

D E C I S I O N No 54
as of 23.03.2005
regarding the State aid granted by the
Authority for State Assets Recovery according to G.E.O. no. 108/2004
to SC “LAMINORUL” SA Braila

THE COMPETITION COUNCIL,

Having in regard the provisions of the Decree no. 57/2004 for the appointment of the Competition Council's members,

Having in regard the provisions of the Competition Law no. 21/1996, published in the Official Gazette, Part I, no. 88 of April 30, 1996, amended and completed by G.E.O. no. 121/2003, approved by Law no. 184/2004,

Having in regard the provisions of the Law no. 143/1999 on state aid, published in Official Gazette, Part I, no. 370 of August 03, 1999, with subsequent amendments and completions,

Having in regard 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 Official Gazette, Part I, no. 73 of April 12, 1993,

Having before us,

- (1) Through the Government Emergency Ordinance (G.E.O.) 108/16.11.2004 on measures for the economic recovery of the trading company SC “LAMINORUL” S.A. Braila, published in the Official Gazette no. 1103 of 25.11.2004, the Government of Romania decided to grant through the Authority for State Assets Recovery (AVAS) a reimbursable loan to SC “LAMINORUL” S.A. Braila. The loan was necessary for the immediate solution of the social problems that would have been occurred by a potential liquidation of SC “LAMINORUL” S.A. Braila. The statement of reasons to G.E.O. 108/16.11.2004 shows the fact that SC “LAMINORUL” S.A. Braila had very serious economic and financial troubles in the past 4 years, and the company was close to bankruptcy.
- (2) The Competition Council requested the Authority for State Assets Recovery (hereinafter called AVAS), through Note C.C. /2662/17.12.2004 information on the financial support granted to SC “LAMINORUL” S.A. Braila, as it had doubts on the character of state aid of this measure. The financial support consists of a reimbursable loan amounting at ROL 95 billion, for a three-year period, with a 12-month grace period, and an interest rate equal to the average interest rates charged by the credit institutions for the loans to non-banking clients.

- (3) Since AVAS did not supply the relevant information in this case, the Competition Council started an internally generated investigation in order to assess the financial support granted by AVSA to SC “LAMINORUL” S.A. Braila.
- (4) Since AVAS’s intention to grant financial support to LAMINORUL” S.A. Braila was not notified pursuant to the provisions of Art. 6 par. (1) of Law 143/1999 on state aid, with subsequent modifications and completions, through the mutual Note of the Department to Authorize State aid and the Legal Department, recorded on 2718/31.12.2004, the starting of an formal investigation for the measures of financial support granted to to LAMINORUL” S.A. Braila by AVAS was proposed.
- (5) Pursuant to Art. 40 letter (a) read in conjunction with Art. 27 letters. (i) and (r) of the Competition Law 21/1996, with subsequent amendments and completions, by Order of the President of the the Competition Council 1/05.01.2005, the Council started the formal investigation procedure with the objective to analyze the state aid character and the compatibility of the financial support measure created under GEO108/16.11.2004 on measures for the economic recovery of the trading company SC “LAMINORUL” S.A. Braila.
- (6) The Order which triggered the investigation and the Note to open the investigation were published on the Competition Council’s website, pursuant to the provisions of Law 143/1999 on state aid, with subsequent modifications and completions, in order to allow the interested parties to convey their point of view on the measure at issue over which the investigation was open.
- (7) Until the moment of the finalization of the investigation report, the Competition Council has not received from interested persons any points of view or other comments regarding the measure on which it has been decided the opening of the formal investigation in accordance with Art. 40 letters a) read in conjunction with art. 27 letter i) and r) of Competition Law no. 21/1996 with subsequent amendments and completions. The Grantor did not contest the conclusions of the Competition Council mentioned in the note for the opening of an investigation regarding the application of the Regulations for state aid for rescuing and restructuring of a company in difficulty.
- (8) The Competition Council has submitted the conclusions of the investigation for new comments requesting the beneficiary and the grantor to express their position within five days.
- (9) The Competition Council has received comments on the state aid both from the beneficiary by letter no. 9000/07.03.2005 filed with the Competition Council by no. GM/122/08.03.2005, as well as from AVAS by letter no. 5748/08.03.2005. Also, after initiating the investigation procedure AVAS has submitted the state aid notification forms by letter no. P/5590/07.03.2005 filed with the Competition Council at RS-AS no. 7/07.03.2005.

I. Description of S.C Laminorul S.A. Braila

- (10) The enterprise “LAMINORUL” Braila was set up in 1959 by the combination of two plants from the same field: „Intreprinderile Metalurgice Dunarene Braila” (the Danube Metal Enterprises Braila) and „Intreprinderea Industria Sarmei Braila” (the

Wire Industry Enterprise Braila). In 1991, the “LAMINORUL” Braila enterprise turns into a stock company and is registered at the Trade Registrar unde no. J09/42/05.02.1991, its line of business being recorded under the CAEN CODE 2710 – production and trading of metal products: hot rolled profiles, iron steel, drawn wire, drawn metal bars, pins, chains, pitchforks, metallurgic repairs, household objects, wooden and ironed confections. The company produces mainly hot rolled products falling under ECSC description products.

(11) Between 1999 and 2004 the company closed two rolling mills producing small and medium-sized profiles. At present, the company carries out its business in the following sections and workshops:

- Rolling mill no. 3 – small and medium-sized profiles;
- Rolling mill no. 4 – medium-sized profiles;
- Drawn bars – calibrated steel and dulled wire;
- Forges – pitchforks for agriculture and architectural forged articles;
- Pins – pins for construction;
- Chains – commercial and non-skidding chains.

I.1. The economic and financial position of Laminorul SA Braila

(12) S.C. “LAMINORUL” S.A. Braila has had between 2001-2004 a declining activity determined by the poor management, the reduction of the productive activity due to lack of raw materials, by the lack of funds for supplying needs, as well as by the reduction of turnover due mainly to processing revenues.

(13) The economical and financial results from the balance sheets for the last 4 years:

Table no. 1 Turnover and financial results between 2001-2004 for S.C. Laminorul S.A
- ROL thousand -

Turnover			
2001	2002	2003	2004(10 months)
242,929,138	487,739,986	186,447,502	106,481,976
PROFIT(+)/LOSS (-)			
- 48,282,082	- 98,450,709	- 100,330,780	- 1,120,090

Source: Balance sheets and financial statements of S.C. “LAMINORUL” S.A. Braila

In 2003 and 2004 the turnover shows a significant decrease following losses on external markets but also a decrease in domestic demand. The company registers losses throughout the entire analyzed period.

(14) The situation of the company’s debts compared with the evolution of the equity during 2001 – 2004 is presented below:

Table no. 2 The Company’s debts and the equity during 2001 – 2004 for S.C. Laminorul S.A Braila

DEBT (ROL thousands)			
2001	2002	2003	2004 (10 months)
140,741,608	238,575,553	197,895,429	155,687,771

Equity (ROL thousands)			
2001	2002	2003	2004 (10 months)
252,816,359	146,502,609	91,629,755	88,448,294
Indebtness ratio DEBT/EQUITY			
2001	2002	2003	2004 (10 months)
0.56	1.62	2.16	1.76

Source : balance sheets and financial situation from S.C. "LAMINORUL" S.A. Braila

(15) The indebtness ratio of the company considered to be a rate of financial autonomy registered an increased evolution from the beginning of 2001. The increase of the indebtness ratio shows that the company is more dependent on its creditors, being a negative signal for the financial credit institutions.

(16) The continued economic and financial degradation of the company's position determined the major shareholder, AUTHORITY FOR STATE ASSETS RECOVERY to institute, through the Order no 4231/10.11.2004, the special administration procedure, during the period of privatization of S.C. LAMINORUL Braila, with the following objectives:

1. Enforcing administrative and financial surveillance measures upon the company;
2. The notification of budgetary creditors about this measure, in order to avoid any forced execution against this undertaking, execution pending or about to be started.
3. Requests to the Ministry of public Finance and other budgetary institutions issuing liabilities certificates, allowing the granting of facilities provided by Law no 137/2002 with the subsequent modifications and completions;
4. Requests to services providers for the rescheduling of outstanding debts.
5. Compliance with the economic and financial discipline.

II. The privatization of SC "Laminorul" S.A. Braila

(17) The privatization process of SC Laminorul SA Braila at the end of 1999 by taking over the majority share stock owned by State Property Fund by S.C. TUBMAN (INTERNATIONAL) Ltd., a company registered in Gibraltar, which holds also controlling interest, directly or indirectly, over S.C. SILCOTUB S.A. Zalau and S.C. TUBINOX S.A. Bucuresti.

II.1 The evolution of ownership structure from the privatization until the present time

(18) The ownership structure from the privatization until present had the following evolution:

Table no. 3 The structure of ownership as of 31.12.1999

No	Name of the shareholder	Number of shares	%
1.	S.C. TUBMAN(INTERNATIONAL) Ltd	2,337,817	69.9990
2.	S.I.F. MOLDOVA	239,716	7.1776
3.	OTHER SHAREHOLDERS	762,254	22.8234
TOTAL		3,339,787	100.00

Source: Investigation report of the Competition Council

(19) For failure to meet the objectives concerning the invested amounts and the related deadlines to which SC TUBMAN (INTERNATIONAL) Ltd. Committed through the Privatization Contract, AVAS sued this company for termination of the Contract. After this the ownership structure is presented as follows:

Table no. 4 The ownership structure upon 24.11.2004 after the termination of the contract

No	Name of the shareholder	Number of shares	%
1.	A.V.A.S.	9,931,376	69.9900
2.	S.C. TUBMAN(INTERNATIONAL) S.A.	2,334,144	16.4495
3.	LEGAL ENTITIES	708,521	4.9932
4.	PHYSICAL PERSONS	1,215,666	8.5672
TOTAL		14,189,707	100.00

By taking over the majority stake A.V.A.S. became the majority shareholder in S. C. "Laminorul" S.A. Braila.

III. The relevant market

(20) The steel sector in Romania is carried out in 33 production companies and 4 research and development institutes. The business profile of these companies fully covers the domestic demand for iron products and sub products, steel and steel derivatives. A significant amount of steel products is exported on all continents, showing all the time a positive trade balance.

(21) From a structural point of view, the production sector is represented by 7 integrated steel companies, 5 producers of laminated pipes, 3 producers of welded pipes, 14 producers of laminated products, 2 steel companies producing iron and iron cast parts, a steel company producing iron alloys and a steel company producing molded parts. SC Laminorul SA is a company producing laminated products.

(22) The relevant product market is the market for metallurgical products represented by small and medium-sized, wide, squared, flat, special profiles (INP, UNP), equal and unequal wings bars, calibrated and rounded steel, wide and squared steel, dulled- drawn wire, chains, pins and forged products.

(23) The geographic market is defined by the Romanian territory and the neighboring countries of Romania.

(24) The evolution of the production-good on groups of products is presented above:

Table no. 5 The evolution of production-good on groups of products

GROUPS OF PRODUCTS	(Tones)			
	2001	2002	2003	2004(10 months)
Full fine laminate	28.030	53.702	13.718	17.947

Calibrated steel	0.780	0.843	0.321	0.232
Chains	0.597	0.695	0.629	0.457
Pins	0.188	0.297	0.381	0.410
Forged products	0.119	0.269	0.930	0.160
TOTAL	29.714	55.806	15.142	18.693

Source: S.C. "LAMINORUL" S.A. Braila

During the analyzed period the output of the company shows fluctuating levels.

(25) The market share of S.C. "LAMINORUL" S.A. Braila is 1.8%.

(26) The main competitors their national market share in 2004 is presented below:

1. S.C. MECHEL TARGOVISTE	31.3%
2. S.C. DUCTIL STEEL BUZAU	16.3%
3. S.C. OTEL INOX TARGOVISTE	13.3%
4. S.C. COMPANIA MECHEL CAMPIA TURZII	11.7%
5. S.C. SIDERURGICA S.A. HUNEDOARA	11.2%
6. S.C. LAMBRO DROBETA TURNU SEVERIN	8.0%
7. S.C. LAMINATE FOCSANI	6.4%
8. S.C. LAMINORUL S.A. BRAILA	1.8%.

Source: S.C. "LAMINORUL" S.A. Braila

(27) On the Romanian market, three other European competitors were selling products from the same market product category:

- ISPAT NOVAHUTA - POLAND: iron steel and UNP
- RABNITA – REPUBLIC OF MOLDOVA: small profiles and concrete steel
- KRIVORISTAL – UKRAINE: profiles

(28) *The external market* specific to steel products is characterized by fierce competition due to oversupply of products along with frequent safeguarding measures imposed by producers from EU countries and USA as countermeasures to the effects of this crisis by limiting imports for shorter or longer periods of time or by imposing of supplementary custom duties in order to protect the national producers. Romania has the potential to become a stable source of supply for steel products to the neighboring countries.

IV. The description of the measure of financial support

(29) According to the provisions of GEO no. 108/16.11.2004 on some measures for the economic recovery of SC Laminorul SA Braila, AVAS was authorized by the Government to grant to SC "LAMINORUL" S.A. Braila a reimbursable loan in amount of ROL 95 billion, for 3 years, with a 12 month grace period for principal and interest.

(30) By the mandate given by GEO no. 108/2004, AVAS signed with SC „LAMINORUL” S.A. Braila the Loan Contract no. 269/26.11.2004 in amount of ROL 95 billion, a loan that was going to be drawn granted in tranches, 10 days after the date when justifying documents were presented by the company.

(31) The loan agreement stipulates that the interest rate of the loan is the average interest rate applied by credit institutions for loans granted to non-banking clients - 24.74%. The loan agreement does provide the repayment schedule of the loan as follows:

ROL	
Period	Debt/month + the interest
23 months	3,958,330,330 + the interest
The 24 th month	3,958,333,410 + the interest

(32) From the signing date of the Loan Contract, respectively from 26.11.2004, until opening the investigation SC “LAMINORUL” S.A. Braila benefited effectively of the ROL 95 billion amount.

V. Comments received from AVAS and the beneficiary of the state aid

(33) In the comments received, the beneficiary of the loan claims that the aid in amount of ROL 95 billion is a loan given by the owner in order that the company restarts operations. The loan was used rationally, for purchase of raw materials and payment of debts allowing for the restart of the business. This is very important in view of the urgent privatization of the company. If the situation would have remained the same with the one at the moment when AVAS took over the majority stake in the company, the interest of the potential investors would have been lower and the restart of operations costlier given a longer non operating period.

(34) AVAS considers it can count on a higher value from the privatization as a result of implementing the measure. Besides its role of a public authority, AVAS has also the majority stakeholder position in the company, its objective being to ensure that the future revenues from the sale of the shares will be maximized, acting this way as a prudent private investor. However, AVAS considers that, as a measure of precaution (prudent private investor), the interest on the loan is higher than the market interest rate, AVAS requesting and receiving ensuring guarantees.

(35) In the comments received it is invoked that on the laminated profiles and rolled bars market all significant competitors have received aids authorized by the Competition Council. More than that, on the specific internal market, besides SC Laminorul SA Braila there are two other competitors. The elimination of a competitor out of the three active on the market could lead to the danger of segmenting the market, especially given the fact that the other two competing companies are owned by MECHEL Trading group which would this way obtain the monopoly position.

(36) Regarding the external market AVAS considers that is less likely to have a distorsion of the competition given the small percentage, under ROL 2 billion from turnover being achieved on the external market in 2004. In addition, the company diminished its output capacity by closing rolling mill no. 2 this representing a compensatory measure for the likely distorsions of competition.

(37) Both AVAS and the beneficiary of the loan claim that the measure will maintain jobs (618) in an area with high unemployment.

VI. The assessment of the measures of financial support issued by GEO no. 108/2004

(38) According to art. 2 par (1) of Law no. 143/1999 on state aid, with subsequent amendments and completions “*state aid represents any measure of support from the State or from resources of the State regardless of the form, that distorts or threatens to distort competition, through favoring 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.*”

(39) From the definition provided at art. 2, par. 1 from Law no. 143 on state aid with the subsequent modifications and completions, the financial support represents state aid if the following conditions are met cumulatively:

- a. It is provided from state sources by the public authorities or other bodies that administrate them in the name of the state.
- b. Favor only some undertakings or the production of some good or services – selectivity criteria.
- c. Offer advantages to the beneficiary undertakings.
- d. Distort the competition and affect the trade between Romania and the Member States of the European Union.

VI.1.1 The supply of the aid by the state or from state sources

(40) The explanation in art. 2 (1), “*from the state ...or from state resources*“ serves not only for the goal of the judicial norm of including in the concept of state aid the aids granted directly by the state but also the aids granted by the public or private bodies appointed or established by the state.

(41) AVAS is an institution of public interest with legal status, in the subordination of the Government, with a mission to manage the state assets portfolio, to apply the Government’s privatization strategy, all its actions being binding to the Romanian state.

(42) In case of financial support granted to S.C. “LAMINORUL” S.A. Braila, the Government authorized AVAS to grant to this company a reimbursable loan (art. 1 par. (1) of G.E.O. no. 108/16.11.2004). Therefore, the financial support is granted by the state.

VI.1.2 The analysis of selectivity criteria

(43) In order to be considered state aid, the support measure must favour certain undertakings, affecting this way the balance between the beneficiary and its competitors, meaning it fulfils the selectivity criteria.

(44) Considering GEO no. 108/2004, the measure of financial support is for one undertaking, respectively S.C. “LAMINORUL” S.A. Braila, the measure has a selective character.

VI.1.3 The analysis of advantages offered to SC Laminorul SA Braila by granting the aid

(45) To be considered state aid the measure must favor the beneficiary meaning it receives an economic advantage. It is relevant the state aid effect and not the form under which it was granted or the intention of granting the aid.

(46) The financial support granted under the form of a reimbursable loan confers an advantage to the beneficiary, whilst its economic and financial position does not entitle the company to obtain a loan in similar conditions from the financial market.

(47) In order to establish if the terms of the loan are to the advantage of the borrower, the state behavior, as a lender, needs to be compared with the behavior of a private creditor („the principle of the prudent private creditor in the market economy”.

(48) In order to take a decision to loan funds, a private creditor analyses the qualitative and quantitative factors of the company based on the evolution of the economic and financial indicators.

(49) Using the scoring method for determining the rating category, the private creditor establishes the rating of the company and its appropriate risk level.

(50) Below are the factors used to establish the appropriate rating category, as they appear in the Credit Manual of a Private bank under the supervision of the National Bank of Romania.

Table no. 6 The factors used for establishing the rating category

Pos .	BRR* Category Factors	BRR 1	BRR 2	BRR 3	BRR 4	BRR 5	BRR 6	BRR 7	BRR 8	BRR 9	BRR 10
1.	Management	8	7	6	5	4	3	2	1	-	-
2.	The business in the market context	8	7	6	5	4	3	2	1	-	-
3.	The indebttness ratio (total debt/total liabilities)	≤ 40%	41% 50%	51% 60%	61% 70%	71% 80%	81% 85%	86% 90%	> 90%	-	-
4.	Operating income profitableness rate (exploitation profit ./turnover)	≥ 15%	12 % 14,9%	10% 11,9%	8% 9,9 %	7% 7,9%	6% 6,9%	5% 5,9 %	< 5 %	-	-
5.	Interest coverage (operating profit./interest outlay)	≥ 10	4 9,9	2,5 3,9	1,7 2,4	1,2 1,6	0,8 1,1	0,6 0,7	< 0,6	-	-
6.	Current liquidity (active flow/ passive flow)	≥ 1,20	1,11 1,19	1,06 1,10	1,00 1,05	0,90 0,99	0,80 0,89	0,70 0,79	< 0,70	-	-

7.	Points for quantitative factors	8	7	6	5	4	3	2	1	-	-
8.	Score	43-48	37-42	31-36	25-30	19-24	13-18	7-12	1-6	-	-
9.	Romanian National Bank category	A	A	A	A	B	C	D	D	E	E

**BRR – Borrower Risk Rating*

(51) Each factor receives points from 8 to 1, the maximum score represents the most favorable situation for the undertaking.

(52) Using the above-mentioned score, the position of S.C. “LAMINORUL” S.A. Braila on 31.10.2004 was the following:

ESTABLISHING BRR IN THE S.C. Laminorul S.A. Braila CASE

Factors

Score

A. Qualitative Factors	3
1. The management	1
2 The business in the market context	2
B. Quantitative factors	9
1. Indebtness rate (57%)	6
2. Trading profitability rate (0,0%)	1
3. Interest coverage (0,0%)	1
4. Current liquidity (0,14)	1
TOTAL SCORE (A+B)	12
BRR CATEGORY	7

(53) For this rating category no private creditor will accept to grant this loan to the undertaking because there is no guarantee that the undertaking can sustain an interest above ROL 16 billion calculated for three years, for a ROL 95 billions loan.

(54) As far as the interest is concerned, in the Contract specified that it shall be the average interest used by the credit institutions for the credits granted to the non-bank clients. No financial credit institution leaves room for interpreting when it establishes the interest for the granted loan, specifically stipulating the amount of this interest. Not even in the reimbursement schedule, annex to the Contract, is not actually provided the value of the interest which should be paid by S.C. “LAMINORUL” S.A. Braila for each reimbursment rate.

(55) Referring to the loan guaranteeing, the Contract only specifies the assets considered for the guarantee.

The simple enumeration of certain assets considered as gage isn't equivalent with the establishment of a guarantee on them under the form requested by the law, namely:

- Signing the mortgage contract in original form;
- Registering in the land register of the mortgage right in the creditor's favour- AVAS;

(56) On December the 2nd, 2004, after AVAS just paid the entire amount of the loan (November the 30th, 2004), the contract parties (AVAS and S.C. "Laminorul" S.A. Braila) agreed on the modification of the initial contract, closing an additional act which stipulates that S.C. "Laminorul" S.A. Braila was to close an Insurance policy for the assets taken as gage, act subsequently cessed to AVAS.

(57) Point 7.3 in the Additional Act to the Loan Contract provisioned that the policy, in original, shall be submitted at the Loaner's headquarters before the date of the first redraw from the credit; are not accepted credit redraws if this clause isn't fulfilled (the Insurance policy was signed on December the 8th, 2004 and the amount granted as loan of ROL 95 bill. was redrawn on November the 30th, 2004).

(58) The financial support granted by the Authority for State Assets Recovery creates an economic advantage for SC Laminorul SA Braila, the loan being granted in preferential terms (different from regular market conditions).

(59) Regarding the principle of the private prudent investor in the market economy, invoked by AVAS, the Competition Council takes the view that this principle can not be applied because a private investor seeks to maximize its profits and not to rescue from bankruptcy a company by giving it loans in preferential terms. The investor is in a position to choose the investment which it considers the most profitable. In theory, the capital the investor prepares to invest is available to all market operators in the same terms.

(60) The test of the private prudent investor principle can be applied even if the company is in difficulty but the investor forecasts a long term profit. The profit maximization must be demonstrated by comparing the obtained result with the profit that could have been made from placements and investments having a rate of return at least commensurate with the assumes level of risk. In this case AVAS states that is counting on a higher value by implementing the measure. Besides its public institution role, AVAS has also the majority stakeholder role in the company but its objective is to ensure that the future revenues obtained from sale of shares held will be maximized.

(61) From information sent by AVAS the authority anticipates privatization proceeds of about ROL 60 billion. Compared to the ROL 95 billion value of the loan granted to SC Laminorul SA, the revenues forecast to be obtained from sale of shares held by AVAS are lower thus, no prudent private investor would have agreed to give a loan in similar conditions. Any private investor would have chosen in this situation the solution of liquidating the company. In this case there are no elements showing that the state should have borne higher expenses in the case of liquidation than in the case of keeping the company operational, so the private investor principle cannot be applied.

(62) Comments sent by the beneficiary claiming that AVAS acts as an owner and not as a public authority can not be retained because AVAS will obtain a lower price by selling

the shares held as compared with the granted state aid, or because no private investor takes into consideration social nature but rather aims to maximize its profits.

VI.1.4 The distortion of competition and the effect on trade between Romania and the European Union Member States

(63) The competition distortion is possible only when the state aid is granted in a selective way to a certain undertaking disregarding the other real or potential competitors.

(64) The fact that the undertaking is in a critical economic and financial situation and receives a state aid, allows it to maintain and consolidate its position on the market compared to other domestic or foreign undertakings is affecting the trade between Romania and the European Union Member States.

(65) Regarding the comments of AVAS, which considers that by liquidating the company, Mechel Trading will have the monopoly on the market, the Competition Council takes the view that SC Laminorul SA is recognized as a producer of light and medium sections and on this market the situation of the production is the following:

Table no. 7 The domestic productions of light and medium sections thousand tones

The company	2002	2003	2004
Mechel Targoviste	92.0	111.1	131.0
Mittal Steel Hunedoara	83.2	51.7	85.2
Industria Sarmei Campia Turzii	19.0	16.3	19.2
Laminorul Braila	54.7	14.9	19.2
Laminate Focsani	2.8	29.1	19.0

It may be observed that by liquidating S.C. Laminorul S.A. Braila, Mechel will not have the monopoly on the sections market as it has an important competitor – Mittal Steel Hunedoara.

(66) On the calibrated steel market, S.C. Laminorul S.A. Braila has an insignificant share market of 1%. The rest is shared between Mechel S.A. Targoviste, S.C. Mechel S.A. Campia Turzii and the importers (almost 4%). The liquidation of the Company will not consolidate the dominant position of MECHEL having regarded the insignificant share market of Laminorul, on one hand and the presence of import on the Romanian market on the other hand. Also, there are no elements to conclude that the share market of Laminorul will be covered by Mechel, following the liquidation of Laminorul. This share market may be covered by importers.

(67) Referring to the minimum distortive effect of the aid, the Competition Council takes the view that any state or public authority intervention leads to changes in the market conditions. For these reasons, not only the existing distortions of competition fall under art. 2 (1) from the Law no. 143/1999 modified and completed, but also any other distorting threat. The Capacity reductions were not taken into consideration by the authorities as measures to offset the adverse affect on competitors, but they represented measures taken by the management of the company.

(68) In conclusion, the financial support granted to S.C. “LAMINORUL” S.A. Brăila threatens to distort the competition on the relevant market and to affect the trade between Romania and The European Union Member States.

(69) The financial support granted to S.C. “LAMINORUL” S.A. Brăila meets the four defining criteria of a state aid according to art. 2 from the Law no. 143/1999 amended and completed. Therefore, the Competition Council considers that the loan granted to SC Laminorul SA Braila, approved through the Government Emergency Ordinance no. 108/2004 represents state aid.

VI.2. Evaluation of the state aid

(70) The state aid granted to S.C. “LAMINORUL” S.A. Brăila under the form of a reimbursable loan contracted in preferential conditions because, as demonstrated in V.1.3, the company would not have been capable to obtain a loan from any credit institution. This was not possible due to the poor economic and financial position of the company.

(71) In these circumstances, the amount of the state aid is of ROL 95 billion, representing the total value of the contracted loan.

VI.3. Analysis of the compatibility of state aid granted to SC Laminorul SA Braila

V.3.1. The legal framework for granting state aids in the steel sector

(72) In 1993, Romania and EU signed the European Agreement, by which Romania took the commitment to observe the regulations on granting state aids to undertakings operating in Romania.

(73) The European Agreement is a legal and political instrument that has as a goal the preparation of Romania in order to accede to the EU. Chapter II of Title V contains certain regulations on competition, including provisions on state aid. Art. 64(1)(iii) and Art. 64(2) of European Agreement prohibiting the state aid if it does not fulfill the authorization conditions, in compliance with the EU legislation and practice on state aid.

(74) The strict rules of art. 64 of the European Agreement have been modified by Protocol 2 on ECSC products, annex to The European Agreement. The Protocol 2 adopts a flexible approach concerning the products formerly included in ECSC Treaty. Subsequently to the adoption of The European Agreement and following the negotiations, The Association Council adopted implementation rules for the assessment of the state aid according to art. 9 of Protocol 2 for ECSC products and art. 64 of the European Agreement for any other products. Thus, any state aid granted in the steel sector in Romania must be notified to the Competition Council on an ex-ante basis, prior to being granted. The Competition Council must determine whether the intention to grant the state aid is in accordance not only with the Romanian legislation but also with the European Agreement.

(75) According to Law no. 143/1999 on state aid, with subsequent amendments and completions and to the regulations adopted for its application, in the steel industry only the following state aids can be granted:

- a. State aid for environmental protection according to the Regulation on state aid for environmental protection.

- b. Aid for research and development according to the Regulation on state aid for research and development.
- c. Aid for small and medium-sized enterprises at state aid intensities up to 15% and 7.5% according to the Regulation on state aid for small and medium-sized enterprises.
- d. *De minimis* aid will be allowed according to Regulation on the 'de minimis' rule of the State Aid which is not covered by the notification obligation
- e. Training aid will be permitted according to Regulation on training state aid
- f. Employment aid will be permitted according to the Regulation on state aid for employment.

(76) Aid for rescue and restructuring firms in difficulty in the steel sector, defined in Annex B of the Multisectoral Regulation on regional state aid for large investment projects, is not compatible with the common market.

(77) Regional aid for investments is prohibited.

VI.3.2 The legal framework regarding the state aid granted to SC Laminorul SA Braila

(78) The granting of the loan to SC LAMINORUL SA Braila has been determined by the need of immediate resolution of social issues that may arise into event of liquidating SC LAMINORUL SA Braila as mentioned in Government Emergency Ordinance no. 108/16.11.2004 preamble.

(79) According to the grantor of the state aid the objective of the state aid is to maintain the workforce in an area with a high unemployment rate. The official unemployment rate in the county of Braila is of 8.5% being higher than the national average rate (6.8%).

(80) AVAS claims that the four conditions of the Regulation on state aid for employment are met so the aid can be granted. The state aid is considered compatible because:

a) Is limited in time and progressively reduced;

The loan is granted to the company by AVAS in a single tranche. The payback is of 3 years with a grace period of 12 months.

b) There are regional disadvantages whose gravity is demonstrated;

According to AVAS the official rate of unemployment in the county of Braila is of 8.5% being higher than the national average rate (6.8%). Also, in the notification form, it is mentioned that the city of Braila has a large number of formerly employed people who are not any longer in the books of the Braila County Agency for Employment, so the real evolution of the out of work workforce reaches much higher levels.

Without this loan the company would likely be subject to liquidation. Laying off 618 employees would lead to expenses of about ROL 2 billion with the unemployment benefits.

Eliminating a competitor from the three active on the profile market could lead to the danger of segmenting the market, given the fact that the other two competing companies are owned by MECHEL Trading Group which this way would obtain a monopoly position.

By not paying the taxes about ROL 1 billion per year are lost by the Local Council budget, ROL 36 billion per year by the state budget and the possibility of cashing ROL 60 billion from privatization.

c) The level of the aid is commensurate with the size of disadvantages aiming to mitigate

AVAS states that by approximately quantifying the disadvantages a total of ROL 99 billion is obtained, ROL 4 billion more than the loan granted to the company.

d) The aid is justified by its contribution to regional development

AVAS states that by maintaining jobs at Laminorul and by continuing to operate the company could contribute to the development of the region.

(81) Regarding the arguments of AVAS supporting the granting of aid for maintaining of employment, the Competition Council retains the provisions of the Regulations on State aid for employment, put in application by the Order of the President of the Competition Council no. 166/2003, with the subsequent modifications and completions. According to Article 9 of the Regulation, the aid for maintaining of employment is similar to operating aid. Subject to any sectoral rules, such aid may be authorized by the Competition Council only where, it is intended to make good the damage caused by natural disasters or exceptional occurrences or, under the conditions applying to operating aid in the Regulation on regional aid.

(82) In the steel sector, the regional aid for investments is prohibited. The operating aid has more distortive effect as it does not contribute normally to regional development and has no incentive effect. The covering of the current expenditures of a firm in difficulty maintain the firm on the market without any benefits to the competitive environment. Also, according to Article 1 align. (4) of the Regulation on regional aid, with the subsequent modifications and completions, the aid granted to a firm in difficulty must be assess according to the specific rules regarding the aid for rescuing and restructuring, and it does not represent regional aid.

(83) The Competition Council has in its view the provisions of the Regulation on state aid for rescue and restructuring of firms in difficulty put in application by the Order of the President of the Competition Council no. 501/23.11.2004, published in the Official Gazette part I no. 1215/17.12.2004. According to Article 5 paragraph 2 of the Regulation, taking into account that even its existence is in danger, a company in difficulty can not be considered an instrument for promoting other public policy objectives, until its viability is assured. In consequence, the aid for companies in difficulty may contribute to the development of economic activities without having negative effects over the normal competitive environment if the conditions of the Regulation on aid for rescuing and restructuring are met.

(84) S.C. Laminorul S.A. Braila is confronted with a difficult economic and financial situation as indicated in I.1, therefore irrespective of the aimed objective the loan granted to the company could be considered compatible only if the criteria provided by the Regulation on state aid for rescue and restructuring of firms in difficulty were met. In consequence, the

analysis of the Competition Council takes into account the provisions of the Regulation on state aid for rescue and restructuring of firms in difficulty.

(85) According to art. 4 from the Regulation on state aid for rescue and restructuring of firms in difficulty, its provisions do not apply to companies from the steel sector. The conclusion is that aid for rescuing and restructuring of a steel company is prohibited.

(86) The prohibition of the rescuing and restructuring aid for a steel company bear in mind the particular situation of the steel industry in Romania and commitments assumed by Romania in its relations with the European Communities and its Member States in respect of granting State Aid in this sector by Protocol 2, annex to the European Agreement.

(87) Taking into account that S.C. Laminorul S.A. Braila is a recognized producer of medium and light profiles – ECSC products, any state aid granted to the company must be analyzed according to Protocol no. 2 regarding ECSC products.

VI.3.3 Protocol no. 2 on ECSC products

(88) Art 9 (4) from Protocol No 2 on ECSC products from 29/03/1993 (European Agreement annex) stipulates that in the first five years after the ratification of the European Agreement, and by waiver from Art 9(1)(3) from Protocol no. 2, Romania may, exceptionally, regarding ECSC steel products, provide public aid for restructuring, subject to the following conditions:

- a. if the restructuring plan leads to the viability of the company under normal market conditions at the end of the restructuring period;
- b. the value and intensity of the State aid are strictly limited to the minimum necessary to restore viability; and the aid is progressively reduced.
- c. the restructuring must be linked to a rational globalization and reduction of production capacities in Romania.

Each party involved will ensure the transparency in the field of public aid through a full and continuous exchange of information with the other party, including the value, the intensity and the scope of the aid and of the detailed restructuring plan.

(89) The initial five years period expired on 31.12.1997. By the Additional protocol to Protocol no. 2, Romania has been granted with an extension of the initial period by an additional 8 years period, starting with 01.01.1998 or up to the date of Romania's accession to EU whichever comes first.

(90) According to art. (2) from the Additional Protocol, Romania has to forward to the European Commission a restructuring program and business plans of steel companies - subject to this program - that must meet the requirements of art. 9 (4) from Protocol no 2.

(91) The strategy for restructuring of steel sector in Romania, drafted in 2001 by Ministry for Economy and Trade, established strategic concepts for industrial, financial and social restructuring of steel companies, considering Romania's accession to EU. The strategy has been approved on February 2002 by the Romanian Government in Government Decision

no. 213/02.2002, becoming the official working document Romania in the consultations and contacts with the EC regarding the restructuring of the steel sector.

(92) Based on the approved strategic program, the plans for economic and financial viability of steel companies ISPAT SIDEX Galati, SIDERURGICA Hunedoara, COS Targoviste, ISCT Campia Turzii, CS Resita, SIDERCA Calarasi, Otelu Rosu have been realized. The restructuring strategy of steel sector, in addition with the Plans of Viability for the above mentioned companies have been sent to the EC, becoming the basis of reciprocal negotiation in years 2001-2002, having as main goal the establishment of the general framework of the Program for the restructuring of Romanian steel sector before Romania's accession to the EU. This is the basis for the implementation of Protocol no. 2 annex to the European Agreement which allowed for state aid to be granted during the restructuring process, of the steel sector.

(93) EC has provided the final evaluation of restructuring program and business plans, considering that conditions from Protocol no 2, art 9 (4) are carried out. Subsequently, EC Council has approved the programs of restructuring and the viability plans.

(94) The Restructuring steel strategy has been approved by Romanian Government with G.D. 55/13.01.2005. SC Laminorul SA Braila is not included on the list of companies which are beneficiaries of state aid for restructuring, approved by the Government of Romania by means of the Government Decision no. 55/13.01.2005, and the Authority for State Assets Recovery did not deliver to the Competition Council any information showing that the state aid meets the criteria of Protocol no. 2.

VII. Conclusions

(95) The Authority for Recovery of the State Assets in its capacity of grantor eluded the legal provisions neglecting to notify the Competition Council the intention for granting this state aid, before the conclusion of the loan agreement.

(96) The state aid granted to SC Laminorul SA Braila under the form of a loan in value of ROL 95 billion

- is incompatible with the legal provision in State aid field and with the normal competition environment; infringes the provisions of the Regulation on state aid for rescuing and restructuring firms in difficulty and of the Protocol 2 on the ECSC products, annex at the European Agreement establishing an association between Romania, on one hand, and the European Communities and its Member States, on the other hand;

- is prohibited by the Regulation on state aid for rescuing and restructuring firms in difficulty and by the Protocol 2 on the ECSC products, annex at the European Agreement establishing an association between Romania, on one hand, and the European Communities and its Member States, on the other hand.

DECIDES

Art. 1 On the grounds of Art. 12 paragraph (1) and (2) letter d) from the Law nr.143/1999 on state aid with the subsequent modifications and completions, the state aid granted to the SC Laminorul SA Braila, in amount of ROL 95 billion is prohibited.

Art. 2. The grantor shall take all necessary measures to recover the aid unlawfully made available to the recipient.

Art. 3. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. The interest rate which shall be taken into account at the recovery is the reference rate of the National Bank of Romania established for the first working day of July 2004, for the interest to be paid in the second semester of 2004, and the reference rate established for the first working day of the year 2005, for the interest to be paid in the first semester of 2005.

Art. 4 This Decision becomes applicable on the day of its communication.

Art. 5 According to the provisions of Article 29 of Law No. 143/1999 on State aid, as amended, this Decision may be appealed by the interested persons at the Court of Appeal Bucharest, Administrative Litigation Section, within thirty days of the date of its communication.

Art.6. This decision will be communicated by the General Secretariat of the Competition Council to the following parties:

- Authority for State Assets Recovery, Cpt. Av. Alexandru Serbanescu Street, no. 50 , Sector 1 ;
- SC Laminorul SA Braila , 2, Industria Sarnei Street, Postal Code 810461, Braila county.

Art. 7. The General Secretariat, the Directorate for Authorization of the State Aid and the Legal Department of the Competition Council will follow the enforcement of this decision.

PRESIDENT

MIHAI BERINDE