

**DECISION OF THE COMPETITION COUNCIL**  
**no. 210 of 24.11.2005**  
**regarding the state aid to be granted to**  
**SC CAROMET SA Caransebes**

**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, 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,**

**1. PROCEDURE**

(1) By address no. VP/1648/22.06.2005 filed with the Competition Council no. RS-AS 43/22.06.2005, the Authority for the Recovery of State Assets (hereafter AVAS) has notified based on art. 15 from Law no. 143/1999 on state aid, republished, the individual state aid for the restructuring of SC CAROMET SA Caransebes (hereinafter called CAROMET) within the privatization process.

(2) The Competition Council requested from AVAS supplementary information by addresses no. DAAS/641/24.06.2005 and no. CC/1347/07.07.2005. The notification

became effective when information was accurate and complete, respectively on 25.10.2005.<sup>1</sup>

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

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

(3) AVAS has notified the financial support measures granted to CAROMET based on the following:

- GEO no. 26/2004 on some measures for the completion of AVAS portfolio companies' privatisation and the consolidation of some privatisations, approved with modifications and completions by Law no.442/2004<sup>2</sup>.

### **2.2. Financial support measures**

(4) The financial support measures notified by AVAS are granted in the context of the CAROMET privatization. The company is to benefit from facilities provided by GEO no. 26/2004 and GEO no. 95/2003, i.e. facilities relating to the payment of overdue obligations to the consolidated state budget and AVAS amounting to ROL 316,152,465,185 and consisting of the following:

- exemption from the payment of overdue obligations to the consolidated state budget as of 31.12.2003 in amount of ROL 87,065,850,237;
- exemption from the payment of interest and penalties of any kind related to overdue budgetary obligations as of 31.12.2003 calculated until the date of the share ownership transfer in amount of ROL 184,657,015,607;
- exemption from the payment of interest and penalties of any kind related to overdue budgetary obligations until the date of issuing the common order, in amount of ROL 3,627,944,969;
- overdue obligations to the national social health insurance fund budget as well as related interest and penalties of any kind as of 31.12.2003, in total amount of ROL 40,801,654,372.

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<sup>1</sup> AVAS partially answered to the supplementary information requests by addresses no. VP4/1992/12.07.2005 and no. VP4/22.07.2005 filed with the Competition Council no. DAAS/750/13.07.2005, respectively no. RG 5402/26.07.2005. By addresses no. VP4/1993/07.07.2005 and no. VP4/1993/10.08.2005 filed with the Competition Council no. DAAS/720/11.07.2005, respectively no. RG 6410/17.08.2005, AVAS requested a postponement of the deadline to submit information on the affiliation to a group of firms for the majority shareholder of SC CAROMET SA Caransebes. This information were submitted on 09.09.2005 by address no. VP4/2993 filed with the Competition Council no. RG 7030/12.09.2005 and by address no. VP4/3887/21.10.2005 filed with the Competition Council no. DAAS/1220/25.10.2005.

<sup>2</sup> GEO no. 95/2003 regarding the taking over by AVAS of certain budgetary claims in order to collect and wire them to the National Fund for social health insurance, approved with modifications and completions by Law no. 557/2003; Regulation on state aid for the rescue and restructuring of firms in difficulty, approved by Order of the President of the Competition Council no. 501 of 23.11.2004.

### 3. BENEFICIARY OF THE MEASURES - CAROMET

(5) The beneficiary of the above measures is CAROMET. The company started its activity on June 1<sup>st</sup>, 1971 under the name of 'Intreprinderea de Constructii Metalice' Caransebes. Subject to Law no. 31/1990 and GD no. 1245/1990 the company changed its name into SC CAROMET SA Caransebes.<sup>3</sup>

(6) CAROMET was privatized in 2004 through the signing of the share sale-purchase agreement no. 47/30.06.2004 concluded between AVAS and a consortium made up of SC IASITEX SA Iasi, CAROMET Employees Association and Mr. Pavel Ponetchi (hereinafter called IASITEX).<sup>4</sup> The ownership structure after privatization is presented in table no. 1. The share ownership transfer took place on 14.07.2004.

**Table no. 1 Shareholders structure after privatisation at CAROMET**

SHAREHOLDERS	Equity holdings	
	Shares held	Shareholding (%)
IASITEX (consortium)	1,533,129	69.994
SIF BANAT CRISANA	379,811	17.340
Other shareholders	277,433	12.666
<b>Total</b>	<b>2,190,373</b>	<b>100.000</b>

*Source: AVAS Notification*

(7) At the request of the majority shareholder the General Shareholders Meeting proposed a capital increase of ROL 55,050,000,000 by issuing 2,202,000 shares with a face value of ROL 25,000<sup>5</sup>. The ownership structure of CAROMET changed accordingly and is presented in the table below:

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

SHAREHOLDERS	Equity holdings	
	Shares held	Shareholding (%)
IASITEX (consortium)	3,045,929	82.2519
SIF BANAT CRISANA	379,811	10.2564
Other shareholders	277,433	7.4917
<b>Total</b>	<b>3,703,173</b>	<b>100.000</b>

*Source: AVAS Notification*

(8) The main business of CAROMET is the production and repair of rail transport means and rolling stock. Besides the main activity the company carries out ancillary activities such as maintenance of equipments, manufacturing of tools and devices, control

<sup>3</sup> CAROMET is a joint-stock company having as of the date of signing the share sale-purchase agreement shareholders equity of ROL 54,759,325 thousand divided in 2,190,373 shares with a face value of ROL 25,000 ROL according to the Registry of Commerce.

<sup>4</sup> Within the consortium, SC IASITEX SA Iasi owns 79% of the shares, Pavel Ponetchi owns 16% of the shares and CAROMET Employees Association 5% of the shares.

<sup>5</sup> The only shareholder who subscribed within the 30-day offer was IASITEX who has purchased 1,512,800 shares in amount of ROL 37,820,000,000 ROL. At the end of the offer, the Extraordinary General Meeting on the 23.11.2004 approved the capital increase by ROL 37,820,000,000 and the cancellation of unsubscribed shares.

laboratories, merchandise transportation and other activities required by the main activity: import-export, engineering, consulting and specific area servicing.

(9) The company's activity is structured on three production units:

- the boggies and welded components unit with three production shops: welded components shop, mechanical processing shop and assembly shop;
- the metallic constructions unit;
- the hydrotechnical equipment unit.

(10) CAROMET manufactures and sells the following products:

- railway rolling stock:
  - boggies and spare parts for for all types of electric, Diesel-electric and Diesel-hydraulic locomotives;
  - boggies for all types of railcars, tramways and subways;
  - major repairs for all boggy types;
- hydromechanical equipment, respectively:
  - metallic constructions for industrial purposes and boilers;
  - cut-off plates, bulkheads, built-in parts, grates;
- metallic industrial construction;
- welded components, bodies, gus ducts, lifting devices.

(11) The company had 1,129 employees as of 31.03.2004.

(12) CAROMET financial results in the last three years, based on information from the balance sheet, are the following:

**Table no. 3 Financial results based on balance sheet data**

2002	2003	2004
<b>Turonver (ROL thousand)</b>		
195,211,055	225,076,199	237,381,522
<b>Turnover made in Romania (ROL thousand)</b>		
102,526,206	154,649,035	202,227,973
<b>Profit/Loss (ROL thousand)</b>		
829,072	-8,158,073	-3,817,635

*Source: AVAS Notification*

CAROMET problems began in 2002 and continued throughout 2003, these problems arising from significant increases in raw materials, energy together with lack of investment in new technology. At the same time the company did not reorganize itself nor its production processes to eliminate or mitigate the above major deficiencies. In 2004 the company had a loss of ROL 3,420,679 thousand, lower than that of the previous year, due to the fact that starting with the month of July 2004 the company was privatized and started a program for the redressal and restructuring in order to stop losses and increase labor productivity. The company is present also on the external market, however with a constanly decreasing turnover from export: 47.55% in 2002, 31.3% in 2003 and 14.8% in 2004.

(13) The company is a large enterprise (turnover of ROL 237,381,522 thousand and 1,129 employees) and does not fulfil the criteria provided by the Regulation on state aid for SMEs.

### 3.1. Relevant markets

(14) CAROMET is active on the following markets:

- the market for the manufacturing and repairs of railway rolling stock (boggies for railcars and tramways);
- the market for hydromechanical equipment;
- the market for the mechanically welded constructions.

(15) The company has annexed to the restructuring plan a „Market study for products and services offered by CAROMET in order to establish a restructuring strategy and to financially relaunch the company” drafted by SC IPCMG SA Bucuresti – a research and consulting company. This market study contains the following issues:

- the analysis of the company’s product manufacturing sectors and medium term prospects;
- the analysis of the company’s product markets;
- existing competition on the domestic and external market;
- the competitiveness of the company’s products versus the competition;
- prospects of the domestic and external markets.

(16) According to this market study, the size of the domestic market for CAROMET products (demand expressed by market sales) in 2001-2003 and the market shares held by the company are presented below:

**Table no. 4 Domestic markets and market shares held by CAROMET**

<b>Segment description</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Manufacturing and repair of rolling stock</b>			
Total domestic market sales (USD million)	245.0	332.0	341.0
CAROMET sales (USD million)	3.7	1.7	2.8
CAROMET market share (%)	1.5	0.5	0.8
<b>Metallic constructions</b>			
Total domestic market sales (USD million)	400.0	527.0	535.0
CAROMET sales (USD million)	0.3	0.5	1.5
CAROMET market share (%)	0.08	0.09	0.28
<b>Hydromechanical equipment</b>			
Total domestic market sales (USD million)	457.0	463.0	474.0

CAROMET sales (USD million)	1.1	1.0	0.4
CAROMET market share (%)	0.24	0.21	0.08

*Source: Market study*

(17) According to the market study, estimates regarding growth indices and the dimensions of domestic markets where CAROMET operates were made in correlation with Romania's industrial policy and the 2005-2008 Governing program and the macroeconomic and sectorial prospects. The domestic market of the industrial production is estimated to grow by 1.37% in 2007 compared to 2002, and by volume will reach between EURO 3,64 billion and EURO 5,40 billion. Taking into consideration that CAROMET makes parts or products for the processing industry, it can be estimated that the company's product markets will have the same increasing trend.

(18) The main competitors of CAROMET on the domestic market are:

- for rolling stock: SC NICOLINA SA Iasi, SMR Bals, RATB URAC;
- for hydromechanical equipment: UCM Resita, SC ENERGOMONTAJ SA, SC MECANOENERGETICA SA;
- for mechanically-welded constructions: UCMR SA, SC ROMENERGO MECANIC SA, SC FORTUS SA Iasi, SC IUG SA, SC COMMET Tecuci.

(19) CAROMET exports metallic constructions for industrial constructions in Austria, hydromechanical equipment in Switzerland and Germany and welded components in Germany. It also makes railway rolling stock repairs (boggies) for a company from Croatia. According to the market study annexed to the restructuring plan, the market share held by the company on the external market is not significant (under 0.5%).

(20) [...] <sup>6</sup>

### **3.2. Description of the privatization process**

(21) In order to privatize CAROMET, in 2004 AVAS initiated the sale of 1,533,129 shares representing 69.994% of the shareholders equity of the company.

(22) The privatization process was carried out in a non-discriminatory and transparent manner. The company file contained information on the financial status, debts, receivables and the calculation of the net asset value, reflecting the difficult situation the company was in, as well as the fact fiscal facilities were to be granted.

(23) The sale announcement for CAROMET has been published in 16.03.2004 and 17.03.2004 in the domestic press (Bursa and Timpul Resita newspapers) and the international press. The company file was bought by SC BEGACOM SA Timisoara si SC BEGA REPARATII VAGOANE SA Timisoara, who have submitted a joint bid and by SC IASITEX SA Iasi, CAROMET Employees Association and Mr. Pavel Ponetchi who have also submitted a joint bid.

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<sup>6</sup> Confidential data

(24) Following the analysis of participation and prequalification documents, both bidders fulfilled criteria to continue negotiations. Subsequent to the submission of the final enhanced and irrevocable offers, negotiations continued with the consortium made up of SC IASITEX SA Iasi, CAROMET Employees Association and Mr. Pavel Ponetchi who submitted the highest offer.

(25) [...] <sup>7</sup>

#### **4. DESCRIPTION OF THE RESTRUCTURING PROGRAM**

(26) The company has drafted a comprehensive restructuring plan to insure that it returns to viability, comprising organizational, technological, environmental and financial measures.

(27) The restructuring of CAROMET aims to:

- reorganize its production process and procedures to improve productivity and efficiency;
- improve staff productivity and efficiency through downsizing;
- intensify the receivables collection;
- reduce inventories and increase the quality of manufactured products.

(28) The restructuring plan submitted by AVAS contains the causes which led to CAROMET difficulties, as well as measures to ensure the long term viability of the company. AVAS estimates that by implementing the plan the company will become profitable and secure the necessary financial resources to conduct business without debts to the consolidated budget of the state.

(29) [...] <sup>8</sup>

(30) The implementation of the restructuring plan requires a financial effort of ROL 642,455.6 million. This plan is expected to restore the viability of CAROMET in 2009 (at the end of the restructuring period).

##### **4.1. The organizational and managerial restructuring**

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

(32) 250 employees were dismissed in 2004 and another 250 will be dismissed until 31.12.2005 due to the high company debts and operating losses. The financial effort, borne by the company amounts ROL 1,120 million and is represented by severance payments provided by the collective labor agreement.

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<sup>7</sup> Confidential data

<sup>8</sup> Confidential data

<sup>9</sup> Confidential data

(33) In order to reduce losses, measures will be taken to reduce the utilities consumption, to eliminate electrical heating, to reconsider on site lighting, to reduce the functioning of the detensioning and forge ovens, to optimize thermo treatments and to upgrade the production and distribution of compressed air. Also, in order to increase the efficiency of the company's activity organizational measures will be taken (reorganizing the work teams, recycling of processing waste to make small parts, reorganizing the production flow by repositioning equipments from the axles shop, reducing labor costs by a better labor management).

(34) In order to secure the financial resources to support the restructuring plan of CAROMET and to provide liquidity to reduce overdue payments, the company's hostel will be sold (bookvalue of ROL 5,300 million) as well as other tangible assets as such or as scrap iron (estimated price ROL 3,000 million).<sup>10</sup>

#### **4.2. Technological restructuring**

(35) [...] <sup>11</sup>

(36) The restructuring plan aims to provide a more efficient, effective and robust manufacturing process. According with the new organization of the production flow, measures will be taken to reduce the metal consumption and the work norms.

(37) [...] <sup>12</sup>

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

(38) According to the share sale-purchase agreement, investments in the protection of the environment are entirely to be borne by the majority shareholder. These amount ROL 219.0 million and are aimed at complying with the environmental obligations and the measures in the compliance programs. The environmental restructuring contains the following measures:

[...] <sup>13</sup>

(39) The observance of the environment compliance program envisages measures for the protection of the soil, underground and underground waters (removing soil contaminated with oil products and its decontamination; the ecological reconstruction of the area by laying a fertile land cover and seeding grass; drilling observation wells in the underground pockets area), measures to unload waste water (executing a system for the treatment of waste water; revamping the water neutralization installation at the metallic coverings station; executing a decanter-separator for rain water sewerage), measures regarding atmospheric emissions (designing a system for capturing – treatment of noxious gases and fumes from the thermo treatment station, sandblasting; revamping the

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<sup>10</sup> We have been informed by the grantor that a purchaser for the building has been found.

<sup>11</sup> Confidential data

<sup>12</sup> Confidential data

<sup>13</sup> Confidential data



ventilation system) and measures regarding the waste management (building a warehouse for controlled storage of waste by sorts; sale of metallic waste).

#### **4.4. Financial restructuring**

(40) At privatization, the company needed financial restructuring for normal functioning of the manufacturing activity, besides other measures restructuring measures assumed through the restructuring plan.

(41) In the case of CAROMET, the financial restructuring contains financial support from the State granted at privatization, consisting of exemptions and deferrals from payment of overdue obligations to the state budget and AVAS, as well as exemptions from the payment of delay penalties related to overdue obligations, facilities granted based on GEO no. 26/2004 and GEO no. 95/2003, in total amount of ROL 316,152.5 million. Also, there are firm agreements to sell the stocks of finished products until the end of 2005 to create liquidity. In order to carry out the manufacturing activity, the company will also approach the market for loans.

(42) By the restructuring plan, the company realistically assessed the restructuring financing sources for the following period, on one hand based on own sources, and on the other hand based on funds of the majority shareholder who provides technology and environmental protection investments indispensable to carry out business.

(43) The restructuring plan through its financial component, gives the possibility to increase cash flow, to secure a stable cash-flow, which will ease the financial activity of the company. This way the company will be able to pay its current debts to the state and to allocate the necessary liquidities for planned investments in order to sustain the long term production program.

(44) [...] <sup>14</sup>

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

(45) 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, with subsequent amendments and completions. <sup>15</sup>

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<sup>14</sup> Confidential data

<sup>15</sup> 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.

(46) The financial support to be granted to CAROMET and notified by AVAS consists in the foregoing by the state from future revenues, therefore state resources are involved.

(47) The measures of financial support granted under GEO no. 26/2004 regarding some measures for accelerating the privatization, with subsequent amendments and completions, are addressed only to undertakings to be privatized, amongst which is CAROMET. Thus, the financial support granted to SC CAROMET SA has a selective nature.

(48) The assumption that a debt write-off or debt rescheduling represents an advantage is valid in a non-privatization context. Given that in this case, incentives i.e. debt write-offs and/or rescheduling are part of the privatization package, such incentives should be analyzed to determine whether or not they constitute state aid. In assessing whether an economic advantage has been given to CAROMET the behaviour of the State must be compared to that of a private investor/seller under similar circumstances i.e. the prudent private investor test.

Ordinarily, an investor/creditor will seek to achieve a positive price, i.e. the price obtained is greater than the value of the debts. However, in this case the price is negative, i.e. less than the value of the facilities. An investor/creditor may be willing to accept a negative price if the cost of the privatization is less than the cost of liquidation. In this case, such analysis is not possible as AVAS informed the Competition Council that prior to the privatization no comparative analysis was made between the company's liquidation cost and the cost of the privatization. Consequently, such a comparative cost could not have influenced AVAS when deciding whether to liquidate or privatize the company.

In addition, taking into consideration the social effects and cost of liquidating the company (indeed such costs are not normally 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 account all the above the Competition Council concludes that the prudent private investor test does not apply to the privatization of CAROMET.

(49) The granting of financial support to CAROMET 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 CAROMET may affect the trade with the Member States as long as the company's products compete, especially on the Romanian market, with similar products of the companies from the European Union.<sup>16</sup>

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

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<sup>16</sup> Another part of the products of CAROMET are to be exported.

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

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

(52) The State aid objective is the restructuring of CAROMET in order to restore its viability until the end of the restructuring period. If the conditions stated in the Regulation on State aid for rescue and restructuring aid in difficulty are observed, the State aid may be considered compatible.

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

(54) The Competition Council evaluates the State aid granted to CAROMET, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty, published in the Official Gazette no.1215/17.12.2004, and issued in the application Law no. 143/1999 on State aid, with further modifications and completions. As to be considered compatible with a normal competitive environment, the State aid must fulfill the criteria set in the above mentioned Regulation.

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

(55) The aid for CAROMET is considered as individual state aid for restructuring and is to be granted based on a restructuring plan drafted by the company together with the buyer and AVAS with the main objective being the restoration of the company's viability until the end of the implementation period.

(56) The Competition Council assesses the state aid granted to CAROMET according to criteria provided in the Regulation on state aid for rescuing and restructuring firms in difficulty, as follows:

- eligibility of the company: company in difficulty;
- restoring the company's long term viability;
- avoid undue distortion of competition;
- aid limited to the minimum necessary – proportionality of the aid;
- observing the "first time, last time" principle;

- affiliation to a group of companies;
- confirmation of a commitment by Romania to ensure the fulfillment of the restructuring plan and the monitoring of its progress by the Competition Council.

### **7.1. Eligibility of CAROMET – firm in difficulty**

(57) In order to benefit from State aid in accordance with the Regulation State aid for rescuing and restructuring firms in difficulty, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not able to cover its losses either from its own financial resources or from other sources and which, in the absence of external intervention of the State will almost certainly lead to the company's demise.

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

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

(60) In the case of CAROMET the following indicated that it was a firm in difficulty:

- a) since 2002 the company started to make losses, mainly from operating activities;
- b) the turnover in current prices grew by only 3.8% in 2003 compared to 2002; in comparable prices turnover grew by just 0.9%;
- c) equity has negative values reaching ROL -93,149,663 thousand in 2002, respectively ROL -125,952,340 thousand in 2003;
- d) inventories grew significantly in 2002 by 158.6% compared to the previous year and by 108.8% in 2003 compared to 2002;
- e) the decrease in cash flow arising from poor financial management thereby impacting on the productivity of the company;
- f) the company's debts constantly grew as an immediate consequence of the lack of liquidity, due to the fact that the late payment of the debts generated significant interest and penalties; debts grew year by year from ROL 136,563 thousand ROL in 2001, to ROL 147,606 thousand in 2003, respectively by 7%, whilst arrears grew by 14%;
- g) increase of financial debts – the intermediate liquidity decreases in 2001-2003 from 0.50 in 2001 to 0.29 in 2002 and 0.26 in 2003, which shows a critical financial situation.

(61) Causes leading to the company being in difficulty:

- lack of funds (own financial resources) required to carry out business and to pay entirely the budgetary debts;
- increase of prices for raw materials and materials, as well as utilities (water, gas, electricity);
- obsolete and worn out equipments (60-70%), as well as the inefficient usage of existing production capacities due to lack of orders;
- high expenses with repairs and maintenance;
- lack of IT equipment make more efficient ancillary production activities.

Given the above facts the Competition Council concludes that CAROMET was a firm in difficulties in accordance with the definition in the Regulation.

## **7.2. Restoring the long term viability of the company**

(62) Difficulties confronting CAROMET led to the drastic reduction in its business activities, coupled with the cumulation of debts to the state budget which attracted delay penalties higher than overdue debts.

(63) In 2004, CAROMET was privatized. In order to overcome the difficult situation, the company prepared together with the Buyer (the IASITEX consortium) and AVAS a restructuring plan for 2005-2009. The summary of the measures contained by the restructuring plan of CAROMET was presented in Chapter 4 of the present decision.

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

(65) According to the article 13 the Regulation State aid for rescuing and restructuring firms in difficulty, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on the restructuring plan. The restructuring plan which must be as short as possible in time must include the abandonment of loss making activities and to offer the company long term viability, thereby 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 as well as from taking into consideration external factors such as price and demand over which the company has no substantial influence.

(66) The restructuring plan of CAROMET starts from the financial and economic data that reflects the company's activities in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong and weak points of the company as well as the circumstances that led to the difficulties the company faces.

(67) The strategy of CAROMET aims at preserving the strong points, respectively: the qualified staff and their expertise in the field, international recognition of the products. In the meantime, the strategy of CAROMET aims at limiting and counteracting with appropriate measures the weak points, i.e. obsolete and outdated technology causing inefficient productivity and high costs.

(68) The implementation of the measures provisioned by the restructuring plan financed by the company and the majority shareholder, as well as by the state by facilities granted to the company for the payment of budgetary obligations is foreseen to improve the financial - economic indicators in the period 2005-2009, as follows:

[...] <sup>17</sup>

(69) 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:

[...] <sup>18</sup>

(70) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the restoration of the long term viability of CAROMET.

### **7.3. Preventing any excessive distortion of the competition (compensatory measures)**

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

(72) CAROMET has small market shares on the relevant markets, respectively 0.8% for rolling stock, 1.5% for metallic constructions and 0.08% for hydromechanical equipment. On the external market the company does not have a significant market share (under 0.5%). As a consequence, having in regard the provisions of art. 14 of the Regulation on State aid for rescue and restructuring firms in difficulty that stipulates that the compensating measures will be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the effected markets, Competition Council considers that the reduction of production capacities proposed by the company through the restructuring plan are sufficient.

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<sup>17</sup> Confidential data

<sup>18</sup> Confidential data

(73) The measures to be taken by the company until the end of the restructuring period, in order to avoid the distortion of competition consist in an irreversible capacity reduction, namely fixed assets and goods reduction.

(74) The irreversible reduction of viable capacities is an integral part of the restructuring plan and consists in the reduction by 28.0% of the capacity for the production and repair of rolling stock, by 46.7% of capacities for metallic construction, by 25.0% of capacities for hydromechanical equipment and by 54.5% of capacities for welded components.

(75) There are differences between the projected capacity of CAROMET and the functioning capacity. The company does not intend to increase its production capacities, but to better use its remaining capacities.

(76) The functioning production capacities and their capacity utilisation between 2002-2004 are presented below:

**Table no. 12** Capacity utilization ratio between 2002 - 2004

Products	Projected capacity	2002		2003		2004	
		Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)
Rolling stock, including repairs (pairs)	400	300	9%	250	10%	250	12%
Metallic constructions (tons)	12,000	7,500	27%	7,500	28%	7,500	23%
Hydromechanical equipment (tons)	6,000	4,000	14%	4,000	9%	4,000	7%
Welded components (tons)	4,000	2,500	16%	2,200	14%	2,200	13%

*Source: Restructuring plan of CAROMET*

(77) After the enforcement of the measures provided in the restructuring plan, capacities production and their capacity utilisation are presented below:

[...] <sup>19</sup>

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

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<sup>19</sup> Confidential data

#### 7.4. Aid limited to the minimum necessary (proportionality of the aid)

(79) In accordance with art.15 of the Regulation on rescue and restructuring firms in difficulty, the State aid intensity and quantum is limited to the minimum necessary for implementing the restructuring plan. The State aid benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art.15 (2) of the Regulation, for large undertakings a contribution of at least 50% is considered adequate.

(80) The total restructuring cost of CAROMET is ROL 642,455.6 million and is composed of:

- Organisational restructuring cost	ROL 2,131.5 million
- Technological restructuring cost	ROL 295,052.6 million
- Environmental restructuring cost	ROL 219.0 million
- Financial restructuring cost	ROL 345,052.5 million

(81) [...] <sup>20</sup>

(82) [...] <sup>21</sup>

(83) The company's own contribution of 50.8% for covering the restructuring cost is assured by:

- capital injection of the majority shareholder – the IASITEX consortium;
- revenues from sale of assets;
- revenues from the sale of finished products and materials with slow or non movement inventory;
- revenues from the sale of scrap iron;
- increasing the ceiling of the credit line open in 2004 (the loan was contracted at market terms).

(84) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 49.2%.

(85) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 50.8% to the restructuring costs, this showing the trust in the practical value of the restructuring and the fact that the amount and intensity of the state aid were strictly limited to allow the restructuring according to the existing financial resources of the company and the majority shareholder. It is avoided in this way that the company receives a liquidity surplus which might be used for aggressive activities, distorting the market.

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<sup>20</sup> Confidential data

<sup>21</sup> Confidential data



## **7.5. Observing the „first time, last time” principle**

(86) CAROMET has never received restructuring aid in the past. 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.

## **7.6. Affiliation to a group of companies**

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

(88) AVAS has underlined that investors agreed to purchase the majority stake and to assume an important part of the restructuring costs of CAROMET only if conditions for the granting of payment facilities were mentioned in the presentation file.

(89) The fiscal facilities intended to be granted to CAROMET refer to historical debts arisen prior to the company's privatization. These debts did not arise from any arbitrary allocation.

(90) As a result of the privatization and the conclusion of the shares purchase-sale contract the new owner of CAROMET is IASITEX.

(91) AVAS supplied data regarding the financial and economic situation of the members of the consortia comprising SC IASITEX SA Iasi, Mr. Pavel Ponetchi and CAROMET Employee Association (hereafter SC IASITEX SA). Within the consortia, SC IASITEX SA Iasi holds 79% of the shares, Mr. Pavel Ponetchi holds 16% of the shares and CAROMET Employee Association 5% of the shares.

(92) Based on information provided by AVAS and the beneficiary of the state aid, the Competition Council notes that SC IASITEX SA Iasi is a member of SC SERVICIILE COMERCIALE ROMANE SA group of companies. [...] <sup>22</sup>

(93) According to submitted balance sheets, companies within the group made a net profit of ROL 257,590 million in 2003. At the same time, cumulated debts amounted ROL 1,759,668 million, 7 times higher than their profit. The Competition Council notes that the debts of CAROMET to the state budget and AVAS amounted ROL 316,152.5 million.

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<sup>22</sup> Confidential data

(94) At privatization, the IASITEX consortium paid a price of ROL 8,516.5 million, respectively EURO 209,026 for 69.994% of the shareholders equity of CAROMET. Also, the Buyer assumed a contribution to the restructuring program, respectively to the financing of the technological and environmental restructuring measures in amount of ROL 294,540 million.

(95) In these circumstances the Competition Council considers that SC IASITEX SA Iasi, Mr. Pavel Ponetchi and the CAROMET Employee Association could not cope with the financial difficulties of CAROMET as well as with the restructuring of the company without a consistent intervention of the State, the company's debts to the State budget and AVAS being in total amount of ROL 316,152.5 million. Compared to the financial resources of the group of companies of which SC IASITEX SA Iasi is a member, as well as those of the other consortia members this is considered to be a significant contribution.

## **7.7. Monitoring and annual reporting**

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

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

## **8. CONCLUSIONS**

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

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

- collective personnel lay-off, with immediate and lasting effect the increase of the unemployed persons in the area ;
- increase of the budgetary expenditures with the unemployment allowance, support allowance and other forms of social protection to the unemployed persons which from the tax payers are becoming consumers of financial resources;
- the decrease of the quantum of the contributions paid by the company for the employees;

- non-recovering of all the debts to the budgetary creditors and third parties;
- reduction of the activity of raw materials and materials suppliers with collaboration relations with CAROMET.

## **DECIDE**

**Art. 1.** The financial support measure notified by the Authority for the Recovery of State Assets for CAROMET 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 alin.(2) lit. c) corroborated with art. 23 (1) e) of the Law no. 143/1999 on state aid, republished, the restructuring aid that is going to be granted to CAROMET at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

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

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

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

**Art. 6.** The amount of the State aid that is going to be granted is of ROL 316,152,465,185 (RON 31,615,246.5 RON).

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

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

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

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

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- CAROMET, DN 68 km 3,2 Caransebes, judetul Caras-Severin, cod postal 325400.

**PRESIDENT**

**MIHAI BERINDE**