

COMPETITION COUNCIL DECISION
no. 180 of 22.09.2005
on the state aid for
S.C. SATURN S.A. Bucuresti

THE COMPETITION COUNCIL,

With regard to 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,

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette no. 742, Part I, of 16.08.2005,

With regard to the provisions of the State aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744, of 16.08.2005,

With regard to the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 470, of 02.07.2002, as subsequently modified and completed,

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members,

Based on the following reasons,

1. THE PROCEDURE

(1) Through the address no. VP4/1631/22.06.2005, registered at the Competition Council by no. RS – AS 44/22.06.2005, the Authority for State Asset Resolution (hereinafter named AVAS) notified the individual state aid for the restructuring of SC SATURN SA Bucuresti in the privatisation procedure, in accordance with Article 15 of Law no. 143/1999 on state aid, republished.

(2) The Competition Council requested additional information from AVAS. AVAS submitted the requested additional information by the addresses registered at the Competition Council by no. DAAS 746/12.07.2005, DAAS 747/12.07.2005, DAAS

768/14.07.2005, DAAS 769/14.07.2005, DAAS 778/18.07.2005, DAAS 784/19.07.2005, RG/5101/19.07.2005 and DAAS 979/23.08.2005.

(3) The notification became effective when the information were exact and complete, respectively 23.08.2005.

2. DESCRIPTION OF THE STATE AID MEASURE

2.1. Legal basis of the state aid measure

(4) The Authority for State Asset Resolution notified the state aid granted to SC SATURN SA Bucuresti according to the following normative acts:

- Article 18 of the Law no. 137/2002 on some measures for the acceleration of privatization;
- Article 281 of the G.D. no. 577/2002 for the approval of the Methodological Norms for the enforcement of the GEO no.88/1997 on the privatisation of the commercial companies, as subsequently modified and completed;
- Law no. 442/2004 for the approval of the G.O.no. 26/2004 regarding some measures for finalizing the privatization of the companies under AVAS portfolio and consolidation of some privatizations, Chapter V – Consolidation of some privatizations made by AVAS;
- G.E.O. no. 40/2002 for the recovery of the budgetary arrears, approved by the Law no. 491/2002;
- Regulation on State aid for rescue and restructuring firms in difficulty, approved by Order of the Competition Council President no. 501 of 23 November 2004.

2.2. State incentives provided for SC SATURN SA Bucuresti

(5) The state aid notified by AVAS is granted in the context of SC SATURN SA Bucuresti privatization, consisting in facilities provided by the Law no. 137/2000 and mentioned in the presentation file and in the stock purchasing contract, respectively facilities for the outstanding debts payment to the consolidated state budget.

(6) The facilities for the outstanding debts payment to the state budget are granted for the privatization of SC SATURN SA Bucuresti, in amount of ROL 26,057,044,599 and consist of:

- exemption of past due budgetary debts, representing 85% of the debt outstanding at December 31, 2002, as well as interest and penalties of any kind related to the past due budgetary debts, in amount of ROL 18,657,633,336.
- rescheduling of budgetary debts, representing 15% of the past due debts at December 31, 2001 as well as the budgetary debts representing sums retained by the company from the employees or from shareholders and which had to be paid to the state budget (i.e. tax on wage, tax on dividends, the company and the employees' contribution to the social security fund) in total amount of ROL 7,399,411,263.

3. BENEFICIARY OF THE STATE AID MEASURE (SC SATURN SA Bucuresti)

(7) SC SATURN SA Bucuresti is a joint – stock company. When the stock sale – purchase contract was concluded, the company had the equity capital registered at the Trade Registry Office in amount of ROL 5,149,500 thousand divided into 205,980 shares with a nominal value of ROL 25,000, according to the amendments registration form no. 17367/17 February 2000.

(8) SC SATURN SA Bucuresti was set up in 1990 and it was registered at the Trade Registry Office by no. J40/1091/1991. The company was set up in accordance with the provisions of the Law no. 15/1990 on the reorganization of the state owned economic units as Régie Autonome and commercial companies, and in accordance with the Decision no. 1259/29 December 1990 of the Bucharest City Hall.

(9) SC SATURN SA Bucuresti derives from Auto Zetari Department of the Undertaking for Transport Equipment Bucharest, set up in 1983, as a department for special transportation of prefabricated pieces and big panels, which served the construction enterprises of the Central General Enterprise for Constructions and Assembly Bucharest.

(10) SC SATURN SA Bucuresti was privatized in 2002, by signing the stock sale – purchase contract no. B026/30 December 2002 concluded between APAPS (subsequently transformed into AVAS) and SC TOMINI TRADING SRL. The shareholders structure after the privatization is presented in the Table no.1. The property transfer was realized on January 17, 2003, according to the amendments registration form no. 89027/ 4 March 2004.

Table no. 1 The shareholders structure after the privatization of SC SATURN SA Bucuresti

SHAREHOLDERS	CAPITAL POSSESSIONS	
	Number of shares	Weight in the equity capital (%)
TOMINI TRADING SRL	185,552	90.08
PPM	20,428	9.92
Total	205,980	100.00

Source: Notification form

(11) The main line of business of SC SATURN SA Bucuresti consists of road transportation of goods, especially for the constructions activity.

(12) The company also participates in the following secondary activities: manufacture of pieces and accessories for vehicles and vehicle engines, rent of construction equipments and machines and outfits for constructions, with or without serving personnel; trade of pieces and accessories for vehicles; constructions activities.

(13) SC SATURN SA had a turnover of ROL 8,012,053,000 in 2002 and 81 employees at December 31, 2002.

(14) Taking into account that after the privatization shares in SC SATURN SA will be held by SC TOMINI TRADING SRL Constanta i.e. 90.08% and this last one is included in the “big enterprises“ category (turnover of ROL 260,779,220 thousand, average number of employees 321 and the shareholders structure formed by two natural persons in 2002), SC SATURN SA cannot be considered a small – medium sized enterprise and therefore it was included in the category of the companies for which the individual notification is required, because the independence criterion is not accomplished.

(15) The transport capacity of SC SATURN SA is the following:

Table no. 2 **SC SATURN SA Bucuresti Park of auto vehicles**
[...]*

Source : Notification form, The restructuring program of SC SATURN SA

The motor vehicle park held by SC SATURN SA decreased year by year due to the dismantling of the motor vehicles put out of service and their worn out and obsolete status. On January 2003, when the patrimony was effectively taken over by SC TOMINI TRADING SRL as a result of the privatization process of January 2003, none of the motor vehicles inventoried by the company was functioning, being in different non – operating stages, and the company was not carrying on any activity. The breach of the activity of the company was also influenced by the seasonal character of the activity, respectively transport for the construction activity, which is carried out mainly in the warm season. After the privatization the new owner made an assessment of the fleet and a part of them were dismantled while a small number of motor vehicles were rehabilitated.

(16) The economic – financial results registered by SC SATURN SA, based on the balance sheets previous to the privatisation, are the following:

Table no. 3 **The economic – financial results based on the balance sheets**

2000	2001	2002
Turnover (ROL thousand)		
6,124,986	13,230,933	8,012,053
Profit/Loss (ROL thousand)		
- 1,298,600	- 6,087,451	- 6,950,746

Source: Notification form

As it can be noticed in the table, the company registers losses in the period analyzed above.

4. DESCRIPTION OF THE PRIVATIZATION PROCESS

(17) [...]*

(18) [...]*

(19) [...]*

* confidential data

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* confidential data

- (20) [...]*
- (21) [...]*
- (22) [...]*
- (23) [...]*
- (24) [...]*
- (25) [...]*

5. RELEVANT MARKETS

(26) SC SATURN SA operates on the goods road transportation market. The beneficiaries of the transport services undertaken by SC SATURN SA are Romanian companies active in all the economic fields and especially in the construction field. The turnover of SC SATURN SA in 2002 was ROL 8,012,053 thousand and was made entirely within the Romanian market.

(27) The geographic market on which SC SATURN SA operates is the area of Bucharest, the southern area of the country, respectively Constanta, Pitesti, Oltenita and the agricultural area of Baragan.

(28) According to the market study added to the restructuring plan of SC SATURN SA, the part of road transport of goods in the total turnover of the company is the following:

Table no. 4 Percentage of the road transport of goods in the turnover of SC SATURN SA

- % -

Name of the Product	2002		2003		2004	
	U.M. (tones)	value (ROL thousand)	U.M. (tones)	value (ROL thousand)	U.M. (tones)	value (ROL thousand)
Road transport of goods	29,000	6,669	69,000	9,726	60,000	9,078
% in the turnover	-	83.2	-	99.3	-	99.8

Source: Notification form

(29) SC SATURN SA reduced its transport capacity to half during 2000-2002, from 256 vehicles in 2000 to 147 vehicles in 2002. As a result, its market share decreased.

(30) Taking into account the large number of undertakings which also operates in the same market (3056 undertakings in 2002, 3402 undertakings in 2003 and 3651 undertakings in 2004), the market share of SC SATURN SA is quite low, having a market share of 0.01% in 2002.

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(31) The market of the road transportation for construction materials is presented as follows:

Table no. 5 Volume of the road transportation for construction materials in 2003

-thousand tons -

Group of transported products	Total	With own transportation means	With the transportation means of the road transport undertakings
Cement, unslack lime, prefabricated materials for constructions	28,169	19,816	8,353
	100%	70.35%	29.65%

Source: supplementary informations

Taking into account that SC SATURN SA performs construction materials' transportation, were assessed the statistical data related to this market share. From the data presented in the above table it can be seen that the road transportation for construction materials, made with their own means by companies not having as main activity object the transports, holds 70.35% from the total market of construction materials road transport. Most of the construction companies have the financial and organizational possibility to develop their own auto parks. In comparison, the proportion of the transport services performed by the transport undertakings is small (29.65%).

(32) SC SATURN SA offers transport services for charge and accomplished in 2003 a volume of 69 thousand tons of transported products. SC SATURN SA's market share on the market of road transport for construction materials is of 0.8%.

(33) In Romania the market of road transports for goods is open to any Romanian natural or legal person because everyone of them can buy a transportation means of different capacity, using payment facilities, as leasing, long term credits, by which they can undertake own transports or transports for occasional or permanent clients.

(34) Despite all these, the access of foreign transportation means is made on the basis of international agreements for road transport of goods. Romania, like any other country, concluded agreements with all the European countries and the majority of the Asian countries. Based on these agreements which fulfil the regulations, the access with own means in the partner countries is allowed only for export or import products of the respective country, with authorizations for each transportation party. All these agreements prohibit internal transportation of any kind for foreign transportation means. Thus, the national market of road transports of goods is protected in every country, being served only by domestic natural or legal persons.

(35) The international road traffic of goods is performed with special transportation means according to the provisions of international agreements.

(36) SC SATURN SA does not have proper means of international transportation of goods, nor the authorization to undertake this type of traffic.

(37) The Romanian market of the road transport of goods has most of its operators endowed with their own means of transportation specific to their business profile, internalizing the costs incurred by the transport of the merchandise they produce. This situation led to the expansion of the fleets of the Romanian operators which cover more than a half of the volume of the Romanian road transport of goods. As a result, the market share of the companies with the transportation of goods as their main activity recorded a downward trend.

(38) According to the market study annexed to the notification form, the size of the internal market of road transport, calculated as an average for the years 2000-2002, is about 275 million tones/year.

(39) After the privatization of SC SATURN SA, the internal market for road transport of goods enhanced by 3.6%. The rate of covering the demand on this market is 74.5%, and is envisaged to enhance annually by an average percentage of 1%.

(40) Taking into account the big number of the operators on the internal market of the road transports of goods, their market shares are insignificant.

6. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(41) The company together with the investor and APAPS drew up a restructuring program consisting of measures of organizational, technological, environmental and financial nature. The restructuring period cover the period 2003 – 2008.

(42) The granting of the state aid consisting in payment facilities for the budgetary debts accumulated by SC SATURN SA before the privatization was made conditional by APAPS (AVAS) on the elaboration of a restructuring program by the company.

(43) In order to redress the company's situation the undertaking proposed a strategy aiming to rehabilitate the existing transportation means, to gradually replace old vehicles with new ones, as well as to develop profitable activities related to the core business meant to improve the economic – financial results of the company, i.e. increase of turnover and profit.

(44) The ways to achieve the proposed goals within the restructuring plan regard the following:

a) The existing fleet was not operational when taken over, which requires its rehabilitation. This assumes the technical check up of each transportation mean, the determination of the components and parts to be replaced, assessment of the rehabilitation cost and finally the correct assessment of the repair or dismantling necessity of the vehicles within the fleet. This assessment takes into account, on one

hand, the price of spare parts, the value of labour, the possibility to use reconditioned spare parts and, on the other hand, the price of transportation services.

b) The organizational structure of the company at the privatization date was not changed since the company was functioning on the principles of a centrally planned economy. By the restructuring program, the company assumed the obligations to redo structures, to re compartmentalize the activities, to ensure specific qualification of the personnel according to the new structure.

c) The high ratio of worn out vehicles of SC SATURN SA imposed as a compulsory measure of the restructuring program the replacement of old vehicles with new ones. Taking into account the large investments it was decided to phase the replacement process. When drafted, the restructuring program included only the minimum acceptable from the perspective of improving the economic – financial indicators and restoring viability, as well as from the point of view of the investment effort.

d) Taking into account the relatively seasonal nature of construction activities for which SC SATURN SA performs transportation services, it is required to diversify the company's activities by choosing fields related or linked to its existing activity. The restructuring program aims at the extension of servicing transportation means, the acquisition of equipment specific to constructions and in the same time adjacent to transport: scaffolding, loading – unloading equipment and accessory transport equipment.

e) The restrictive legislation related to environment protection is conditioning the approval of the company's functioning by realizing investments required to obtain the legal permits. Within this action the company focused not only on the specific environment work required by the specialized bodies and the legislative regulations, but also accessory elements: hygienic and comfort conditions for the employees.

f) The company inherited a big volume of debts to the state budget from the period prior to privatization, respectively a poor economic situation. Although according to legal provisions in force at the privatization date SC SATURN SA benefits at privatization from facilities for the payment of budgetary debts, calculated until the date of privatization the company benefited from these facilities only until December 31, 2001. SC SATURN SA was privatized on 30.12.2002 and between 01.01.2002 and 30.12.2002 it accrued other debts to the state budget, in amount of ROL 3,923 million, which were entirely paid by the buyer. Thus, the value of the granted state aid was diminished by ROL 3,923 million to the level of ROL 26,057 million.

(45) The restructuring plan submitted by AVAS includes the causes that led to the financial difficulty of SC SATURN SA and also the measures to ensure the long term viability. By enforcing the measures of the restructuring plan, it is considered that the company will have a profitable activity and will be able to ensure its own financial resources in order to carry out its activity, without debts to the consolidated state budget or the local budgets.

(46) The restructuring program elaborated together with the Buyer and AVAS covers 2003 – 2008. The synthesis of the restructuring plan measures is made in the table below:

Table no. 6 Synthesis of the restructuring plan measures of SC SATURN SA

- ROL thousand -

No.	Measures	Implementation costs assessment		
		Own sources	Investor' sources	State aid
1.	Measures of organizational and managerial nature	350	-	-
2.	Measures of technical and technological nature	-	19,852	-
3.	Measures of environment protection	-	6,780	-
4.	Measures of financial restructuring	-	3,923	26,057
	TOTAL	350	30,555	26,057
TOTAL COST OF RESTRUCTURING		56,962		

Source: *Restructuring plan of SC SATURN SA Bucuresti*

(47) The restructuring program accomplishment takes a financial effort in amount of ROL 56,962 million. This plan will restore the viability of SC SATURN SA in 2008 (at the end of the restructuring period).

6.1. Organizational and managerial restructuring

(48) According to the restructuring program of SC SATURN SA, the organizational and managerial restructuring includes the following measures:

Table no. 7 Measures of organizational and managerial restructuring

- ROL thousand -

Measure	Term to finalize	Implementation effort	Financing		State aid
			Own sources of SC SATURN SA	Buyer sources	
Modification of the organizational structure as a result of the merger between technical-administrative activities and creation of new compartments	December 2004	60	60	-	-
Modernization of the informational system, creation of an integrate system of calculation technique	December 2004	230	230	-	-
Decrease of employees number	December 2004	60	60	-	-
TOTAL		350	350	-	-

Source: *Restructuring program of SC SATURN SA Bucuresti*

(49) The reorganization by merging some activities and creating new compartments gives the possibility of a better separation of the expenses, thus the costs would reflect the objective reality, with a direct impact on the transport tariff. The modernization of the

informational system contributes to frame the company into the actual standards, taking into account the financial, technical and prompt management requirements that lead to the informational circuits decrease and also the decrease of the number of documents involved and through these to reduce expenses. The company aims to maintain an average number of 55 employees, compared with 2002, when it had 81 employees. The number of employees is related to the significant decrease of the park, from 147 vehicles in 2002 to 46 vehicles in 2004.

6.2. Technical and technological restructuring

(50) The technological investments assumed by the buyer amount ROL 19,852 million and consist in:

Table no. 8 Measures of technical and technological restructuring

- ROL thousand -

Measure	Term to finalize	Implementati on effort	Financing		State aid
			Own sources of SC SATURN SA	Buyer sources	
Rehabilitation of the existing fleet	July 2004	3,030	-	3,030	-
Fleet replacement	December 2004	5,834	-	5,834	-
Acquisition of repair and maintenance equipment for transportation means	December 2004	5,988	-	5,988	-
Acquisition of equipment related to construction and transport equipment for construction materials	December 2008	5,000	-	5,000	-
TOTAL		19,852	-	19,852	-

Source: Restructuring program of SC SATURN SA Bucuresti

(51) According to the restructuring plan, the buyer assumed technological investments in amount of ROL 19,852 million. The buyer committed to implement an investment program which consists of:

- reset in function the means of transportation that have a technical state which permits the efficient rehabilitation and the endowment with tools, outfits, tires, accumulators;
- [...]*
- reorganization of the repairing and up keeping activities, which will be extended to all types of repairs for the own parks, as well as for the third parties;
- acquisition of tools and outfits specific for the repairing and up keeping of the means of transport;
- [...]*

* confidential data

* confidential data

(52) The investment program assumed will ensure the improvement of the usage parameters of the endowed means of transport and also the engagement of the road transport capacities to caving works for the contracts which include complete services of caving, loading, transport, unloading and constructions. Thus the company will obtain additional incomes.

6.3. Financial restructuring

(53) At the time of privatization the company required a financial restructuring for the normal functioning of the production activity, in addition to the other restructuring measures assumed by the restructuring plan.

(54) In the case of SC SATURN SA, the financial restructuring includes financial support granted by the state for its privatization, consisting in exemptions and rescheduling for some outstanding debts to the state budget and the local budgets, as well as in exemptions of the increments and delay penalties related to the budgetary debts, facilities granted in accordance with the provisions of the Law no. 137/2002. The total amount of these facilities is ROL 26,057 million and they were calculated until December 31, 2001. The debts accrued by the company between 01.01.2002 and 30.12.2002 were paid by the buyer. Thus the state aid value was diminished by ROL 3,923 million.

(55) The financial restructuring includes the following measures:

Table no. 9 **Measures of financial restructuring** - ROL thousand -

Measure	Term to finalize	Implementati on effort	Financing		State aid
			Own sources of SC SATURN SA	Buyer sources	
Exemptions and rescheduling for outstanding debts to the state budget and the local budgets in accordance with the Law no. 137/2002	December 2008	26,057	-	-	26,057
Investor' payment of the budgetary debts accumulated by S.C. SATURN S.A. during January 1 st , 2002 – December 31, 2002	2003 – 2004	3,923	-	3,923	-
TOTAL		29,980	-	3,923	26,057

Source: Restructuring program of SC SATURN SA Bucuresti

6.4. Measures of restructuring regarding environment protection

(56) According to the shares selling-purchase contract, the investments regarding environment protection are entirely the obligation of the buyer and have as a scope to reduce environment pollution and to obtain environment advice. Environment advices include obligations regarding the protection of soil and air and the discharge of waste water. The investments made by the buyer amount ROL 6,780 million and aim to

accomplish the environment obligations and the measures included in the programmes of conformity with the environment advices. The environment investments consist in:

- laying up of the existent fuel station;
- measurement of the soil pollution produced by the fuel tanks;
- rehabilitation of the existent bore hole;
- carrying out a purification station for waste waters;
- carrying out a controlled system for tapping, discharge and filtration of the pollutants issued by the repair shop.

Table no. 10 Measures of restructuring regarding environment protection

- ROL thousand -

Measure	Term to finalize	Implementation effort	Financing		State aid
			Own sources of SC SATURN SA	Buyer sources	
Laying up of the existent fuel station and rehabilitation of the existent bore hole	December 2004	3,500	-	3,500	-
Carrying out a purification station for waste waters carrying out a controlled system for tapping, discharge and filtration of the polluters	December 2005	3,280	-	3,280	-
TOTAL		6,780	-	6,780	

Source: Restructuring program of SC SATURN SA Bucuresti

(57) By the restructuring plan, the company realistically determined its financing sources for the restructuring during the next period, on one hand by own sources, and on the other hand, by buyer's funds that ensure technological and environmental investments necessary to unfold the activity.

(58) Through its financial restructuring component, the restructuring plan could make possible the increase of the cash – flow and the ensuring of stable cash – flow that will relieve and make easier the financial activity of the company. Thus the company will be able to pay its current debts to the state and to allocate the necessary liquidities to carry out the investments programmed and necessary in order to develop and sustain expectant the production program.

7. ASSESSMENT OF THE STATE AID MEASURES – STATE AID NATURE OF THE NOTIFIED MEASURES

(59) The criteria that allow assessing if a measure could be state aid are provided by Article 2(1) of Law no. 143/1999 on state aid, republished. According to the law, the state aid is any measure of support granted by the state or by the local administrative authorities, or through state or local administrative resources, regardless of its form, that distorts or threatens to distort the competition, by favouring certain undertakings, the production of certain goods or the supply of certain services or that affects the trade

between Romania and the Member States of the European Union, being considered incompatible with a normal competitive environment.

(60) In order to be considered state aid according to Law no. 143/1999 on state aid, republished, the financial support must fulfil cumulative the four terms stipulated at Article 2:

- the measure must be granted by state or through state resources;
- the measure must be selective;
- the measure must ensure an advantage to the undertaking;
- the measure must distort or threaten to distort the competition and must affect the trade between Romania and the Member States of European Union.

a) support granted through state resources

(61) Because the facilities intended to be granted to SC SATURN SA Bucuresti and notified by AVAS consisted in the foregoing by the state of some revenues, therefore there is no doubt that state resources are involved.

b) the measure of support has selective nature

(62) The measures of financial support granted according to the provisions of the Law no. 137/2002 on some measures for the acceleration of privatization, as subsequently modified and completed, are provided only for the undertakings that will be privatized, SC SATURN SA Bucuresti being among them. Thus the financial support granted to SC SATURN SA has selective nature.

c) the measure of support grants an advantage to the company

(63) The measures of financial support granted to SC SATURN SA create an economic advantage for the company which is exempted from the payment of some debts to its budgetary creditors, as well as from the payment of the interests and delay penalties related to the outstanding budgetary debts. Granting these facilities has a favourable effect on the economic – financial indexes and on the cash – flow. Thus the company has an advantage, being favoured comparative with its competitors.

d) the measure distorts or threatens to distort the competition and affects the trade between Romania and the Member States of the European Union.

(64) Granting the financial support to SC SATURN SA creates the premises for a possible distortion of the competition on the relevant market, because it permits to the company to stay on this market. SC SATURN SA does not unfold international road transports and as regards the internal road transports, usually there are contracts concluded between states that allow the vehicles access for the partner countries and only for the export or import products of the respective country, based on authorization for each transport. Thus, the Competition Council can not exclude the possibility that the granting of financial support creates the premises for the potential distortion of

competition between Romania and the Member States of the European Union, in the event of some modifications of the legislation in force from this field.

(65) As far as the application of the private creditor principle is concerned, the Competition Council finds the following:

- AVAS underlined that the privatisation process was carried out through an open and transparent tender. All potential bidders had enough time to perform an adequate assessment of the company to substantiate their offers. In the end, SC SATURN SA was sold to the only bidder that submitted the bidding;
- However, as mentioned at para. 21, the privatisation process was accompanied by negotiations regarding the price and the level of investments. Thus, the sell was subject to the implementation of certain technological modernisation measures and carrying out environmental compliance investments;
- The price paid by the buyer for purchasing 90.08% of the company's social capital is ROL 6,494.3 mil. This value is much lower than the level of the incentives granted at the company's privatisation – ROL 26,057.1 mil;
- Also, AVAS informed the Competition Council that a comparative assessment between the company's liquidation cost and its privatisation cost was not carried out before privatisation. Taking into consideration the social effects that would have been generated by the workforce lay off in case of liquidation, the State acted directly towards the company's privatisation, assuming the responsibility of granting incentives in case the privatisation was completed;
- As a private creditor, the state must aim to recover the debts it owns to SC SATURN SA;
- By selling the company, the state (through AVAS) aimed to maintain it in function, conditioning the sale of the share package on certain investments to be made by the new owner in the company and granting facilities during the privatization process. This way, the state didn't act as a creditor aiming to recover its claims owned at an undertaking.

(66) Taking into account the above presented facts, the Competition Council considers that the private creditor test cannot be applied for SC SATURN SA's privatization.

(67) In conclusion, the measures of financial support are considered state aid and fall under Law no. 143/1999 on state aid, republished.

8. COMPATIBILITY OF THE STATE AID WITH THE STATE AID LEGISLATION

(68) Article 2 of Law no. 143/1999 on State aid, republished, provides that the State aids granted by the State or through State resources that distort or threaten to distort competition and affect the trade with the Member States are incompatible with a normal competitive environment.

(69) The State aid objective is the restructuring of SC SATURN SA Bucuresti in order to restore its viability until the end of the restructuring period. If the conditions stated in the Regulation on State aid for rescue and restructuring aid in difficulty are fulfilled, the State aid may be considered compatible.

(70) The restructuring aid is conditioned by the implementation of a restructuring viable and coherent plan, demonstrating the long term viability of the company. To this effect, the Regulation provides that the restructuring usually involves one or more of the following elements: the company's reorganization and rationalization on a more efficient basis, generally implying the retreat from actions that are generating losses, the restructuring of the existing activities that could become competitive again and sometimes the diversification towards new and profitable activities. Generally the industrial restructuring must be accompanied by a financial restructuring (capital injections, gearing decrease).

(71) The Competition Council assess the state aid granted to SC SATURN SA according to the criteria provided by the Regulation on state aid for the rescue and restructuring of firms in difficulty, published in the Romanian Official Gazette no. 1215/17 December 2004, issued for the appliance of Law no. 143/1999 on state aid, republished. In order to be considered compatible with a normal competitive environment, the state aid must fulfil all the criteria included in the regulation mentioned above.

9. CRITERIA THAT MUST BE FULFILLED IN ORDER TO GRANT STATE AID FOR RESTRUCTURING

(72) The measures of state support mentioned in paragraph 2.2. together with the restructuring plan will lead to:

- Restoration of the long term viability of SC SATURN SA
- Avoid excessive distortion of the competition
- Adequacy of the restructuring costs with its benefits (aid limited to the minimum necessary)
- Observance of the „one time, the last time” principle
- Confirmation of the fulfillment of the restructuring plan and the monitoring of its fulfilment by the Competition Council (annual monitoring and reporting)

10. ELIGIBILITY OF SC SATURN SA Bucuresti – FIRM IN DIFFICULTY

10.1. Firm in difficulty

(73) In order to benefit from state aid in accordance with the Regulation on state aid for rescue and restructuring firms in difficulty, the company must be in difficulty. In the Regulation framework, the Competition Council considers a firm as being in difficulty when it is not able, either through own financial resources or through resources that could be obtained from owners/shareholders or creditors, to cover the losses that will lead almost for sure in short or medium term to its exit from the economic circuit, except for an external intervention of the public authorities.

(74) On the line of Article 2 (2) letter b) and c) of the Regulation on state aid for rescue and restructuring firms in difficulty, a joint – stock company is considered in difficulty when more than half of its own capital was lost, based on the bookkeeping and more than a quarter of this capital was lost during the last 12 months. A company, regardless of its legal form, is considered in difficulty when it fulfils the conditions in order to be subject of the legal procedure of judicial reorganization and bankruptcy.

(75) To this effect, the Competition Council states that, according to the data from the balance sheet, the equity of SC SATURN SA recorded in 2001 a negative value of ROL 1,860,183 thousand compared with a positive value of ROL 4,227,268 thousand in 2000 and in 2002 the equity had a negative value of ROL 8,810,929 thousand. The Competition Council ascertains that SC SATURN SA fulfils the condition provided by Article 2 (2) of the Regulation in order to be considered firm in difficulty due to the fact that the company lost more than half of its own equity in 2001 and in 2002 the loss exceeded the equity capital.

10.2. Causes that led to the financial difficulty of SC SATURN SA

(76) Prior to privatization the turnover of SC SATURN SA decreased significantly from ROL 13,320,933 thousand in 2001 to ROL 8,012,053 thousand in 2002, i.e. the turnover in 2002 is 60% from the turnover in 2001. The company's equity had a negative value since 2001 due to the accumulation of interest and fiscal penalties related to the previous years and of past due budgetary debts due to the lack of funds. In 2002, the losses exceed the shareholders equity which means that the company was insolvent. During 2002 – 2003 the operating result is negative and the company's claims show a continuous increase. In view of the above financial situation APAPS, as a major shareholder, decided to launch the privatization procedure. The evolution of the main indicators which show the difficulty status of the company is the following:

Table no. 11

Economic – financial indicators

- ROL thousand -

	2000	2001	2002
Shareholders' Equity	5,149,500	5,149,500	5,149,500
Equity	4,227,268	-1,860,183	-8,810,929
Gross result of the financial year	-1,298,600	-6,087,451	-6,950,746
Operating result	-1,992,966	-1,791,441	-2,989,335
Claims	4,322,010	5,505,901	6,869,041

Source: Notification form, balance sheets

(77) The causes that led to the company' difficulties are the following:
- the fleet was entirely liquidated at the date of privatization, having an ancientness two – three times bigger than the normal activity and being in different stages of degradation, from the stage of old iron with lack of assemblies and spares to the stage of auto vehicle that requires small remedies. In these conditions, the economic performances were weak

and the fuel consume was high, fact that imposed the compulsory replacement with new means of transport endowed.

- the organizational structure of the company remained unchanged from the period the company was functioning on the principles of the directional economy;
- the marketing activity was non-existent and the contracts and the attraction of new clients were not planned in long term;
- the company did not have a coherent strategy based on performance objectives on short, medium and long terms and neither had means to achieve these objectives;
- at the date of privatization the company had outstanding debtors in amount of about ROL 5 billion. Their debts could not be cut off because they exceeded the prescription term of 3 years.
- the company did not find the necessary solutions to attract long term sources of financing in order to pay the debts, as well as to make profitable the production capacities.

(78) Given the difficult situation, APAPS decided to grant some facilities for the company's privatization, conditioned by the implementation of a restructuring plan. According to the information included in the AVAS notification form, the presentation file disclosed to the potential investors the granting of the facilities for the budgetary debts payment. Subsequently, these facilities were taken into account when negotiating with the selected bidder.

(79) By concluding the stock sale – purchase contract, the investors assumed to contribute to the technical, technological and environmental restructuring with EUR 225,000, the equivalent of ROL 8,100 million, ROL 6,780 million being allocated for environment protection investments. In addition, the investor contributes to the restructuring program with an amount of ROL 22,455 million in order to achieve some investment and financial measures.

(80) The state contribution to the financial restructuring of the company summarizes ROL 26,057 million. The state contribution refers exclusively to historical debts of the company accrued until 31.12.2001 to be exempted from payment; debts accrued since 01.01.2002 until the date of privatization (30.12.2002) are to be paid by the investor.

11. RESTORATION OF THE LONG TERM VIABILITY OF THE COMPANY

(81) As previously shown, the lack of long term financing sources led to the company inability to finance an investments program for means of transport in order to renew its fleet. Thus, at the time of privatization the fleet was in an advanced state of usage, with an age of two to three times more than the normal duration. At the privatization moment the company had non collected receivables in amount of about ROL 5 billion, which could not be recovered because the 3 years limitation term was exceeded. The company recorded losses higher than the shareholders equity and accumulated debts to the state budget and the local budgets.

(82) On December 30, 2002, SC SATURN SA was privatized. In order to go beyond this difficult situation, the company together with the buyer (SC TOMINI TRADING SRL Constanta) and AVAS elaborated a restructuring program for 2003 – 2008. The synthesis of the measures included in the restructuring plan of SC SATURN SA was presented in Chapter 6.

(83) The analysis of the restructuring plan and of the way it will lead to the restoration of the long term viability of SC SATURN is based on the provisions of Article 13 of the Regulation on state aid for rescue and restructuring firms in difficulty.

(84) According to the Article 13 of the Regulation on state aid for rescue and restructuring firms in difficulty, the granting of state aid for restructuring is conditioned by the enforcement of the restructuring plan that underlay the assessment of the Competition Council regarding the state aid. The restructuring plan, whose duration must be as short as possible, must include abandon of the activities that create losses. The plan must grant the company long term viability, thus permitting it to function by its own sources. The restructuring plan must underlay on a realistic estimation of the market conditions. The viability restoration must result mainly from the internal measures included in the restructuring plan and from the consideration of external factors, such as prices and demand fluctuation, on which the company does not have a determining influence.

(85) The restructuring plan of SC SATURN SA begins with the technical – economic data that reflect the company's activity in the period previous to the privatization. This plan was elaborated as a result of a diagnostic – analysis that marks out the strong and weak points of the company and the circumstances that led to the difficulties that the company faces.

(86) The strategy of SC SATURN SA pursues the preservation of the strong points, such as: the ascending trend of the demand for road transport services in comparison with the rail transport, production spaces large and well built which permit the company to diversify its activity, favourable positioning of the company, national development of the road transport infrastructure, the shareholders' availability to invest, management performed by experienced experts and the development of the construction activity for which the company provides transport and auxiliary activities. At the same time, the strategy of SC SATURN SA pursues the limitation and the counteraction by proper measures the weak points, such as: the deplorable technical state of the means of transport endowed, the degradation of buildings, production halls and utilities, the professional incompetence of a part of the personnel and the insufficient endowment for the informational system generalization.

(87) By applying the measures included in the restructuring plan, supported by the company and the buyer through their own resources and by the state through the facilities granted to the company for the budgetary debts, the improvement of the economic – financial indicators, the enhancement of incomes and the decrease of expenses are envisaged. Thus:

Table no.12 The envisaged evolution of the economic – financial indicators, in consequence of the restructuring measures appliance

[...]*

Source: Restructuring program of SC SATURN SA Bucuresti

(88) As a consequence of the achievement of the restructuring measures, the company seeks to accomplish the following target indicators, at the end of the restructuring period:

Table no. 13 Target economic – financial indicators

1. Gross profit	ROL million	780
2. Turnover	ROL million	14,850
3. Number of employees	persons	55
4. Equity	ROL million	15,600
5. Recovery duration of claims	days	30
6. Payment duration of debts	days	30
7. Gearing	%	60
8. Economic profitability	%	5
9. Financial profitability	%	5
10. Cash - flow	ROL million	7,000

Source: Restructuring program of SC SATURN SA Bucuresti

(89) The Competition Council finds that during 2003 – 2004 SC SATURN SA accomplished in due time the measures stipulated in the restructuring plan whose time limit is December 2004, respectively the investments assumed and the payment of the company' debts accumulated between January 1st, 2002 and December 31, 2002 by the buyer. At the same time, the economic – financial indexes obtained in this period indicate the fact that SC SATURN SA is advancing on the right direction, in accordance with the objectives of the restructuring plan.

(90) Regarding those mentioned above, the Competition Council considers that the proposed restructuring plan will lead to the restoration of SC SATURN SA long term viability.

12. PREVENTION OF ANY EXCESSIVE DISTORTION OF THE COMPETITION (COMPENSATORY MEASURES)

(91) In accordance with the provisions of the Regulation on state aid for rescue and restructuring firms in difficulty, in order to minimize as much as possible the negative effects of the state aid granting on competition on the relevant market, there are necessary compensatory measures. These measures will be adequate to the disturbing effects caused by the aid and especially to the size and the relative importance of the company on the relevant market. The decrease of the company' presence on the market will be set based on the market study added to the notification form and on any other relevant information. It will be a part of the restructuring plan.

* confidential data

(92) In 2003 - 2004, the buyer replaced some old vehicles with new ones, respectively 5 dump wagons of high capacity (42 tones), 5 VOLVO head tractors and a MAZDA commercial van. The investor bought also various equipments aiming to diversify the company's activity, to the effect of a more focused approach to the construction sector, additional to the main activity of the company. Although SC SATURN SA received from the investor various new equipments, the total capacity of transportation did not increase, but on the contrary was reduced by 66% in the first year of the privatization period, by dismantling 97 transport vehicles.

(93) SC SATURN SA has an insignificant market share on the relevant market on which it operates, respectively 0.01% on the merchandise road transportation market and 0.8% on the construction materials road transportation market.. Pursuant to this and having regard to the provisions of Article 14 of the Regulation on state aid for rescue and restructuring firms in difficulty which stipulate that the compensatory measures will be adequate to the disturbing effects of the state aid on the competition and to the size and relative importance of the company on the affected markets, the Competition Council considers that the state aid granted to SC SATURN SA does not disturb very much the competition. Thus there are not necessary decreases of the production capacities as a compensatory measure in order to attenuate the disturbing effect of the state aid on the competition. Despite all these, the Competition Council will impose the condition that SC SATURN SA does not increase its production capacities over the level of 2003.

(94) By the restructuring plan SC SATURN SA will not enhance its market share, but it intends to maintain the market segment on which presently activates.

(95) In regard to those previously presented, the Competition Council determines that the state aid will be used only in order to restore the company viability and will not allow the beneficiary to enhance the production capacity during the appliance of the restructuring plan.

13. AID LIMITED TO MINIMUM NECESSARY (PROPORTIONALITY OF THE AID)

(96) In accordance with the provisions of Article 15 of the Regulation on state aid for rescue and restructuring firms in difficulty, the State aid intensity and quantum need to be limited to what is absolutely necessary for allowing the restructuring, depending on the company's and shareholders' existing financial resources. The State aid beneficiary must significantly contribute to the restructuring program, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to the provisions of Article 15 (2) of the Regulation, for large undertakings a contribution of at least 50% is considered adequate.

(97) The total restructuring cost of SC SATURN SA is ROL 56,962 million and consists in:

- Organisational restructuring cost – ROL 350 million
- Technological restructuring cost – ROL 19,852 million

- Environmental restructuring cost – ROL 6,780 million
- Financial restructuring cost – ROL 29,980 million

(98) The total restructuring cost of SC SATURN SA Bucuresti, amounting ROL 56,962 million, is supported from the following resources:

- SC SATURN SA Bucuresti own resources – ROL 350 million
- Investor's capital injection – ROL 30,555 million
- State aid – ROL 26,057 million

(99) From the total restructuring cost in amount of ROL 56,962 million, 54% will be financed from the investors resources, in a small part from the company's own resources and 46% from state aid.

(100) The own contribution of 54% for covering the restructuring cost is assured by:

- Capital injection of majority shareholder – SC TOMINI TRADING SRL;
- Income from capitalization of tangible assets;

(101) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 46%.

(102) Having regard to the above mentioned aspects, the Competition Council considers as significant its contribution of 54% to sustain the restructuring costs, this contribution demonstrating confidence in the practical value of restructuring and the fact that the amount and the intensity of the State aid were strictly limited to allow the restructuring in regard to the existent financial resources of the company and of the majority shareholder. Thus, the company does not receive a surplus of liquidities that could be used for aggressive activities to distort the competition on the market.

14. OBSERVANCE OF “ONE TIME, LAST TIME” PRINCIPLE

(103) SC SATURN SA Bucuresti did not ever receive a restructuring aid. Thus, the provisions of Article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

15. MEMBERSHIP TO A GROUP OF COMPANIES

(104) According to the provisions of Article 2(5) of the Regulation on State aid for rescue and restructuring firms in difficulty, a company belonging to a group is not normally eligible to receive State aid for rescue and restructuring, except for the case when it can be proved the financial difficulties belong to the company itself and are not the outcome of an arbitrary allocation of costs within the group and that the said difficulties are much too serious to be handled by the group itself.

(105) The fiscal facilities intended to be granted to SC SATURN SA refer to debts accumulated until the privatization - as an effect of the economic results obtained in the

years prior to the moment when the majority equity shares were sold, therefore these debts belong to SC SATURN SA.

(106) As a result of the privatization process and the conclusion of the stock purchase-sale contract, the new owner of SC SATURN SA Bucuresti is SC TOMINI TRADING SRL Constanta.

(107) AVAS submitted information on the economic – financial situation of SC TOMINI TRADING SRL and on the members of the group that SC SATURN SA joins after the privatization.

(108) The major shareholder of SC SATURN SA, SC TOMINI TRADING SRL has as main purpose of business – recovery of recyclable wastage and scrap. In 2002 SC TOMINI TRADING SRL Constanta had a turnover of ROL 260,779,220 thousand, a profit of ROL 29,537,701 thousand and 321 employees.

(109) SC TOMINI TRADING SRL holds other shares at SC LAMAR 93 SA, which has the main purpose of business – recovery of recyclable wastage and scrap. It holds 1,293 shares meaning 68.48% of the equity capital, the rest of the stock being held by five natural persons. According to the information of the Ministry of Public Finance, SC LAMAR 93 SA had in 2002 a turnover of ROL 3,754,366 thousand and a loss of ROL 1,553,808 thousand.

Table no. 14 **Economic – financial statement of the group members in 2002**
- ROL thousand -

Group	Turnover	Net profit
SC TOMINI TRADING SRL	260,779,220	29,537,701
SC LAMAR 93 SA	3,754,366	-1,553,808

Source: Notification form and additional information

(110) The moment of privatization SC SATURN SA debts summarized ROL 26,057 million. According to those presented above, at the moment of the acquisition of SC SATURN SA by SC TOMINI TRADING SRL, the economic – financial results of the companies belonging to the group indicated profit for SC TOMINI TRADING SRL and loss for SC LAMAR 93 SA.

(111) As shown before, beside the price paid for privatization, in amount of ROL 6,494.32 million, SC TOMINI TRADING SRL paid a part of the company's budgetary debts accumulated until the privatization (during January 1st, 2002 – December 30, 2002), in total amount of ROL 3,923 million. The total contribution to the restructuring cost, assumed by the buyer in the restructuring plan, is ROL 30,555 million.

(112) The first year after privatization (2003), the total effort of SC TOMINI TRADING SRL, meaning the purchase price payment, the contribution to make investments and the payment of a substantial part of the SC SATURN SA debts to the state budget, amount ROL 22,275 million. Beside the direct expenses determined by restoring the viability and

making the company efficient, the buyer, SC TOMINI TRADING SRL, made a series of investments in the company, which were not included in the restructuring plan even though they highly contributed to the good functioning of the company. The value of these investments is ROL 10,145 million. These investments refer to:

- rebuilding the roofs and the hydro isolation and partial assembly of windows and doors to every building in the complex;
- rehabilitation of lavatories and installing showers for the workers;
- purchase of chairs, desks, cupboards;
- connection to the gas network;
- assembly of air conditioning equipment for ensuring protection of the computers and other installations with fixed temperature usage conditions;
- partial restoration of the heating installation for the workplaces.

(113) The information in the balance sheet of SC TOMINI TRADING SRL shows that in 2002 the company recorded loans and debts that, together with the related interests, summarize ROL 5,908,423 thousand.

(114) The Competition Council notes that SC TOMINI TRADING SRL can not deal with the financial difficulties of SC SATURN SA and the restructuring of the company without the state intervention. In comparison with the financial resources of SC TOMINI TRADING SRL and of the members of the group, the contribution to the cost of restructuring SC SATURN SA is significant.

(115) According to those shown above, at the moment of the acquisition of SC SATURN SA by SC TOMINI TRADING SRL, the economic – financial results of the companies belonging to the group were not sufficient to cover entirely SC SATURN SA debts. The major shareholder – SC TOMINI TRADING SRL – allocates all the available resources to finance the investment program for retechnology and environment, as well as to pay a part of SC SATURN SA debts to the state budget. The contract of new credit lines for covering the company debts to the state budget would have lead to an insufferable gearing for the group.

16. MONITORING AND ANNUAL REPORTING

(116) In accordance with the provisions of Article 18 of the Regulation on State aid for rescue and restructuring firms in difficulty, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.

(117) The Competition Council will monitor the implementation of the restructuring plan until the end of the period, in order to assure itself that increases of the production capacities are nor registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of complementary liquidities to be used for other activities included in the restructuring program.

17. CONCLUSIONS

(118) Having regard to the above-mentioned arguments, the Competition Council concludes that the individual State aid intended to be granted to SC SATURN SA Bucuresti is compatible with a normal competitive environment, and does not significantly affect the trade with the European Union Member States.

DECIDES

Art. 1. The measure of financial support notified by the Agency for Authority for State Asset Resolution for SC SATURN SA Bucuresti represents a State aid, according to Article 2(1) of Law no. 143/1999 on State aid, republished.

Art. 2. According to the provisions of Article 21 (2) letter c) read in conjunction with Article 23 (1) letter (e) of Law no. 143/1999 on state aid, republished, the restructuring aid that is intended to be granted to SC SATURN SA Bucuresti for its privatization, is authorized on the condition that the provisions of Articles 3 and 4 of this Decision should be observed.

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

Art. 4. The company will not enhance its total production capacities above the 2003 production level.

Art. 5. If the conditions imposed by this decision are not observed, then the provisions of Article 22 of Law no. 143/1999 on State aid, republished, shall apply.

Art. 6. The value of the State aid that will be granted is of ROL 26,057,044,599 respectively 2,605,704.459 RON.

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

Art. 8. In accordance with the provisions of Article 32 of Law no. 143/1999 on State aid, republished, the Authority for Authority for State Asset Resolutions 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 Resolutions 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.

Art. 9. In accordance with the provisions of Article 46 of Law no. 143/1999 on State aid, republished, 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 General Secretary of the Competition Council to:

- The Authority for State Asset Resolution Authority for State Asset Resolution, 50, Cpt. Av. Alexandru Serbanescu street, sector 1, Bucharest;
- SC SATURN SA Bucuresti, Str. Zetarilor nr. 29-31, sector 5, Bucuresti.

PRESIDENT

MIHAI BERINDE