

**COMPETITION COUNCIL DECISION**  
**no. 204 of 04.11.2005**  
**on the State aid to be granted to S.C. IMATEX S.A. Targu Mures**

**THE COMPETITION COUNCIL,**

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

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

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

With regard to the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 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 the address no. VP4/1649/22.06.2005, registered at the Competition Council with no. RS-AS 47/22.06.2005, the Authority for State Assets Recovery (hereinafter named AVAS) notified, based on art. 6 of the State aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC IMATEX SA Targu Mures within the privatisation process.

(2) By the addresses DAAS no. 639/24.06.2005, DAAS no. 915/10.08.2005 and CC/2340/09.09.2005, the Competition Council requested additional information from AVAS. AVAS submitted the additional information by several addresses, registered at the Competition Council with no. DAAS 698/08.07.2005, DAAS 830/25.07.2005, RG 5399/26.07.2005, RG 6499/22.08.2005, DAAS 1084/21.09.2005, DAAS 1095/22.09.2005, DAAS 1112/27.09.2005, DAAS 1119/28.09.2005 and DAAS 1132/29.09.2005.

(3) The notification became effective when all information was exact and complete, namely 29.09.2005.

## **2. DESCRIPTION OF THE STATE AID MEASURE<sup>1</sup>**

(4) The State aid notified by AVAS is granted in the context of SC IMATEX SA Targu Mures's privatization, the company will benefit of the facilities provisioned in the Law no.137/2000 and mentioned in the Presentation File and the Shares Sale-Purchase Agreement, namely facilities on the payment of unpaid debts towards the State consolidated budget.

(5) The State aid consisting of exemptions and reschedules the payment relating to unpaid debts towards the State budget, in the total amount of ROL 53,229,496,506, are to be granted to SC IMATEX SA Targu Mures at privatization and consists of exemptions totaling ROL 48,288,253,521 and payment reschedulings, for a 5 year period and with a grace period of 6 months, of ROL 4,941,242,985.<sup>2</sup>

## **3. BENEFICIARY OF THE STATE AID MEASURE (SC IMATEX SA Targu Mures)**

(6) SC IMATEX SA Targu Mures is a joint-stock company and at the date when the Shares Sales-Purchase Agreement was signed, the social capital recorded at the Official

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### <sup>1</sup> **Legal base of the State aid measure**

AVAS notified the State aid granted to SC IMATEX SA Targu Mures on the basis of the following acts:

- Art.18 of the Law no. 137/2002 on the acceleration of privatisation;
- 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 modifications and completions;
- Law no. 609/2003 for the approval of the Government Ordinance no. 86/2003 on certain measures in the financial – tax field;
- Law no.191/2004 for the approval of the Government Ordinance no. 36/2004 on the amendment and completion of the Law no.137/2002 on certain measures for accelerating the privatization;
- 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.

### <sup>2</sup> The annuled debts, amounting to ROL 48,288,253,521, consists of:

- 87% from the obligations to the State social securities budget and the unemployment insurance budget, unpaid until 31.12.2001;
- Interests and penalties of any kind, related to the budgetary obligations owed and unpaid until 31.12.2001, calculated until the date when the common order was issued;
- Interests and penalties related to the obligations unpaid to the National Unique Health insurance Fund took over by AVAS based on a protocol, calculated until the date of their took over.

The debts rescheduled for the payment, for a 5 year period, with a grace period of 6 months, amounting ROL 4,941,242,985, represent:

- The difference of up to 13% from the obligations to the State social insurance budget and the Unemployment insurance budget, unpaid until 31.12.2001;
- Rescheduling the obligations unpaid to the Unique Health insurance Fund took over by AVAS based on a protocol.

For the sum rescheduled interests are calculated at the level of those established for the budgetary claims (0.06% per day) according to the legal provisions in force.

Trade Register was of ROL 18,805,350 thousands, divided into 752,214 shares with a nominal value of ROL 25,000.

(7) The company was established in 1948 by nationalizing and uniting several production workshops for installations for fabrics, named ROBOT State Owned Manufactory. In 1968 were made the first machines for waving wool chequers and the first machines for reeling and doubling textile threads. In 1990 the IMATEX factory was reorganized, becoming a joint stock company, in accordance with the Law no. 15/1990.

(8) SC IMATEX SA Targu Mures was privatised in 2003 by signing the Shares Sale-Purchase Agreement no. CBV/24.02.2003, concluded between APAPS (subsequently named AVAS) and SC CARTOXAL SRL Brasov. The ownership transfer took place in June 2003. The shareholders' structure after privatisation is the following:

**Table no. 1 Shareholders structure after privatisation at SC IMATEX SA Targu Mures**

SHAREHOLDERS	CAPITAL	
	Number of shares	Social capital ratio (%)
SC CARTOXAL SRL Brasov	431,791	57.4027
SIF Transilvania	271,808	36.1344
PPM	48,615	6.4629
<b>Total</b>	<b>752,214</b>	<b>100.00</b>

*Source: The notification form*

(9) SC IMATEX SA Targu Mures main activity as registered in the Trade Register consists in manufacturing installations for the textile, clothes and leather goods' industry, (NACE cod 2954). The company also performs the following secondary activities: manufacturing spare parts and components for the industry of machines and equipments with specific destination, general mechanics operations (NACE cod 2852), performing setting ups of installations, performing services of technical assistance during the technological probation periods for the beneficiaries and service, import-export activities, manufacturing installations for processing food products, drinks and tobacco, intermediating commerce with fabrics, confections, shoes etc.

(10) At present, SC IMATEX SA does not obtain revenues from its main activity but from activities carried out due to the re-orientation of its manufacturing object. These activities consist in manufacturing spare parts and components for the industry of machines and equipments with specific destination, due to the severe reduction of the orders of installations for the textile industry, the disappearance of a large number of undertakings operating in this sector.

(11) As a result of a gradual decrease in production volume due to the lack of orders, starting in 1990 the company registered a decrease in production and in the number of employees, wich was reduced to 370.

(12) SC IMATEX SA activitys are structured as follows:

- the mechanical section;
- the tools section;
- the cutting section;

- the coverings section: galvanic coverings, enchasery, painting;
- adjusting section;
- thermic treatment section;
- foundry section;
- moulding section.

(13) The main groups of products manufactured by SC IMATEX SA are:

- Machines for polishing rims for autovehicles in several versions;
- Plane, round and special polishing machines;
- Cutting up machines, strip jigsaw alike;
- Spare parts and assemblies for the installations processing wood;
- Parts for reducers;
- Unique parts, series parts and assemblies for the machine-building industry.

Besides these products, the undertaking also performs, according to its own designs or those of its clients: the design of parts, assemblies and installations, assemblyings, cuttings, sourface treatments, thermo treatments.

(14) The economic- financial results registered by SC IMATEX S Targu Mures, based on the data from the balace sheets, are as follows:

**Table no.2 The economic – financial results based on the balance sheets**

2000	2001	2002	2003
<b>Total turnover (thousand ROL)</b>			
45,306,092	66,817,757	68,321,758	49,946,854
<b>Net profit/loss (thousand ROL)</b>			
-994,478	-365,756	-40,572,962	14,153,018

*Source: The notification form, the annexed balance sheets*

As can be seen from the above data, between 2000 - 2002 prior to privatization the company registered losses. In 2003 obtained profit. The assessment of the economic financial indicators of SC IMATEX SA is presented in the chapter „SC IMATEX SA’s eligibility – firm in difficulty”.

(15) According to the balance sheet of 2003, the company had 370 employees and a turnover of ROL 49,946,854 thousands, respectively Euro 1.4 mil. Therefore, the company is considered a large undertaking.

#### **4. THE RELEVANT MARKETS WHERE SC IMATEX SA Targu Mures OPERATES**

(16) Since 1999, SC IMATEX SA Tragu Mures operates on the market producing parts and components for machines manufacturing and equipment with specific destination.

(17) The company’s products are aimed at both the domestic and export markets.

**Table no.3 Percent held in the turnover by the products commercialized on the domestic and external market**

Year	2000	2001	2002	2003
Percent in the turnover of the products commercialized on the domestic market	13	12	8	13
Percent of the exports in the turnover	87	88	92	87

Source: The notification form

As it can be seen from the above table, the turnover made on the Romanian market is very low in comparison with SC IMATEX SA Tragu Mures's total turnover.

(18) According to the market study annexed to the restructuring plan of SC IMATEX SA, the market share owned by the undertaking on the domestic market is of approx. 0.1%.

**Table no 4 SC IMATEX SA's market share on the domestic market** thousand ROL

Indicator	2000	2001	2002
Volume of the production in the machines and equipments' industry*	22,701,200,000	35,338,000,000	45,988,400,000
Valoric size of the market of machines and equipments with specific destination's industry *	6,302,000,000	10,963,000,000	10,868,000,000
SC IMATEX SA's turnover made on the Romanian market	5,889,000	8,018,000	12,297,000
SC IMATEX SA's market share on the domestic market	0.093%	0.073%	0.113%

Source: The notification form

(19) On the market of parts and components for the industry of machines and equipments with specific destination, SC IMATEX SA competes with over 100 smaller or larger domestic undertakings. The functioning production capacities existing on the domestic market are as follows:

**Table no 5 SC IMATEX SA's competitors**

Company	Percent owned from the total capacity (%)
SC ASAM SA Iași	6.101
SC IRUM SA Reghin	2.086
SC MES SA Suceava	1.586
SC Stimin Industries SA Oradea	1.470
SC UMARO SA Roman	0.869
SC SETUM SA București	0.774
SC UNIREA SA Cluj Napoca	0.488
SC MECANEX SA Botoșani	0.462

\* Statistical indicators supplied by the Romanian Institute of Statistics

\* Statistical indicators from the Romanian Statistic Institute

SC NICOVALA SA Sighișoara	0.437
SC PUMAC SA București	0.434
SC ATRIC SA București	0.416
SC ROMUPS SA Suceava	0.370
SC INFRAȚIREA SA Oradea	0.336
SC STRICKSYSTEME SRL	0.197
SC PAGI G-P SRL	0.166
SC DORNA MECANICA SA	0.128
SC AMA SA	0.117
SC LERA SRL	0.117

Source: The notification form

(20) The company's main competitors on the European Union market are undertakings from Poland, Hungary, Bulgaria, such as:

- Caprioni, Bulgaria – hydraulic components and gears;
- Autonom Metall Gmbh, Bulgaria;
- Drouzhba Co., Bulgaria – parts for engines;
- Bervina Ltd, Hungary – parts and components for transmissions;
- Apator, Poland – parts for gears;
- Cantoni Motor, Poland – piese hidraulice;
- Ergom Manufacturer, Poland;
- Jazon, Poland – parts and assemblies for cars/machines;
- Waznski Hzdraulika, Poland – hydraulic components.

(21) EU undertakings started recently to externalize production processes to less developed countries, with lower employment and production resources costs. Therefore, an increase in demand for the products sold on the market where the undertaking is operating is forecast, according to the market study annexed to the restructuring program.

(22) According to the market study annexed to the restructuring plan, the external market share of IMATEX SA is insignificant, being under 0.001%.

## 5. DESCRIPTION OF THE PRIVATIZATION PROCESS

(23) - (31) [...]\*

## 6. STATE AID ASSESSMENT OF THE MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(32) 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 favoring certain undertakings, the production of certain goods or the provision of certain services

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\* confidential data

or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment.

(33) In order to be considered State aid, according to the Law no. 143/1999 on the State aid, republished, the financial support must cumulatively fulfill the four conditions provisioned at art. 2:

- a) To be granted by the State or from State resources,
- b) The measure to be selective,
- c) To ensure an advantage to the undertaking,
- d) To distort or threaten to distort the competition and affect the trade between Romanian and the Member States of the European Union.

*a) The support is granted from State resources*

(34) The financial support to be granted to SC IMATEX SA Targu Mures, notified by AVAS, consist in the State foregoing certain incomes, due to it, therefore constitutes State resources.

*b) The support measure has a selective character*

(35) The financial support measures granted based on the provisions of the Law no. 137/2002 on certain measures for accelerating the privatization, with the subsequent amendments and completions, addresses only to those undertakings to be privatized, enclosing also SC IMATEX SA Targu Mures. Therefore, the financial support granted to SC IMATEX SA has a selective character.

*c) The support measure grants an advantage to the company*

(36) By the granted financial support measures, an advantage is created for SC IMATEX SA, the company being exempted from the payment of certain debts towards its budgetary creditors, as well as from the payment of the interests and delay penalties related to the unpaid budgetary obligations. Granting these facilities has a favorable effect on its economic- financial indicators and its cash- flow. Therefore, the company has an advantage, being favored in comparison with its competitors (see below).

(37) The assumption that a debt write-off or debt rescheduling represents an advantage is valid in a non-privatization context. Where such debt write-offs and rescheduling are part of the privatization package such facilities 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<sup>3</sup>. 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 would not be borne nor accepted by a private investor/creditor) the State took direct action by opting for privatization and granting the incentives as part of the privatization.

Taking into consideration the presented facts, the Competition Council considers that the private investor/creditor test cannot be applied for SC IMATEX SA's privatization.

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

(38) Granting the financial support for SC IMATEX SA creates the premises for a possible distort of the competition on the relevant markets, as the company is allowed this way to maintain itself on the market. At the same time, there is no doubt that the financial support to be granted to SC IMATEX SA may affect the trade with the Member States of the European Union, as the products manufactured by the company compete with similar products manufactured by firms from the European Union, a large part of SC IMATEX SA's products being designated for the export.

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

## **7. COMPATIBILITY OF THE STATE AID WITH THE LEGISLATION IN THE FIELD**

(40) Article 2 of the Law no. 143/1999 on State aid, republished, stipulates 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.

(41) The State aid objective is the restructuring of SC IMATEX SA 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 firms in difficulty are observed, the State aid may be considered compatible.

(42) 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,

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<sup>3</sup> The price paid by the buyer for purchasing 57.4% of the equity is of ROL 17,271,640,000. This value is much smaller than the level of the facilities granted at the company's privatization – ROL 53,229,496,506.



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 by the financial restructuring (capital injections, reduction of debts degree, etc.).

(43) The Competition Council evaluates the State aid granted to SC IMATEX SA, in accordance with the criteria stipulated in the Regulation on State aid for rescue 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.

## **8. ELIGIBILITY OF SC IMATEX SA– FIRM IN DIFFICULTY**

(44) In order to benefit of State aid in accordance with the Regulation State aid for rescue 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 obtained from owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost certainly lead on short or medium term to its exit from the economic market.

(45) In article 2 (2) (b) and (c) of the Regulation State aid for rescue 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 evidence of the company show, and more than quarter of this capital was lost during the last 12 months, and a company, irrespective of its legal form, is considered in difficulty when it fulfills the conditions that allow the application of the procedure concerning the legal reorganization and the bankruptcy.

(46) The Competition Council notes that according to the company's balance sheets for the last three years, prior to the privatization, there was a decrease of its capitals, and in 2002 the company registered a negative equity of capital amounting ROL 14,713,690 thousand.

<b>Table no. 6</b>	<b>Capitals' evolution</b>		<b>- thousand ROL-</b>
	<b>2000</b>	<b>2001</b>	<b>2002</b>
Capitals	35,241,283	34,875,528	-14,713,690
Gross result of the financial exercise	-994,478	-203,316	-40,572,962
Gross result/ Capitals (%)	-2,82	-0,58	-

*Source: The notification form, annexed balance sheets*

According to the data from the balance sheet, SC IMATEX SA's own capitals registered in 2002 a negative value of ROL 14,713,690 thousand, in comparison with the positive value of ROL 34,875,528 thousands in 2001.

(47) The company registered a significant loss of its own capitals during one year, fulfilling this way the condition provisioned at art. 2 (2) of the Regulation, so that we can consider SC IMATEX SA „a firm in difficulty”.

## **9. THE COMPANY'S FINANCIAL DIFFICULTIES**

(48) Prior to 1990 SC IMATEX SA was one of the main producers of machines and installations for the Romanian textile industry. After 1990, due to changes on the domestic market, the undertaking refocused on the production of spare parts and different mechanic processing for the textile industry. As a result, the company's production of machines and installations for the textile industry dropped from 22.6% of its total activity in 1991 to less than 2% in 2001 due to the lack of contracts.

(49) In this context, the requests for spare parts and sub-components for factories in the textile industry started to reduce significantly, from 8% of the total production in 2001, to 2.7% from the total production in 2002.

(50) In order to replace the gaps left by the lack of orders and contracts for installations and spare parts in the textile industry field, during 1992-1994 the company's activity object was extended with the import- export of parts and assemblies for the industry of machines and equipments with specific destination. Starting with 1995 the proportion of export production starts to increase, the production designated for export reaching in 2000 approx. 87% from the total production.

(51) Although the company's turnover remain at the constant level, SC IMATEX SA productivity decreased. Its capitals registered a negative value in 2002 due to the accumulation of tax interests and penalties related to the previous years and the unpaid budgetary obligations caused by the lack of funds. In 2002, the accumulated losses exceed the equity, which means that the company was actually insolvent. Under these conditions, APAPS, as main shareholder, decided to sale the undertaking.

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

- The loss of the traditional markets;
- Exploiting a obsoleted production technology;
- Lack of a high and constant volume of orders;
- Long period for repaying the debts;
- Slow stocks' rotation;
- Long period for cashing in the claims;
- Reduced flexibility of the technological fluxes, with high dependency on the production workshops;
- Strong competition on domestic level, as a result of the capacities available in the machines construction field;
- Unpredictable increase of the prices for raw materials, materials and fuel, as well as for utilities.

(53) Taking into consideration this difficult situation, APAPS decided to grant certain facilities for privatizing the company, conditioned by the implementation of certain restructuring measures. According to the information from AVAS' notification, the presentation file elaborated at privatization made the facilities to be granted for the payment of the budgetary obligations known for all potential investors. Subsequently, these facilities were taken into account when negotiating with the bidder admitted to the negotiation.

(54) The investors contribute to the fulfillment of the restructuring program with an amount of ROL 56,830 mil., for certain technical, technological and financial measures.

(55) The State's contribution to the company's financial restructuring amounts ROL 53,229 mil. The State's contribution exclusively refers to the company's historical debts, accumulated until 31.12.2001, these following to be exempted from the payment.

## **10. CRITERIA WHICH MUST BE FULFILLED FOR GRANTING THE STATE AID**

(56) The State support measures, mentioned in chapter 2, together with the measures from the financial restructuring plan, will lead to:

- The restoration of the long term viability of SC IMATEX SA;
- Avoid undue distortion of competition;
- Be proportional to the costs and benefits of restructuring (State aid limited to minimum necessary);
- 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 (annual reporting and monitoring).

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

(57) - (77) [...]\*

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

(78) The difficulties that SC IMATEX SA Tragu Mures faced after 1990 have led to the significant restriction of the activity as well as of the number of employees while important debts to the State budget were registered.

(79) In 2003, SC IMATEX SA Tragu Mures was privatized. In order to overcome the difficult situation, the company elaborated, together with the Buyer and AVAS, a restructuring program for the period 2003-2008. The synthesis of the measures comprised in the restructuring plan of SC IMATEX SA Tragu Mures was presented in Chapter 11.

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\* confidential data

(80) The assessment of the restructuring plan and of how it leads to the restoration of SC IMATEX SA Tragu Mures's viability is consisting with the provisions of article 13 of the Regulation State aid for rescue and restructuring firms in difficulty.

(81) According to the article 13 the Regulation State aid for rescue 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 made by the Competition Council is based on this restructuring plan. The restructuring plan which must be as short as possible in time, has to enclose the giving up to activities that registered losses and to lead to the company's long term viability, 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.

(82) The restructuring plan of SC IMATEX SA Tragu Mures starts from the technical - economic data that reflect the company's activity in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the company's strong and weak points, the circumstances that have led to the difficulties the company faces.

(83) The strategy of SC IMATEX SA Tragu Mures aims at preserving the strong points, such as: tradition and competence well known in the field of manufacturing textile machines and installations, as well as spare parts, the existence of its own constructive and technological designing department, assisted by computer, the existence of an integrated production system, a good quality –price proportion for the manufactured products, well trained personnel, etc. At the same time, SC IMATEX SA Tragu Mures's strategy aims to limit and counteract its weaknesses, such as the loss of the traditional markets due to the disappearance of the NACE market, the high usage degree of certain old installations, the reduced flexibility of the technological flows, with high dependence on the production workshops, the lack of financial resources for technologizing the whole undertaking.

(84) As a result of implementing the restructuring plan, the company aims to ensure the viability, by the following:

- Continuing the production activities according to the demand from the market;
- Improving the manufactured products' quality;
- Decreasing the production costs and implicitly reaching competitive selling prices, obtaining a more secure and broad opening market;
- Improving the company's financial autonomy and the capital's utilization degree;
- Increasing the utilization degree for the production capacities, using rationally the working force, increasing the labor productivity;
- Reducing the constant debts and cashing in the claims.

(85) The enforcement of the measures provisioned by the restructuring plan, by the company, by the buyer, by its own contribution, as well as by the State, through facilities granted to the company for payment of budgetary obligations, is foreseen to improve the financial - economic indicators in the period 2003-2008, as follows:

**Table no.11 Evolution forecast of the financial - economic indicators, after applying the restructuring measures - ROL mill -**

Indicators		2003	2004	2005	2006	2007	2008
<b>1</b>	<b>Total incomes, from which:</b>	<b>117,419</b>	<b>141,577</b>	<b>146,181</b>	<b>219,605</b>	<b>250,175</b>	<b>260,000</b>
	- exploiting incomes	115,037	138,127	146,181	219,605	250,175	258,000
	- turnover	49,947	74,028	146,181	219,605	250,175	258,000
	- financial incomes	2,382	3,450	0	0	0	2,000
	-extraordinarely incomes	0	0	0	0	0	0
<b>2</b>	<b>Total costs, from which:</b>	<b>99,479</b>	<b>108,911</b>	<b>141,033</b>	<b>190,224</b>	<b>219,499</b>	<b>241,800</b>
	a) exploiting	87,962	103,036	141,033	188,460	218,124	240,080
	b) financial	7,410	5,875	0	1,764	1,375	1,720
	c) extraordinarely	4,107	0	0	0	0	0
<b>3</b>	<b>Gross profit (+) / loss(-)</b>	<b>17,940</b>	<b>32,665</b>	<b>5,148</b>	<b>29,380</b>	<b>30,677</b>	<b>18,200</b>
<b>4</b>	<b>Net profit (+) / loss (-)</b>	<b>14,153</b>	<b>32,635</b>	<b>3,861</b>	<b>22,035</b>	<b>23,007</b>	<b>15,288</b>

Source: SC IMATEX SA Tragu Mures's restructuring program and the supplementary information

(86) 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. 12 Target financial- economic indicators in 2008**

1. Net profit	mil.ROL	15,288
2. Turnover	mil.ROL	258,000
3. Employee number	pers.	300
4. Capital	mil.ROL	167,457
5. Duration for recovering the claims	days	77
6. Duration for paying the debts	days	164
7. Indebtness degree	%	69.25
8. Economic rentability	%	7.68
9. Financial rentability	%	13.52
10. Cash- flow	mil. ROL	20,613

Source: SC IMATEX SA Tragu Mures's restructuring program and the supplementary information

(87) The Competition Council considers that, during 2003 – 2005, SC IMATEX SA accomplished in due time the measures provisioned in the restructuring plan having as time limit August 2005, namely the assumed investments and the payment by the buyer of the debts the company had at AVAS. At the same time, the economic- financial indicators from this period show that SC IMATEX SA follows the desired line, according to the objectives from the restructuring plan.

(88) Taking into account the presented data, the Competition Council considers that the proposed restructuring plan will lead to restoring SC IMATEX SA Tragu Mures' long term viability.

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

(89) According to the provisions of the Regulation on the State aid for rescue and restructuring firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granting has 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 study attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

(90) SC IMATEX SA Tragu Mures has low market quota on the relevant markets on which it operates, respectively 0.1% on the domestic market of parts and sub-assemblies for the industry of machines and equipments with specific destination, and under 0.001% on the external market. Therefore, according to the provisions of art. 14 in the Regulation on the State aid for rescue and restructuring firms in difficulty, which 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 in case of SC IMATEX SA no substantial reduction of production capacity is necessary.

(91) In spite of all these, SC IMATEX's restructuring plan provisions measures to be taken by the company until the end of the restructuring period, with the purpose of avoiding the distort of competition consisting in irreversible reductions of the production capacities, namely assets and tangible assets. Therefore, until the end of the year 2004, the company's restructuring plan provisions the close down of the casting capacities as well as the galvanic covering capacities, capacities used together to fulfil the company's activity object.

(92) The irreversible reductions of viable capacities are part of the restructuring plan and consist in the reduction with 15% of the designed production capacity, compared to the level of 2002. From the production capacities taken out of use, part shall be sold and part shall be scrapped and capitalized as scrap iron.

(93) By its restructuring program, SC IMATEX SA Tragu Mures does not increase its market shares, but intends to maintain the present market segment it acts on.

(94) Between the designed production capacity of SC IMATEX SA and the functioning production capacity, there is no significant difference. The company does not intend to increase its production capacities, but to accomplish a utilization degree superior to those still functioning.

(95) The production capacities, according to their utilization degree during 2000 – 2002, are as follows:

**Tabel no. 13 The production capacity and the utilization degree during 2000 - 2002**

<b>Year</b>	<b>Designed capacity billion ROL</b>	<b>Capacity in function Billion ROL</b>	<b>Utilization degree (%)</b>
<b>2000</b>	106	81.6	77
<b>2001</b>	106	72	68
<b>2002</b>	106	67.1	63

*Source: SC IMATEX SA Tragu Mures's restructuring program*

(96) After applying the measures from the restructuring plan, the production capacities and their utilization degree is as follows:

**Tabel no. 14 The production capacity and its utilization degree during 2003 – 2008**

<b>Year</b>	<b>Designed capacity billion ROL</b>	<b>Capacity in function Billion ROL</b>	<b>Utilization degree (%)</b>
<b>2003</b>	95	50.4	53
<b>2004</b>	90	71.2	79
<b>2005</b>	90	78	87
<b>2006</b>	90	82	91
<b>2007</b>	90	88	98
<b>2008</b>	90	88	98

*Source: SC IMATEX SA Tragu Mures's restructuring program*

(97) By its restructuring program, SC IMATEX SA aims to improve the utilization degree for the production capacities. Therefore, the utilization degree for the capacities is to be increased from approx. 63% in 2002, to approx. 98% in 2008, taking into account that the company assumed, according to the restructuring program, to reduce its designed production capacity with 15% compared to the level of 2002.

(98) Regarding the presented facts, the Competition Council considers that the State aid shall be used only for the return to viability, not allowing it, while applying the restructuring plan, to extend its production capacities.

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

(99) In accordance with art.15 of the Regulation on the State aid for 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, according to the company's and shareholders' existing financial resources. The State aid beneficiary must significantly contribute to the restructuring programme, using its 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 50% is considered adequate.

(100) The total restructuring cost of SC IMATEX SA Tragu Mures is ROL 183,095 million and consists of:

- Organisational restructuring cost – ROL 6,756 million;
- Technological restructuring cost – ROL 70,380 million;
- Financial restructuring cost – ROL 105,959 million.

(101) The total restructuring cost of SC IMATEX SA Tragu Mures, amounting ROL 183,095 million, is supported from the following resources:

- SC IMATEX SA Tragu Mures own resources – ROL 73,036 million;
- Investor's sources – ROL 56,830 million;
- State aid – ROL 53,229 million.

(102) From the total restructuring cost in amount of ROL 183,095 million, 40% will be financed from the company's own resources, 31% from the majority shares buyer's own resources and 29% from the financial support granted by the State.

(103) The company's own contribution of 71% for covering the restructuring cost is ensured by:

- Capital injection of majority shareholder;
- Incomes from capitalization of tangible assets and goods;
- Incomes from capitalization of the scrap iron and the installations taken out of use, from the production capacities close down;
- Incomes from renting the free spaces within the company;
- Credits from the Romanian capital market, under market conditions.

(104) The State aid intensity, calculated as ratio between the value of the State aid and the total restructuring cost, is of 29%.

(105) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 71% to sustain the restructuring costs, this contribution proving confidence in the practical value of the restructuring and the fact that the amount and the intensity of the State aid were strictly limited to allow the restructuring in relation with the existent financial resources of the company and of the majority shareholders. Thus, the company does not receive a surplus of liquidities that could be used for aggressive activities to distort the competition on the market.

## **15. OBSERVANCE OF "FIRST TIME, LAST TIME" PRINCIPLE**

(106) SC IMATEX SA Tragu Mures has never received any restructuring aid before. Thus, the provisions of article 24 of the Regulation on the 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.



## **16. AFFILIATION TO A GROUP OF COMPANIES**

(107) - (117) [...]\*

## **17. ANNUAL MONITORING AND REPORTING**

(118) In accordance with article 18 the Regulation on the 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.

(119) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to insure itself that increases of the production capacities nor major deviation from the achievement of restructuring measures are registered, 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.

## **18. CONCLUSIONS**

(120) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC IMATEX SA Tragu Mures 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 measure notified by the Authority for State Assets Recovery for SC IMATEX SA Tragu Mures 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) (c) corroborated with article 23 (1) (e) of the Law no. 143/1999, republished, the restructuring aid that is going to be granted to SC IMATEX SA Tragu Mures 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 2008 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.

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\* confidential data

**Art. 6.** The value of the State aid that is going to be granted is of ROL 53,229,496,506, respectively RON 5,322,949.65.

**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 inventor and monitor it. In addition, the Authority for State Assets Recovery 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 issuing of the decision. The following reports must prove 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:

- The Authority for State Assets Recovery, 50, Cpt. Av. Alexandru Serbanescu street, sector 1, Bucharest;
- SC IMATEX SA Tragu Mures, Str. Gheorghe Doja, nr. 64-68, Targu Mures City, Mures County, postal cod 540146.