

DECISION OF THE COMPETITION COUNCIL

No. 65 on 07.04.2005

regarding the State aid granted to S.C. ARIS S.A. Arad

THE COMPETITION COUNCIL,

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

Taking into account the provisions of the Law no. 21/1996, published in the Official Monitor no. 88, Part I, on 30.04.1996, with the subsequent modifications and completions,

Taking into account the provisions of the Law no. 143/1999 regarding the State Aid, published in the Official Monitor of Romania, Ist Part, no. 370 on 3.08.1999, with the subsequent modifications and completions,

Taking into account the provisions of the European Agreement regarding an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Official Monitor of Romania no. 73, Part I, on 12.04.1993,

Taking into account the provisions of the Regulation on the state aid for rescuing and restructuring firms in difficulty, published in the Official Monitor of Romania, Ist Part, no. 470 on July the 2nd, 2002;

Taking into account the provisions of the Regulation for the modification and completion of the Regulation on the state aid for rescuing and restructuring firms in difficulty, published in the Official Monitor of Romania, Ist Part, no. 521 on June the 9th, 2004,

The Report established by the reporter and the investigation team due to the data found during the investigation opened by the Order of the Competition Council's President no. 512 /07.12.2004,

Based on the following reasons,

I. THE PROCEDURE

(1) By the address no. P/18/05.05.2004, registered at the Competition Council with no. RS-AS 54/05.05.2004, the Authority for the State Assets' Capitalization (AVAS) notified to the Competition Council, in the name of all state aid suppliers, namely in the name of the Ministry of Public Finance, the National Agency of Tax Administration (ANAF), the Local Council of Arad County, the Arad County Council, the Commercial Society CET SA Arad, the Autonomous Regie Water and Sewerage Arad and FDPE ELECTRICA SA

Banat Timisoara, based on art. 6 in the Law no. 143/1999 regarding the state aid, with the subsequent modifications and completions, the individual state aid for restructuring S.C. ARIS S.A. Arad in the context of its privatization.

(2) The Competition Council, finding the existence of certain support measures granted to the company on different dates, respectively in 2000 and 2002, requested to A.V.A.S. supplementary data, by the addresses of the State Aid Authorization Department no. 366/24.05.2004, respectively no. 454/24.06.2004. The information requested referred to the data related to the existence of the restructuring plan and the state aid granted in 2000 by the GD no. 874/2000 on the transfer of the shares owned by the State towards S.C. ARIS S.A. Arad through the management of the State Ownership Fund (F.P.S.) under the management of the Ministry of Public Finance. Within the legal time limit the Authority for the State Assets' Capitalization didn't submitted the requested information or the restructuring plan of S.C. ARIS S.A. Arad.

(3) By the addresses no. 493/05.07.2004, A.V.A.S. requested the redraw of the notification for completing it.

(4) As A.V.A.S. didn't come with a new notification and didn't submit to the Competition Council information to clarify the doubts on the state aid's compatibility, by the Note of the State Aid Authorization Department, registered with no. DAAS/1007/06.12.2004 was proposed to open an investigation.

(5) Based on art. 40 letter. a) corroborated with art. 27 letters i) and r) in the Law of competition no. 21/1996, with the subsequent modifications and completions, by the Order of the Competition Council's President no. 512/07.12.2004, was started the investigation analyzing the compatibility of the financial support measures granted to S.C. ARIS S.A. Arad with the conditions imposed by the Law no. 143/1999 on the state aid, with the subsequent modifications and completions and with the regulations issued in its application.

(6) The Order no. 512/07.12.2004 on the opening of the investigation and the note on the opening of the investigation were published on the Competition Council's site, according to the provisions of the Law no. 143/1999 on the state aid, with the subsequent modifications and completions, to allow the interested persons to submit their point of view on the measure which is the reason of the investigation. The Competition Council has send to AVAS new information requests on 09.12.2004 and on 08.02. 2005, to which AVAS didn't answered within the legal time limit. In the same time, the Competition Council made a control, through the Competition Inspectorate of Arad County based on which it was elaborated the Control Note no. 42 on 26.01.2005.

(7) During the investigation, by the address no. P/5606/07.03.2005, registered at the Competition Council with no. RS-AS no. 8/07.03.2005, based on art. 6 in the Law no. 143/1999 regarding the state aid, with the subsequent modifications and completions, Authority for the State Assets' Capitalization submitted a new notification on the individual state aid for restructuring S.C. ARIS S.A. Arad.

II. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

1. Beneficiary of the state measures of support

(8) The beneficiary of the state measures of support is S.C. ARIS S.A. Arad, stock company established in 1948, with headquarters in Arad initially named „Intreprinderea de Masini Unelte Arad”. Based on the Law no. 15/1990 and of GD no. 1224/1990, the undertaking was established as commercial company under the name of „S.C. ARIS S.A. Arad”, taking over in the same time the whole patrimony. The company and is incorporated at the Registry of Commerce under no. J02/1/03.01.1991.

(9) At the date when the shares sale- purchase contract was signed, the company had registered at the Office of the Registry of Commerce equity of ROL 52,676,997,678, divided in 2,347,147 shares, with the nominal value of 22,443 ROL/share. At present, the equity is of ROL 78,094,929,543, divided in 3,479,701 shares, with the nominal value of 22,443 ROL/share.

(10) As a result of the transfer of the ownership right on the shares, by which the whole package owned by APAPS, representing 72.97% from the equity of S.C. ARIS S.A. Arad, was acquired by S.C. ASTRA COMIND S.R.L. Arad, S.C. ARIS S.A. Arad's shareholders structure being:

Table no. 1 Shareholders' structure after the transfer of the ownership right

Shareholders	Percent owned by shareholders	Number of shares	Total value (ROL)
S.C. ASTRA COMIND S.R.L.	72.97	1,712,802	38,440,415,286
S.I.F. Banat Crişana	21.52	504,989	11,333,468,127
Natural persons	5.51	129,355	2,903,114,265
TOTAL	100.00	2,347,146	52,676,997,678

Source: The notification form

(11) The economic-financial results of the undertaking, based on the data from the balance sheets from the last 4 years are the following:

Table no. 2 The economic-financial results based on the data from the balance sheets

2000	2001	2002	2003
Total turnover (thousand ROL)			
35,659,290	64,519,325	56,674,435	26,434,727
Profit/loss (thousand ROL)			
42,985,674	-37,907,586	-9,144,315	-50,354,988

Source: The notification form

(12) The company's privatization took place in 2002, after several unaccomplished attempts:

- By the GD no. 874/2000 the shares owned by FPS to S.C. ARIS S.A. were transferred to the Ministry of Public Finance, and the penalties and delay majorities related to the debts unpaid to the state budget were annulled for increasing the appeal at privatization;
- the Ministry of Public Finance organized the bidding for appointing the company to transact on the capital market the shares owned by state at SC Aris SA;
- the bidding was won by SVM UNICAPITAL SA BUCURESTI, which elaborated the prospectus for the secondary public offer for shares sale;
- application letters were submitted by Weiler Werkzeugmaschinen GmbH & CoKG, Kraus & Wiemmer Maschinenbau GmbH & Co and Emco Maier GmbH Magdeburg Werkzeugmaschinen AG ;
- the privatization failed, none of the participants submitting the final purchase offer, due to the forced execution of one asset by the International Bank of Religions;
- in 2001, the shares owned by the state at S.C. ARIS S.A. Arad were transferred from the management of the Ministry of Public Finance into the management of APAPS (now named AVAS) which took over the company's privatization procedures, but the only offer submitted didn't fulfilled the requested qualification criteria;
- the privatization process was restarted in 2002, by publishing in the Romanian press the shares' sale offer;
- the sale of the presentation dossier and the submission of the offers took place during June- August 2002, with the meeting of the legal provisions in force;
- were offered for sale, by negotiations based on final offers, improved and irreversible, a number of 1,712,802 shares, representing 72.97% from the company's equity;
- though several presentation dossiers were bought, in the last day for submitting the offers, respectively on 06.08.2002, three offers for the purchase of the share package were registered (S.C. BEGA CONSTRUCT S.A. Timișoara, S.C. A2 IMPEX S.R.L. Ploiești and S.C. ASTRA COMIND S.R.L. Arad);
- the offer submitted by S.C. ASTRA COMIND S.R.L. Arad was accepted following the negotiations and, on 30.08.2002, the Shares' Sale – Purchase Contract no. 23 was signed;
- the transfer of the ownership right on the shares was made on 05.09.2002.

2. Measures of financial support for SC ARIS SA ARAD

(13) The financial support measures granted to SC ARIS SA ARAD, subject of this investigation, were granted based on GD no. 874/2000 on the transfer of the shares owned by the State at S.C. ARIS S.A. Arad from the management of the State Ownership Fund (F.P.S.) into the management of the Finance Ministry, respectively based on the Law no. 137/2002 on certain measures for the privatization's acceleration, with the subsequent modifications and completions.

(14) The financial support granted to the company amounts ROL **280,643,806,604** and encloses:

- facilities based on GD 874/2000 amounting ROL **131,837,274,180**, representing the annulment of the penalties and delay majorities related to the debts unpaid to the State budget;

- facilities granted at privatization, based on the Law no. 137/2002 on certain measures for the privatization's acceleration, with the subsequent modifications and completions, amounting ROL **148,806,532,426**, representing the annulment of the penalties and delay majorities related to the budgetary obligations owed and unpaid by the company, calculated until the date when the transfer of the ownership right on the shares took place, as well as of those related to the company's debts towards the utilities suppliers, amounting ROL **118,236,376,096** and installments at the payment of the obligations owed to the state budget and unpaid until 31.12.2001, amounting ROL **30,570,156,328**.

3. The company's restructuring

(15) The company, after 1990, was confronted especially with the impossibility to cope with the new economic situation generated by the disappearance of CAER market, as well as with the lack of the demand on the domestic market, when the personnel number was much higher than its' necessary. S.C. ARIS S.A. had 7000 employees and, besides the main factory located in Arad County, it had 4 more production workshops in Arad County (IMET Ineu, PROMES Sebis, PROMEC Chisineu Cris, STRUNG Lipova).

(16) During 1990 – 1992, the company worked on stock, its production capacities and the personnel number being oversized in comparison with the size of the demand, situation generating huge fix costs.

(17) Therefore, taking into account the company's unhealthy situation and the high volume of debts owed to the State budget, the company was transferred from the management of the State Ownership Fund (F.P.S.) into the management of the Finance Ministry, which was going to accomplish its privatization, by transaction on the capital market of the shares owned by the State at S.C. ARIS SA. Arad. For its privatization, the company benefited, in 2000, from the annulment of the majorities and delay penalties related to the debts unpaid to the state budget. Although the privatization process wasn't accomplished, the Ministry of Public Finance confirmed the granting and maintaining of these facilities, as a financial restructuring measure of the company.

(18) According to the information submitted by AVAS, the facilities granted to the company in 2000 by the Ministry of Public Finance were not conditioned by the implementation of a restructuring plan. AVAS states that the company had in progress, from 1999, a restructuring program, but it didn't presented this program to the Competition Council during the investigation.

(19) From the information presented by AVAS during the investigation, the restructuring program started in 1999 was actually based on personnel reduction measures for reducing the costs and for meeting the productivity criteria necessary for obtaining a minimum profit. The personnel restructuring measures were adopted by the Shareholders' General Meeting on 26.11.1999, according to the provisions in the EGO no. 98/1999.

(20) According to the data presented by AVAS, the personnel restructuring measures was adopted as the final solution for recover, as the difficult economic- financial situation the company was going through, the lack of liquidities necessary for the supply with raw materials and materials, the lack of certain investments to insure the competition of the products made were reflected more and more in the accomplished results. This way, starting a restructuring program since 1999, the company tried, after the personnel lay offs, to re-asses the production structure and in the same time, the structure of the existing fix assets. From this analysis resulted the need to restrain its activity to a narrower working area, dislocating some tool- machinery and equipments, disassembling others, and in the end selling them.

(21) In spite of the fact that S.C. ARIS S.A. benefited by financial facilities and reduced its employees number with 50%, and the financing banks accepted to continue the grant of certain working credits, the company's situation didn't improved.

(22) Therefore, before the privatization from 2002, S.C. ARIS S.A. was in an advanced de-capitalization degree, generated by big losses incurred to the entire company. The exploiting losses amounted in 1999 ROL 39,224 mill., in 2000 amounted ROL 28,184 mill., and in 2001 ROL 18,634 mill.

(23) According to the information presented by AVAS, once with the establishment of the special management, in 2002, the company drafted a restructuring program proposal, in which the financing sources for the measures were to be insured through the sale of assets. The company couldn't start this plan due to the several litigations in process, having as object some land, from which approx. 89% situated under the builongs to be sold. In conclusion, until 2002, the company kept dealing with a serious lack of cash and with a technological aging.

(24) S.C. ARIS S.A.'s privatization from 2002 was accompanied by new facilities from the State, respectively exemption of majorities and delay penalties related to the unpaid budgetary obligations, granted by APAPS.

(25) After S.C. ARIS S.A.'s privatization and the transfer of the ownership right on the shares, the buyer of the main share package, S.C. ASTRA COMIND S.R.L. Arad, elaborated a restructuring plan which, according to AVAS, would be a continuation of the previous restructuring plans.

(26) According to the data presented in the notification, the restructuring plan elaborated by the new main shareholder enclosed management, technological and environmental restructuring measures, as well as financial restructuring, for the period previous to the

privatization, respectively 2000 – 2002, as well as the period post-privatization, respectively 2002 – 2009.

(27) Analyzing the restructuring plan annexed to the notification submitted to the Competition Council by AVAS during the investigation procedure, it can be seen that measures from the period 2000 - 2002, before the privatization, is limited mainly to personnel reductions and tax facilities.

(28) According to the notification, the restructuring program submitted by AVAS during the investigation, enclosing the restructuring measures assumed by the company until the privatization, as well as the measures to be implemented after the privatization and has as aim the accomplishment of the following objectives:

- organizing three profit centers: « Fabrica de Mașini Unelte », « Fabrica de Boghiuri și Componente de Vagon », « Fabrica de Sectoare Calde » and « Atelierul de Sculărie »;
- organizing and endowing the workshop for manufacturing boggies for international traffic wagons, meeting the UIC standards, for which ARIS owns the authorization no.1424 on 26.06.2002, issued by the Romanian Railway Authority AFER;
- enclosing in the manufacturing process the following types of boggies for wagons:
 - bogie Y32, which equips the international traffic wagons AVA 200 which can reach a speed of 200 km/h. These boggies offer an increased comfort index, fulfilling the UIC ;
 - bogie Y32RS, which is designated to the wagons with crampon and was especially customized to equip these wagons, this is a bogie allowing speed up to 160 km/h being superior to the bogie Minden-Deutsch, which equips right now the wagons from the SNTFC-CFR Călători;
- counter-balancing the production of lathes with the production of components for international traffic wagons AVA and for wagons modernized for SNTFC –CFR Călători – which shall be enclosed in the company’s manufacturing process;
- manufacturing all the wood activity for the travelers’ wagons;
- enclosing the production of air-conditioning installations for travelers’ wagons;
- enclosing the casting of pieces in graphite and of the steel pieces in steel, pieces for which is necessary calculation technique, respectively process computers ATAS and METALSCAN.

(29) The strategy proposed by the company in its restructuring plan aims:

- to create new markets as a result of diversifying the products;
- to increase the production capacities for rolling stock;
- to increase the turnover;
- to make profitable the exploiting activity by reducing the costs per product;
- to make profit from the exploiting activity so that it would cover the supplementary costs generated by the interests related to the budgetary obligations.

(30) According to the information presented by AVAS, the investor and the company's contribution to the accomplishment of the restructuring plan consists in technological investments amounting ROL 6,215 mil., environment investments amounting ROL 2,273 mil., organizing measures amounting ROL 59,445 mill. and financial measures taken by the company within the plan, amounting ROL 89,745 mill.. The company's financial restructuring, part of the restructuring plan, consisted in the granting, by the State, of certain financial support measures amounting ROL 280,644 mil.

(31) According to the information declared in the notification form and in the information submitted for its completion, the total cost of implementing the measures from the restructuring plan is of ROL 438,322 mill, from which approx. 23.43% shall be financed by the buyer's own sources, 12.57% from the company's own sources and 64% from the financial support granted by the State.

(32) The restructuring plan presented to the Competition Council describes the measures taken by the company, the effect of their implementation, the application time limit, the measures' cost, their financing manner, respectively the company's contribution, the investor's contribution or the financial support from the state, but, as far as the company and the investor's contribution is concerned, the origin of the financing sources is not specified.

(33) The synthesis of the measures enclosed in S.C. ARIS S.A. Arad's restructuring plan, according to the notification submitted by AVAS, is presented in the tables no.3 - 6:

a) management restructuring measures:

Table no. 3 Management restructuring measures

No. crt.	Measure	Finalizing date	Cost of the measure (mill. ROL)
1	Laying off 500 employees according to EGO 98/1999.	2000	
2	Organizing the company on profit centers- stage I	2000	
3	Selling the equipments given up according to the legislation in force	2000	
4	Acquiring office materials - computers	2000	32
5	Capitalization of waists	2001	
6	Acquiring office materials - computers	2001	42
7	Buildings' abilitation and modernizing	2002	1,572
8	Reorganizing the company in three profit- centers: Fabrica de Sectoare Calde, Fabrica de Maşini-Unelte, Fabrica de Boghiuri and Componente Vagon-stage II	2003 2004	3,671 3,747
9	Organizing the workshops Casting and Heating Treatments in the Factory of Hot Areas. Focusing the activity and decreasing the space.	2003 2004	1,065 3,033
10	Organizing the workshops Prelucrări Mecanice and Montaj in	2003	11,761

	the Factory of Tools- machinery. Putting together the activity of major repairing from the workshop Maintenance and repairing with the Factory of Factory of Tools- machinery. Building up the activity and abridging the space.		
11	Organizing the Boggies and Wagon components' Factory on the free spaces with the building and bogie repairing activities, sub-assembly manufacturing, wagon repairing.	2003 2004	2,431 9,680
12	Building up the activities of the company's functional activities and abridging the used spaces. Letting off in the technical-management workshop of the space for the Wagon Designing Center	2003 2004	2,495 1,741
13	Making their own heating system based on methane gas	2003 2004	10,527 555
14	Replacing the thermo-isolation from the workshop Strung Greu	2004	3,987
15	Repairing the isolation from the roofs	2004	2,080
16	Modernizing the compressed air station by acquiring a new compressor Atlas Copco	2003	1,026
	Total		59,445

Source: The notification form

These measures shall be financed from the company's own sources amounting ROL 1,747 mil. and from the investor's own sources amounting ROL 57,698 mil..

b) technological restructuring measures:

Table no. 4 Technological restructuring measures

No. crt.	Measure	Finalizing date	Cost of the measure (mil. ROL)
1	Making major repairing and equipments' modernizing	2000	800
2	Steps for attesting the system for of quality insurance	2000	250
3	Making major repairing and equipments' modernizing	2001	380
4	Acquiring products with high performance, equipped with numeric commands, frequency transformers	2001	1,200
5	Making technical installations on flux	2002	796
6	Modernizing flux equipments	2002	420
7	Endowment of the Factory of Hot Sectors with modern material and technological installation's control equipments. Enclosing in the manufacturing process the nodded cast iron	2003 2004	2,254 15
8	Extending the use of equipments of high productivity	2004	100
	Total		6,215

Source: The notification form

These investments shall be financed from the company's own sources amounting ROL 4,884 mil. and from the investor's own sources amounting ROL 1,331 mil..

c) *investments for environmental protection*

d) Table no. 5 Restructuring measures for environmental protection

No. crt.	Measure	Finalizing date	Cost of the measure (mil. ROL)
1	Making workings for meeting the standards for environmental protection	2000	500
2	Disaffecting the activity of metallic coverage and neutralizing waist water	2003	166
3	Modernizing the hydro-cyclones from the Cast workshop	2003	248
4	Equilibrating the level of the water layer in the area where the company is located by pumping the industrial water in the drilled pits	2003	
5	Eliminating the drinking water's consumption by using the industrial water from their own pits endowed with pumps automatically controlled	2003	920
6	Modernizing the cast ventilation	2003	158
	Total		2,273

Source: The notification form

These investments shall be financed from the company's own sources amounting ROL 500 mill. and from the investor's own sources amounting ROL 1,773 mill..

e) *Financial restructuring measures*

Table no. 6 Financial restructuring measures

No. crt.	Measure	Finalizing date	Cost of the measure (mil. ROL)
1	Annulment of penalties and delay majorities according to HG 874/2000	2000 2001	124,350 7,487
2	Insuring the working capital	2002	10,117
3	Contracting for products the firms with which they work directly and the firms with commissions with an advance enclosed between 30-50 %.	Permanent	
4	Capitalizing the raw materials and materials without movement' stock	Permanent	40
5	Paying the loan granted to the company for paying the electricity and natural gas	2002	593
6	Loan from the buyer for paying the BCR credit	2002	14,093
7	Payment of certain fiscal debts	2002	10,600
8	Payment of certain commercial debts in court	2002	1,500
9	Capitalizing the debts by all legal means	2004	120
11	Contracting working credit	2004	10,000
12	Payment of debts	2002-2009	42,682
13	Facility for the payment of the unpaid obligations according to the Law no. 137/2002	2002-2009	148,807

	Total from which : Buyer and company's own sources		370,389 89,745
--	---	--	---------------------------

Source: The notification form

(34) As a result of the implementing of the restructuring plan, the company forecasts until 2005 the following evolution of the main economic- financial indexes:

Table no. 7 Evolution of the main economic- financial indexes

		-mill. ROL-					
No. crt.	Index	2000	2001	2002	2003	2004	2005
1.	Equity from which	51,515	52,677	52,677	95,505	113,479	113,479
2.	Total number of employees on 31.12	596	521	504	496	510	600
4.	Total incomes, from which:	154,026	62,488	105,895	96,968	182,141	147,999
	- exploiting incomes	28,434	59,428	58,182	87,583	182,051	146,334
	-net turnover	35,659	64,519	56,674	26,435	45,384	140,000
	- financial incomes	2,941	2,539	1,424	9,385	90	1,665
	- extraordinarily incomes	122,651	521	46,289	-	-	-
5.	Total costs, from which:	111,040	100,395	115,039	147,323	146,696	131,499
	a) from exploiting, from which:	56,619	78,063	80,590	142,455	144,595	128,000
	-costs with raw materials and consuming materials	8,861	16,706	15,779	6,902	23,205	24,085
	-costs with water and energy	8,873	12,208	12,332	8,482	18,696	20,000
	- costs with workings and services performed by third parties	5,567	7,278	8,175	6,045	5,953	2,900
	- costs with the personnel	25,626	33,830	36,236	37,705	46,556	54,900
	- costs with amortization and provisions	4,295	3,318	4,009	2,965	22,262	22,300
	-other costs (merchandise, consumables etc.)	1,949	2,532	2,386	1,758	1,069	550
	- costs related to the budgetary obligations	1,448	2,191	1,673	78,598	26,854	3,265
	b) financial	6,007	3,875	5,604	4,868	2,101	1,499
	c) extraordinarily	48,414	18,457	28,845	-	-	-
6.	Gross Profit (+)/Loss (-)	42,986	-37,907	-9,144	-50,355	35,445	16,500
7.	net Profit (+)/Loss (-)	42,986	-37,907	-9,144	-50,355	35,445	16,500

Source: The notification form

From the received data it can be seen the evolution of the main economic- financial indexes:

- Exploiting incomes register significant increasing, namely of 1.51 times more in 2003 compared to 2002, of 2.1 times more in 2004 compared to 2003, and in 2005 decreased of 0.8 times compared to 2004;
- The turnover registers a fluctuant evolution during the analyzed period, following to register an increase of 3,9 times in 2005 compared to 2000;
- Exploiting costs have an increasing trend, approx. constant for the whole period. In 2003 the increase is accentuated due to the supplementary costs generated by the investment program. For 2005, the company aims to reduce the exploiting costs registered in 2004 with 12%;

- The number of employees will increase in analyzed period;
- The company registers profit starting with 2004, without covering the loss from the previous years.

(35) The annual forecast situation of the cashing and the payments (cash-flow) until 2005 is:

Table no. 8 Evolution of the cash flow during the implementation of the restructuring plan

- mil ROL-

	2000	2001	2002	2003	2004	2005
1. cash flow from the exploiting activity, from which:						
-cash in.	1,973	-35	18,752	-18,055	-10,746	14,391
-payments	29,447	71,672	124,565	55,127	93,226	157,700
	27,474	71,707	105,841	73,182	103,972	143,309
2. cash flow in investments activity						
-in	-32	-41	6,025	-6,025	-	-
-out	-	-	17,117	25,711	17,974	-
	32	41	11,092	31,736	17,974	-
3. cash flow in financing activity						
-in	-661	-	0	-1,094	10,000	-14,093
-out	-	-	31,786	-	10,000	-
	661	-	31,786	1,094	-	14,093
4. total cash flow						
	1,280	-76	24,749	-25,174	-746	298
5. cash at the beginning of the period						
	80	1,360	1,284	26,033	859	113
6. cash at the end of the period						
	1,360	1,284	26,033	859	113	411

Source: The notification form

It can be seen that the cash flow evolution is negative from 2000 to 2004. Starting with 2002 the cash- flow shows the buyer's contribution to the payment of the budgetary and commercial debts of S.C. ARIS S.A. and its funding for starting investments activities.

4. Considerations on the company's restructuring

(36) According to the AVAS and the company, the restructuring plan submitted to the Competition Council encloses measures referring to the period previous to the privatization, respectively 2000 – 2002, as well as to the post-privatizing period, respectively 2002 – 2009, and is made from:

- The program elaborated in 1999 based on personnel restructuring measures, measures for improving the utilization degree of the production capacities, program supported by tax facilities from the state;
- The program elaborated in the period of the special management, focused on the rationalization of the production spaces (on asset sale, moving and grouping certain activities etc.), laying off a number of employees, improving the working environment, capitalization of the stocks and cashing in the debts; in the information submitted by AVAS within the investigation is results that this program wasn't implemented;
- The program elaborated together with the offer submitted by the buyer during the privatization process follows the interests which drove him when buying the company's shares, taking over most of the measures and time limits from the program elaborated during the special management period.

(37) In the note of opening the investigation, the Competition Council expressed its doubts referring to the fulfillment of the criteria on the restructuring plan enclosed in the Regulation on the state aid for rescuing and restructuring firms in difficulty, namely:

- If the grantor conditioned the granting of the tax facilities in 2000 by the existence of a coherent restructuring plan which should insure the company's return to long term viability, in a reasonable time period, based on the realistic assessments on the future functioning conditions, plan which must be funded on a market study and supply complete and well funded information related to the situation on the relevant market, as well as the evolution of the conditions from these markets;
- If the facilities granted to the company in 2002, when privatizing, were based on a restructuring plan established on the above-mentioned criteria;
- If the size of S.C. ARIS S.A.'s contribution to the total cost of the restructuring is according to the Regulation on the state aid for rescuing and restructuring firms in difficulty.

(38) Regarding the restructuring plan established by the company in 2000, the Competition Council notes the following:

- AVAS didn't submitted to the Competition Council the restructuring plan established in 1999 and adopted in the Shareholders' General Assembly on 26.11.1999, according to the provisions from the EGO no. 98/1999;
- The *ex-post* assessment of the restructuring plan established in 2002 for the measures adopted by the company in 1999, before the privatization, isn't relevant because, as mentioned, and according to the provisions of the Regulation on the state aid for rescuing and restructuring firms in difficulty, the restructuring plan must be made *ex-ante*, based on a market study made before the date when the restructuring measures were adopted and to an economic assessment of the

circumstances leading to the company's difficulties. Therefore, the restructuring plan must focus the company towards the giving up to the activities generating structural losses and to allow it to progress towards a new structure which would give it long term viability and the possibility to function with its own resources. According to the provisions in the above-mentioned regulation, the restructuring plan must insure a radical change allowing the company, after the end of the privatization, to totally cover its costs, including the amortization and financial costs. The forecasted recovering of investments must be sufficient to allow the restructured company to compete by its own means on the free market;

- The restructuring measures taken by S.C. ARIS S.A. before the privatization, mainly consisting in the lay off of personnel and the facilities granted to the company, didn't accomplished their purpose, namely the return to viability, the company dealing even after the implementation of these measures with a difficult economic situation, respectively after 2000, as it can be seen from the economic-financial data obtained during the investigation started by the Competition Council¹. As it can be seen from the data presented by AVAS, the restructuring started in 1999 actually meant emergency measures to insure the company's survival for a limited time period, as at that point S.C. ARIS S.A. was insolvable, having large debts towards its debtors, budgetary and commercial;
- The laying off personnel measures taken after the personnel restructuring, measures assumed by the company in 1999, are, under certain conditions, necessary but not sufficient for the company in difficulty to return to viability, as it needs first to identify the reasons leading to its difficulty, and after that it should be aimed, through the measures implemented by the restructuring plan, to eliminate the effects incurred by them and to obtain, at the end of the restructuring period, the total coverage of the costs, including the amortization and the financial costs. The Competition Council notes that, taking into consideration the reasons leading to SC ARIS SA's difficulties (the disappearance of CAER market, the lack of internal demand for the products made by the company etc), presented in AVAS' notification, was necessary that the personnel restructuring measures to be completed with other measures leading to the company re-orienting itself towards other partners and new opening markets, making technological investments, orienting towards the manufacturing profit, increase of the products' quality and other measures meant to fight against the reasons leading to the company's difficulty;
- Taking into account the failure of the first restructuring measures started in 1999, the company elaborated in 2002, during the period when it was under the special management, a restructuring draft plan never implemented due to the several litigations in course at that date;

¹ in 2000 due to the financial facilities granted by the state, the company registers profit amounting ROL 42,985,674 thousands, and after that, in 2001 and in the year when the privatization took place, respectively in 2002, it registers losses amounting ROL 37,907,586 thousands and ROL 9,144,315 thousands. In the same time, the company continued to register losses in 2003, these amounting ROL 50,354,988 thousands.

- After the privatization, in 2002, the company together with the new major shareholder elaborated a new restructuring plan. This plan, annexed to the notification submitted to the Competition Council during the investigation period, is considered by AVAS a continuation of the plan elaborated in 1999. In the same time, AVAS mentions in the notification the existence of three restructuring plans elaborated during 1999-2002;
- Under the conditions presented in the notification, namely the existence of a sole restructuring plan for the period 1999-2009, the grantor mentions two calculation methods for the costs related to the restructuring, as well as for the investor and the company's own contribution as percent from the total restructuring costs according to the taking, or not, into account of the second tax facility package granted at privatization. Therefore, in the first method the restructuring costs are of ROL 289,515 mill. and the beneficiary's contribution to the restructuring cost is of 54.47%. In the second method the restructuring cost is of ROL 438,322 mill. and the beneficiary's contribution to the restructuring cost is of 36%. Taking into account, by AVAS, of two calculation methods contradicts its statement on the existence of a sole restructuring plan;
- The Competition Council notes that, though in the notification form the beneficiary of the state aid measures declares its own financial contribution at the restructuring costs, the source of this sources is not specified and justifying documents are not presented to prove the possibility to cover these financing sources;
- The Competition Council notes that SC ARIS SA's restructuring plan isn't funded on a market study enclosing complete and well supported information related to the situation on the relevant markets as well as the evolution of the conditions on these markets.

Due to the above-mentioned facts, the Competition Council notes that SC ARIS SA did not have a sole restructuring plan for the period 1999-2009, neither coherent and nor based on a market study made before adopting the decision of restructuring the company, which, by the enclosed measures, should have insured the company's long term viability.

5. Analysis of the markets on which S.C. ARIS S.A. ARAD acts

(39) Until the privatization, S.C. ARIS S.A. ARAD acted mainly on the market of lathe producers.

(40) According to the data submitted by AVAS, the situation of the domestic lathes production and of the imports is presented in the table no. 9:

Table no. 9 Situation of the domestic lathes production and of the imports

	2000	2001	2002
Number of lathes produced in Romania (peaces)	307	388	281
Number of imported lathes (peaces)	57	580	382
Total lathes	364	968	663
Number of lathes produced by Aris Arad (peaces)	231	298	222
Percent owned by the company in total production and imports	63%	30%	33%

Source: The notification form

It can be seen that the number of lathes produced by the company had a fluctuant trend, while the imports registered an increase in 2001 as well as in 2002, compared to 2000.

(41) As far as the domestic production of lathes is concerned, until 2002, S.C. ARIS S.A. Arad represented the main producer, making during 75.4% in 2000 and 79% in 2002, from the domestic lathe production.

(42) On world level, the main lathe producers are the firms from Japan, USA, and Italy.

(43) S.C. ARIS S.A. ARAD main competitors on the Romanian market of lathes with a working diameter of up to Ø 800 mm are: S.C. SARO S.A.Târgoviște, GILDEMEISTER-Germania, WEILER-Germania, MAZAK-Japonia, DECKEL-Germania, MAHO-Germania. On the external market of the lathes with a diameter larger than Ø 800 mm, the company's main competitors are S.C. SARO S.A.Târgoviște, NARONI-Brazilia, COLCHESTER-Anglia, GILDEMEISTER-Germania, WEILER-Germania, MAZAK-Japonia, DECKEL-Germania, MAHO-Germania. For other types of lathes, S.C. ARIS S.A. Arad has as main competitors on the domestic market the firms NAPOMAR SA Cluj Napoca, TITAN MASINI UNELTE SA București and the firms from Germania.

(44) Until 2002 the sale to export of S.C. ARIS S.A.'s products was mainly ensured by WEILER from Germania, through which the whole export was made.

(45) After privatization, S.C. ARIS S.A. ARAD focuses on the market segment designated to the travelers' wagons and aims to become the main supplier of boggies and traveler wagons' components for SC Astra Vagoane Calatori SA. Re-establishing the production activity, after privatization, on new principles consisted in maintaining the lathes production at a high level, but also in developing a new range of products, namely the manufacturing of boggies and repairing services. From this reasons, the production

structure the company proposes after privatization, compared to the one existing until the privatization, is the following:

Table no.10 Breakdown of production envisaged for SC ARIS SA

Year	Average boggies, pcs.	Cast iron, tonns	Conventional lathes, pcs.
2000		323	231
2001		417	298
2002		310	222
2003		36	3
2004	22	300	29
2005	240	934	77
2006	384	1,347	110
2007	420	1,484	125
2008	492	1,721	145

Source: Notification form

As it can be seen, ARIS proposes to maintain its lathes production up to 48% from the production realized in the best year prior to the privatization, 2001 respectively. The company will redirect towards the production of boggies and spare parts for railway cars, given the fact that Buyer of the shares is the majority stockholder from ASTRA VAGOANE Arad.

6. Comments received from AVAS, after the submission of the investigation report

(46) In the comments sent by AVAS to the Competition Council regarding the Investigation Report in the case of SC ARIS SA Arad, there are mentioned, in principal, the following facts:

- in 2000 there was no restructuring plan drafted by the company;
- in 2000 the company has not benefited from the write-off of increases and delay penalties due to the unpaid debts towards the state budget, according to G.D. no. 874/2000; in fact, the State has acted as a prudent creditor, trying to capitalize the debts principle, renouncing to the increases and penalties, with the purpose of getting future benefits;
- the restructuring measures for SC ARIS SA undertaken by the budgetary creditors have had not the purpose of restoring of the viability of the company; there were fiscal measures taken according to an normative act, which have produced effects at the moment of granting, being operated in the accounts of the company;
- the company reduces its lathe production and develops the production capacity for the buggies, AVAS considering that to be a compensatory measure;
- by granting the State aid, the ASTRA COMIND group, to which the company belongs following the privatization in the year 2000, it cannot consolidate its position on the railway cars and rolling stock market, on which it is the only domestic producer.

III. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES GRANTED TO S.C. ARIS SA

(47) In order to be considered state aid according to Law no. 143/1999 on state aid, with the subsequent modifications and completions, the financial support must cumulatively meet the four conditions provided at article 2:

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

(48) The financial support granted to S.C. ARIS SA and notified by A.V.A.S. consists in the state's give up from obtaining revenues, therefore state resources are involved.

(49) The State, by granting fiscal support measures according to G.D. no. 874/2000, did not acted as a prudent private creditor because, granting the financial support has not been supported by an analyze, carried out by the State, in order to argument the potential revenues gained by the State following the granting of the facilities. This fact is also demonstrated by the fact that granting the facilities has not had positive effects; on the contrary, the financial and economic situation of the company has become worse during the years 2000-2002.

(50) The financial support measures granted based on the provisions of G.D. no. 874/2000 on the transfer of shares held by the state in S.C. ARIS S.A. Arad from the management of the State Ownership Fund (F.P.S.) in the management of the Ministry of Finance were granted only to S.C.ARIS S.A. The financial support measures granted on the basis of Law no. 137/2002 regarding some measures for speeding up the privatization, with the subsequent modifications and completions, are aimed at undertakings to be privatized, among which S.C.ARIS S.A. Thus, the measures granted to S.C. ARIS S.A. have a selective character.

(51) The financial support measures granted in 2000 and 2002 create an economic advantage for S.C. ARIS S.A. the company being exempted from payment of some debts to its budgetary and commercial creditors, as well as from payment of interest and delay penalties related to past due budgetary obligations. The granting of such facilities has a favorable effect on its economic and financial indicators and on its cash-flow. Thus, the company is created an advantage, being favored against its competitors.

(52) The granting of financial support to S.C. ARIS S.A. creates the premises for a possible distortion of competition on the relevant markets because it allows the company to maintain or even consolidate its market on these markets.

(53) Also, there is no doubt that the financial measures affects trade with the Member States of the European Union since a part of the company's products are sold on the external market and a part of the products manufactured by S.C. ARIS S.A. Arad compete on the Romanian market with similar products manufactured by companies from the Member States of the European Union.

(54) In consequence, the Competition Council notes that the financial support measures granted by S.C. ARIS S.A. based on provisions from G.D. no. 874/2000 and based on the provisions of Law no. 137/2002 are considered state aid and fall under Law no. 143/1999 on state aid with subsequent modifications and completions.

IV. ASSESSMENT OF THE STATE AID

(55) Art. 2 from Law no. 143/1999 on state aid with subsequent modifications and completions provides that state aids granted by the state or from state resources which distort or threaten to distort competition and affect trade with the Member States are incompatible with the normal competitive environment.

(56) The Competition Council is assessing the state aid granted to S.C. ARIS S.A. according to criteria provided in the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, issued in the application of Law no. 143/1999 on state aid. In order to be considered compatible with the normal competitive environment, the state aid must meet all criteria from the above mention regulation.

1. Eligibility of S.C. ARIS S.A. – company in difficulty

(57) The reasons allowing to establish whether in 2000 and 2002 S.C. ARIS S.A. was eligible or not to receive state aid for restructuring being a company in difficulty are the following:

- the evolution of the financial exercise result compared to shareholders' equity

Table no. 11 The result of the financial exercise compared with the shareholders' equity

- ROL thousand -

	2000	2001	2002
Shareholders' equity	51,514,633	52,676,998	52,676,998
Profit/Loss	42,985,674	- 37,907,586	- 9,144,315
Loss/shareholders' equity (%)	-	72	17

Source: Notification form

From the evolution of these economic and financial indicators it can be observed that the company had losses prior to privatization. Thus, the losses of 2001 and 2002 are due, mainly, to non-profitable operating activity generated by the high level of direct production expenses, as well as those related with foreign suppliers for the export activity. The profit made in 2000 is due exclusively to the „exceptional revenues” of ROL 118,277 million, representing increases and delay penalties related to past due budgetary obligations, canceled on the basis of GD no.874/2000.

The critical position of the company is reflected during the analyzed period by the diminishing of the financial exercise result, SC ARIS SA having in 2001 a loss of 72% from the shareholders' equity.

- The evolution of the not-covered losses from previous years compared to the shareholders' equity:

Table no.12 Previous years losses not-covered compared to shareholders' equity
ROL thousand

	2000	2001	2002
Shareholders' equity	51,514,633	52,676,998	52,676,998
Previous years' losses	122,216,571	77,737,616	115,576,571

Source: The Notification form

It is to mention the fact that besides the loss related to each financial exercise, the company has to recover a loss 2 times larger than the shareholders' equity both in 2000 as well as in 2002.

- diminishing of equity:

Table no.13 The equity situation
- ROL thousand-

	2000	2001	2002
Equity	-25,078,360	-62,968,204	-72,043,888
Loss related to the financial exercise	-	-37,907,586	-9,144,315

Source: The notification form

Due to its significant losses incurred both from the previous years as well as in each analyzed financial exercise, a constant diminishing of equity is to be noted.

- the increase of losses:

Table no. 14 Evolution of losses
- ROL thousand-

	2000	2001	2002
Current Profit/Loss, of which:	42,985,674	- 37,907,586	- 9,144,315
- operating	-28,184,487	-18,634,717	-22,407,695
- financial	-3,066,620	-1,336,517	-4,180,217
- exceptional	74,236,781	-17,936,352	17,443,597
Total loss	-79,230,897	-115,645,202	-124,720,886

Source: Notification from

The core company's business during the analyzed period was carried out inefficiently, the company posting constantly operating losses. These losses were due mainly to higher production costs and the reduced capacity utilization. Until 2002 the financial expenses contributed each year to the increase of the losses, especially from payment of interest for the utilized loans.

(58) The Competition Council, following an investigation, notes that the company has a deteriorating economic and financial position which is showing the continuance of the difficulty situation confronted with and the fact that the implementation of the restructuring measures adopted in 2000-2002 did not have the anticipated effect.

(59) Given the above, the Competition Council notes that, at the moment of granting the two state aids, as well as the entire analyzed period, SC ARIS SA meets the conditions to be considered in difficulty, according to the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*.

2. Belonging to a group

(60) According to the provisions of art. 2 par. (5) from *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, a company belonging to a group is not normally eligible for granting rescue and restructuring aid, except the case when it can be demonstrated that the company's difficulties are of its own and do not result from an arbitrary allocation of costs within the group and the difficulties are too serious to be dealt with by the group.

(61) Following the privatization carried out in 2002, S.C. ARIS S.A. became part of a group of firms 72.97% of the shares being held by SC ASTRA COMIND S.R.L ARAD, a company in the group made of: SC ASTRA VAGOANE CALATORI SA Arad whose main object is the construction of rolling stock, SC ARIS SA Arad whose main object after privatization is the manufacturing of boggies and rolling stock components, SC Intreprinderea de Reparatii Vagoane Călători SA Caransebeș where maintenance services for rail cars are performed and SC ASTRA COMIND SRL Arad which deals with trade and logistics.

(62) During the investigation, the Competition Council obtained from the AVAS only information related to the economic and financial position of SC ASTRA COMIND S.R.L Arad, the buyer of the majority stake of SC ARIS SA. AVAS did not provide information referring to the economic and financial position of the other members of the group in order to establish to what extent whether the group could have contributed to solve the difficulties of ARIS. The economic and financial position of SC ASTRA COMIND S.R.L ARAD is presented below:

Table no.15 Main economic and financial indicators of SC ASTRA COMIND SRL ARAD

Position	Description	Value	
		2001 31.12.2001	2002 30.06.2002
1	Annual turnover ROL thousand./USD thousand	4,553,827 144.12	7,317,971 218.5
2	Gross income ROL thousand/ USD thousand	1,521,156 48.14	1,076,181 32.1

3	Net income ROL thousand/USD thousand	1,140,867 36.1	759,939 22.7
4	Rate of return (%)	25.05	10.39
5	Global liquidity	0.989	1.015
6	Cash in the bank (ROL thousand)	15,581,810	19,055,976
7	Cash in the bank (USD thousand)	3.3	28
8	General solvency rate	1.007	1.036
9	Financial rate of return (%)	0.71	3.41

Source: Notification form

From data presented results that SC ASTRA COMIND S.R.L ARAD makes profit during the analyzed period.

(63) The Competition Council has notes, based on data supplied by AVAS and according to those mentioned at para. 60 and 62, SC ARIS SA does not fulfill the conditions provided by art. 2 par.3 and par. 5 from the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, on the eligibility of the company to receive state aid in conditions in which following the privatization the company is part of a group.

3. Restoration of the company viability

(64) As mentioned in Chapter II, point 4 – Considerations regarding the restructuring of the company, the Competition Council notes that AVAS has not submitted the restructuring plan drafted in 1999 which was adopted in the General Shareholders Meeting from 26.11.1999, in accordance with the provisions of the GEO no. 98/1999. Data presented in the notification lead to the conclusion that the restructuring measures taken by S.C. ARIS S.A. prior to the privatization, which have mainly consisted in laying off employees, and the facilities granted to the company have not reached their purpose respectively the restoration of viability the company being confronted, even after taking these measures, with a difficult economic situation, respectively after 2000 as it can be noted from the economic and financial data obtained during the investigation launched by the Competition Council.

(65) The lay offs during 1999 have not proven sufficient to restore the company's viability, because the conditions leading to the difficulty position have not been mitigated by corresponding restructuring measures. In this respect, the Competition Council notes that, having in view the causes which led into difficulty SC ARIS SA (the loss of the COMECON market, the lack of demand for the company's products on the internal market etc) presented in the AVAS notification, it was necessary that the personnel restructuring measures be accompanied by other measures leading to a re-orientation of the company to new partners and new markets, investments in technology, re-orientation of the manufacturing profile, increase of the product quality and other measures able to mitigate the causes which led the company into difficulty.

(66) The Competition Council notes that following the privatization, the company together with the new majority stockholder, have drafted a new restructuring plan. While

AVAS considers that the restructuring plan covers, through its measures, the period 1999-2009, and according to those mentioned in paragraphs 36 and 38, the Competition Council notes that the submitted restructuring plan does not involve coherent measures during its application period, and the financing resources of these measures do not clearly show where they come from.

(67) The Competition Council notes that the restructuring plan of SC ARIS SA is not based on a market study providing complete and sound information related to the situation on the relevant markets as well as the evolution of conditions on these markets.

(68) Given the above, the Competition Council has doubts regarding the observance of the criteria provided in art. 13 of the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty* related to ensuring the long term viability of the company, following the implementation of the restructuring plan.

4. Aid limited to minimum

(69) According to provisions of art. 14 from *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, the amount and the intensity of the state aid must be limited to minimum necessary, in order to allow the restructuring in accordance with the existing financial resources of the company and of its shareholders.

(70) In the notification form and the information obtained to complete it is mentioned that the restructuring plan is financed from the company's own sources, the buyer's and from state aid. Thus, from the total restructuring cost amounting ROL 438,322 million, 23.43% will be financed from the buyer's own sources, 12.57% from the company's own sources, the remainder 64% being state aid.

(71) The Competition Council notes that S.C. ARIS SA did not mention which are the financing sources of its contribution to cover the restructuring costs and did not provide justifying documents certifying the existence, even potential, of such sources which would not be subject to state aid.

(72) The Competition Council finds conditions set in art. 15 of the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty* regarding the limitation to the necessary minimum of the state aid granted to the company not to be met, because the contribution of the company to the achievement of the restructuring plan is lower than the minimum 50% contribution set in the in the Regulation. In the same time, there is uncertainty referring to the real own contribution of the company and of the buyer in realizing the restructuring plan mentioned in the notification. Thus, granting the state aid might lead to the creation of a liquidity surplus which might be used by the company in activities with no connection with the restructuring process, activities which might lead to the distortion of competition on the relevant markets.

5. Avoiding the significant distortion of the competitive environment

(73) According to the provisions of the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, in order to minimize to a larger extent of the negative effects of granting the aid over competition on relevant markets, in such a way that the positive effects aimed by granting the state aid mitigate the negative effects, it is necessary to apply compensatory measures such as capacity reductions or the reduction of the company's market presence, asset sales etc. The measures must be proportionate with the distorting effects caused by the aid and especially with the size and the relative importance of the company on the relevant markets affected by the granting of the state aid. The level of the compensatory measures will be established based on the market study attached to the restructuring plan of the company. In the case of non implementation of compensatory measures, it will be considered that the aid is incompatible with the normal competitive environment.

(74) From information provided by AVAS and as mentioned in paragraph 20, following the reduction of activity and personnel layoffs during 2000 the company has significantly reduced the production capacities for lathes, from 850 pcs./year to 360 pcs./year. According to provisions of art. 14 from the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, stopping and the definitive renouncing from loss generating activities which are not absolutely required by the company's viability, will not be considered reductions of capacity or of the market presence when analyzing compensatory measures. Thus, the Competition Council notes that the capacity reductions for lathes due to restraint of activity can not be considered compensatory measures, an integral part of the restructuring measures provided in the company's restructuring plan.

(75) In addition, according to those presented in paragraph 29, the company, by the implementation of the restructuring plan, aims to increase production capacities for rolling stock. This fact is in contradiction with the provisions of art. 14 par. 2 from *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*.

(76) SC ASTRA COMIND SRL Arad, the buyer of the company, collaborate with SC ASTRA VAGOANE SA Arad to the manufacturing of rolling stock. According to those mentioned in paragraph 45 and the fact that the buyer of the majority stake of SC ARIS SA is SC ASTRA COMIND SRL Arad, the of the majority stock of shares in ASTRA VAGOANE Arad the only domestic producer of railway passenger cars and the main supplier for the Romanian market, the Competition Council notes that by granting the state aid to ARIS, the ASTRA group consolidates its position on the railway car and rolling stock market.

(77) As for the domestic lathes production, until 2002, although it has recorded substantial production reductions S.C. ARIS S.A. Arad continued to represent the main domestic producer, reaching between 75.4% in 2000 and 79% in 2002 from the domestic lathes production.

(78) Given the above, the importance of the company on the relevant markets affected by granting the state aid, the Competition Council notes that the provisions of art. 14 from the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty* are not observed regarding the application of compensatory measures in view of reducing the distorting effects of the state aid on the competition.

6. Observing „one time, last time” principle

(79) The Competition Council notes that the state aid granted by the company in 2000 based on G.D. 874/2000 represents state aid for restructuring because, as previously mentioned, when granting the state aid the company was in difficulty. Also, in 2002, the aid granted to the company at privatization is likewise aid for restructuring because even at privatization the company was in difficulty.

(80) The state aids granted to S.C. ARIS S.A. Arad have not been notified to the Competition Council prior to being granted therefore, according to art. 3¹ from the Law no. 143/1999 on state aid, they represent unlawful aids.

(81) According to art. 24 from the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty* which provides that a restructuring aid is granted only once, a new restructuring aid can be granted to a company only after a period of minimum 10 years, and considering that between the first and the second aid granted to S.C. ARIS S.A. is less than 10 years, the Competition Council notes that the provisions of the Regulation are not observed, the «one time, last time» principle being infringed.

V. CONCLUSIONS

(82) Given the above, according to the results of the investigation, the Competition Council notes that the state aid granted to S.C. ARIS S.A. Arad, in total value of ROL 280,643,806,604 is incompatible with the provisions of Law no. 143/1999 regarding state aid, with the subsequent modifications and completions, as well as with the provisions of the *Regulation regarding state aid for the rescuing and restructuring of firms in difficulty*, issued in the application of the Law. In consequence, the granting of such a state aid is in position to significantly affect the normal competitive environment and infringes the appropriate application of the international treaties Romania is a part of.

(83) Any state aid granted to S.C. ARIS S.A. prior to issuing the present decision meets the conditions set in art. 3¹ from Law no. 143/1999 regarding state aid, with the subsequent modifications and completions, is being considered unlawful aid, aid granted without being authorized by the Competition Council, given that from the analysis following the investigation resulted that the granted aid is incompatible with the normal competitive environment, it is therefore required the enforcement of the provisions of art. 17 and 18 of the Law.

DECIDE

Art. 1. Having regard of art. 12 par. (1) and (2)(d) from the Law nr. 143/1999 regarding state aid, with the subsequent modifications and completions, the individual aid for restructuring granted to S.C. ARIS SA Arad in amount of ROL 280,643,806,604 is prohibited.

Art. 2. The state aid granted to S.C. ARIS S.A. Arad prior to issuing of the present decision, plus related interest, will be recovered by the state aid grantor according to art. 17 and 18 from the Law no. 143/1999 regarding state aid, with the subsequent modifications and completions.

Art. 3. The present Decision is applicable from the date of its communication.

Art. 4. According to provisions of art. 29 from the Law no. 143/1999 regarding state aid, with the subsequent modifications and completions, the present Decision can be contested by interested parties at the Bucharest Court of Appeals, the Administrative Litigation Section, within 30 days from its communication.

Art. 5. The present Decision will be communicated by the General Secretariat from the Competition Council to:

- The Authority for State Assets Recovery, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1;
- S.C. ARIS S.A. Arad , str. Calea Victoriei nr. 33-35, cod postal 310158, Arad, Judetul Arad.

Art. 6. The General Secretariat, the State Aid Authorization Department and the Legal and Litigation Department from the Competition Council will seek to enforce the provisions of the present Decision.

PRESIDENT

MIHAI BERINDE