

**DECISION OF THE COMPETITION COUNCIL  
no. 203 of 03.11.2005**

**regarding the state aid to be granted to**

**S.C. UZINA MECANICA MARSA S.A.**

**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, Part I, no. 742 from 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 from 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. 1215, from 17.12.2004,

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. 156624/14.07.2005, filed with the Competition Council with no. RS-AS 66/14.07.2005, the Ministry of Economy and Trade notified based on art. 15 from the State aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC UZINA MECANICA MARSA SA (SCUMM), within the privatization process.

(2) The Competition Council requested the Ministry of Economy and Trade supplementary information by addresses RG/5262/22.07.2005, DAAS/866/01.08.2005, DAAS/905/09.08.2005, DAAS 1976/23.08.2005 to which the Ministry of Economy and Trade replied by addresses filed with the Competition Council with no. DAAS 866/01.08.2005, DAAS 875/02.08.2005, DAAS/928/15.08.2005 and DAAS 987/26.08.2005. Also, discussions were held with the representatives of the Ministry of Economy and Trade and of SCUMM on 17.08.2005. Due to the fact that information submitted by the Ministry of Economy and Trade did not answer all requests of the Competition Council, the notification was considered unsupported and therefore withdrawn. By address no. 125911/DA/05.09.2005, filed with the Competition Council with no. RS-AS/82/05.09.2005, the Ministry of Economy and Trade has resubmitted the notification regarding the state aid for the restructuring of SCUMM, within the privatization process. The Competition Council has again requested supplementary information replied by addresses filed with the Competition Council with no. DAAS/1067/13.09.2005, DAAS/1068/13.09.2005, DAAS/1072/14.09.2005, DAAS/1073/15.09.2005, DAAS/1081/20.09.2005, DAAS/1082/21.09.2005, DAAS/1085/21.09.2005 and DAAS/1086/21.09.2005.

(3) The notification became effective when information was accurate and complete, respectively on 21.09.2005.

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

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

(4) The Ministry of Economy and Trade has notified the financial support measures granted to SCUMM based on the following acts:

- Law no. 137/2002 on the acceleration of privatisation;
- Government Ordinance (GO) no.36/2004 for amending and completing the Law no.137/2002, approved by Law no.191/2004;
- Art. 281 of the Government Decision (GD) no. 577/2002 on the approval of the Methodological Norms for the enforcement of the Emergency Government Ordinance (EGO) no. 88/1997 on the privatisation of commercial companies, with the subsequent amendmends and completions;

- EGO no. 26/2004 on some measures for the completion of APAPS portfolio companies' privatisation and the consolidation of some privatisation, approved with amendmends and completions by Law no.442/2004;
- Government Decision no. 101/2004 regarding the approval of the extension of the payment facilities provided at art. 18 from the Law no. 137/2002 on the acceleration of the privatization, with the subsequent amendmends and completions, for certain companies from the portfolio of the Ministry of Economy and Trade – The Office of State Portfolio and Privatization in Industry (OPSPI);
- Government Decision no. 2377/2004 regarding the approval of the List of commercial companies within the portfolio of the Ministry of Economy and Trade benefiting, at privatization, from restructuring measures of the companies' debts to the budgetary creditors and APAPS, according to the provisions of art. 50 from GEO no. 26/2004;
- Draft Joint Order of the Ministry of Economy and Trade and the Ministry of Public Finance, regarding the granting of facilities to the payment of due and non paid budgetary obligations of SCUMM.

## 2.2. Financial incentives provided for SCUMM

(5) The measures of financial support notified by the Ministry of Economy and Trade are granted in the context of privatization of SCUMM, the company is to benefit from facilities provided in Law no. 137/2000, i.e. write-off and rescheduling of some pastdue obligations to the state budget as of 31.12.2003.

(6) Facilities concerning payment of pastdue obligations to the state budget to be granted to SCUMM at privatization, in total amount of ROL 66,500 million consisting of exemptions from payment in amount of ROL 55,162 million and payment reschedulings in amount of ROL 11,337 million, as follows:

**Tabel no. 1 Facilities that SCUMM benefits from**

No.	Facility	Amount granted (ROL)	Legal basis
1.	Exemption up to 95% from the payment of pastdue budgetary obligations as of 31.12.2003 according to art. 26 (1) (a)	17,805,666,432	GEO 26/2004
2.	Rescheduling of up to 5% from the payment of pastdue budgetary obligations as of 31.12.2003 according to art. 26 (1) (d)	937,140,337	GEO 26/2004
3.	Rescheduling for the payment of pastdue budgetary obligations as of 31.12.2003, according to art. 26 (3) (a) and art. (4) (a)	10,399,888,170	GEO 26/2004
4.	Exemption from the payment of interest and penalties of any kind related to pastdue	37,356,901,295	GEO 26/2004

	budgetary obligations, according to art. 26 (1) (e), (3) (b) and (4) (b)		
	<b>Total</b>	<b>66,499,596,234</b>	

Source: Notification form

### 3. BENEFICIARY OF THE AID MEASURES

(7) SCUMM is a joint-stock company. When the share sale-purchase agreement was signed the company had shareholders equity of ROL 41,082,500,000 divided in 1,643,300 shares with a face value of ROL 25,000.

(8) The current SCUMM initially belonged to Intreprinderea Mecanica Marsa, a machine building company comprising commercial sectors (the actual SC MECANICA SA Marsa - SCM) and special sectors for military production (the actual SC UZINA MECANICA MARSA SA - SCUMM). In 1981, within Intreprinderea Mecanica Marsa, a Special Products Factory was established with capacities designed for the manufacture of military products. Subsequently, in 1991, this factory became a branch of RATMIL Bucuresti – UZINA MECANICA MARSA, and in 1998, UZINA MECANICA MARSA was under the Special Department of the Ministry of Industry and Trade (at present Ministry of Economy and Trade) and was incorporated with the Registry of Trade under no. J32/1036/1998.

(9) SCUMM was privatized in 2004, by signing the share sale-purchase agreement no. 2/06.04.2004, concluded between the Ministry of Economy and Trade – The Office of the State Portfolio and Privatization in Industry (OPSPI) and the only bidder was the Employees Shares Program Association – Uzina Mecanica Marsa (PAS-UMM). Following the conclusion of the agreement PAS-UMM has become the only shareholder of SCUMM. The shareholders structure after privatisation is as follows:

**Table no. 2 Shareholders structure after privatisation at SCUMM**

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares	Percentage of equity held
PAS - UMM	1,643,300	100,00

Source: Supplementary information

(10)<sup>1</sup>

(11)<sup>2</sup>

(12) The production of SCUMM is focused on the following elements:

<sup>1</sup> Confidential data

<sup>2</sup> Confidential data

- vehicle bodies – a wide range of bodies, tailored on the customers request for vehicles, trucks, buses, vans with various compartments and destinations, respectively passenger or cargo transport;
- equipped containers - metallic containers of standard sizes and required accesories to be used as cargo warehouses or on construction sites, as living amenities;
- trailers and semi-trailers – with loadds between 300 Kg and 11,000 Kg, for cargo or passenger transport, as well as agricultural trailers and dumper trailers, which could be pulled by various vehicles;
- welded metallic constructions – standardized metallic confections (euroboxpalets), as well as tailor made metallic constructions according to customers technical specifiications, designed for mining works, drilling or construction works;
- parts and accesories for manufactured products as well as geared wheels.

(13) The shift to civilian production from military production process required considerable effort to adapt to this new manufacturing profile. This led to serious financial difficulties for the company.

(14)<sup>3</sup>

(15)<sup>4</sup>

(16) In 2004, SCUMM employed 220 persons, compared to 1991 when it had 1,741 persons. Because the company has a turnover under EURO 50 million and employees below 250 persons the company meets the criteria of a medium enterprise.

(17)<sup>5</sup>

### **3.1. RELEVANT MARKETS**

(18) SCUMM operates on the markets for producing and trading car bodies, equipped containers, trailers and semi-trailers, metallic welded constructions, parts and accessories<sup>6</sup>. From these, the highest proportion in the turnover is held by the sales of equipped containers (60% of the turnover in 2004), followed by the metallic welded constructions (20%) and parts and accessories (10%). The sales of car- bodies and trailers

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<sup>4</sup> Confidential data

<sup>5</sup> Confidential data

<sup>6</sup> The equipped containers, used as storehouses for merchandises or in the organization of the yard, as inhabited areas, are generally manufactured at the demand of important clients, periodically ordering. The metallic welded confections are products for the clients ordering unique products and are represented by atypical constructions of different complexities, designated for the mining workings, steel mills, assembling- building workings. The spare parts and accessories for the made products and the different types of serrated wheels are demanded by the units specialized in repairing and maintenance. The car-bodies are made especially for the small size clients, submitting small orders, many of them unique. As far as the production of trailers and semi-trailers is concerned, the orders are occasionally, this market being a fluctuant one and with a strong competition.

and semi-trailers have a smaller weight in the company's turnover, representing only 5%, respectively 4% from its total.

(19) The sales in the last three years are as follows:

**Table no. 4** **SCUMM's sales**  
- ROL mill -

Product's name	2002	2003	2004
Car-bodies	4,963,8	2,282,7	4,410,0
Trailers and semi-trailers	5,402,9	3,674,2	3,257,5
Equipped containers	5,664,2	7,693,3	49,605,3
Metallic welded confections	-	19,072,1	17,130,4
Parts and accessories	6,192,2	5,976,0	9,862,0
Total	22,223,0	38,698,3	84,265,3

Source: SCUMM's restructuring program

(20) 97% of the company's market is aimed at Romania's territory. The company does not have regular orders or stable clients abroad for exports. The main export products are in the area of welded construction and parts and accessories range for Italy, France, and Germany.

(21) According to the market study annexed to SCUMM's restructuring plan, elaborated by the consultancy firm SC ROM Benchmarking & Consulting SRL, the market shares owned by the company are as follows:

**Table no. 5** **SCUMM's market shares**  
(%)

Product	Domestic market share
Equipped containers	3.620
Auto trailers, semi- trailers	0.002
Different car-bodies	0.001
Metallic welded constructions	0.053
Spare parts and accessories	0.004

Source: Notification form

From the presented data, it can be seen that the products manufactured by the company represent a small percentage from the relevant markets, SCUMM's production being characterized by a low volume and a high diversification degree (very often unique products).

(22) The main competitors of SCUMM are:

- on the market of equipped containers: IPIC Chitila, Metalica Bucuresti, Aromet Buzau, Install Rom Slatina, IUMT Moreni, CTX Containex – Austria, Mobil Box – Hungary;
- on the market of trailers and semi-trailers: Tools and Matrixes Factory ARO Campulung, MAT Craiova, Silmar Braila, Rocar Bucuresti, Metalcar Sibiu, Rocar

Bucuresti, Grivita Bucuresti, Metalul Salonta, Schmitz – Germany, Pongratz – Austria, Umbra Rimorchi – Italy;

- on the market of car-bodies: Tools and Matrixes Factory ARO Campulung, Silmar Braila, Metalcar Sibiu, Rocar Bucuresti, Grivita Bucuresti, Metalul Salonta, Schmitz – Germany, Pongratz – Austria, Umbra Rimorchi – Italy;

- on the welded constructions market: Romprim Bucuresti, Metalcar Sibiu, Automecanica Medias, Hidromecanica Brasov, Mechanical Factory Bucuresti, Faur Bucuresti, Mechanical Factory Cugir, other undertakings with mechanical profile.

- on the market of spare parts and accessories: ASAM Iași, Neptun Câmpina, Mechanical Factory Cugir, other undertakings with mechanical profile.

(23) The main beneficiaries of the products SCUMM, on groups of products, are the following:

- for equipped containers: ROMGAZ SA Mediaș, TRANSGAZ SA Mediaș, HIDROCONSTRUCȚIA SA București, AEROSTAR SA Bacău;

- for trailers and semi-trailers (casual orders): CCCF București, NUCLEAR ELECTRICA Cernavodă, ENERGO MONTAJ Rm. Vâlcea;

- for car-bodies: HIDROCONSTRUCȚIA București, ELECTRICA Craiova;

- for metallic welded constructions: ROM METAL Baia Mare, LASEDO Sibiu, CAREDO Cluj Napoca, ATA Cluj Napoca, SOMETRA Copșa Mică;

- for spare parts: AGROMECH Brăila, AGROLIV Turda, RECOSEMTRACT Timișoara, AGROBARSA Brașov, DACIA NOVA Bârlad.

(24) From the market study annexed to the restructuring plan it results that at European level as well as in Romania, for the next five years, the trends of the markets on which SCUMM activates are increasing, these trends being forecasted based on the demand of products specific for the company, in sectors such as constructions, merchandise road transports etc.

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

(25) In 2003, the Ministry of Economy and Trade – the Office of State Portfolio and Privatization in Industry (OPSPI) initiated the privatization process of SCUMM by selling through negotiation based on final offers, improved and irrevocable, of the shares held by the state in the company.

(26) The privatization announcement was published on 11.09.2003, in the following newspapers: Ziarul Financiar, Adevarul, Tribuna de Sibiu, Curierul de Valcea, Gazeta de Sud.

(27) The presentation file was purchased by a single bidder represented by Uzina Mecanica Marsa Employees Share Program (PAS-UMM). Following the analysis of the submitted offer PAS-UMM has become the buyer of SCUMM.

(28)<sup>7</sup>

(29) The transfer of the share ownership right took place on 08.04.2004.

## **5. STATE AID CHARACTER OF THE NOTIFIED MEASURES**

(30) The criteria, which allow to be established if a measure is State aid, are presented in art. 2 (1) of the State aid Law no. 143/1999, 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.

(31) In order to be considered State aid within the meaning of State aid Law no. 143/1999, republished, the financial support must fulfil cumulatively the four criteria provided in article 2:

- a) is granted by the state or from state resources,
- b) the measure is selective,
- c) provides an economic advantage to the undertaking,
- d) distorts or threatens to distort competition and affects the trade of Romania with the Member States of the European Union.

*a) the support is granted from state resources*

(32) The financial support to be granted to SCUMM consist in the foregoing by the state of some revenues, therefore state resources are involved.

*b) the support measure has a selective character*

(33) The measures for financial support granted under Law no. 137/2002 regarding several measures for accelerating the privatization are addressed only to the undertakings to be privatized, among which SCUMM. Thus, the financial support granted has a selective character.

*c) the support measure confers an advantage to the company*

(34) Through the support financial measures granted SCUMM is economically advantaged, the company being exempted from the payment of some debts due towards the state budget, other one being rescheduled. The granting of these facilities has a favorable effect over the economic and financial indicators and over the cash-flow. Thus the company is advantaged in comparison with its competitors.

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<sup>7</sup> Confidential data



*d) the support measure distorts or threatens to distort competition and affect trade between Romania and the Member States of the European Union*

(35) The granting of financial support to SCUMM 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 the company 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 companies from the European Union.

(36) As regards the application of the private investor/creditor test, the Competition Council notes the following:

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 Ministry of Economy and Trade 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.

(37) Considering the above, the Competition Council considers that the private investor/creditor test does not apply in the case of SCUMM privatization.

(38) Therefore, the financial support measures are considered State aid and fall under the State aid Law no. 143/1999, republished.

## **6. THE STATE AID COMPATIBILITY WITH THE LEGISLATION IN THE FIELD**

(39) The State aid objective is the restructuring of SCUMM to return to viability at the end of the restructuring period. If the conditions in the *Regulation on the State aid for rescue and restructuring firms in difficulty*, the State aid can be considered as compatible.

(40) The restructuring State aid is conditioned by the accomplishment of the feasible, coherent restructuring plan to prove the company's long term viability. For this, the Regulation provides that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on a efficient basis, usually meaning the redrawn from those activities generating losses, restructuring the existing activities which can become competitive again and sometimes their diversification towards new, profitable activities. The industrial restructuring must be usually followed by the financial restructuring (capital injections, reducing the debts degree, etc.).

(41) The Competition Council assesses the State aid granted to SCUMM, according to the criteria provisioned in the Regulation mentioned above. In order to consider it compatible with the normal competitive environment, the State aid must fulfill all the criteria provisioned by it.

## **7. ELIGIBILITY OF SCUMM – FIRM IN DIFFICULTY**

(42) In order to benefit of State aid in accordance with the Regulation, 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 loses either from its own financial resources or from resources it can obtain from the 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 failure.

(43) According to article 2 (2) (b) and (c) of the Regulation, a company, regardless its legal form, is considered as being in difficulty when it fulfills the conditions to be subject to the judicial reorganizing procedure and the bankruptcy procedure provisioned in the legislation. In the same time, a company can be considered as in difficulty if it can be seen the increase of the losses, the decrease of the turnover, increase of the stocks, decrease of the cash flow, increase of the debts etc.

(44)<sup>8</sup>

(45)<sup>9</sup>

(46)<sup>10</sup>

(47)<sup>11</sup>

(48) Taking into account the above presented facts, the Competition Council considers that the condition from art. 2 (2) from the Regulation, necessary to consider SCUMM as “firm in difficulty”, is fulfilled.

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<sup>8</sup> Confidential data

<sup>9</sup> Confidential data

<sup>10</sup> Confidential data

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## **8. FINANCIAL DIFFICULTIES - CAUSES**

(49)<sup>12</sup>

(50)<sup>13</sup>

(51) Taking into account this difficult situation, the Ministry of Economy and Trade has decided to privatize the company by the provision of certain facilities, conditioned by the implementation of specific restructuring measures and the observance of special clauses, as detailed in Chapter 4.

(52) According to the information presented in the notification submitted by the Ministry of Economy and Trade, the presentation dossier elaborated at privatization informed potential investors of the availability of certain facilities and obligations.

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

(53) The measures mentioned in paragraph 2.2. above must lead to the following:

- Restore the long term viability of SCUMM;
- Avoid undue distortion of competition;
- Be proportional to the costs and benefits of restructuring (state aid limited to the minimum necessary);
- Respect “one time, last time” principle;
- Confirm the fulfillment of the restructuring plan and the monitoring of it’s progress by the Competition Council (annual monitoring and reporting).

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

(54) The company elaborated a restructuring program containing organizational, technological, environmental and financial components.

(55) The restructuring of SCUMM focuses on the following major directions:

- Increasing the efficiency of the company’s activity by modifying the organizational structure of the company, creating modules representing responsibility centers;
- Increasing the quality of the products and services, but also the superior capitalization of the existing resources, at the same time with the costs’ reduction;
- Modernizing the technologies and re-organizing the production;
- Intensifying the marketing activity for a better coverage of the market demand;
- Modernizing and upgrading the existing technology according the the assumed investment program, by the acquisition of installations and equipments,

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<sup>12</sup> Confidential data

<sup>13</sup> Confidential data

- calculation technology, machines, transportation means, as well as modernizing the existing ones;
- Intensifying claims recovery;
- Reducing production stocks.

(56) The Restructuring Plan submitted by the Ministry of Economy and Commerce, annex to the notification form, contains both the causes which led to the difficult financial situation of SCUMM, and the measures to ensure the long term viability of the company. By enforcing the measures from the Restructuring Plan, the Ministry of Economy and Trade envisages that the company will record a profitable activity and the financial measures for an appropriate carrying out of the activity, registering no debts to the State budget.

(57)<sup>14</sup>

(58) The total cost of the restructuring program is ROL 110,833 mill. This plan will restore SCUMM's viability in 2010 (at the end of the restructuring period).

### 10.1. Organizational and managerial restructuring

(59) SCUMM's organizational and managerial restructuring contains the following measures:

**Table no. 9 Measures on the organizational and managerial restructuring**

Measure	Dead end	Implementing effort	Own sources	- ROL mill. -	
				Buyer's sources	State aid
1. Redesigning the organizational structure from the point of view of management units	31.12.2007	500	500	-	-
2. Redesigning the decisional system, establishing and setting the hierarchy for the decisional authority and the competencies for taking a decision	31.12.2006	500	500	-	-
3. Elaborating a control system for assessing management performance	31.12.2007	100	100	-	-
4. Designing and integrating a management information system (MIS)	31.12.2005	100	100	-	-
5. Developing the informatics system and consolidating the informatics basis at the level of each organizational structure	31.12.2008	200	200	-	-
6. Developing management skills base	31.12.2006	100	100	-	-

<sup>14</sup> Confidential data

7. Promoting the company's products with consultancy from certain specialists in the field	31.12.2006	33	33	-	-
8. Elaborating the program for improving the work conditions	2005 – 2006	3,000	3,000	-	-
9. Elaborating their own network to sell the products	31.09.2009	100	100	-	-
10. Efficient division of electricity and gas supply and consumption	31.12.2009	3,000	-	3,000	-
11. Concluding contracts with SCM in order to share the access roads and those inside the factory	31.12.2006	100	100	-	-
12. Reorganization of productive capacity concerning the national defense system	31.12.2006	50	50	-	-
<b>TOTAL</b>		<b>7,783</b>	<b>4,783</b>	<b>3,000</b>	<b>-</b>

Source : SCUMM's restructuring plan

(60) The organizational restructuring aims to redesign the company's structure and establish management units based on areas of responsibility. The quality of personnel and decision making will be further consolidated by the development and integration of an information database system to link each level in the organizational chain. The impacts of the above will be to improve the overall efficiency and coordination of the workflows.

(61)<sup>15</sup>

## 10.2. Technical and technological restructuring

(62) The future technological investments, amounting ROL 36,250 mill. refer to:

**Table no. 10 Measures on technical and technological restructuring**

Measure	Deadline	Implementing effort	Own sources	- ROL mill.-	
				Buyer's sources	State aid
1. Acquiring new installations and equipments	2004-2006	8,900	300	8,600	-
2. Upgrading technologies	31.12.2008	5,500	5,000	500	-
3. Integrating CAD (computer assisted design)	31.12.2006	3,150	3,150	-	-
4. Reorganizing the production flows	2005-2009	2,100	2,100	-	-
5. Acquiring IT hardware and software	31.12.2007	3,100	3,100	-	-
6. Acquiring transport means	31.12.2006	1,500	1,500	-	-
7. Acquiring working machines and tools	31.12.2008	6,000	6,000	-	-
8. Modernizing and upgrading existing equipment	2005-2009	6,000	6,000	-	-
<b>TOTAL</b>		<b>36,250</b>	<b>27,150</b>	<b>9,100</b>	<b>-</b>

<sup>15</sup> Confidential data

Source : SCUMM's restructuring plan

(63) The technical restructuring is to upgrade and improve the quality of the equipment and productive flows, thereby enhancing the company's productive capacity. Taking into account that the equipments from the production workshops date since 1975 – 1985 and many of them are obsolete, the company will acquire new ones and, where possible, modernize the existing ones. According to the restructuring plan, the company will acquire efficient processing centers, discharging installations with plasma, a plan rectifying machine, a carousel lathe, a groove milling machine, a raging machine ZFTKKK. In the same time, it shall be acquired transport means as, at present, the company has in its endowment, for the merchandise transportation, one ARO truck from 1995 and a DACIA light lorry. In the same time, the company will take out of order a high number of equipments, which will be sold for supporting their own contribution to the restructuring cost.

### 10.3. Restructuring measures for environmental protection

(64)<sup>16</sup>

### 10.4. Financial restructuring

(65) In the case of SCUMM, financial restructuring comprises financial support granted by the State upon privatization, consisting of payment exemption and rescheduling for some debts due to the State budget, granted according to the Law no. 137/2002, in total value of ROL 66,500 mill, as follows:

**Table no. 12** Measures of financial restructuring - ROL mill -

Measure	Term to finalize	Implementati on effort	Financing		State aid
			Own sources of SCUMM	Buyer sources	
Exemptions and rescheduling for outstanding debts to the state budget in accordance with the Law no. 137/2002	2010	66.500	-	-	66.500
<b>TOTAL</b>		<b>66.500</b>	-	-	<b>66.500</b>

Source: Restructuring program of SCUMM

(66)<sup>17</sup>

(67) By the restructuring plan, the company is re-adjusting its financing sources for the restructuring, based on its own resources, on one way, and on the buyer' sources on the other way, assuring the technical, technological and environment investments which are absolutely necessary for the survival of the company.

<sup>16</sup> Confidential data

<sup>17</sup> Confidential data

(68) The company's own contribution comes from selling assets and unused equipments, mainly a production unit, having a total surface of 15,000 sm, with the related land and equipments, as well as other equipments and installations taken out of use as a consequence of restraining the activity.

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

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

(70) The difficulties that SCUMM has faced after 1989 lead to the significant restriction of the activity as well as of the number of employees (from over 1700 to 220 employees), while important debts to the State budget were registered. To these debts, delay increases and penalties were added that exceeded the value of due and unpaid debits.

(71) In 2003, SCUMM was privatized. In order to overcome the difficult situation, the company elaborated together with the buyer (the Employees Association PAS) and the Ministry of Economy and Trade, a restructuring program for the period 2004-2010. The synthesis of the measures comprised in the restructuring plan of SCUMM was presented in Chapter 10.

(72) 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 on State aid for rescuing and restructuring firms in difficulty.

(73) According to the article 13 from the Regulation on 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 must be as short as possible in time has to comprise 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, restoring the viability have to result mainly from internal measures contained by it, as well as from taking into consideration the external factors, such as price and demand variation, factors on which the company has no determinant influence.

(74) The restructuring plan of SCUMM starts from the technical - economical 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 which led to the difficulties that the company faces.

(75)<sup>18</sup>

(76) The strategy of SCUMM aims at preserving the strong points, such as: fair prices for products, the existence on the market of several suppliers for the most materials and spare parts used for the production, relatively reduced selling costs, production units of important dimensions, equipped with elevating equipments, integrated production units for the most activities, which allow the execution of a large range of products, equipments which make possible adaptations (adaptation by cutting, plastic distortions, painting), the flexible structure of the equipments, implementing the quality management system, certified by the military OMCAS certification body, a high volume of equipments which cannot be used anymore and which can be sold out, qualified workforce, managerial team formed out of qualified people with experience.

At the same time, the plan will identify and eliminate the weak areas of the company such as: lack of a distribution network, marketing department (adequate promotion measures and increase the number of experts in this field), insufficient product renewal due to limited R&D capacity, the existence of a park of equipments obsolete, production spaces insufficient endowed with utilities, the dependence from SCM in the supply of utilities (energy, natural gases, water) sharing with SCM access roads and inner roads, placement of production halls and ancillary buildings which can not allow for a clear separation of SCUMM perimeter from that of SCM, high operating costs, constant costs with excess capacities, relatively low capacity utilization ratio<sup>19</sup>.

SCUMM also takes into consideration the opportunities due to the provisioned increase for specific products in two large economic sectors for which the company can be a supplier: transports and constructions.

(77)<sup>20</sup>

(78)<sup>21</sup>

(79) Taking into account the presented data, the Competition Council considers that the proposed restructuring plan will lead to restoring the viability of SCUMM on a long term.

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<sup>18</sup> Confidential data

<sup>19</sup> Through the restructuring plan, SCUMM has set as a target to separate from SCM regarding the supply with electricity, natural gas and water, as well as the metering of consumption and conclusion of agreements on its own behalf with the utilities suppliers (Table no. 9, measure 10). At present, only SCM has concluded such contracts with the utilities suppliers, SCUMM depending on it, the consumption metering being shared for the two companies. SCUMM depends also from SCM regarding the access roads, these being owned by SCM since the separation of the two companies. As a result, the company is to conclude an agreement regarding the shared access of the roads and the provision of an adequate contribution for their maintenance (Table no. 9 measure 11); see also paragraph 8.

<sup>20</sup> Confidential data

<sup>21</sup> Confidential data



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

(80) According to the provisions of the Regulation on 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 proportionate to the distorting effects caused by the aid 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.

(81) SCUMM has a low market share on the relevant markets on which it operates i.e. 3.62% for equipped containers, 0.002% for auto trailers and semi-trailers, 0.001% for car-bodies, 0.053% for welded metallic constructions and 0.004% for spare parts and accessories. As a consequence, having regard to the provisions of art. 14 of the Regulation on State aid for rescue and restructuring firms in difficulty that stipulates that the compensatory 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 in case of SCUMM no substantial reduction in productive capacity is necessary.

(82)<sup>22</sup>

(83) The company has obtained the Ministry of Economy and Trade agreement to sell a building with equipment and utilities. The company identified a buyer and finalized negotiations, the agreement to be concluded in the near term. The sale of this property will generate funds to be utilized for the restructuring program. By selling this production unit, the production capacities will be reduced with 10% and the company will get a part of the resources needed for the restructuring program.

(84) The company will also make other irreversible reductions with the seller's agreement in order to avoid significant distortions on the market, consisting of 17% of the production capacities for equipped containers, with 37% for trailers and semi-trailers, with 25% for car-bodies, with 7% for welded metallic constructions and with 9% for spare parts and accessories, compared with the year 2003. Any further capacities will also be sold. The capacities evolution and their usage degree are as follows:

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<sup>22</sup> Confidential data

**Table no. 15****Production capacities evolution**

Year	Production capacities				
	equipped containers (pieces/year)	trailers and semi-trailers (pieces/year)	car-bodies (pieces/year)	welded metallic constructions (tons/year)	spare parts and accessories (hours/year)
2003	60	80	20	300	110
2004	55	60	15	280	100
2005	50	60	15	280	100
2006	50	50	15	280	100
2007	50	50	15	280	100
2008	50	50	15	280	100
2009	50	50	15	280	100
2010	50	50	15	280	100

Source: Restructuring Plan of SCUMM

The production capacities presented in the above table are the existing ones after the reduction following the selling of the production unit mentioned in par. 83 and do not take into consideration the capacities which could not be converted for civil production and which represent around 10% from the total capacities of SCUMM.

**Table no. 16****Production capacities usage degree**

	equipped containers	trailers and semi-trailers	car-bodies	welded metallic constructions	spare parts and accessories
					(%)
2003	43.3	68.8	70.0	83.3	72.7
2004	90.9	8.3	53.3	78.6	72.0
2005	90.0	66.7	66.7	78.6	80.0
2006	90.0	80.0	93.3	89.3	85.0
2007	90.0	80.0	93.3	89.3	90.0
2008	90.0	80.0	93.3	89.3	95.0
2009	90.0	80.0	93.3	89.3	95.0
2010	90.0	80.0	93.3	89.3	95.0

Source: Restructuring Plan of SCUMM

(85) By the restructuring program, SCUMM intends to increase the level of capacity utilization ratio. Thus, the capacity utilization ratio is going to increase from nearly 67% in 2002, up to 90% at the end of the restructuring plan.

(86) Regarding the aforesaid, the Competition Council considers that the State aid is to be used only for the company's return to viability. The beneficiary will not be allowed while implementing the restructuring plan to extend its productive capacity.

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

(87) In accordance with art.15 of the Regulation on rescue and restructuring firms in difficulty, the State aid intensity and amount need to be limited to what is absolutely necessary for allowing the restructuring, depending on the company's and shareholders'

existing financial resources. The benefiting company must significantly contribute to the restructuring program, using own resources, including the sale of unessential assets or external loans contracted under normal market conditions. According to art. 15(2) of the Regulation, for medium undertakings a contribution of at least 40% is considered adequate.

(88) The total restructuring cost of SCUMM is ROL 110,833 million and consists of:

- Organizational restructuring cost – ROL 7,783 million
- Technological restructuring cost – ROL 27,150 million
- Environmental restructuring cost – ROL 300 million
- Financial restructuring cost – ROL 66,500 million

(89) The total restructuring cost of SCUMM, amounting ROL 110,833 million, is supported from the following resources:

- SCUMM own resources – ROL 31,933 million
- Investor's capital injection – ROL 12,400 million
- State aid – ROL 66,500 million

(90) From the total restructuring cost, 40% will be financed from the company's own resources and from the majority shares buyer's own resources, representing ROL 44,333 mill and 60% from State aid, representing ROL 66,500 mill.

(91) Beneficiary's own contribution of 40% for covering the restructuring cost is assured by:

- Capital injection of majority shareholder – Association PAS-UMM;
- Income from capitalization of tangible assets and goods.<sup>23</sup>

(92) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 60%.

(93) In view of the above mentioned aspects, the Competition Council considers as significant a contribution of 40% to sustain the restructuring costs. This contribution demonstrates confidence in the restructuring plan and the fact that the amount and the intensity of the aid were limited to allow the restructuring, taking into consideration the financial resources of the company and of the majority shareholders. Consequently, the company has not and will not receive surplus liquidities that could be used for aggressive activities to distort the competition on the market.

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

(94) SCUMM did not ever receive any 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.

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<sup>23</sup> See also paragraphs 15 and 83

## **15. MEMBERSHIP TO A GROUP OF COMPANIES**

(95) According to the provisions of art.2 (5) of the Regulation on 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 proven the financial difficulties belong to the company itself are not the outcome of an arbitrary allocation of costs within the group and that the difficulties are much too serious to be handled by the group itself.

(96) The fiscal facilities intended to be granted to SCUMM consist of historical debts that built up many years prior to privatization. Therefore, these debts, at the moment when the majority of the shares were sold, belonged to the company.

(97) As a result of privatization and the conclusion of the shares purchase-sale contract, the new owner of SCUMM is the Employees' Association PAS UZINA MECANICA Marsa which neither has any turnover, nor it has shares to other companies. As a consequence, one can conclude that SCUMM does not take part of any group whatsoever.

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

(98) 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 established objectives.

(99) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases the production capacities are not 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 than the ones comprised in the restructuring program.

## **17. CONCLUSIONS**

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

**DECIDES**

**Art. 1.** The financial support measures notified by the Ministry of Economy and Trade for SCUMM represent 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 SCUMM 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 2010 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 value of the State aid that is going to be granted is of ROL 66,499,596,234, respectively RON 6,649,959.62.

**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 Ministry of Economy and Trade shall submit to the Competition Council information on the State aid granted in order to be inventorised and monitored. In addition, the Ministry of Economy and Trade 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 in the Appeal Court, Administrative Contentious Department, within 30 days from the communication.

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

- Ministry of Economy and Trade, Calea Victoriei nr. 152, sector 1, Bucuresti;
- SC UZINA MECANICA MARSA SA, Str. Uzinei, nr. 1, Localitatea Marsa, Jud. Sibiu, cod postal 555250.

**PRESIDENT**

**MIHAI BERINDE**