stated that the compensatory measures will be proportional with the distorting effects of the State aid on competition and, especially, with the size and relative importance of the Company on the affected markets, the Competition Council considers that, in the SC TREMAG SA case, substantial reductions of the production capacities are not necessary.

(95) [...] ²⁴.

(96) [...] ²⁵.

(97) There are significant differences between the production capacity of SC TREMAG SA and the production capacity effectively used. The company does not intend to increase its production capacities, but to achieve a usage degree superior to those remained in function.

(98) [...] ²⁶

(99) Through the restructuring plan, SC TREMAG SA intends to improve its usage production capacities. Thus, the usage degree of the production capacities will increase in comparison with 2004 (respectively, from the beginning of the restructuring plan), reaching at approx. 87% in 2009, taking into consideration that the company committed itself to reduce totally and irreversible the functioning production capacities with 13.33%. Through the restructuring plan, SC TREMAG SA does not increase its market shares, but intends to maintain its activity on the market segment on which it operates at present.

(100) Given the above-mentioned, the Competition Council concludes that the state aid will be used only to restore the company's viability not allowing the beneficiary, during the restructuring plan application, to extend its production capacities.

²⁴ Confidential data

²⁵ Confidential data

²⁶ Confidential data

7.4. State aid limited to what is absolutely necessary (state aid proportionality)

(101) The analysis of the difficult economic and financial situation faced by the company prior to its privatization underlined that its privatization and granting the state aid for restructuring, by means of the facilities, were both required. This way, the company will remain within the economic circuit and its viability will be restored.

(102) According to provisions of art. 15 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, the State aid amount and intensity have to be limited to what is absolutely necessary, so that it could be possible the restructuring using the company's and shareholders' existing financial resources. The state aid beneficiary has to significantly contribute, via its own resources, to the financing of the Restructuring Plan, including the sale of unessential assets for the company's survival, or by external financing got under market terms. According to the provisions of art.15 (2) of the Regulation, a contribution of at least 50% is considered satisfactory, in the case of large companies.

(103) The total cost of the SC TREMAG SA's restructuring is of ROL 231,409 mill. and consist of:

- organizational restructuring cost	ROL 6,223 mill.;
- technological restructuring cost	ROL 45,809 mill.;
- environmental restructuring cost	ROL 8,485 mill.;
- financial restructuring cost	ROL 170,892 mill.

(104) [...] ²⁷.

(105) [...] ²⁸.

(106) According to art. 15 of the Regulation, the State aid amount and intensity must be strictly limited to the minimum restructuring costs necessary for permitting the restructuring, function of the existing financial resources of the Company, its shareholders or the group in which it is part. In S.C. TREMAG S.A. case, the State aid intensity has a value of 49.37%, calculated as ratio between the State aid value and the total restructuring costs.

(107) Under these conditions, the Competition Council considers the beneficiary's contribution of 50.63% to be significant for the implementation of the restructuring plan. The contribution shows the beneficiary's confidence in the practical value of restructuring, according to the existent financial resources of the company. In addition, this amount and the intensity of the state aid were strictly limited to permit the restructuring in accordance with the existent financial resources of the company and of the major shareholder. This way, it is avoided the danger that the company would receive a surplus of liquidity which could be used for other aggressive activities distorting the market.

²⁷ Confidential data

²⁸ Confidential data

7.5. Observance of “first time, last time” principle

(108) As results from the information presented in the notification form, SC TREMAG SA Tulcea has not received any other restructuring aid. The provisions of art. 24 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, which stipulates that the restructuring state aid has to be granted only once has therefore been observed.

7.6. Membership of a group of companies

(109) According to the provisions of art 2(5) of the Regulation, a company affiliated to a group, normally, is not eligible to be granted state aid for rescuing and restructuring, except the case when it is possible to demonstrate that the company’s difficulties are its own and are not the result of a arbitrary cost allocations inside the group, and that the difficulties are too serious to be worked out by the group.

(110) AVAS underlined that the investors agreed to purchase the majority shares package and to commit themselves to cover a significant part of the TREMAG’s restructuring costs only under the conditions in which the payment facilities mentioned in the presentation file were granted.

(111) Fiscal facilities granted at the privatization of S.C. TREMAG S.A Tulcea refer to the historical debts – effect of the economic outcomes obtained prior to the sale of the majority shares stock – therefore, those debts belong to S.C. TREMAG S.A itself.

(112) As mentioned at par. (35)-(36) of the present Decision, the cumulated profit of the companies which acquired SC TREMAG SA Tulcea is of ROL 25,574.3 mil. From the analysis of the data from the balance sheets of the companies, it results that the financial resources at their disposal are limited to be utilized to their current activity.

(113) At privatization, the Buyers paid for 50.97% of SC TREMAG SA registered capital a price of ROL 7,057 mill. As well, the investors committed themselves to contribute to the restructuring plan, respectively to finance the restructuring measures of organizational, technical, technological and environmental protection nature, in quantum of ROL 80,760 mill. Under these circumstances, the Competition Council ascertains that, since the company’s debts owed to the State budget and AVAS were of ROL 114,232 mil., the majority shareholders couldn’t cope with either the financial difficulties of SC TREMAG SA or the company’s restructuring, without a State’s consistent intervention. This contribution is significant in comparison with the financial resources of the group.

(114) Having in view the aforesaid, the Competition Council concludes that the group did not have the financial resources to solve the difficulties the company is facing, respectively to cover the debts owed to the State in value of ROL 114,232 mill. In addition, taking into account that the investors committed themselves to contribute with ROL 80,760 mil. to the financing of the restructuring plan, since their cumulated profit is of ROL 25,574.3 mil., it can be stated that the group used all its financial resources to support the economic restoration and restructuring of S.C. TREMAG S.A.

7.7. Monitoring and annual reporting

(115) According to provisions of art.18 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, the Competition Council permanently monitors the implementation of the Restructuring Plan, in order to ensure the fulfillment of the established objectives.

(116) The Competition Council shall monitor the implementation of the restructuring program until the end of the restructuring period in order to make sure that there will be no increases of the production capacity, major deviations from achieving the restructuring measures, and that the aid shall not lead to additional liquidities which may be used for activities other than those in the Restructuring Program.

8. CONCLUSIONS

(117) Taking into consideration the above presented grounds, the Competition Council finds that the individual state aid granted to SC TREMAG SA is compatible with the normal competitive environment, and does not significantly affects the trade with the Member States of the European Union.

DECIDES

Art. 1. According to art. 2(1) of the *Law no.143/1999 on state aid, with subsequent amendments and completions*, the measure notified by the Authority for State Assets Recovery for S.C. TREMAG S.A. Tulcea represents a state aid.

Art. 2. Based on art.12 (2) lit. c), corroborated with art.14 (1) lit. e) of *Law no.143/1999, with subsequent amendments and completions*, the state aid for restructuring, intended to be granted to S.C. TREMAG S.A. Tulcea for its privatization is authorized under condition to observe provisions of art. 3, art. 4 and art. 5 of the present Decision.

Art. 3. The state aid for restructuring will be granted after the company will reimburse the state aid received in 2002 by which the *de minimis* threshold is exceeded, respectively the amount of ROL 2,205,408,506 (RON 220,541) and the related interest rates (ROL 1,148,459,625, respectively RON 114,846).

Art. 4. The company is compelled to fully implement the Restructuring Plan to which the company committed itself.

Art. 5. The company shall reduce its production capacities until 2009, according to the Restructuring Plan to which it committed itself.

Art. 6. In case of failure to observe the conditions imposed by the present Decision, provisions of art. 13 of the *Law no. 143/1999 on state aid with further amendments and completions*, shall apply.

Art. 7. The value of the state aid that is going to be granted is of ROL 114,231,929,918, i.e. RON 11,423,193.

Art. 8. The present Decision shall enter into force at the date of its communication.

Art. 9. According to the provisions of art. 24 of the *Law no.143/1999, with further amendments and completions*, the Authority for State Assets Recovery shall submit to the Competition Council information concerning the granted state aid, in order to be inventoried and monitored. Also, the Authority for State Assets Recovery shall submit to the Competition Council annual reports regarding the implementation of the Restructuring Plan. The first report shall be submitted within 6 months from the Decision's issuing date. Further reports shall contain all the necessary data related to the enforcement stage of the Restructuring Plan (from both factual and financial point of view). Also, the reports shall provide evidence on the enforcement stage of the compensatory measures related to the reduction of the production capacities imposed by the present Decision.

Art. 10. According to the provisions of art. 29 of *Law no.143/1999 on State aid, with further amendments and completions*, the present Decision can be appealed, by the interested persons, before the Bucharest Court of Appeal, Administrative Contentious Department, within 30 days from its communication.

Art. 11. The present Decision shall be communicated by the General Secretary of the Competition Council, to:

- The Authority for State Assets Recovery, 50, Cpt. Av. Alexandru Serbanescu Street, 1st sector, Bucharest;
- S.C. TREMAG S.A., 49,Taberei Street, Tulcea town, Tulcea District.

Art. 12. The General Secretary and the Directorate for State Aid Authorizing of the Competition Council shall pursue the fulfillment of the present Decision.