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**COMPETITION COUNCIL DECISION  
no.216 from 30.11.2005  
concerning the State Aid to be granted to  
National Research and Development Institute for Gas Turbines (INCDT)  
COMOTI Bucuresti**

**THE COMPETITION COUNCIL,**

Taking into account the provisions of the Decree no. 57/2004 for the appointment of the Competition Council members,

Taking into account the provisions of Competition Law no. 21/1996, republished in Official Journal of Romania, 1<sup>st</sup> Part, no. 742 on 16 August 2005,

Taking into account the provisions of Law no. 143/1999 on state aid republished in the Official Journal of Romania, 1<sup>st</sup> Part, no. 744 on 16 August 2005,

Taking into account the provisions of European Agreement establishing an association between Romania, on one hand, and European Communities and the Member States of those, on the other hand, approved by Law no. 20/1993, published in Official Journal of Romania, 1<sup>st</sup> Part, no. 73 on 12 April 1993;

Taking into account the provisions of the Regulation on the State Aid for rescue and restructuring firms in difficulty, published in the Official Journal of Romania, 1<sup>st</sup> Part, no. 1215 on 17 December 2004,

**On the following grounds**

**1. PROCEDURE**

(1) By the note no. 20691/07.07.2005, registered at the Competition Council with the no. RS-AS 65/12.07.2005, the Ministry of Education and Research notified to the Competition Council under Art. 15 of *Law 143/1999*, republished, the financial support for restructuring of INCD COMOTI Bucuresti.

(2) By address DAAS/945/17.08.2005 and DAAS/1062/12.09.2005 supplementary information has been requested from Ministry of Education and Research regarding the beneficiary market share and the market share of the competitors, demonstration the way in which the measures from the restructuring plan will contribute to the relieving of the negative circumstances which have led to the appearance of the institute's difficulties, presentation in detail of the real own sources of the beneficiary as well as other information related to the restructuring program of INCDT COMOTI BUCURESTI.

(3) The notification became effective on the date the information was correct and complete, namely on 23.11.2005.

## **2. DESCRIPTION OF THE FINANCIAL SUPPORT**

### **2.1. Legal grounds for granting the State Aid**

- *Law no. 230/2004 on endorsement of GO no. 38/2004 concerning the modification of GO no. 57/2002 on scientific research and technological development, modified by GEO no. 26/2005 on the repeal of the legal provisions relating to granting of facilities on payments of budgetary overdue debts, approved by Law no. 244/2005;*
- *GO no. 2,089/2004 on endorsement of the List of Research and Development Institutes, which benefit of facilities on payments of overdue fiscal debts stated in Art. II of the Law no. 230/2004, as well as of the maximum thresholds of payments exemption;*

### **2.2. The financial State Aid measures for INCDT COMOTI Bucuresti**

(4) The financial State Aid measures notified by the Ministry of Education and Research are granted to INCDT COMOTI BUCHAREST; therefore, INCDT COMOTI Bucuresti shall benefit of the facilities assured by the Law no. 230/2004, namely facilities on payment of overdue debts towards the State consolidated budget.

(5) The facilities on payment of overdue debts towards the State budget to be granted to INCDT COMOTI Bucuresti, in amount of RON 11,519,478.6 are planned as follows:

**Table no. 1** The financial measures of support granted to INCDT COMOTI Bucuresti

<b>No.</b>	<b>Measure</b>	<b>Amount granted (RON)</b>
1.	Exemption from payment of duties to the state budget outstanding on 31.12.2003 and related obligations	6,617,051.0
2.	Exemption from payment of duties to the social contribution outstanding on 31.12.2003 and related obligations	2,889,494.4
3.	Exemption from payment of duties to the single national fund of health insurance outstanding on 31.12.2003 and related obligations	1,777,885.6
4.	Exemption from payment of duties to the unemployment insurance fund	167,536.0

	outstanding on 31.12.2003 and related obligations	
5.	Exemption from payment of duties to the local state budget outstanding on 31.12.2003 and related obligations	67,511.6
	<b>TOTAL</b>	<b>11,519,478.6</b>

*Source: Notification form and supplementary information*

### **3. THE BENEFICIARY OF STATE AID MEASURES INCD TURBO-ENGINES COMOTI BUCHAREST**

#### ***The preambul***

(6) INCDT COMOTI was founded in 1985, under the name Scientific Research and Technological Engineering Center for Aircraft Engines under the previously named INCREST. After several reorganizations, COMOTI Bucharest became in 1996 the National Institute for Research and Development for Turbo engines. The institute share capital RON 1,791,746.7 it is hold entirely by the state, withouth any shareholder structure. COMOTI it is registered in the Trade Register under J40/4880/24.06.1997 and and Unique Registration Code no. R445238/09.12.1992.

(7) The Institute performs its activity both in their principal head office in Bucharest, and in the two University Centres (Iasi and Bucharest), the Magurele centre and the Experimental Centre in Sf. Gheorghe, Tulcea.

(8) COMOTI's main line of business is research and development, as described below:

- applied and fundamental research specially in gasodynamics, palette gas machines, combustion phenomena, heat transfer and conversion of energy in industry, aerodynamics and the marine field;
- applied research on providing fundamental needs to create and the technology to achieve turbine engines;
- applied research to achieve and develop specific technologies to produce gas turbomachinery, related tools and installations, as well as achieving experimental and functional models, prototypes, stands, platforms and pilot-centres;
- other scientific research and technology development tasks that contribute to the achievement and solution of problems in their line of business.

(9) The company carries on the following secondary activities: consulting, exploiting expertise and technical assistance for blade machines, software, experimentation technologies, laboratory design and assembling, projects and technologies for turbo machines, checking, certifications, qualifications and technologies specific for the activity scope.

(10) From the supplimentary informations results that 70% from it turnover is coming from the research and development activity and 30% from the economic contracts.

(11) The Ministry of Education and Research specified that INCD COMOTI Bucuresti achieved, based on command, products and new equipments, complex one, with a strong inovating character, such as prototype or unique products. The institute products are realized in it own laboratory, based on the projects and tehnologies wich are elaborated by the researches and experts from Comoti.

(12) Research and development institutes in and of themselves do not principally aim at achieving and maximizing their profit through commercial business, to immediately increase the value of their research results. Most of the times, research needs a longer cycle in order to be successful, with major failure risks and contingencies, and it cannot easily generate profit, specially in the short run.

(13) At the same time, the benefits of research and development and innovation are significant, and their effects on the medium and long run are considerable for those states or groups of states who understand the crucial role of research as a vector for progress, sustainable development and social security.

(14) In Romania, social and economic changes after 1989 and the transition to the market economy triggered continuous changes to the national research system. Theoretically, research centres were designed to operate as an efficient whole but their dismantling of patrimony assets and equipment significantly diminished their capability to adapt to the free market for research services. The number of research institutes dropped from 40,000 in 1989 to 8,000 at present. The situation is similar for INCDT COMOTI so from 506 employees in 1996 institute has at end of 2004, 195 employees.

(15) Also, the big plants, works and other industrial centres of the former socialist economy had big difficulties themselves, as they were bound by the state Plan to adopt process new products and technologies manufactured exclusively by the research institutes, under orders and contracts. Their difficulties were triggered by the ever decreasing number of domestic contracts, but specially external ones, as the CAER disappeared, and the markets in the Middle East, Latin America and the Soviet Union were lost.

(16) Thus, the following internal and external factors triggered difficulties to COMOTI's normal business:

- large difficulties in collecting the debts from the institute's clients, specially from the undertakings where the state holds the majority; in 1999, the total value of the institute's claims was equal to the total amount of debt to the central and local state budget;
- COMOTI's main economic clients significantly reduced their investments programs being in a difficult economic situation;
- given the poor economic and financial situation, the institute could not directly attend auctions in order to supply cogenerative installations;
- the high degree of wear-and-tear of the computer systems: more than 60% was over 5-year old;
- unforeseeable price increase for materials, fuel and utilities;
- national economic status: financial blockage, high inflation.

(17) Although as of 2004, the Institute made big efforts to pay their current debts on time, they could not recover the outstanding debts from the previous years. The debts to the state cumulated until the end of 2003 remained unpaid, which triggered interest rates and penalties for late payments.

(18) This scarce situation of the company is also indicated by the main economic and financial results:

**Table no. 2-** INCDT COMOTI BUCURESTI's economic and financial results 2002-2004

2002	2003	2004
<b>Turnover (RON)</b>		
4,962,887.4	5,818,764.0	7,914,091.3
<b>Loss (RON)</b>		
1,583,777.1	2,975,153.8	4,022,408.6

Source: Notification form

(19) As shown by the above data, the company had annual losses between 2002-2004. Given this difficult situation, the Ministry of Education and Culture decided to grant payment incentives to the Institute.

(20) At the end of 2004, COMOTI used to have 195 employees and RON 7,914,091.3 turnover, namely Euro 1,952,548.6. Thus, two of the criteria in the *Regulation on state aid for small and medium-size enterprises* to be deemed a medium-size enterprise. The third criteria – the „independence criteria” – is not met since the Romanian state holds the entire registered capital of the Institute. Consequently, in the following analysis, we will consider the Institute as a large enterprise.

### 3.2. Relevant markets

(21) The relevant market for the business of INCDT COMOTI Bucuresti is fundamental and applied research, and technological development of national interest in the area of turbine engines.

(22) According to the market study attached to COMOTI's restructuring plan, the Institute's market shares on the Romanian market are:

**Table no.3** INCDT COMOTI BUCURESTI's market shares

Market segment	Competitor	Market share %
1. The market for fundamental and applied research	Domestic research institutes and producers (INCAS SA „Elie Carafoli” București, INAV SA București, AEROSTAR SA Bacău, Space Sciences Institute Bucharest, etc)	97.27
	<b>INCDT COMOTI</b>	<b>2.73</b>
2. The market for the production of cogenerative groups with turbine and gas engines	GE Nuovo Pignone Italy	24.20
	Turbomach Switzerland	7.75
	GE USA	55.66

	Siemens Power Generation Germany	4.84
	Turbomeca France	3.87
	<b>INCDT COMOTI</b>	<b>3.68</b>
3. The market for natural gas compressors, and air compressors	GE Nuovo Pignone Italy	90.48
	Atlas Copca Sweden	3.33
	<b>INCDT COMOTI</b>	<b>2.77</b>
	Igerssol Rand USA	2.08
	Confind S.A. Romania	1.34
4. The market for environment protection equipment	ADIS Baia Mare Romania	36.8
	HV Turbo Denmark	21.6
	Aertzener Austria	16.9
	Haffi Austria	12.5
	Alfa Lavale Canada	8.5
	Pieralisi Italy	2.96
	<b>INCDT COMOTI</b>	<b>0,74</b>

Source: Notification form

(23) The market study reveals the fact that there is an increasing demand on the market for the Institute's products. Competition is very harsh, and in the recent times, imports have increased their role.

(24) The demand for cogenerative groups has visibly increased because these stations allow lower costs of electricity and heating than classical solutions. Also, this will determined the reduction of noxes emission in atmosphere and the reduction of CO2 emissions. Also, the demand for centrifugal air blowers will raise since the large majority of the water treatment plants for the waste city water are equipped with old technology which do not meet the new European standards, so that they should be renewed.

(25) In terms of the market for natural gas compressors and air compressors, the Institute's product quality is comparable to that of the international competitors; however, the latter enforce a much more efficient promotion policy

(26) INCDT COMOTI's main domestic beneficiaries are: SC Transgaz SA, SC Romgaz SA, OMV, SC Petromservice SA.

(27) Also, INCDT Comoti Bucuresti is a partner to several European projects, as indicated hereinafter: the *Method Project* – a program design meant to increase the yield of gas centrifugal compressors; the *CoJeN Project* targeting the computation of coaxial jet noises; the *SILENCER Project* on the airplane noise suppression equipment; the *ABRANEW Project* on increasing the efficiency of gas turbines. In fact, INCDT Comoti Bucuresti is the only research institute in the aviation field from Romania who is a partner in European projects. However, the audit carried out by SNECMA Moteurs - Franța in September 2003 reveals the fact that INCDT COMOTI could be able to fulfil the criteria required by the large projects carried out in

the European Union in the field of aviation by reactivating the quality system, taking into account that the major competences in the field of aviation engines research were kept.

(28) The market study shows that, given the existing conditions, INCDDT COMOTI will not be able to face competition in the absence of the implementation of a Restructuring Program aiming at various issues (technology investments, organization and financial restructuring), and also at cost reduction and increase of efficiency.

#### 4. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(29) Looking at the enterprise's situation before 2004 and aiming at eliminating the causes that triggered the difficulties, the COMOTI Institute, together with the Ministry of Education and Culture drafted a restructuring plan for 2005-2009, made of organizational, technological, environment and financial measures, using a SWOT Market study and analysis.

(30) COMOTI's restructuring action aims at these major targets:

- upgrading and modernization the institute's laboratories ;
- the modernization of the research and development teams and the rehabilitation, modernization and certification of research laboratories to face the approach of new research and development themes, both nationally and at European level in the activity field of the institute;
- changing of the organizational chart;
- modernizing the production department, given it is used in the European projects to manufacture high-tech components for the experimental research;
- modernizing the service and repair for turbine engines and industrial turbomachinery.

(31) The restructuring plan conveyed by the Ministry of Education and Culture includes both the causes that triggered the difficult financial situation for COMOTI, and the measures to insure the institute's long-term viability. The Ministry of Education and Culture deems that the enforcing of the restructuring measures will lead to profitable business, and that the company will thus have its own financial resources for the business, without debts to the consolidate or local state budget.

(32) COMOTI's restructuring plan, drafted with the Ministry of Education and Culture covers the interval 2005-2009. In brief, these are the measures in the restructuring plan:

**Table no. 4** Summary of the measures in the restructuring plan of INCDDT COMOTI  
- RON -

No.	Measures	Evaluation of the implementation costs		
		Own sources	Investment	State aid
1.	Management and organizational measures	2,100,000	-	-
2.	Technical and technological measures	6,060,000	-	-
3.	Environment protection measures	320,000	-	-

4.	Financial restructuring measures	229,000	2,600,000	11,519,479
	<b>TOTAL</b>	<b>8,709,000</b>	<b>2,600,000</b>	<b>11,519,479</b>
<b>TOTAL RESTRUCTURING COST</b>		<b>22,828,479</b>		

Source: INCDT COMOTI's restructuring program

(33) The implementation of the restructuring plan requires a financial effort of RON 22,828,479. This plan will restore COMOTI's viability by the year 2009 (at the end of the restructuring period).

#### 4.1. Organizational restructuring

(34) The organizational restructuring measures were drafted while having in mind the difficulties COMOTI faced before making the decision to grant financial support, and the years to come. They refer to:

**Table no. 5** Measures on organizational restructuring - RON –

No.	Measures	Evaluation of the implementation costs		
		Own sources	Investment	State aid
1.	Modification of the organizational structure <i>per</i> cost centres, allowing enhanced separation of overheads <i>per</i> various compartments and product groups.	70,000	-	-
2.	Reorganization of staff from the science and technical divisions and from The University Politehnica Bucuresti, University Tehnica Iasi, under the modified organization structure	120,000	-	-
3.	Personnel reduction of 13%	240,000	-	-
4.	Modernizing labour locations to raise work productivity; upgrading water installations for continuous flow; replacing the current expensive heating system with a modern system	540,000	-	-
5.	Equipping the labour locations with installations as requested by Law no.182/2002 regarding the protection of classified information.	200,000	-	-
6.	Enhancing participation in national and international exhibitions and fairs	550,000	-	-
7.	Personnel training to raise the level of qualification and experience	380,000	-	-
	<b>TOTAL</b>	<b>2,100,000</b>		

Source: INCDT COMOTI's restructuring program



#### 4.2. Technical and technological restructuring of the research and development activity

(35) Technical investments comprised in the restructuring program amount at RON 6,060,000. Technical and technological restructuring measures envisage to counter-balance some of the main causes which led to the appearance of the difficulties of the institute, especially those linked to wear and obsolescence of the technological equipments in the patrimony, this leading to a low efficiency and high costs.

(36) Thus, the necessity to achieve these investments in rehabilitations and modernisations resulted from a thorough analysis of the technical condition of the equipments and calculation technique in the institute's laboratories, in order to find the best solutions to solve the problems which the institute faces.

**Table no. 6** Measures for technological restructuring - RON -

No.	Measures	Evaluation of implementation costs		
		Own sources	Investment	State aid
1.	Modernisation of the research and development groups (design, replacement of old PCs, different soft - CAD + CAM, soft CFD, stationery)	1,220,000	-	-
2.	Rehabilitation, modernisation and authorisation for the research and development laboratories	2,080,000	-	-
3.	Modernisation and rehabilitation of the assembly and service units	610,000	-	-
4.	Upgrading and modernizing the department for experimental products and prototypes	2,150,000	-	-
	<b>TOTAL</b>	<b>6,060,000</b>		

Source: Restructuring program of INCDT COMOTI Bucuresti.

#### 4.3. Restructuring measures for environment protection

(37) According to the restructuring plan, investments in environment protection amount at RON 320,000 ensured by own resources of the state aid beneficiary and aim at achieving a phonic protection area around the turbine engines stands on the Militari Platform in order to reduce the phonic impact.

#### 4.4.. Financial restructuring

(38) Considering the difficult situation of INCDT COMOTI, beside the organisational and technological restructuring measures, a financial restructuring was necessary for the normal functioning of its activity.

(39) One of the measures of financial restructuring is the support granted by the state to the institute in the form of payment facilities for their due obligations (debt annulment) in amount of RON 11,519,478.6.

(40) The restructuring plan comprises measures consisting in valuation of assets. Thus, fixed assets were evaluated and it was estimated that 180,000 RON will be obtained. Thus, fixed assets were assessed in order to be sold (lathes, milling machines, drilling machines, rectifying machines, motor vehicles. The sums obtained represent the financing source of the restructuring plan. The measure has the implementation cost at RON 25,000 and the amount constitute sources for financing the restructuring plan.

(41) Also, in the view of the financial restructuring, INCDT COMOTI contributes with an amount of RON 2,600,000 by contracting credits on the Romanian capital markets, in order to supplement the working capital.

**Table or. 7-** Measures concerning financial restructuring - RON –

No	Measures	Evaluation of implementation costs		
		Own sources	Investment	State aid
1.	Exemptions from the payment of budgetary obligations according to Law no. 244/2005	-	-	11,519,479
2.	Assets valuation	25,000	-	-
3.	The payment of the rates link to the bank credit	204,000	-	-
4.	Contracting bank credits	-	2,600,000	-
	<b>TOTAL</b>	<b>229,000</b>	<b>2,600,000</b>	<b>11,519,479</b>

*Source: Restructuring plan INCD COMOTI Bucharest and supplementary information*

(42) By the financial restructuring component, the restructuring plan offers the possibility to increase the cash flow, ensuring a stable cash flow, which will make the financial activity of INCDT COMOTI easier. This way, the institute will be able to pay its current debts towards the state and allocate the necessary liquidity to the execution of scheduled and necessary investments, with a view to develop and support its activity in prospect.

(43) By implementing the above mentioned measures, it is foreseen that INCDT COMOTI will become viable until the end of 2009.

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

(44) The criteria establishing whether a measure represents State Aid are provided for under the Article 2(1) of State Aid Law no. 143/1999, republished. The state aid represents, according to the law, 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, being considered as incompatible with a normal competitive environment.

(45) The financial support granted to INCD COMOTI Turbomotoare București and notified by the Ministry of Education and Research consists of revenues foregone by the State, consequently there are involved resources of the State.

(46) The measures of financial support granted pursuant to the provisions of the Law no. 244/2005 are addressed only to the undertakings that undertake this activity of research-development, among which is ranged INCD COMOTI Bucuresti. Thus, the financial support granted by INCD COMOTI Bucuresti has a selective character.

(47) Through the granted financial support measures an economic advantage is created for INCD COMOTI Bucharest, the institute being written-off from the payment of certain taxes, as well from the interests and delaying penalties for the residual budgetary liabilities. The granting of these facilities has a favourable effect upon economic-financial indicators. Thus, the institute will benefit of an advantage, being favoured against its competitors.

(48) The granting of the financial support for INCDT COMOTI creates the premises for a possible distortion of competition on relevant markets, as it allows the company to maintain itself on these markets. There is no doubt that the financial support to be granted to INCDT COMOTI might affect the trade with the European Union Members, since the institute participates in some European projects.

(49) Summing up, the financial support measures are deemed state aid and fall under the scope of the *Law no. 143/1999 on State Aid*, republished.

## **6. COMPATIBILITY OF THE AID**

(50) The Article 2 of Law no. 143/1999 on the State Aid, republished, states that the aids granted by the State or out of state funds that distort or threaten to distort competition and affect the trade with the Member States are incompatible with the normal competition environment.

(51) The objective of the State aid is the restructuring of INCDT COMOTI in order to restore the viability of the company at the end of this period. If the conditions set out in the Regulations on Rescue and Restructuring Aid for Firms in Difficulty the State Aid are fulfilled, the state aid can be considered compatible.

(52) The restructuring aid is conditioned by the implementation of a feasible, coherent and far-reaching plan to restore the firm's long-term viability. In this sense, the Regulation provides for that restructuring usually implies one or more of the following elements: reorganization and rationalization of the company's activities on to a more efficient basis, usually by reducing the loss-making activities, restructuring of the existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Industrial restructuring must usually be accompanied by financial restructuring (capital injections, lower debt degree, etc.).

(53) The Competition Council examines the state aid to be granted to INCDT COMOTI, according to the criteria provided for under the Regulation on Rescue and Restructuring Aid for Firms in Difficulty the State Aid, published in the Official Gazette of Romania no. 1215/17.12.2004, issued to apply the Law no. 143/1999 on State Aid, as subsequently modified and completed. In order to be considered compatible with a normal competitive environment, the state aid must meet all criteria from the above-mentioned Regulation.

## **7. CRITERIA TO BE FULFILLED SO AS THE RESTRUCTURING STATE AID TO BE GRANTED**

(54) The state aid granted for INCDT COMOTI it is considered individual state aid granted for restructuring, based on Restructuring Plan made by the institute and the grantors (M.Ed.C) having a principal objective the rehabilitation of the viability of the institute at the end of restructuring period.

(55) Considering all of the above, the Competition Council concludes that the conditions for INCDT COMOTI Bucuresti to be considered in difficulty are met, as this situation is defined in the Regulation on state aid for rescue and restructuring firms in difficulty.

- Restore the long term viability of INCDT COMOTI Bucuresti;
- Avoid undue distortion of competition
- Be proportional to the costs and benefits of restructuring
- Respect “the first time, last time” principle
- Confirm a commitment by Romania to ensure the fulfillment of the restructuring plan and the monitoring of it’s progress by the Competition Council;

### **7.1. THE ELIGIBILITY OF INCDT COMOTI BUCHAREST – THE UNDERTAKING IN DIFFICULTY**

(56) In order to benefit of the state aid according to the Regulation on the State Aid for Rescue and Restructuring of Firms in Difficulty, the company must encounter difficulties. The Competition Council considers that, according to the Regulation, a firm is in difficulties where it is not able, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

(57) For the purposes of the Article 2(2)(b) and (c) of the Regulation on state aid for rescue and restructuring of companies with difficulties, a joint-stock company is considered to have difficulties where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months, and where a company, whatever the type of company concerned, fulfils the criteria under its domestic law for being the subject of collective insolvency and bankruptcy proceedings.

(58) The Competition Council notes that in 2004, when it was decided to grant a financial support to the institute, with an equity of RON 1,791,746.7 , COMOTI had losses amounting at RON 4,022,408.6 , which were 2,24 times higher than the equity. An analysis of the evolution of other economic-financial indicators shows the increase of losses, negative values of own capitals, increase of the stocks volume, increase of debts, of the financial burdens etc., indicating the difficult position of the institute.

(59) Considering all of the above, the Competition Council concludes that the conditions for INCDT COMOTI Bucuresti to be considered in difficulty are met, as this situation is defined in the Regulation on state aid for rescue and restructuring firms in difficulty.

## **7.2. RESTORING THE INSTITUTE VIABILITY**

(60) The difficulty INCDT COMOTI BUCURESTI was confronted with have led to the drastic restraining of the activity coupled with the accumulation of debts to the state budget to which, over time, increases and delay penalties were added surpassing by far the amount of pastdue debts.

(61) The analysis of the restructuring plan and the way in which this would conduct to the viability is based on the provisions of article 13 from the Regulation on state aid for rescue and restructuring of companies with difficulties.

(62) According to art. 13 of the Regulation the granting of the restructuring state aid is conditioned by the implementing of the restructuring plan which is the base of the assessments made by the Competition Council regarding the state aid. The Restructuring Plan, with a duration as short as possible, has to include the abandonment of loss generating activities and it has to offer the company its long term viability, by allowing it to function on its own resources. The Restructuring Plan must be based on a realistic estimation of the market conditions, the return to viability has to result mainly from internal measures enclosed by it, as well as from the consideration of the external factors such as the prices and demand's fluctuation, factors upon which the company has no significant influence.

(63) The restructuring plan of INCDT COMOTI starts from the technical and economic data reflecting the activity of the institute prior to 2004. The restructuring plan was elaborated starting from the institute's weak and strong points and taking into account the opportunities and threatens it can be confronted with.

(64) INCDT Comoti has set a number of objectives regarding the institute's development Strategy allowing the return to viability after the implementation of the restructuring plan, namely:

- reaching an operational balance, in view of making profit;
- improving the working environment for all staff;
- modernization and reorganizing all technological activity in concordance with the restructuring plan;
- cost reduction leading to an efficient activity;
- reorganization the institute activity;

(65) The strategy of INCDT COMOTI pursues the preservation of the strong points, that is: tradition and competence; experienced team; fast adaptation to change; efficient and concrete response to requests; openness to cooperation with domestic and external partners; offering technical assistance for the installation and maintenance for all supplied equipments, with full attention to the service and post-guarantee activity; the institute is certified by S.C. AEROQ S.A. Bucuresti and O.M.C.A.S., which are certificating bodies licensed by the Romanian standardisation Institute.

(66) At the same time, the strategy of INCDT COMOTI Bucuresti pursues the limitation and counter-balancing the weak points, such as: the limitation of the access of the institute to the well-known clients due to the poor situation before 2004 which led to the impossibility to participate directly at the bidding procedures for the supply of cogenerative installations; high fluctuation of the qualified personnel; laboratories and stands to test turbine engines and their components endowed with old installations; approximately 60% of the calculation technique is older than 5 years.

(67) As part of the restructuring program, the institute gives up loss making activities. Thus, the mechanical shop on the Magurele platform is to be closed due to its inefficiency.

(68) Also, the institute will improve its clients management, due to, as shown in para. (16), one of the causes which led the institute in difficulties was represented by the deliveries made to clients lacking liquidities. Given the above, INCDT COMOTI intends to adopt a new policy regarding the recovery of pastdue receivables by suing basly paying customers. In the meantime, the institute will conclude contracts only with beneficiaries presenting guarantees that they have sufficient financial means to pay for the requested contracts.

(69) By enforcing the measures comprised in the restructuring plan – to which both INCDT COMOTI and the state will contribute, by facilities granted to the institute for the payment of budgetary obligations - for 2005 – 2009, an improvement of the economic-financial indicators is foreseen, as follows:

**Table no. 8-** The foreseen evolution of the economic-financial indicators, following the enforcement of the restructuring measures

- RON -

Name of the indicators	2005	2006	2007	2008	2009
<b>Net turnover</b>	<b>8,500,000</b>	<b>9,350,000</b>	<b>10,285,000</b>	<b>11,313,500</b>	<b>12,444,850</b>
<b>1. Total incomes, of which:</b>	<b>10,210,000</b>	<b>11,231,000</b>	<b>12,352,000</b>	<b>13,583,300</b>	<b>14,941,500</b>
a) operating incomes	10,200,000	11,220,000	12,340,000	13,570,000	14,927,000
b) financial incomes	10,000	11,000	12,000	13,300	14,500
c) extraordinary incomes	0	0	0	0	0
<b>2.Total expenses, of which:</b>	<b>10,209,900</b>	<b>11,121,000</b>	<b>12,152,000</b>	<b>13,283,300</b>	<b>14,541,500</b>
a) operating expenses	10,189,900	11,099,000	12,128,000	13,258,300	14,512,500
b) financial expenses	20,000	22,000	24,000	25,000	29,000
c) extraordinary expenses	0	0	0	0	0
<b>3. GROSS PROFIT /LOSS</b>	<b>100</b>	<b>110,000</b>	<b>200,000</b>	<b>300,000</b>	<b>400,000</b>

Source: Restructuring plan of INCDT COMOTI and supplementary information

(70) After accomplishing the measures in the restructuring plan, in the end of the restructuring period the institute foresees the reach of the indicators pursued as follows:

**Table no. 9** Targeted economic-financial indicators

1.Net profit	RON	336,000
2.Turnover	RON	12,444,850
3.Number of employees	Pax	170
4.Own capital	RON	7,000,000
5.Financial profitability	%	4,8
6.Economic profitability	%	3,7
7.Cash flow	RON	150,000
8.Duration of debts recovery	Days	54.9
9.Duration of debts payment	Days	97.5

*Source: Restructuring plan of INCDT COMOTI and supplementary information*

(71) Considering all the above, the Competition Council considers that the restructuring plan of INCD COMOTI Bucuresti starts from the technical-economic data reflecting the activity of the institute in the period before 2004 and from the causes which led to the difficulties which the institute faces. The plan was realized based on market analysis, SWOT analysis, of realistic evaluations concerning the future operating conditions on the long term.

(72) Also, it was found out that the implementation of the restructuring plan envisaged shall lead to the restoration of the long-term viability of INCD COMOTI Bucuresti, which results mainly from the internal measures comprised in the restructuring plan and is not based on external factors as fluctuation of prices and demand. The restructuring plan implemented by COMOTI will ensure a radical change, which shall allow the institute to entirely cover the costs and compete by its own forces on the free market after the restructuring is finalized.

### **7.3. AVOIDING A SIGNIFICANT DISTORSION OF THE COMPETITIVE ENVIRONMENT**

(73) According to the provisions of the Regulation on state aid for rescue and restructuring firms in difficulty, in order to minimize the negative effects of granting the state aid over competition on the relevant markets, compensatory measures are required. These measures shall be proportional with the distorting effects caused by the aid and especially with the size and relative importance of the company on the relevant markets. The decrease of the presence of the company on the market is established on the basis of the market study annexed to the notification, as well as any other relevant information and shall be part of the restructuring plan.

(74) INCD COMOTI Bucuresti holds small market shares on the relevant markets on which it is active, that is: 2,73% for research financed through National Plan for Research and Development, 0,35% for aviation turbine engines for research, 10,24% for cogeneration with motors with gas turbine, 2,77% for compressors for natural gas and air, 0,74% for equipments for environment protection. Consequently, considering the provisions of Art. 14 of the Regulation on state aid for rescue and restructuring firms in difficulty, stipulating that compensatory measures shall be proportionate with the distorting effects of the state aid over competition and, especially, with the size and relative importance of the company on the relevant markets, the reductions of the production capacities are not required.

(75) The irreversible reductions of capacities make an integral part of the restructuring plan. Thus, the personnel involved in the research activity will be diminished by 25 employees until 2009, as compared to the beginning of 2005, reaching to 195 employees from 170 employees in 2009, as follows:

**Table no. 10** Evolution of the production capacities during 2005 – 2009

	2005	2006	2007	2008	2009
Number of employees	195	188	182	176	170

*Source: Restructuring plan of INCDT COMOTI and supplementary information*

(76) Given the relatively low size and importance of the institute on the relevant markets, the Competition Council considers that the compensatory measure represented by the diminishing of the personnel involved in the research activity, as presented in the table below, is sufficient to minimize the negative effects of granting the aid on competition.

(77) Considering all the above, the Competition Council finds that the state aid shall be used only to restore the viability of the institute, not allowing the beneficiary, during the enforcement of the restructuring plan, to extend its production capacity. Also, INCDT COMOTI Bucuresti does not increase its market share but intends to maintain the segment it operates on currently.

#### **7.4. AID LIMITED TO THE MINIMUM**

(78) The analysis of the difficult economic-financial situation which the institute was confronted with before 2004 showed that, in order to stay in the economic circuit and become viable, it was necessary to grant a state aid for restructuring as facilities.

(79) According to the provisions of Art. 15 of the Regulation on state aid for rescue and restructuring firms in difficulty, the amount and intensity of the state aid must be limited to the minimum necessary, in order to allow the restructuring considering the existing financial resources of the company and shareholders. The state aid beneficiary must bring a significant contribution to the restructuring plan by own resources, including the sale of assets which are not essential to the survival of the company, or by external financing under market terms. According to the provisions of art. 15 (2) of the Regulation, for large enterprises, a contribution of at least 50% is considered appropriate.

(80) The total cost of the restructuring of INCD COMOTI Bucuresti is of RON 3,460,645 and comprises:

- the cost of the organisational restructuring	2,100,000 RON
- the cost of the technological restructuring	6,060,000 RON
- the cost of the environment restructuring	320,000 RON
- the cost of the financial restructuring	14,348,479 RON

(81) Of the total cost of RON 22,828,479, 49,53% will be financed of sources of the beneficiary and 50,46% of financial support granted by the state.



(82) The own firm contribution of the beneficiary of RON 11,309,000 represents 50,93% of the total restructuring costs and is ensured through:

- bank credits contracted by Comoti – 2,600,000 RON;
- own sources of INCDT COMOTI, in amount of 8,709,000 RON, consisting of:
  - net incomes from research projects - 5,946,000 RON ;
  - incomes from rentals - 2,583,000 RON ;
  - valuation of evaluated assets - 180,000 RON.

(83) According to the provisions of art. 15 (2) of the *Regulation on the state aid for rescuing and restructuring of firms in difficulty*, the amount and the intensity a contribution of at least 50% for large undertakings can be considered as appropriate. Also, in some exceptional situations and extremely difficult a lower contribution can be accepted. In this case, the Ministry of Educations and Research underlined that not granting the state aid would lead to the institute being liquidated, while an important part of the Romanian research activity is an difficult economic situation and the number of research institutes is decreasing every year.

(84) Under this circumstances, the Competition Council estimates as significant the beneficiary's contribution of 49,53% to the restructuring plan, demonstrating the trust in the real value of the restructuring and the fact that the amount and the intensity of the aid are limited to the minimum to allow the restructuring according to the existing financial resources of the institute. Thus, it is avoided that the beneficiary would receive an excess of liquidity which could be used in aggressive activities distorting the market.

## **7.5. FULFILMENT OF THE „*FIRST TIME, LAST TIME*” PRINCIPLE**

(85) Such as it is stipulated in the supplementary information and the notification formular, sent by the the Ministry of Education and Research, INCDT Comoti has not received any other restructuring aid, thus fulfilling the provisions of art. 24 from the Regulation, which stipulates that a restructuring state aid must be granted only once.

## **7.6. GROUP AFFILIATION**

(86) According to the provisions of art 2(5) of the Regulation, a company affiliated to a group, normally, is not eligible to be granted state aid for rescuing and restructuring, except the case when it is possible to demonstrate that the compay's difficulties are its own and not the result of a arbitrary cost allocations inside the group, and that the difficulties are too serious to be worked out by the group.

(87) Taking into account that INCDT COMOTI's whole patrimony is owned by the Romanian State we cannot talk about the group affiliation within the meaning of the state aid legal provisions.

## **7.7. MONITORING AND ANNUAL REPORTING**

(88) In accordance with the provisions of art. 18 in the Regulation on the State aid for rescue and restructuring firms in difficulty, the Competition Council continuously monitors the

implementing manner of the restructuring plan so that it would not divert from the fulfillment of the established objectives.

(89) The Competition Council shall monitor the implementation of the restructuring plan until the end of the period, to make sure that there will be no increases of the production capacities, major diversions from the accomplishment of the restructuring measures as well as of the fact that the state aid will not result in creation of supplementary liquidities to be used for activities other than those enclosed in the restructuring plan.

## **8. CONCLUSIONS**

(90) Taking into account the above mentioned reasons, the Competition Council notes that the individual State aid to be granted to INCDT COMOTI BUCURESTI is compatible with the normal competitive environment and does not significantly affect the trade with the Member States of the European Union.

## **DECIDE**

**Art. 1.** The measure notified by the Ministry of Research and Education for INCDT COMOTI BUCURESTI constitutes state aid for the purposes of Article 2 (1) of Law 143/1999 on State aid, republished.

**Art. 2.** Under Article 21 para. 2 letter. (c), corroborated with Article 23 par. 1 letter. (e) of Law 143/1999 on State aid, republished the State aid for restructuring to be granted to INCDT COMOTI BUCURESTI is authorized provided that the conditions under Articles 3 and 4 of this decision are met.

**Art. 3.** The institute is bound to implement in whole the restructuring program to which it has committed.

**Art. 4.** The institute will reduce its production capacities until 2009 such it is stipulated in the restructuring plan.

**Art. 5.** If the conditions imposed by the present conditions are not observed, the provisions of art. 22 from the Law no. 143/1999 on State aid, republished shall be applied.

**Art. 6.** The value of the state aid which is to be granted is RON 11,519,478.9.

**Art. 7.** This Decision is applicable as of the date when communicated.

**Art. 8.** Under Article 32 of Law 143/1999, republished the Ministry of Research and Education shall submit to the Competition Council information on the state aid granted, in order to inventory and monitor it. The Ministry of Education and Research shall submit to the

Competition Council annual reports regarding the implementation of the restructuring plan. The first report shall be submitted within 6 months as of the issuing of the decision. The following reports will have necessary data (quantitative and qualitative) related to the implementation of the restructuring plan and the compensatory measures regarding the capacities reduction imposed by the present decision.

**Art. 9.** According to the provisions of art. 46 of the Law no. 143/1999 on state aid, republished, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeal, the Administrative Litigation Section, in 30 days from its communication.

**Art. 10.** The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- Ministerul Educatiei si Cercetarii – str.Mendeleev nr.21-25, sector 1, Bucuresti;
- INCD COMOTI Bucuresti- b-dul Iuliu Maniu nr.220, sector 6, Bucuresti.

**PRESIDENT**

**MIHAI BERINDE**