

**DECISION OF THE COMPETITION COUNCIL**  
**no. 185 of 03.10.2005**  
**regarding the state aid to be granted to**  
**SC HIDROSIB SA Sibiu**

**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 17.08.2005,

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, with the subsequent modifications and completions,

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) By address no. VP/2075/15.07.2005, filed with the Competition Council no. RS-AS 67/18.07.2005, the Authority for State Assets Recovery (hereinafter named AVAS) has notified based on art. 15 of the State aid Law no. 143/1999, republished, the individual state aid for the restructuring of SC HIDROSIB SA Sibiu within its privatization process.

(2) The Competition Council requested additional information from AVAS by address no. DAAS/804/21.07.2005. AVAS replied to the requested supplementary information by address no. VP4/2411/04.08.2005 filed with the Competition Council no. RG 6080/08.08.2005.

(3) The notification became effective when all information was accurate and complete, namely on 08.08.2005.

## **2. DESCRIPTION OF THE STATE AID MEASURE**

### **2.1. Legal base of the state aid measure**

(4) The Authority for State Assets Recovery notified the financial support measures granted to SC HIDROSIB SA Sibiu on the basis of the following acts:

- GEO no. 26/2004 on some measures for the completion of AVAS portfolio companies' privatisation and the consolidation of some privatisations, approved with modifications and completions by Law no.442/2004;
- GEO no. 8/2003 regarding the fostering of the restructuring, reorganization and privatization process of some national companies, and commercial companies with capital mostly held by the state;
- 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. Financial support measures for SC HIDROSIB SA Sibiu**

(5) The financial support measures notified by AVAS were granted in the context of SC HIDROSIB SA Sibiu privatization. The company will benefit from facilities mentioned in the Presentation File and the Shares Sale-Purchase Agreement, namely incentives on the payment of outstanding debts towards the State consolidated budget and AVAS.

(6) Facilities from the payment of past due obligations to the state budget and AVAS to be granted to SC HIDROSIB SA Sibiu at privatization, in total amount of ROL 158,278.0 million, consist of:

- Exemption from payment for 97% of the company's debts, in amount of ROL 37,074.3 million, consist in:
  - budgetary obligations due and not paid at 31.12.2003, in amount of ROL 36,857.7 million;
  - own claims representing dividends, in amount of ROL 216.6 million;
- exemption from payment of the following obligations, in total amount of ROL 80,240.4 million, as follows:
  - increases and delay penalties of any kind related to obligations due and not paid at 31.12.2003, calculated until the date of the share ownership transfer, in amount of ROL 73,737.0 million;
  - increases and delay penalties of any kind related to rescheduled budgetary obligations, calculated until the date of the common order, according to para. 70 from GEO no. 26/2004, in amount of ROL 5,750.0 million;
  - interest related AVAS own claims, in amount of ROL 753.4 million;

- payment rescheduling for a 5 year period, with a grace period of 6 months, of the following obligations, in total amount of ROL of 39,266.3 million:
  - obligations to the health fund, along with the related interest and delay penalties, in amount of ROL 8,439.0 million;
  - budgetary obligations due and not paid since 01.01.2004 until the date of common order issuance, according to para. 6 from GEO no. 26/2004, in amount of ROL 21,356.4 million;
  - the difference of non exempted obligations (the remainder 3%) in total amount of ROL 9,470.9 million, representing budgetary obligations due and not paid at 31.12.2003 (ROL 1,140 milion), own claims representing dividends (ROL 6.7 million), budgetary obligations due and not paid at 31.12.2003 consisting in taxes and fees, the company's contribution to the national social insurance fund and the employees' contribution to the social health insurance;
- redundancy payments on the basis of para. 2 (1) a) of GEO no. 8/2003, in amount of ROL 1,697.0 million.

### 3. BENEFICIARY OF FINANCIAL MEASURES (SC HIDROSIB SA Sibiu)

(7) SC HIDROSIB SA Sibiu is a joint-stock company having, on the date of signing the share sale-purchase agreement, a shareholders equity of ROL 28,356,000 thousand divided in 1,134,240 shares with a face value of ROL 25,000 according to the Registry of Commerce.

(8) SC HIDROSIB SA Sibiu was set up when State Enterprise BALANTA Sibiu was divided into two commercial companies, on the basis of GD no. 1272/1990. The State Enterprise BALANTA Sibiu was set up through nationalization of HESS SA Sibiu in 1948.

(9) SC HIDROSIB SA Sibiu was privatized in 2004, through the signing of the share sale-purchase agreement no. 68/08.09.2004, concluded between AVAS and ADVANCED HANDLING Ltd. – U.K. The shareholding structure after privatization is shown in table no. 1. The share ownership transfer was carried out on 13.09.2004.

**Table no. 1** Shareholders structure after privatisation at SC HIDROSIB SA Sibiu

SHAREHOLDERS	Equity holdings	
	Shares held	Shareholding (%)
ADVANCED HANDLING LTD.- U.K.	1,073,141	94.61
Individuals	61,099	5.39
<b>Total</b>	<b>1,134,240</b>	<b>100.00</b>

*Source: Notification form*

(10) The core business of SC HIDROSIB SA Sibiu consists in the manufacturing of measurement, adjustment and devices for industrial processes, respectively hydraulic devices, equipment and installations.

(11) Besides the core business, the company carries out some ancillary activities: import-export, engineering, consulting and servicing in the related fields.

(12) The activities of the company are structured into three manufacturing areas with specific equipment, i.e.:

- the hydraulic components area;
- the tools area;
- the maintenance area for servicing all machine tools and building infrastructure.

(13) SC HIDROSIB SA Sibiu manufactures and sells hydraulic devices, equipment and installations.

(14) The company had an average of 201 employees in 2004, according to data in the balance sheet, the effective number as of the end of 2004 being of 142 employees.

(15) The financial results of SC HIDROSIB SA Sibiu, based on data in the balance sheet, prior to privatization, are the following:

**Table no. 2 The economic and financial results based on data included in the balance sheet**

2002	2003	2004
<b>Turnover (ROL thousand)</b>		
37,743,356	44,417,333	35,743,652
<b>Turnover in Romania (ROL thousand)</b>		
32,573,484	38,438,887	32,908,582
<b>Profit/Loss (ROL thousand)</b>		
-37,146,829	-30,661,903	-25,963,893

*Source: Notification form*

It can be seen that during the period the company incurred losses. The company has a small external market, its turnover being achieved mainly on the domestic market.

(16) SC HIDROSIB SA Sibiu complies with the requirements of the Regulation regarding state aid to SMEs, with the subsequent modifications and completions, to be considered a medium sized enterprise, as follows:

- the company is held 94.61% by ADVANCED HANDLING LTD. – U.K., therefore SC HIDROSIB SA Sibiu and ADVANCED HANDLING LTD. are tied enterprises within the meaning of art. 2 point 7 of the Regulation regarding state aid to SMEs, with the subsequent modifications and completions;
- the number of employees and the financial figures are within the limits imposed by the Regulation regarding state aid to SMEs, with the subsequent modifications and completions, respectively 250 employees the ROL equivalent of EURO 50 million, as indicated below:
  - the company's average number of employees is 142, and that of the majority shareholder's of 34;
  - the company's turnover is ROL 35,744 million, and that of the majority shareholder's of ROL 160,098 milion.

### **3.1. RELEVANT MARKETS**

[...]¹

## **4. DESCRIPTION OF THE PRIVATIZATION PROCESS**

(24) In order to privatize SC HIDROSIB SA Sibiu, in 2004 AVAS initiated the sale of the majority stake, respectively 1,073,141 shares representing 94.61% from the shareholders equity.

(25) The privatization process was carried out in a non-discriminatory and transparent manner. The presentation file of the company contained information on the economic and financial situation, debts, claims and the calculation of the net worth, information reflecting the difficult situation the company was in, as well as the fact that fiscal facilities were to be granted.

(26) The sale announcement for the shares held by AVAS at SC HIDROSIB SA Sibiu has been published on 30.04.2004 in the domestic media (Adevarul, Cronica Romana and Monitorul de Sibiu newspapers). The presentation file has been bought by two bidders: ADVANCED HANDLING LTD. – U.K. and SC ALCOMB SA Sibiu. At the deadline provided by the announcement, the bid was submitted only by U.K. firm.

(27) Subsequent to the analysis of the prequalifying and tender documents submitted by the U.K. firm, AVAS who conducted negotiations has noted that the bidder has submitted all documents provided by the law, in order to be admitted to negotiation. During the negotiation sessions, AVAS requested the bidder to enhance its initial offer, regarding both the per share price as well as the investment amount assumed.

(28) [...]²

## **5. STATE AID ASSESSMENT OF THE MEASURES – ARE THE MEASURES STATE AID?**

(29) The criteria, which allow to be established if a measure is State aid, are presented in art. 2 (1) of Law no.143/1999 on State aid, republished. According to the Law, the State aid represents any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment.

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¹ Confidential data

² Confidential data

(30) The financial support granted to SC HIDROSIB SA Sibiu notified by AVAS consists in the foregoing of some revenues by the State therefore, State resources are involved.

(31) The measures for financial support granted under Law no. 137/2002 regarding several measures for accelerating the privatization, with subsequent amendments and completions, are addressed only to the undertakings that follow to be privatized, among which SC HIDROSIB SA Sibiu. Thus, the financial support granted to SC HIDROSIB SA Sibiu has a selective character.

(32) The assumption that a debt write-off or debt rescheduling represents an advantage is valid in a non-privatization context. The debt write-offs and rescheduling are part of the privatization and consequently, should be analyzed in terms of whether or not they constitute state aid. If the facilities, as in this case, are granted in the privatization context, one should apply the private investor/creditor test. Ordinarily, an investor/creditor will seek to achieve a positive price, i.e. the price obtained is greater than the value of the debts.

However, in this case the price is negative, i.e. less than the value of the facilities. An investor/creditor may be willing to accept a negative price if the cost of the privatization is less than the cost of liquidation. In this case, such analysis is not possible as AVAS informed the Competition Council that prior to the privatization no comparative analysis was made between the company's liquidation cost and the cost of the privatization.

Taken into consideration the social effects and cost of liquidating the company (such costs are not borne by a private investor/creditor) the State took direct action by opting for privatization and granting the incentives as part of the privatization.

(33) The granting of financial support to SC HIDROSIB SA Sibiu creates the premises for the potential distortion of competition on the relevant markets, as the company is helped to survive on these markets. In addition, there is no doubt that the financial support granted to SC HIDROSIB SA Sibiu may affect the trade with the Member States as long as the company's products compete, especially on the Romanian market, with similar products of the companies from the European Union. Another part of the products of SC HIDROSIB SA Sibiu are to be exported.

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

## **6. COMPATIBILITY WITH STATE AID LEGAL BASE**

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

(36) The State aid objective is the restructuring of SC HIDROSIB SA Sibiu 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 observed, the State aid may be considered compatible.

(37) The restructuring aid is conditioned by the implementation of a viable and coherent restructuring plan, demonstrating the long term viability of the company. To this effect, the Regulation states that the restructuring usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient base, generally implying the retreat from actions that are generating losses, the restructuring of the existing activities that may become again competitive and sometimes the diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied the financial restructuring (capital injections, reduction of debts degree, etc.).

(38) The Competition Council evaluates the State aid granted to SC HIDROSIB SA Sibiu, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty, published in O.G. no.1215/17.12.2004, and issued in the application Law no. 143/1999 on State aid, republished As to be considered compatible with a normal competitive environment, the State aid must fulfill the criteria set in the above mentioned Regulation.

## **7. ELIGIBILITY OF SC HIDROSIB SA Sibiu – FIRM IN DIFFICULTY**

(39) In order to benefit from State aid in accordance with the Regulation State aid for rescuing and restructuring firms in difficulty, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not capable to cover its losses either from its own financial resources or from resources got from owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost lead on short or medium term to its economic market exit.

(40) In article 2 (2) (b) and (c) of the Regulation State aid for rescuing and restructuring firms in difficulty, a joint-stock company is considered as being in difficulty when more than half of its own capital, as the accounting records of the company show, and more than a quarter of its capital was lost during the last 12 months, and a company, irrespective of its legal status, is considered in difficulty when it fulfills the conditions to allow the application of the procedure concerning the legal reorganization and the bankruptcy.

(41) According to art. 2 para. (3) from the Regulation on state aid for the rescue and restructuring of firms in difficulty, if none of the requirements provided in para. (2) are not met, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

(42) The reasons to establish whether SC HIDROSIB SA Sibiu is eligible or not to receive state aid for restructuring being a firm in difficulty are the following:

*a) Evolution of turnover*

<b>Table no. 5</b>	<b>Evolution of turnover in 2001-2004</b>				- ROL thousand -
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	
Turnover	30,483,186	37,743,356	44,417,333	35,743,652	
Turnover in 2001 prices	30,483,186	32,259,279	38,928,425	32,702,335	
Sales	27,547,043	34,461,266	43,472,787	34,440,559	
Sales adjusted to inflation index	27,547,043	29,454,074	38,100,602	31,510,118	

*Source: Notification form*

According to Profit and loss records, the turnover showed a slight increase until 2003, but insufficient to cover costs and make the company viable. Sales during the analyzed period have the same increasing trend, but not sufficient to cover company costs. 2004 shows a decline of both the turnover and sales, following the closure of the 5,000 tonnes/year foundry shop.

*b) Evolution of the gross profit and of the operating profit*

**Table no. 6** Evolutia of gross profit and of the operating profit in 2001-2004

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	-ROL thousand-
Shareholders equity	28,356,000	28,356,000	28,356,000	28,356,000	
Gross profit	-11,072,451	-37,146,829	-30,661,903	-25,963,893	
Operating profit	-11,076,525	-37,110,608	-30,649,839	-25,890,557	

*Source: Notification form*

The analysis of the indicators shows the fact the gross result of the company was mainly determined by the operating loss. During the entire analyzed period the company made losses. In 2002 and 2003 the losses were higher than the shareholders capital, and in 2004 these represented 89 % from the shareholders equity.

*c) The gross operating margin, calculated as operating profit/turnover*

**Table no. 7** Gross operating margin 2001-2004

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	-ROL thousand -
Operating profit	-11,076,525	-37,110,608	-30,649,839	-25,890,557	
Turnover	30,483,186	37,743,356	44,417,333	35,743,652	
Profitability (%)	-36.3	-98.3	-69.0	-72.4	

*Source: Notification form*



In the analyzed period, the gross operating margin posted negative values due to operating losses.

*d) Evolution of inventories*

<b>Table no. 8 Evolution of inventories in 2001-2004</b>		<b>-ROL thousand -</b>		
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Inventories	43,418,228	30,686,554	27,713,726	26,300,900
Finished, half finished, rezidual products inventories	32,897,954	20,873,966	19,287,091	16,434,673
Turnover	30,483,186	37,743,356	44,417,333	35,743,652
Inventory timing	513	293	225	265
Weight of finished, half finished, rezidual products in total inventories (%)	76	68	70	62

*Source:Notification form*

Although it can be seen a diminishing of inventories, the inventory timing remains high. The diminishing of their volume is given to the fact that the company takes actions to sell non-moving and slow moving inventories.

*e) Evolution of receivables*

<b>Table no. 9 Evolution of receivables in 2001-2004</b>		<b>-ROL thousand -</b>		
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Receivables	4,285,845	6,946,245	4,039,617	4,513,227
Turnover	30,483,186	37,743,356	44,417,333	35,743,652
Collection timing (days)	51	66	33	45
The highest manufacturing cycle for main products	60	60	60	60

*Source:Notification form*

Due to liquidity problems, the number of clients which are uncertain, in litigation or with a high insolvency ratio has risen from year to year, reaching at the end of 2004, 59% from the total of non collected clients.

*f) Evolution of equity*

<b>Table no. 10 Evolution of equity in 2001-2004</b>		<b>-ROL thousand -</b>		
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Equity	-9,344,750	-46,491,479	-77,153,485	-103,117,380
Gross profit	-11,072,451	-37,146,829	-30,661,903	-25,963,893

*Source:Notification form*

The balance sheets for the last four years show the continuous diminishing of equity which had throughout the period growing negative values, following the accounting losses accrued year by year.

g) *The indebtedness ratio, as total debts/Equity*

**Table no. 11 Evolution of the indebtedness ratio in 2001-2004**

-ROL thousand -

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Total debts	76,546,142	97,735,001	126,190,671	157,909,700
Debts in off balance sheet accounts				969,931
Equity	-9,344,750	-46,491,479	-77,153,485	-103,117,380

*Source: Notification form*

The level of the debts has risen continuously, mainly due to accrual of debts to budgetary entities, which not paid generated interest and delay penalties. Debts to the state budget accrued year by year, along with the interest and delay penalties generated, have led to the decapitalization of the company, as such that at the end of 2004 equity had negative values of over ROL 103 billion.

## **8. FINANCIAL DIFFICULTIES**

(43) Although the turnover of the company has remained constant, the operating results of SC HIDROSIB SA Sibiu are declining. Equity has shown negative values since 2001 due to accrual of interest and fiscal penalties related to previous years and past due budgetary obligations due to lack of funds. The analysis of the economic and financial indicators in 2001-2004 show a reduction in productivity, arising mainly from an increase in costs.

(44) Causes which led the company into difficulties are as follows:

- lack of funds (own financial resources) required to carry out business and to pay entirely the budgetary debts;
- mismatch between the price of utilities (electricity, natural gas) and the price of materials (metal) with the ROL/USD exchange rate, at least with the level of inflation, leading to losses of ROL billions on an annual basis. Practically, for the last four years the ROL/USD exchange rate is maintained within 5-10%, while the price of electricity, natural gas and metals has tripled;
- increase of effective costs due to permanent increase of prices for raw materials, materials and utilities;
- the decline of operating activities to most clients of the company;
- high interest rates and tight fiscal policy;
- mis-match of prices for the company's products with the price of raw materials and materials, utilities etc.

(45) Taking into consideration these difficulties AVAS decided to grant facilities at privatization of the company, based on ensuring the implementation of certain restructuring measures. According to information from AVAS notification, the presentation file prepared for the privatization informed the potential investors that

facilities for the payment of budgetary obligations will be granted. Subsequently, these facilities have been considered when negotiating with the selected bidder.

(46) The majority shareholder assumed responsibility to ensure a contribution to the technological and environmental restructuring of the company in the amount of ROL 26,043 million. In addition, it is contributing to the achievement of the restructuring plan with the amount of ROL 7,616 million for organizational measures and ROL 5,700 million to the financial restructuring of the company.

(47) The contribution of the state to the financial restructuring of the company amounts to ROL 158,278 million and consists of the exemption from payment of the company's historical debts which accrued until 31.12.2003.

## **9. CRITERIA WHICH MUST BE FULFILLED FOR GRANTING RESTRUCTURING STATE AID**

(48) The measures mentioned in paragraph 2.2. above will:

- Restore the long term viability of SC HIDROSIB SA Sibiu;
- Avoid undue distortion of competition;
- Be proportional to the costs and benefits of restructuring;
- Respect "the first time, last time" principle;
- Confirm a commitment by Romania to ensure the fulfillment of the restructuring plan and the monitoring of its progress by the Competition Council.

## **10. DESCRIPTION OF THE RESTRUCTURING PLAN**

(49) The company elaborated a complex restructuring program, containing measures of organizational, technological, environmental and financial nature.

(50) The restructuring of SC HIDROSIB SA Sibiu focuses on the following major areas:

- increasing the efficiency of the company's activity by modifying the organizational structure of the company, creating modules representing cost centers (hydraulics, tools and moulds, fabrication and assembly, design and consulting);
- modernizing production capacities of the company by investments in machines with computerized numerical control, in improving working conditions, in information technology and staff training;
- intensifying marketing activities to better cover market demand;
- intensifying the recovery of receivables.

(51) The Restructuring Plan submitted by AVAS contains both the causes which led to the difficult financial situation of SC HIDROSIB SA Sibiu, and the measures to ensure the long term viability of the company. By enforcing the measures from the Restructuring Plan, AVAS envisages that the company will record a profitable activity and the financial

measures for an appropriate carrying out of the activity, with no debts to the consolidated State budget or to the local budgets.

(52) [...] <sup>3</sup>

(53) [...] <sup>4</sup>

#### **10.1. Organizational and managerial restructuring**

[...] <sup>5</sup>

#### **10.2. Technical restructuring**

[...] <sup>6</sup>

#### **10.3. Restructuring measures for environmental protection**

[...] <sup>7</sup>

#### **10.4. Financial restructuring**

[...] <sup>8</sup>

### **11. RESTORING THE LONG TERM VIABILITY OF THE COMPANY**

(65) In 2004 SC HIDROSIB SA Sibiu was privatized. In order to overcome the difficult situation, the company prepared together with the Buyer (ADVANCED HANDLING LTD. – Marea Britanie) and AVAS a restructuring plan for 2005-2009. The summary of the measures contained in the restructuring plan of SC HIDROSIB SA Sibiu was presented in Chapter 10.

(66) The assessment of the restructuring plan and of the way in which it leads to the restoring on long term of the company's viability has in view the provisions of article 13 of the Regulation State aid for rescuing and restructuring firms in difficulty.

(67) According to the article 13 the Regulation State aid for rescuing and restructuring firms in difficulty, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on this restructuring plan. The restructuring plan which

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<sup>3</sup> Confidential data

<sup>4</sup> Confidential data

<sup>5</sup> Confidential data

<sup>6</sup> Confidential data

<sup>7</sup> Confidential data

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must be as short as possible in time has to contain the abandon of activities that registered losses and to offer the company the viability on long term, allowing it to function with its own resources. The restructuring plan must to be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures contained by it, as well as from taking into consideration the extern factors such as price and demand variation, factors on which the company has no determinant influence.

(68) The restructuring plan of SC HIDROSIB SA Sibiu starts from the financial and economic data that reflects the company's activity in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong points and the weak points of the company, the circumstances that led to the difficulties the company faces.

(69) The strategy of SC HIDROSIB SA Sibiu aims at preserving the strong points, respectively: the 25 years experience in the manufacturing of hydraulic equipment, the qualified staff and their expertise in the field, certification from Mannesmann in the field of manufacturing hydraulic installations, quality management system implemented and certified according to ISO 9001/2000. In the meantime, SC HIDROSIB SA Sibiu strategy aims at limiting and counteracting with appropriate measures of the weak points: technology dating from the seventies, the advanced worn out ratio of fixed assets, an obsolete information technology, low ratio of replacing technology due to lack of resources, the mismarch between the number of personnel and the portfolio of orders and contracts.

(70) The enforcement of the measures provisioned by the restructuring plan is foreseen to improve the financial - economic indicators in the period 2005-2009 as shown in the table below. The company and the Buyer, as well as the State, through facilities granted to the company for payment of budgetary obligations, will contribute to this enforcement.

**Table no. 17 Evolution forecast of the financial - economic indicators, after applying the restructuring measures**

		-ROL million-				
Indicators		2005	2006	2007	2008	2009
<b>1</b>	<b>Total revenues, of which:</b>	<b>42,783</b>	<b>91,114</b>	<b>123,763</b>	<b>149,679</b>	<b>154,105</b>
	- Operating revenues	42,783	91,114	123,763	149,679	154,105
	- Turnover	37,866	84,680	114,263	135,379	141,905
	- Financial revenues	-	-	-	-	-
	-Extraordinary revenues	-	-	-	-	-
<b>2</b>	<b>Total expenses, of which:</b>	<b>58,991</b>	<b>87,776</b>	<b>109,661</b>	<b>122,913</b>	<b>125,036</b>
	a) operating	58,991	87,776	109,661	122,913	125,036
	b) financial	-	-	-	-	-
	c) extraordinary	-	-	-	-	-
<b>6</b>	<b>Gross profit (+) / Loss (-)</b>	<b>-16,208</b>	<b>3,338</b>	<b>14,102</b>	<b>26,766</b>	<b>29,069</b>

Source: Restructuring Plan of SC HIDROSIB SA Sibiu

(71) As a result of accomplishing the measures provisioned by the restructuring plan, at the end of the restructuring period the company forecasts to reach the following target indicators:

**Table no. 18** **Target financial-economic indicators**

1. Profit net	ROL million	24,110
2. Turnover	ROL million	141,905
3. Number of employees	Persons	135
4. Equity	ROL million	95,400
5. Claim recovery period	days	45
6. Debt payment period	days	47
7. Indebtedness ratio	%	19
8. Economic profitability	%	21
9. Financial profitability	%	25
10. Cash flow	ROL million	2,750

*Source: Restructuring Plan of SC HIDROSIB SA Sibiu*

(72) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the restoration of the long term viability of SC HIDROSIB SA Sibiu.

## **12. PREVENTING ANY EXCESSIVE DISTORTION OF THE COMPETITION (COMPENSATORY MEASURES)**

(73) According to the provisions of art.14 of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granted have on the competition on the relevant markets, compensatory measures are needed. These measures will be proportional with the distorting effects caused by the aids and especially with the size and relative importance of the company on the relevant markets. The reduction of the company's presence on the market will be set based on the market research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

(74) SC HIDROSIB SA Sibiu has a small market share on the hydraulic installation market, respectively 7% and a share of 28% on the hydraulic devices and equipment market. As a consequence, having in regard the provisions of art. 14 of the Regulation on State aid for rescue and restructuring firms in difficulty that stipulates that the compensating measures will be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the effected markets, Competition Council considers that the reduction of production capacities proposed by the company through the restructuring plan are sufficient.

(75) The measures to be taken by the company until the end of the restructuring period, in order to avoid the distortion of competition consist in an irreversible capacity reduction, namely fixed assets and goods reduction. Thus, following the reduction of capacities, assets like the old foundry, the 5,000 tonnes foundry, the former finished products facility and a number of fixed assets will be dismantled and sold as scrap.

(76) The irreversible reduction of capacities is an integral part of the restructuring plan. The irreversible reduction of viable capacities consist in the reduction by 29.0% of the capacity for hydraulic devices and equipment and by 28.6% for hydraulic installations.

(77) By the restructuring program, SC HIDROSIB SA Sibiu does not increase its market shares, intending to maintain the market segment where it is currently active.

(78) There are significant differences between the designed production capacity of SC HIDROSIB SA Sibiu and the existing functioning one. The company does not intend to increase its production capacities, but to better use the remaining capacities.

(79) [...] <sup>9</sup>

(80) [...] <sup>10</sup>

(81) Having in view the above mentioned, the Competition Council acknowledges that the State aid is to be used only for restoration of the the company's viability. The Council does not allow the beneficiary to increase its production capacities during the enforcement of the restructuring program.

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

(82) In accordance with art.15 of the Regulation on 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 benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art.15 (2) of the Regulation, for large undertakings a contribution of at least 40% is considered adequate.

(83) The total restructuring cost of SC HIDROSIB SA Sibiu is ROL 267,333 million and is composed of :

- organisational restructuring cost	ROL 45,853 million;
- technological restructuring cost	ROL 29,250 million;

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<sup>9</sup> Confidential data

<sup>10</sup> Confidential data

- environmental restructuring cost                      ROL 418 milion;
- financial restructuring cost                              ROL 191,812 milion.

(84) The total restructuring cost of SC HIDROSIB SA Sibiu in amount of ROL 267,333 million is supported from the following sources:

- own sources of SC HIDROSIB SA Sibiu    ROL 69,696 milion
- capital injection of the majority shareholder ROL 39,359 milion
- state aid    ROL 158,278 milion

(85) From the total restructuring cost in amount of ROL 267,333 million, 26.1% will be financed from the company's own resources, 14.7 % from the majority shareholders's own sources and 59.2% from financial support granted by the state.

(86) Its own contribution of 40.8% la for covering the restructuring cost is assured by:

- Capital injection of majority shareholder – ADVANCED HANDLING Ltd. U.K.;
- revenues from sale of assets;
- revenues from the sale of finished products and materials with slow or non movement inventory;
- revenues from the lease of idle production premises and offices.

(87) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 59.2% %.

(88) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 40.8% to the restructuring costs, this showing the trust in the practical value of the restructuring and the fact that the amount and intensity of the state aid were strictly limited to allow the restructuring according to the existing financial resources of the company and the majority shareholder. It is avoided in this way that the company receives a liquidity surplus which might be used for aggressive activities, distorting the market.

#### **14. OBSERVANCE OF „FIRST TIME, LAST TIME” PRINCIPLE**

(89) SC HIDROSIB SA Sibiu has never received 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**

(90) According to the provisions of art.2 (5) of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, a company belonging to a group is not normally eligible to receive State aid for rescuing and restructuring, except for the case



when it can be proved the financial difficulties belong to the company itself 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.

(91) The fiscal facilities intended to be granted to SC HIDROSIB SA Sibiu refer to historical debts - as an effect of the economic results obtained in the years prior to privatization, therefore these debts are own to the company.

(92) As a result of privatization and the conclusion of the shares purchase-sale contract, the new owner of SC HIDROSIB SA Sibiu is ADVANCED HANDLING Ltd. U.K. holding 94.61% of the shareholders equity.

(93) AVAS supplied data regarding the financial and economic situation of ADVANCED HANDLING Ltd. U.K. Thus, according to audited financial statements, ADVANCED HANDLING Ltd. had in 2004 a turnover of ROL 160,098 million and a profit of ROL 8,452 million (indicators calculated at the exchange rate from 31.12.2004, respectively ROL 56,108/1GBP). The Competition Council notes that debts of SC HIDROSIB SA Sibiu to the state budget and AVAS at privatization amounted ROL 158,278 milion.

(94) Although the financial situation of ADVANCED HANDLING Ltd. is good, the Competition Council notes that the majority shareholder could not cope with the financial difficulties of SC HIDROSIB SA Sibiu as well as with the restructuring of the company without a consistent intervention of the State, the company's debts to the State budget and AVAS are in total amount of ROL 158,278 million. The majority shareholder assumed a contribution to the restructuring of the company in amount of ROL 39,359 million and in not able to contribute more since its profit as indicated in para. 94 is limited and not significant. Compared to the financial resources of ADVANCED HANDLING Ltd., this is a significant contribution.

## **16. COMMITMENTS TO ANNUAL MONITORING AND REPORTING**

(95) In accordance with article 18 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.

(96) The Competition Council will monitor the implementation of the restructuring plan until the end of the period 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 contained in the restructuring program.

## 17. CONCLUSIONS

(97) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC HIDROSIB SA Sibiu is compatible with a competitive normal environment and does not significantly affect the trade with the Member States of the European Union.

(98) The non-granting of the State aid would lead, according to AVAS, to the winding up of the company, which might have the following consequences:

- collective personnel lay-off, with immediate and lasting effect the increase of the unemployed persons in the area ;
- increase of the budgetary expenditures with the unemployment allowance, support allowance and other forms of social protection to the unemployed persons which from the tax payers are becoming consumers of financial resources;
- the decrease of the quantum of the contributions paid by the company for the employees;
- non-recovering of all the debts to the budgetary creditors and third parties;
- reduction of the activity of raw materials and materials suppliers with collaboration relations with SC HIDROSIB SA Sibiu.

## DECIDES

**Art. 1.** The financial support measure notified by the Authority for State Assets Recovery for SC HIDROSIB SA Sibiu represents a State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.

**Art. 2.** Based on the provisions of article 21 (2) letter c) corroborated with article 23 (1) letter e) of the Law no. 143/1999, republished, the restructuring aid that is going to be granted to SC HIDROSIB SA Sibiu at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

**Art. 3.** The company is compelled to fully implement the assumed restructuring plan.

**Art. 4.** The company shall reduce the production capacities until 2009 according to the assumed restructuring plan.

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

**Art. 6.** The amount of the State aid that is going to be granted is of ROL 158,278 million (RON 15,827,800).

**Art. 7.** The present decision becomes applicable since its communication.

**Art. 8.** In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the State aid granted in order to inventory and monitor. In addition, the Authority for State Assets Recovery shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must demonstrate that the company observed the compensatory measures concerning the reduction of the production capacities imposed by the present decision.

**Art. 9.** In accordance with article 46 of the Law no. 143/1999 on State aid, republished, the present decision can be appealed by the interested parties at the Appeals Court, the Administrative Litigation Section within 30 days from its communication.

**Art. 10.** 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, sector 1, Bucharest;
- SC HIDROSIB SA Sibiu, Str. Stefan cel Mare nr. 193, Sibiu, Judetul Sibiu, cod postal 550.321.

**PRESIDENT**

**MIHAI BERINDE**