

DECISION of the Competition Council

No. 193 on 13.10.2005

**regarding the State aid to be granted to S.C. U.C.M. Resita
S.A.**

The Competition Council

Taking into consideration the dispositions 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 the Law no.20/1993, published in the Official Gazette, Part I , no. 73 on April the 12th, 1993;

Taking into consideration the provisions of the Competition Law no. 21/1996, republished in the Romania's Official Gazette no 742, I Part on 16.08.2005;

Taking into consideration the provision of the Law no 143/1999 on State aid, republished in the Official Gazette no. 744/16.08.2005, Part I;

Taking into consideration the dispositions of the Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1215 of December 17, 2004;

Taking into consideration the Decree no. 57/2004 regarding the appointment of the Competition Council;

The Report drafted by the rapporteur and the investigation team following the findings during the investigation opened through Order of the Competition Council's President no. 136/15.06.2005¹.

Based on the following,

1. PROCEDURE

(1) After a control is made by the Competition Inspectorate Caras-Severin, in March 2005, to S.C. U.C.M. S.A. Resita, it was found that the company received at privatization certain support measures suspected to include state aid elements, based

¹ Comments were submitted to the Competition Council from the interested third parties, i.e. the beneficiary and AVAS, a summary of which is at Annex I to the present Decision.

on the provisions of the *Government Ordinance no. 45/2004 for finalizing the privatization of certain companies in APAPS' portfolio, in difficulty* and the art. 18 in the *Law no. 137/2002 on certain measures for accelerating the privatization*

- (2) The Competition Council requested the Authority for the State's Assets Capitalization (hereby named AVAS), by the address no. 1138/03.06.2005, to notify the support measures granted to S.C. U.C.M. S.A. Resita at privatization, in order to assess them according to the legislation in the field.
- (3) As AVAS did not answer the request to notify within the time limit established by the Competition Council (respectively until 14.06.2005), in the Note elaborated by the Territorial Monitoring Department and registered with no. 1203/15.06.2005, it was proposed to command an investigation *ex officio*.
- (4) Based on art. 34 (a) corroborated with art. 26 (j) in the Competition Law no. 21/1996, republished and of art. 14, art. 20 and art. 40 in the Law no. 143/1999 on the state aid, republished, by the Order of the Competition Council's President no. 136/15.06.2005 an investigation commenced into the support measures suspected to be state aids granted to S.C. U.C.M. S.A. Resita at privatization, as well as their compatibility with the conditions imposed by the Law no. 143/1999 on the state aid.
- (5) The Order no. 136/15.06.2005 on the start of the investigation and the investigation's opening note were published on the Competition Council's site, according to the provisions of the Law no. 143/1999 on the state aid, in order to allow the interested persons to submit their point of view.
- (6) During the investigation, by the address no. VP4/2088/18.07.2005, registered at the Competition Council with RS-AS no. 71/19.07.2005, AVAS notified the state aid measures granted to S.C. U.C.M. S.A. Resita's privatization, as individual restructuring state aid. As the information submitted were not complete and exact, the Competition Council has sent to AVAS a request for supplementary information by the addresses no. 1072/TM/27.07.2005 and 200/CS/22.08.2005.
- (7) By the address no. ICT/1141/13.09.2005, and the address no. 1151/15.09.2005, the report elaborated by the investigation team was submitted to the beneficiary and to AVAS, for possible comments.

2. DESCRIPTION OF THE STATE AID MEASURE

2.1. The legal base for granting the state aid

- (8) The state aid measures granted to S.C. U.C.M. S.A. Resita are established by the following normative acts:
 - GO no. 45/2004 on certain measures for finalizing the privatization of the undertakings in the portfolio of the Authority for the Capitalization of the State's

Assets, which are in difficulty, approved by the Law no.361/2004, with the subsequent amendments and completions;

- Law no. 442/2004 for the approval of EGO no.26/2004 on certain measures for finalizing the privatization of the undertakings in the portfolio of the Authority for the Capitalization of the State's Assets and consolidating certain privatizations;
- Law no. 137/2002 on certain measures for accelerating the privatization;
- GD no. 794/2002 on the approval of the Methodology on the procedure and the competences of granting the facilities for the payment of the taxes, fees and other incomes of the local budgets.

2.2. THE FINANCIAL SUPPORT MEASURES FOR S.C. U.C.M. RESITA S.A.

(9) The following support measures, that are the subject of the investigation, were granted at S.C. U.C.M. S.A. Resita's privatization, namely facilities for the payment of certain obligations unpaid to the state budget, the local budgets and towards AVAS.

(10) The facilities for the payment of the obligations unpaid to the state budget, the local budgets and towards AVAS granted to S.C. U.C.M. Resita S.A., in total amount of ROL 2,247,167 mil., comprise exemptions amounting ROL 1,838,833.6 mil. and the rescheduling of debts towards the state budget in total amount of ROL 408,333.4 mil., as follows:

Table no. 1 – Facilities granted to SC UCM S.A Resita

No.crt	FACILITY	SUPPLIER	AMOUNT GRANTED -ROL-	LEGAL BASIS
1.	Exemption from the payment of the budgetary obligations unpaid until 31.12.2003, calculated until the date when the transfer of the ownership right on the shares took place	Ministry of Public Finances	562,467,410,792	GO 45/2004 and Law no. 442/2004
2.	Exemption from the payment of the interests and penalties of any kind related to the budgetary obligations unpaid until 31.12.2003, calculated until the date when the transfer of the ownership right on the shares took place	Ministry of Public Finances	1,141,703,019,830	GO 45/2004 and Law no. 442/2004
3.	Exemption from the payment of the interests and penalties of any kind related to the sums took over by AVAB and unpaid until 31.12.2003, calculated until the date when	Ministry of Public Finances	95,370,567,917	GO 45/2004 and Law no. 442/2004

	the transfer of the ownership right on the shares took place			
4.	Exemption from the payment of the taxes and local taxes unpaid until 31.12.2003 owed to the local budget of Resita city	Resita Local Council	8,338,983,087	GO 45/2004 and Law no. 442/2004
5.	Exemption from the payment of the interests and delay penalties related to the taxes and local taxes, unpaid until 31.12.2003	Resita Local Council	13,831,840,976	GO 45/2004 and Law no. 442/2004
6.	Exemption from the payment of the obligations towards AVAS,	AVAS	17,121,796,112	GO no. 45/2004
7.	Rescheduling for the payment for a 5 years period, with a grace period of 6 months of the unpaid budgetary obligations		408,333,408,419	GO 45/2004 and Law no. 442/2004
	TOTAL		2,247,167,027,133	

Source: supplementary information

3. THE STATE SUPPORT MEASURES' BENEFICIARY (S.C. U.C.M. RESITA S.A.)

(11) S.C. UCM S.A Resita is a joint stock company with the headquarters in Resita city, Caras – Severin County, no.1 Golului street, with the registration number, at the Trade Register, being J 11/4/12.02.1991 and CUI 1056654, fiscal attribute R. At the date when the shares sale- purchase contract was signed, according to the Trade Register Office the company had equity of ROL 169,200,200 thousands divided in 6,768,008 shares of ROL 25,000 each. The beneficiary is situated in the Development Region West Oltenia, which is considered an assisted area, in accordance with the provisions of Art. 87(3)(a) in EC Treaty.

(12) S.C. UCM S.A Resita was privatized in 2003, by signing the shares sale – purchase contract no.57/23.12.2003, closed between APAPS (subsequently named AVAS) and the Sole bidder formed from the Employees' Association of the Machines Manufacturing Factory and the firm INET AG Elvetia. The shareholders' structure after the privatization is presented in the Table no. 2.

Table no. 2 – S.C. U.C.M. Resita S.A.'s shareholders structure after the privatization

SHAREHOLDERS	CAPITAL OWNING	
	Number of shares	Percent in the equity (%)
INET AG	3,451,685	51.0000
S.I.F. Banat Crişana	1,107,637	16.3658

S.I.F. Oltenia	1,028,861	15.2018
Employees' Association of the Machines Manufacturing Factory Reșița	662,638	9.7908
Other shareholders	517,187	7.6416
Total	6,768,000	100.0000

Source: The notification form

(13) The company had, at the moment when the privatization contract was signed, 3,648 employees and a turnover of ROL 870,023,103 thousand, being, therefore, a large company.

(14) S.C. U.C.M. S.A. Resita' main activity object lays in the manufacturing of engines and turbines (except from those for airplanes, auto -vehicles and motorcycles).

(15) The main activities performed and the products commercialized by the company, according to its activity object registered by the certificate no. 34,643/28.07.2005 issued by the Trade Register's Office, encoded based on the CAEN Classified List and transposed in the European Combined Classified List (CN) are the following:

Table no. 3- The classification of the activities and products commercialized by S.C. UCM RESITA S.A

CAEN	Description of the activity	CN	Description product
2751	Casting casted iron	88510.1,8851.2,8850.3	Casted iron, casted parts
2752	Casting steel	88510.4	Casted parts from steel
2753	Casting light non-ferrous materials	88510.5	Casted parts from light metals (aluminum or other light metals)
2830	Production of steam generators	8402(.1, .2, .9) 8404(.1, .2, .9))	Steam generators and parts for them
2840	Metallic products obtained by plastic forming	88520(.2, .3, .4, .5)	Metallic products made by forging and cupping
2911	Manufacturing engines and turbines	8406(.10-.82, .90) 8407 (.21, .29), 8408 (10), 8410 (.11-.13, .90) 8411 (.82 -.99) 88620 (.1-.2)	Engines and turbines (except from the engines for auto vehicles and motorcycles and of the blasting engines for aircrafts)
2912	Manufacturing pumps and	8412 (.21, .29, .31,.39). 8413 (.11)	Pumps, compressors and parts for them, hydraulic and pneumatic engines

	compressors		
2922	Manufacturing lifting and manipulating equipments	8431.41	Lifting, manipulating equipments and their parts
2923	Manufacturing industrial ventilation and refrigerating equipments	8415(.1, .8), 8418(.5, .6), 8419(.5,.6) , 8421.39	Industrial ventilation and refrigerating equipments
2951	Manufacturing installations for metallurgy	8454(.1,.3), 8455 (.1, .2) 8454.9, 8455(.3, .9)	Machines and installations for metallurgy

Source: Supplementary information

(16) [...]²

(17) [...]³

3.1. Financial situation of S.C. UCM S.A. upon privatization

(18) The economic- financial results registered by S.C. U.C.M. Resita S.A., based on the data from the balance sheets, prior to the privatization, are the following:

Table no. 4- The economic- financial results during 2002-2003

2002	2003
Turnover (thousand ROL)	
759,136,564	870,023,103
Profit/Loss (thousand ROL)	
25,996,259	- 1,065,164,261

Source: The notification form

(19) As it can be seen in the presented data, before its privatization, the company registered an important loss, as it has accumulated large amounts of debts towards the state budget. Although the company's turnover, in comparable prices, is at a constant level, the company registers a decrease of its economic- financial situation. This was influenced by increasing costs, the reduction of future payments on an established date, in the same time with the accumulation of debts towards the state budget and the suppliers.

(20) According to the data from the balance sheets related to the last two years, the capitals' evolution during 2002-2003 is presented in the table below:

² confidential data

³ confidential data

Table no.5 - Evolution of the company's capitals

	Thousand ROL	
	2002	2003
Own capitals	539,283,285	-795,771,412

Source: notification form

It results that in 2003 the company's own capitals register a negative value.

(21) The causes leading to the company's difficult situation are the following:

- Decrease of the domestic demand for its products;
- Lack of necessary financing to maintain the competitive products and to make investments that would have allowed the increase of the products' added value;
- The undertakings' lack of liquidity, leading to the company's financial blockage and debts' accumulation;
- The insufficient advertising on the market of its manufactured products and lack of adequate management policies;
- Over-reliance on imported raw materials for completing domestic production.

4. RELEVANT MARKETS

(22) S.C. U.C.M. Resita S.A. acts on the following relevant markets: the market of hydro-installations and of the hydro-mechanical equipments; the electrical machines market; the spare parts market; the casted and forged parts market.

(23) Those who benefit from the products sold on the domestic market (named from now on the relevant market) are the undertakings from :

- the energetically field, electricity producers;
- the extractive industry;
- the processing industry;
- the industry producing transport means;
- the railway and sea transport;
- agriculture (irrigation systems).

(24) From the evolution of the sales from the company's main domestic markets, presented in the market study, it can be seen that during 2001 – 2003 there is a special development of the hydro- installations market, materialized in a tipping of the market's size during this period; the spare parts market and that of casted parts maintained constant and the market of electrical machines registered a strong decrease, of approx. 5.7 times.

(25) According to the market study annex to the restructuring plan of S.C. U.C.M. S.A., the market shares owned by the company on the domestic markets are as follows:

Table no. 6 – The company's market shares on the domestic markets and the proportion of different products in the turnover

Product's name	2001		2002		2003	
	Sales					
	UM	Val. (mil. ROL)	UM	Val. (mil. ROL)	UM	Val. (mil. ROL)
Hydro-installations	1,241	176,649	1,950	406,729	1,768	650,273
% domestic turnover		36.5		59.3		77.1
Market share		18		23.5		24.3
Spare parts + rep. Diesel engines	-	148,570	-	149,316	-	599,986
% domestic turnover		32.2		19.5		10.6
Market share		13.5		14.2		10
Electrical machines (MW)	18	5,958	19.5	24,698	2.7	4,996
% domestic turnover		1.9		4.6		0.7
Market share		2.3		9.4		1.9
Casted and forged parts (to)	12,555	13,647	5,372	6,462	3,198	7,784
% domestic turnover		4.4		1.2		1.1
Market share		2.6		1.2		1.5

Source: market study

It can be seen that, UCM SA Resita owns a majority position on the domestic relevant markets for none of its products.

(26) The company's sales on the external market amounted ROL 110,996 mil. in 2001, ROL 130,856 mil. in 2002 and of 171,285 mil. in 2003. These values were accomplished from the sales of hydro-installations and spare parts and Diesel motors' repairing.

Table no. 7- The market shares registered by the company on the market segments

Product's name	2001		2002		2003	
	Sales					
	UM	Val. (mil. ROL)	UM		UM	Val. (mil. ROL)
Hydro-installations(to)	442	62,906	417	86,986	301	110,786
Market share		< 1 %		< 1 %		< 1 %
Spare parts+rep. Diesel engines	-	48,090	-	43,869	-	60,499
Market share		< 1 %		< 1 %		< 1 %

Source: market study

(27) [...] ⁴

⁴ Confidential data

(28) [...] ⁵

(29) The main clients for the company's products are:

Table no. 8 – S.C. U.C.M. Resita S.A.'s main clients
[...] ⁶

(30) The estimations made in the market study, related to the trends from the domestic market, for the next five years, show that for the hydro-installations it will be registered an increase of the demand and for electrical machines, spare parts and casted parts, a relatively stability.

(31) U.C.M. Reșița's main group of products is the hydro-installation one, having a proportion of approx. 80% in total sales. From the market study annexed it can be seen an increasing evolution of this market for the following period, evolution mainly due to: the increase in the demand of electricity obtained from regenerative sources; the need to renew the technology of the equipments in function; capital repairing for the installations in use older then 15 years, the tendency to modular standardize the low power hydro-installations, the tendency to build up low power hydro-installations.

5. DESCRIPTION OF THE PRIVATIZATION PROCESS

(32) In accordance with the legal provisions, the sale of the shares package owned AVAS at S.C. U.C.M. Resita S.A. was by negotiation on final, improved and irrevocable bidding.

(33) In 2003, AVAS offered for sale the main shares package owned by the State in S.C. UCM RESITA S.A., representing 60.7908 % from its equity, divided in 4,114,323 shares.

(34) The privatization process started by advertising in newspapers "Curentul", "Bursa" and "Financial Times". The sale of the presentation dossier and the submission of the biddings took place during 25.11.2003-05.12.2003, with the fulfillment of the legal provisions in force.

(35) [...] ⁷

(36) [...] ⁸

⁵ Confidential data

⁶ Confidential data

⁷ Confidential data

⁸ Confidential data

(37) From an analysis of the documents made available for the notification, it can be seen that, the shares bought from AVAS, representing 60.79% from the equity, were divided as follows:

- 51% by INET AG;
- 9.79% by the Employees' Association S.C.UCM S.A. Resita.

6. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(38) The restructuring plan elaborated by the company, buyer and approved by AVAS and submitted to the Competition Council, describes the measures in the company's structural re-organizing, technical restructuring, environment investments and financial restructuring.

(39) S.C. U.C.M. Resita S.A.'s restructuring were focused on the following:

- Increase of the degree of covering the production capacities from orders;
- Making the company's basic activities profitable, as it was provisioned in the privatization contract;
- Renewing the technology/modernizing the manufactured or similarly equipments, to cover the domestic and external market's needs;
- Adjusting the company's financial structure by introducing the supplier credit, increase the cash in financial discipline, obtaining of financing from banks;
- Making its activity efficient by reducing the slow movement stocks, externalizing the activities not specific for its main activity object and by an adequate management of the existing resources.

(40) By implementing the restructuring plan, the company aims to accomplish the following objectives:

- Increase of the turnover;
- Reduction of the costs generated by non-quality and delays related to the turnover;
- Accomplishing the objectives on the manufacturing and delivery planned time;
- Meeting the European environmental criteria.

(41) The restructuring plan submitted by AVAS encloses the causes leading to S.C. U.C.M. Resita S.A.'s difficult financial situation, as well as the measures to ensure the company's long term viability. By applying the restructuring program's measures, AVAS foreseen that the company registers a profitable activity and it will ensure its own financial resources for an adequate development of its activities, without debts to the state budget or to the local budgets.

(42) The restructuring program elaborated together with the Buyer and AVAS covers the period 2004-2010. The measures enclosed in the restructuring plan are as follows:

Table no. 9 –The synthesis of the measures enclosed in S.C. UCM SA’s restructuring plan

- Thousand ROL -

Nr. Crt.	Measures	Assessment of implementing costs		
		Own sources	Investor’s sources	State aid
1.	Organizational and management measures	[...] ⁹	[...] ¹⁰	[...] ¹¹
2.	Technical and technological measures			
3.	Environmental protection measures			
4.	Financial restructuring measures			
	TOTAL			
TOTAL RESTRUCTURING COST		[...] ¹²		

Source: S.C. U.C.M. RESITA S.A.’s restructuring program

(43) Implementing the restructuring program implies a considerable financial effort amounting [...] ¹³. This plan will lead to SC UCM S.A Resita’s return to viability in 2010 (at the end of the restructuring period).

6.1. Organizational and managerial restructuring

(44) The organizational and managerial restructuring encloses the following measures:

Table no. 10 – Measures on the organizational and managerial restructuring
[...] ¹⁴

6.2 Technical restructuring

(45) The technological investments assumed by the company and the Buyer amount [...] ¹⁵ and refer to the following:

Table no. 11- Measures on the technical restructuring
[...] ¹⁶

6.3. Environmental protection restructuring measures

(46) [...] ¹⁷

⁹ Confidential data

¹⁰ Confidential data

¹¹ Confidential data

¹² Confidential data

¹³ Confidential data

¹⁴ Confidential data

¹⁵ Confidential data

¹⁶ Confidential data

¹⁷ Confidential data

6.4. Financing restructuring

(47) The financial restructuring encloses the following measures:

Table no. 13 – Financial restructuring measures

[...] ¹⁸

7. THE ASSESSMENT OF THE SUPPORT MEASURES- THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(48) The criteria allowing to be established if a measure represent or not state aid is presented at art 2 align. (1) in the Law no. 143/1999 on the state aid. According to the law, the state aid represents any support measure taken by the state or by the local administration authorities, or from state resources or from those of the local administration, regardless the form, which distort or threaten to distort the competition, by giving an advantage to certain undertakings, to the production of certain services or that affects the commerce between Romania and the member States of the European Union, being considered as incompatible with the normal competitive environment.

(49) The financial support granted to S.C. U.C.M. RESITA S.A. and notified by AVAS comprises State exemptions and the rescheduling of debts, and therefore constitutes state resources.

(50) The financial support is granted to a certain undertaking, namely S.C. U.C.M. Resita S.A., having, therefore, a selective character.

(51) Taking into account that the facilities are granted within the privatization process, an assessment must be done whether or no such facilities constitute an economic advantage to S.C. U.C.M. Resita S.A.. Consequently, the State's behavior must be compared with that of a private investor/ seller in the same situation (the private prudent investor's test). The state will be considered as acting as a private prudent investor/ seller if it is proved that it obtains the best price from the sale of its shares (i.e. the price obtained is greater than the debts). Did the State therefore, acts as a private prudent investor/ seller in this case?

(52) [...] ¹⁹

(53) [...] ²⁰

(54) [...] ²¹

¹⁸ Confidential data

¹⁹ Confidential data

²⁰ Confidential data

(55) [...] ²²

(56) Therefore, the financial support measures that are granted to S.C. UCM RESITA S.A. are considered as state aids and fall under the incidence of the Law no.143/1999.

8. THE STATE AID'S COMPATIBILITY WITH THE LEGISLATION IN THE FIELD

(57) The state aid's objective is SC UCM S.A Resita's restructuring in order to make the company viable again at the end of the restructuring period.

(58) The restructuring state aid is conditioned by the implementation of a viable, coherent restructuring plan, to prove the company's long term viability. For this the Regulation provisions that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on an efficient base, usually implying the redraw from all the activities generating losses, restructuring the existing activities which can become competitive again and sometimes their diversification directed towards new, profitable activities. The industrial restructuring must be usually accompanied by financial restructuring (capital injections, reduction of the indebtedness degree).

(59) The Competition Council assesses the state aid granted to SC UCM S.A, according to the criteria provisioned in the Regulation on the state aid for rescue and restructuring firms in difficulty, published in the Official Journal no. 1215/17.12.2004, issued in applying the Law no. 143/1999 on the state aid, republished, (named from now on the Regulation). In order to be considered as compatible with the normal competitive environment, the state aid must fulfill all the criteria from the Regulation.

9. CRITERIA TO BE FULFILLED FOR GRANTING THE RESTRUCTURING STATE AID

(60) The financial support measures mentioned at para. 2.2. aim to:

- Sectorial eligibility;
- The company's difficult situation;
- S.C. U.C.M. Resita S.A.'s return to long term viability;
- Prevent of any excessive distort of the competition;
- Be proportional as between the restructuring costs and benefits (the state aid limited at the minimum necessary);
- Respecting the "first time, last time" principle;

²¹ Confidential data

²² Confidential data

- Confirming the fulfillment of the restructuring plan and monitoring it by the Competition Council (annual monitoring and reporting).

10. SECTORIAL ELIGIBILITY

- (61) As showed at Chapter 3- Description of the beneficiary- S.C. UCM Resita S.A. acts within the sector of the products from the machines' manufacturing industry.
- (62) The company's activity object is also mentioned at the Trade Register, encloses the activities and products presented at para. (15).
- (63) The investigation team found out based on the facts mentioned in para. (15)-(17) ca the installations and equipments from the company's endowment allow the manufacturing of some products which, according to the Annex no.1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions*, are defined as steel products, namely: - raw casted irons (72.01), non-alloyed steels (72.06, 72.07), alloyed steels (72.24) and stainless steels (72.18).
- (64) According to art.1 in the *Regulation on the state aid for rescue and restructuring and the state aid for closing in the steel sector*, enforced by the Order of the Competition Council's President no. 40/02.03.2005, "the state aids for rescue and the state aids for restructuring firms in difficulty from the steel sector, as defined in the Annex no.1 to the Multisectorial regulation on the regional state aid for large investment projects, are forbidden".
- (65) According to the company's declarations, the information received from AVAS and the facts found out during the investigation period by assessing the data related to the turnover's structure, it resulted that the company didn't commercialized/doesn't commercialize the above mentioned basic steel products, casted iron and steels. These are used only for manufacturing their own finished products: the casted parts from casted iron and steel for turbines, forged parts, non-ferrous casted parts, precision casted parts, which aren't included in the steel category.
- (66) Regarding the presented facts, the investigation team considered that, the company is eligible to receive restructuring state aid, from the point of view of the sector in which it acts, as far as it doesn't commercialize/ will not commercialize any steel product enclosed in the Annex 1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions*

11. FIRM IN DIFFICULTY

- (67) In order to benefit from state aid, according to the Regulation, the company must be in difficulty. Within the meaning of the Regulation, the Competition Council considers that a firm is in difficulty when it isn't capable, from its own resources or

from the resources it can obtain from owners/ shareholders or creditor, to cover the losses and which, without an intervention from exterior from the public authority, would almost certainly lead, on short or medium term, to it getting out of the market.

- (68) According to art.2 para.(2) letter b) in the Regulation, a stock company is considered as in difficulty when it has lost more than half of its capital, as proved by its accountable registers and more than a quarter of its capital was lost within the last 12 months.
- (69) [...] ²³

12. THE COMPANY'S RETURN TO LONG TIME VIABILITY

- (70) According to art. 13 in the Regulation, the restructuring state aid's granting is conditioned by the implementing of the restructuring plan base for the assessment of the Competition Council on the state aid. The restructuring plan, who's duration must be as short as possible, must enclose the giving up to loss producing activities and offer the company long term viability, allowing it to function with own resources. The restructuring plan must be based on a realistic assessment of the market conditions, the return to viability must be a result, mainly, of the internal measures it contains, as well as of the external factors, such as prices and demand fluctuation, factors on which the company has no important influence whatsoever.
- (71) In 2003, S.C. U.C.M. Resita S.A. was privatized. In order to come out from the difficult situation, the company elaborated, together with the Buyer (the Employees Association and the firm INET AG) and AVAS, a restructuring program for the period 2004-2010. The synthesis of the measures enclosed in the restructuring plan of SC UCM S.A Resita was presented at Chapter 6.
- (72) The analysis of the restructuring plan the manner in which it will lead to the long term viability, takes into account the provisions of art. 13 in the Regulation.
- (73) SC UCM S.A Resita's restructuring plan starts from the technical- economic data reflecting the company's activity during the period previous to the privatization. This plan was elaborated after a diagnosis analysis showing the company's strong and weak points, the circumstances leading to the difficulties the company is confronted with.
- (74) S.C. UCM S.A.'s strategy aims [...] ²⁴
- (75) It results that, by applying the measures enclosed in the restructuring plan, with the contribution of both the company and the Buyer, by its own contribution, as well

²³ Confidential data

²⁴ Confidential data

as the state, by the facilities granted to the company for the payment of its budgetary obligations, for the period 2004- 2010 it is forecasted an improvement of the economic- financial indicators, as follows:

Table no. 14 –The forecasted evolution of the economic- financial indicator, as a result of applying the restructuring measures
[...]²⁵

(76) After implementing the measures in the restructuring program, at the need of the restructuring period, the company forecasts to reach the target indicators, as follows:
²⁶[...]

(77) Related to the presented facts, it is considered that the proposed restructuring plan will lead to the long term viability for SC UCM S.A. RESITA.

13. PREVENTING DISTORTION OF COMPETITION (COMPENSATORY MEASURES)

(78) According to the provisions from the Regulation, in order to minimize as much as possible the negative effects incurred by the state aid's granting on the competition on the relevant markets, compensatory measures are necessary. These measures shall be proportionate with the distorting effects caused by the state aid and especially with the company's size and the relative importance on the relevant markets. Reducing the company's presence on the market it will be established based on the market study annexed to the notification, as well as of any relevant information and it will be part of the restructuring plan.

(79) According to the information received during the investigation period, in order to ensure the viability, until the end of the restructuring period, the company shall reduce production capacities on the following market segments:
[...]²⁷

(80) The market study shows that by applying the restructuring program, SC UCM S.A Resita will consolidate its position on the hydro- installations, without starting aggressive activities on this market, by increasing its market shares and distort the competition.

(81) As a compensatory measure, the state aid grantor imposed the reduction of production capacities on this market, taking into account the significant market shares and the important proportions (80%) held by hydro-installations in the turnover, as follows:

[...]²⁸

²⁵ Confidential data

²⁶ Confidential data

²⁷ Confidential data

(82) Between the designed production capacity of S.C. UCM S.A. and the functioning production capacity are significant differences, the company doesn't intend to increase its production capacities but to accomplish a superior utilization degree of those remained in function.

(83) The functioning production capacities and their utilization degree during 2001 – 2003, is as follows:
[...] ²⁹

(84) After implementing the measures from the restructuring plan, the production capacities and their utilization degree are as follows:
[...] ³⁰

(85) Regarding the presented facts, the Competition Council estimates that the state aid shall be used only for the company's return to viability, without allowing the beneficiary while implementing the restructuring plan, to extend its production capacity.

14. STATE AID LIMITED TO THE MINIMUM NECESSARY (PROPORTIONALITY)

(86) In accordance with the provisions of art. 15 of the Regulation, the state aid's amount and intensity must be limited at the minimum necessary, to allow the restructuring according to the company and shareholders' existing financial resources. The state aid's beneficiary must bring a significant contribution to the restructuring plan from its own resources, including from the sale of assets unessential for the company's survival, or from external financing under market conditions.

(87) [...] ³¹

(88) [...] ³²

(89) [...] ³³

(90) [...] ³⁴

²⁸ Confidential data

²⁹ Confidential data

³⁰ Confidential data

³¹ Confidential data

³² Confidential data

³³ Confidential data

³⁴ Confidential data

(91) The state aid's intensity, calculated as report between the value of the state aid and the restructuring total cost, is of 54.2 %.

(92) Regarding the presented facts, we consider as significant the Company's contribution of 45.75% for sustaining the restructuring costs, taking also into account the following social reasons:

-the company is situated in an assisted area, in accordance with art (87) (3) (a) in the EC Treaty;

- the company is in an area with great difficulties due to the close down of undertakings. S.C. U.C.M. Resita S.A. is the larger employer in Resita City, Caras Severin County, with 3,648 employees, which represents 12 % from the employed population of the city. If the company goes bankrupt – if it doesn't receive the state aid- the unemployment rate in the county would increase from 9.7 % to 12.4%, (almost double of the average rate on the country).

15. FULFILLING THE FIRST TIME, LAST TIME PRINCIPLE

(93) S.C. U.C.M. Resita S.A. didn't receive restructuring state aid any more, so it fulfils the provisions from the art. 24 in the Regulation on the state aid for rescue and restructuring firms in difficulty which stipulates that the restructuring state aid must be granted only once.

16. AFFILIATION TO A GROUP

(94) According to the provisions of art. 2 para. (5) in the Regulation, a firm belonging to a group isn't normally eligible for receiving rescue and restructuring state aid, excepting from the case in which it proves that the company's difficulties are its own and not due to the random allocation of the costs within the group and that the difficulties are too serious to be resolved by the group itself.

(95) The exemptions and rescheduling the company benefits of are related to certain historical debts, accumulated during the years previous to the privatization. As showed at Chap. 3.1., S.C. U.C.M. Resita S.A.'s financial difficulties are its own, the company facing them before the privatization.

(96) [...] ³⁵

(97) [...] ³⁶

³⁵ Confidential data

³⁶ Confidential data

17. ANNUAL MONITORING AND REPORTING

- (98) In accordance with the provisions of art. 18 in the Regulation, the Competition Council permanently monitors the restructuring plan's implementing manner so that it would not divert from the fulfillment of the established objectives.
- (99) The Competition Council shall monitor the restructuring plan's implementation until the end of the period to ensure itself that there will be no increase in the production capacities, serious diversions from the restructuring measures and that the state aid shall not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program. At the same time, the Competition Council shall make sure that the company will not commercialize, not even in the future, the products part from the steel category, as define din the Annex 1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions, published in the Official Journal, Ist Part, no. 165 /17/03/2003.*

18. CONCLUSIONS

- (100) Taking into account the reasons previously presented, the Competition Council finds that the individual state aid which is granted to S.C. U.C.M. Resita S.A. is compatible with the normal competitive environment and doesn't unduly affect the trade with the Member States of the European Union.

DECIDES

Art. 1. The financial support measures granted to S.C. UCM Resita S.A. are state aid according to art. 2 para.(1) in the *Law no. 143/1999, republished.*

Art. 2. In the basis of art. 21 para. (2) (c) corroborated with art. 23 para. (1) (e) in the *Law no. 143/1999, republished,* it is authorized the restructuring state aid which is granted to SC. UCM Resita S.A. at its privatization, under the condition of fulfilling art. 3, art. 4 and art.5 in the present Decision.

Art. 3. The company must implement in whole the assumed restructuring plan. The modification of the restructuring plan shall be done only if fulfilling the provisions of art. 19 in the Regulation on the state aid for rescue and restructuring firms in difficulty, applied by the Order of the Competition Council's President no. 501/23.11.2004, published in the Official Monitor no.1215/17.12.2004.

Art. 4. The company shall reduce its production capacities until 2010, in accordance with the assumed Restructuring Program.

Art. 5. The company shall not commercialize steel products which are enclosed in the Annex 1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions, published in the Official Journal, Ist Part, no. 165 /17/03/2003.*

Art. 6. If the conditions imposed by the present decision are not fulfilled, shall be applied the provisions of art. 22 in the Law no. 143/1999 on the state aid, republished.

Art. 7. The value of the state aid to be granted is of ROL 2,247,167 mil. (RON 224,7 mil.).

Art. 8. This decision is applicable as of its date of communication.

Art. 9 According to the provisions of art. 32 in the Law no.143/1999, republished, the Authority for the State's Assets Capitalization shall submit to the Competition Council information on the granted state aid, for its inventorying and monitoring. At the same time, the Authority for the State's Assets Capitalization shall submit to the Competition Council annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issued date of this decision. The following reports should prove that the company fulfilled the compensatory measures on production capacities' reduction imposed by the present decision and the condition on not commercializing the steel products.

Art. 10. Pursuant to Art. 46 of *Law 143/1999 on state aid with subsequent modifications and completions*, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

Art. 11. This Decision shall be communicated by the General Secretariat of the Competition Council to:

- the Authority for the State's Assets Capitalization, no. 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- S.C. UCM Resita S.A., no. 1 Golului Str., Resita city, Caras-Severin County.

ANNEX I

SUMMARY OF THE COMMENTS OF THE INTERESTED THIRD PARTIES

After submitting the investigation report, the Competition Council received the following comments from the beneficiary (address no. 71/DG0000/22.09.2005):

- the beneficiary states that the company's strategy is to expand on the international level, especially on the Asian and American markets; for this purpose it is collaborating with other European companies in the field and not necessarily competes with them, therefore, not affecting the trade with the Member States;
- the beneficiary considers that the State, even if it acts as a private investor does not lose its public character, and it is therefore responsible to reduce certain social effects; the fact that the comparative study regarding the liquidation costs vs. restructuring costs was elaborated on a date subsequent to the privatization date does not affect its objectivity, as long as the assessment period is the same as the restructuring period. Therefore, S.C. UCM Resita S.A. considers that the liquidation alternative would have been more expensive than the privatization, for the specified period, as the state did not have other possibilities to recover the claims from the company unless selling its assets;
- the beneficiary considers that the condition imposed by the Competition Council to fulfill in whole the restructuring plan is too restrictive, because an objective change in the economic conditions could determine its modifications.

AVAS commented on the investigation report and the beneficiary's comments, claiming that the restructuring program must be totally fulfilled, with the possibility to be modified if certain external/ internal causes could affect the achievement of the measures.