

DECISION OF THE COMPETITION COUNCIL

No 67 on 08.04.2005

**regarding the state aid notified by the
Authority of State Assets Capitalization
granted to S.C. TEROM S.A. Iasi**

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, amended and completed by E.G.O. no. 121/2003 approved by Law no. 184/2004,

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,

Having regard the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Monitor of Romania, Part I, no. 470 on 02.07.2002, with the subsequent modifications and completions,

The report of the reporter and the investigation team following the conclusions of the investigation opened through the Order of the Competition Council' President no. 21 /04.02.2005,

Based on the following reasons,

I. THE PROCEDURE

(1) By the address no. P/11451/13.10.2004, registered at the Competition Council with no. RS-AS 89/13.10.2004, the Authority of State Assets Capitalization (A.V.A.S.) notified based on art. 6 in the Law no. 143/1999 on State aid, amended and completed by Law no. 603/2003 and by G.O. no. 94/2004 regarding some financial measures, the individual State aid for the restructuring S.C. TEROM S.A. Iasi within the privatization process.

(2) By address DAAS no. 806/19.10.2004, no. 887/08.11.2004, respectively no. 8610/02.12.2004, the Competition Council requested supplementary information, mainly regarding the following aspects:

- presenting the measures comprised in the restructuring plan, respectively the necessity of each one of them for restoring the viability of the undertaking (the causes which lead to the implementation of each measure, as well as the expected effects of thereof);

- the financing sources of the restructuring plan;
- the domestic market on which S.C. TEROM S.A. Iasi activates;
- the fulfillment of the “firm in difficulty” criteria;
- the reasons for establishing that there is overcapacity on certain segments of the market on which the company activates.

(3) Due to the fact that A.V.A.S. has not supplied all the relevant information in this case, the Competition Council, following the Note of the State Aid Authorization Department, registered with no. DAAS/118/01.02.2005, has decided to open the investigation procedure on the financial support granted to S.C. TEROM S.A. Iasi by AVAS.

(4) On the basis of the provisions of art. 40 letter a) and art. 27 letter i) and r) from the Competition Law no. 21/1996, with subsequent amendments and completions, by Order of the Competition Council’ President no. 21/04.02.2005, it has been opened the investigation, with the purpose of analyzing the compatibility of the financial support granted to S.C. TEROM S.A. Iasi by AVAS.

(5) The Order to open the investigation and the note regarding the closure of the investigation have been published on the website of the Competition Council, according to the provisions of Law no. 143/1999 regarding the State aid, with subsequent amendments and completions, in order to allow the interested parties to send comments regarding the measure for which the investigation procedure has been opened.

(6) S.C. TEROM S.A. Iasi has communicated the Competition Council by address no. 311/18.02.2005, the following information:

- in 2004 raw materials prices have increased with aproximatively 30% and the market did not response accordingly to the request of increasing the prices for the company’s products; thus, the production costs have overcome, for some ranges, the contracted prices;
- the investments of the company have overcome the company’s financing estimated capacity and theirs effect has not been the expected one, which lead to the impossibility of paying the current debts and the installments;
- it was opened the penal procedure against the representative of the sole administrator of the company and the commercial manager for inappropriate activities of the company.

II. FACTS

A. Description of S.C. TEROM S.A. Iasi

(7) The beneficiary of the financial measures granted by the State is S.C. TEROM S.A. Iasi, a company employing a total number of 2,121 persons on 30.05.2004.

(8) S.C. TEROM S.A. Iasi has been set up under the name of “Synthetic Fibers Plant”. In 1993, the company changes its name into “Purls and Synthetic Fibers Plant”. According to the provisions of Law no. 15/1990 regarding the reorganization of the economical units into autonomous regies and commercial companies and on the basis of G.D. no. 1176/02.11.1990, the Plant has been transformed into commercial undertaking entirely State owned, by taking over the whole patrimony of Purls and Synthetic Fibers Plant. S.C. TEROM S.A. Iasi is registered at the Trade Register under no. J22/263/1991, unique register code 966374, fiscal attribute R.

(9) The company's main line of activity is the production and trading of polymers, purls and synthetic fibers, foil and foil products. The company also has secondary activities as: the production of PP purls, EP bands production, PE foil extrusion installation, PVC profiles production, oxygen and azoth production, cars production, services delivery, paints and antifreeze production, etc.

(10) From the point of view of the production flux, the company is structures as follows:

- 5 chemistry production sections ("Chemistry", "Purls", "Fiber", "Foil Fiber", "Injection Installations");
- 1 textile profile section;
- 1 mechanical profile section.

(11) The basic technology of S.C. TEROM S.A. Iasi is the synthesis process of the polyester granules from dimetiltereftalat and monoetilenglicol, as well as the transforming process of granules into purls (textile and technical), fibers and foils, based on the melting spinning with the possibility of measuring the paint.

(12) [...] ¹

(13) The economical and financial results based on the data from the balance sheets for years 2001 and 2002 are presented in table no. 2.

Table no. 2 Main economical and financial data of the company

-ROL mill.-

Data	2001	2002
Total turnover	406,361	423,546
from which:		
- turnover on domestic market	244,090	257,870
Net result (profit /loss)	1,981	89

Source: balance sheets annexed to the notification form

It can be noticed that the company registered an increasing trend of the turnover, while the profit has decreased in 2002.

(14) S.C. TEROM S.A. Iasi has been privatized in 2002 by selling the main stock of shares owned by APAPS (AVAS), representing 94.6279% from the capital, to Mr. HASAN NANAA with the dwelling place Bucharest. According to the selling-purchase contract, the transfer of the ownership right of shares (when the investor was in the possession of shares) has been achieved on 17.12.2002.

(15) Following the transfer of the ownership right of shares, the structure of the ownership is the following:

Table no. 3 Ownership structure of S.C. TEROM S.A. Iasi after privatization

SHAREHOLDERS	SHARES OWNED	
	No. of shares	Percentage of capital (%)
Hasan Nanaa	2,411,184	94.627
PPM	136,884	5.373

¹ Confidential data

Total	2,548,068	100.000
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Source: AVAS

B. The privatization of S.C. TEROM S.A. Iasi

(16) According to the provisions of G.D. no. 1128/09.11.2000 regarding the privatization strategy of the S.C. TEROM S.A. Iasi, included in the component „The privatization of 50 companies mainly owned by the State, grouped into packets”, from PSAL (The Program for Adjusting the Private Sector), the State Assets Found (subsequently named AVAS) has been entrusted with selling the main stock shares representing 94.6279% of the capital, to a strategic investor/group of investors.

(17) The public announce regarding the selling offer of the 94.6279% of capital owned by APAPS (AVAS) in S.C. TEROM S.A. Iasi has been advertised in the internal press, in the daily newspaper Adevarul, on 10.09.2002 and in the international press, in Financial Times, on 11.09.2002. The deadline for the buying offers was 28.10.2002. The expiry date of the selling offer of AVAS was 08.03.2003, after 180 days. Following the advertising, two buying offers have been registered, one from Nanaa Hasan – natural Romanian person and S.C. TESS CONEX S.A. Iasi.

(18) Following the analysis of the participation papers of the two, the Negotiation Commission has decided to continue the negotiations with Nanaa Hasan. The final offer, improved and irrevocable has been subscribed on 11.12.2002 and the selling-purchase contract has been concluded on 13.12.2002.

C. Markets analysis on which S.C. TEROM S.A. Iasi activates

(19) S.C. TEROM S.A. Iasi is a producer on the following markets:

- fibers;
- technical purls;
- textile purls;
- foil.

(20) S.C. TEROM S.A. Iasi trades its products both on the domestic market, as well as on the external markets.

(21) The market shares in 2001 and 2002 for the main products are as follows:

Table no. 4 Market shares of the company on the domestic market segments

No.	PRODUCTS	2001		2002		2003	
		TOTAL DOMESTIC (tons)	MARKET SHARE (%)	TOTAL DOMESTIC (tons)	MARKET SHARE (%)	TOTAL DOMESTIC (tons)	MARKET SHARE (%)
1	fibers	3 523	78.5	3 524	85	3 895	87.7
2	textile fibers	830	52.54	736	49.36	846	35
3	technical fibers	545	51.1	432	48.2	387	48.5
4	foil	137	100	146.7	100	129.5	100

Source: AVAS notification form

(22) The main competitors of S.C. TEROM S.A. Iasi on the textile and technical PES fibers market are S.C. Moldosin S.A. Vaslui and CORAPET S.A. Corabia, to which is added the competition from the direct importers, especially of PES fibers from Turkey and Asia.

(23) The company's products are designated to the producers of textile products – T-shirts, tissues and thick stuffs, filature purls and carpets. The main clients are: ASITEX S.A. Iasi, Vastex S.A. Vaslui, Vovatex S.A. Pitesti, TEXTOR S.A. Tg. Mures and NETEX Bistrita.

(24) From the supplementary information supplied by AVAS results that on the PES fiber and textile fibers markets there is overcapacity, which will lead to the conservation of two production lines of PES fibers (line II spinning and line IV Fibers Section) and for the textile fibers a small line production will be reduced by conservation (line III spinning Fibers Section).

(25) In the information supplied by AVAS for completing the notification form, there is mentioned that, according to the National Prognosis Commission' previsions, the market for fibers and synthetic fibers shall register, until 2007, a production increase with 5-6% each year. Compared to this prognosis, the Business Plan proposed by the beneficiary of the State aid reveals a production increase for fibers and synthetic fibers which follows the increasing trend of the market, as follows:

Table no. 5 Production evolution of S.C. TEROM S.A.

Products	Production				tons
	2003	2004	2005	2006	
PES Fiber	4,293	7,653	7,890	9,965	
PES Textile Fiber	2,202	2,296	2,526	2,688	
PES Technical Fibers	775	1,225	1,347	1,499	
PES Foil	123	306	337	349	

Source: AVAS notification form

(26) According to the information supplied by AVAS for completing the notification form, the market shares on the fibers and synthetic fibers external market and the competitors of the company are as follows:

Table no. 6 Market shares of the company on the external market of fibers and synthetic fibers

MARKET	MARKET SHARE	COMPETITORS
EUROPE	2.8%	MOGHILEV (Ukraine), MONTEFIBRE, SINTERAMA (Italy), SASA (Turkey), INTERKISA (Spain), ELANA TORUM (Poland), TREVIRA, KOSA (Germany)
USA	0.3%	ROMPULENK
CANADA	0.4%	DUPONT

Source: supplementary information send by AVAS

(27) Both on the domestic and the external market of the polyester products (fibers and purls) there is a trend of drastically decrease of the demand and the selling prices of products. It is estimated that this trend shall be specific for this market in the next period.

D. Describing the financial support granted to S.C. TEROM S.A.

(28) [...] ²

(29) S.C. TEROM S.A. has benefited from restructuring funds according to Law no. 58/1991 in total amount of ROL 7,776,000,000, on the basis of conventions no. 604/13.12.1994, no. 154/17.04.1995 and no. 775/21.11.1995. These funds have been rescheduled for payment; the payment of thereof bears an interest rate at the same level as the one on the financial market. Therefore, these funds do not represent State aid.

E. Restructuring plan of S.C. TEROM S.A. Iasi

(30) The financial support granted by AVAS at the privatization of S.C. TEROM S.A. Iasi is meant for its restructuring. The company, together with the buyer and AVAS have drawn up a restructuring plan, for the period 2003-2006, which comprises measures regarding the structural reorganization of the company, the technical and technological restructuring, environment investments and financial restructuring.

(31) By implementing the restructuring plan, the company envisages the achievement of the following objectives:

- activity efficiency by reducing the costs;
- making available the unused industrial areas;
- purchasing new installations and machines;
- creating liquidities necessary for caring on the activities.

(32) [...] ²

(33) [...] ²

(34) The restructuring plan presented to the Competition Council describes the measures undertaken by the company between 2003-2006, the effect of implementing thereof, the enforcement period, the cost, the financing sources – of the company, of the investor or financial support of the State- without specifying for the first two ones their source.

1. Technological restructuring

(35) [...] ²

2. Environment restructuring

(36) For complying with the environment requirements, through the selling-purchase contract, the new investor has undertaken to achieve environment investments, from own resources, in total amount of ROL 7,790 mill. The purpose of this investment is the setting up equipment for cleaning PET flocks.

3. Other measures

² Confidential data

(37) The restructuring plan comprises also organizational measures, respectively the organization of the production capacity of confections, with a cost of ROL 2,895 mill., being covered by the company, according to the data supplied to the Competition Council.

(38) Also, S.C. TEROM S.A., in the restructuring plan, proposes to finance the acquisition of raw materials, which will be used in the production process, in total amount of ROL 30,928 mill.

4. Financial restructuring

(39) [...]³

5. Considerations regarding the restructuring plan

(40) According to the grantor and the company, implementing the restructuring plan will make possible for S.C. TEROM S.A. not to register losses and to progress to a new structure, through the following:

- assuring the payment in due time of the current debts and the installments according to the graphics established by the budgetary creditors;
- the efficiency of the activity by reduction of costs;
- the rentabilisation and reorganization of the activity;
- increasing the liquidity and decreasing the level of debts.

(41) According to the information received from the grantor, the restructuring plan describes the circumstances which lead to the difficulties that the company confronts with and has been drawn up considering the strengths and weaknesses of the company.

(42) Among the strengths of the company are the following: the flexibility of production from the point of view of products range, as well as the possibility of producing small product quantities; the good quality of products due to the interface possibility of quality control; the possibility of own production of majority of the sub-assemblies and spare parts for the production equipments, and also the possibility to deliver to the national producers of fibers and purls such equipments.

(43) The main weaknesses of S.C. TEROM S.A. Iasi are: the ageneses of the base technological installations which are obsolete and worn out, using raw materials (polyester granules) purchased exclusively from import with a special exchange effort, as well as the financial blockage due to the high volume of debts of the company.

(44) AVAS mentions, in the notification form, that during the implementation of the restructuring plan, the evolution of the cashes and payments will be the one presented in table no. 9.

Table no. 9 The cash flow during the implementation of the restructuring plan

-ROL mill.-

	2003	2004	2005	2006
1. Cash flow from exploitation activity	-1,009	24,324	19,897	16,308
2. Cash flow from investment activity	-9,642	-9,765	-3,963	-4,366
3. Cash flow from financing activity (the	-	-15,478	-15,772	-12,884

³ Confidential data

variation of loans)				
4. Total cash flow	-10,651	-919	162	-942

It can be noticed the negative values of the cash flow registered during the implementation of the restructuring plan.

(45) According to the data from the notification form and the ones completing it, implementing the measures comprised in the restructuring plan will lead to the viability of the company, as it can be noticed also from the economical and financial estimated data for the restructuring period.

Table no. 10 The evolution of the main economical and financial data

		-ROL mill.-			
Data		2003	2004	2005	2006
1.	Total revenues, out of which:	563,550	750,000	826,857	898,506
	- exploiting	555,898	745,111	821,123	893,115
	- financial	7,652	4,889	5,134	5,391
	- extraordinary	-	-	-	-
2	Total expenses, out of which:	616,018	753,711	824,757	896,706
	- exploiting	605,757	743,040	813,553	884,942
	- financial	10,261	10,670	11,204	11,764
	- extraordinary	-	-	-	-
3	Gross profit (+) / Loss (-)	-52,468	-3,771	1,500	1,800

Source: Notification form AVAS

The company and the grantor appreciate that the losses from the year 2004 shall decrease compared with the year 2003, as a large part of the State aid, respectively the exemption from payment of the budgetary unpaid obligations, shall be granted effectively in 2004. Also, it is provisioned that a positive financial result in 2005 is based on the existence of a portfolio of orders, which gives the possibility to the company to revive its activity.

(46) In 2006, following the implementation of the restructuring activities, it is expected, according to the data from the notification form, that the company reaches the target levels presented in table no. 11.

Table no. 11 The level of economical and financial data of S.C. TEROM S.A. at the end of the restructuring period

1. Net profit	ROL mill.	1,800
2. Turnover	ROL mill.	835,610
3. Number of employees	persons	1,823
4. Financial ratability	%	2,2
5. Capital and reserves	ROL mill.	172,523
6. Total assets minus current debts	ROL mill.	121,974

Source: notification AVAS

(47) In the note for opening the investigation, the Competition Council has expressed its doubts regarding the fulfillment of the criteria stipulated in the Regulation on State aid for rescue and restructuring firms in difficulty and in the Law no. 143/1999 on State aid, with subsequent amendments and completions. Also, the Competition Council doubts that the implementation of the measures from the restructuring plan annexed to the notification form shall lead to the viability of the company on

long term, as there is no direct connection between the causes which lead to the debts increase towards the State budget and the restructuring measures.

(48) The Competition Council notes that the restructuring plan of S.C. TEROM S.A. is not based on a market analyze which should comprise complete information and well grounded regarding the situation on relevant markets and the evolution of these markets.

(49) The Competition Council notes that, although in the notification form and in the information completing it, the beneficiary of the State aid measures mentions that he will bring an important financial contribution (57.1%) for covering the restructuring costs, it does not present the financing sources and neither he brings justifying documents of such financing sources.

III. STATE AID CHARACTER OF THE FINANCIAL SUPPORT GRANTED TO S.C. TEROM S.A. IASI

(50) In order to be considered State aid as provided by the Law no. 143/1999 on State aid, with subsequent amendments and completions, the financial support must fulfill cumulatively the following conditions, provided for in art. 2:

- to be granted from State resources,
- to be selective,
- to confer an economic advantage to the company,
- to distort or threaten to distort competition and the trade between Romania and Member States of the European Union..

(51) The financial support granted to S.C. TEROM S.A. Iasi notified by AVAS consists in the renunciation from the State to some revenues, therefore State resources are implied.

(52) The financial support granted according to the provisions of the Law no. 137/2002 regarding some measures for acceleration of the privatization process is addressed only to the companies which are to be privatized, among which S.C. TEROM S.A. Iasi. The measures granted to S.C. TEROM S.A. are therefore selective.

(53) By granting the financial measures under the form of financial facilities an economic advantage is granted to S.C. TEROM S.A.; the company is exempted from payment of the unpaid debts toward the State budget, as well as from the interests and delay penalties of thereof. Following the granting of these fiscal facilities, the company does not have to pay its debts towards the state budget, which has a positive impact on the economic and financial data and on cash flow. Thus, the company has an economic advantage, being advantaged in comparison with its competitors.

(54) Granting of the financial aid to S.C. TEROM S.A. Iasi creates the premises for an alleged distortion of competition on the relevant markets, because the company can maintain or consolidate its position on these markets.

(55) Also, there is no doubt that the financial support distort the trade with Member States of the EU as a part of the products produced by the company are sold on the external market.

(56) Following all these, the Competition Council considers that the financial support granted to S.C. TEROM S.A. represent State aid in the meaning of Law no. 143/1999 on State aid, with subsequent amendments and completions.

IV. STATE AID EVALUATION

(57) Art. 2 from the Law no. 143/1999 on State aid, with subsequent amendments and completions, provides that the aids granted from state resources by the State, which distort or threaten to distort competition and the trade with Member States of the EU are incompatible with a normal competitive environment.

(58) The Competition Council evaluates the State aid granted S.C. TEROM S.A. Iasi according to the criteria provide for in the Regulation on State aid for rescue and restructuring firms in difficulty. In order to be considered compatible while the normal competitive environment, the State aid must fulfill all the criteria from the above-mentioned Regulation.

1. The eligibility of S.C. TEROM S.A. Iasi – firm in difficulty

(59) The criteria for establishing whether S.C. TEROM S.A. Iasi can receive state aid for restructuring, being a firm in difficulty are the following:

a) Turnover

Table no. 12 The evolution of the turnover of S.C. TEROM S.A.

-ROL thousand-

Index	2001	2002
Turnover	406,361,269	423,545,930

Source: AVAS notification

Analyzing the turnover of the company, it can be noticed an increasing trend for the analyzed period.

b) Profit/loss

Table no. 13 Profit /loss of S.C. TEROM S.A.

-ROL thousand-

Index	2001	2002
Balance sheet total (profit +/-loss -)	1,981,408	88,996

Source: AVAS notification

In the analyzed period the company registers profit.

c) Level of debts evolution

Table no. 14 Debts situation of S.C. TEROM S.A. Iasi

-ROL thousand-

Index	2001	2002
Total debts	266,243,007	330,740,862
Equity	119,757,341	121,350,085
Level of debts (%)	222.31%	272.5%

Source: AVAS notification

It can be noticed that the level of debts of the company in 2002 compared with 2001 have increased, registering thus an increasing trend of the level of debts.

d) The evolution of the operating result

Table no. 15 Operating result of S.C. TEROM S.A.

-ROL thousand -

Index	2001	2002
Operating revenues	448,456,806	475,426,084
Operating costs	430,009,492	471,177,517
Operating result	18,447,314	4,248,567

Source: AVAS notification

From the analyze of the production activity it can be noticed that, although the production level has increased, the increase of the costs is higher; thus, the operating result has decreased from ROL 18,447,314 thousand in 2001 down to ROL 4,248,567 thousand in 2002.

e) Gross operating margin

Table no. 16 The Gross operating margin evolution

-ROL thousand -

Index	2001	2002
Operating result	18,447,314	4,248,567
Turnover	406,361,269	423,545,930
Gross operating margin %	4.54	1.00

Source: AVAS notification

The decrease of this profit indicator in 2002 compared with 2001, indicates the fact that the company could not control its production costs and to obtain the best selling price.

f) Stocks evolution

Table no. 17 Stocks situation of S.C. TEROM S.A.

-ROL thousand -

Index	2001	2002
Stocks	106,073,986	136,264,203

Source: AVAS notification

As results from the data from the above table, the stocks evolution is positive; the company registers an increase of thereof in 2002 compared to 2001. In calculating this index, the finished products and goods represent the biggest part, registering in 2001 approximatively 69% and aproximatively 64.4% in 2002.

(60) The Competition Council notes that the company registers, in the analyzed period, an increasing trend of the turnover and in the financial years 2001 and 2002 gains profit. The fact that the company registers an increase of the stocks and especially for the finished products and goods, proves the fact that the company is badly managed and has a wrong market strategy, being incapable to control its production costs and to sell its products for the best prices.

(61) According to the information gathered during the investigation, S.C. TEROM S.A. Iasi has succeeded to contract credits on market conditions, being eligible for receiving credits, which proves that from the analyze of the crediting banks results that the company could have paid the installments. We mention that the company has contracted in 2002 two credits, as follows:

- a USD 840,000 credit, 5.9% interest rate per year, guaranteed with “chimney” and “mechanical service” assets and a finished products pledge; the credit was contracted for purchasing raw materials;
- a USD 400,000 credit, with an interest rate of LIBOR at 3 months + 4.5% per year, with a pledge on the purchase equipment and supplementary guaranteed with a mortgage on the production hall; the credit was contracted for purchasing technological equipments.

(62) Based on the facts presented, the Competition Council considers that S.C. TEROM S.A. Iasi is not a firm in difficulty according to the provisions of Regulation on State aid for rescue and restructuring firms in difficulty.

(63) Even assuming that the undertaking would have been eligible to receive restructuring state aid (but not in this case, as explained at chapter IV, point 1 in the present decision), the criteria provisioned in the Regulation on the state aid for rescuing and restructuring firms in difficulty are not fulfilled anyway, as explained in the following points.

2. Belonging to a group

(64) According to the provisions of art. 2 paragraph (5) from the Regulation on State aid for rescue and restructuring firms in difficulty, a company belonging to a group is not under normal conditions eligible for granting rescue and restructuring aid, except for the case where it can demonstrate that the difficulties of the company are its own and do not result from an arbitrary allocation of costs within the group and that the difficulties are too serious to be covered by the group.

(65) S.C. TEROM S.A. does not belong to a group, being owned in a proportion of 94.6% by Hasan Nanaa – natural person.

3. Restoring the viability

(66) According to art. 12 from the Regulation on State aid for rescue and restructuring firms in difficulty, the restructuring plan must comprise the renunciation of all the activities which produced losses and to lead to the restoration of the viability of the company on long term, being able to function with its own resources. The restructuring plan must be based on a real estimation of market conditions; the restoring of the viability must result mainly from internal measures, as well as from considering external factors as the variation of prices and demand, factors on which the company has no influence.

(67) S.C. TEROM S.A. together with the buyer and AVAS has drawn up a restructuring plan which comprises technological restructuring measures, environments restructuring, organizational restructuring and other measures, as well as financial restructuring measures. The measures comprised in the restructuring plan have been presented in point II.E of the present decision.

(68) The grantor and the company have transmitted to the Competition Council the restructuring plan of S.C. TEROM S.A., mentioning that this plan has been drawn up following the diagnostic analyze which comprises the strengths and the weaknesses of the company and describes the circumstances

which lead to the difficulties. Thus, it is mentioned that the following factors have had a bad influence on the production activity:

- assuring the raw materials (polyester granules) exclusively from import, with an important exchange effort;
- high price of the polyester granules from import compared to the low prices from PES fibers;
- the existence of limited funds of foreign currencies which lead to limited import possibilities;
- low number of beneficiaries from the textile industry who can pay the product bought at the moment of delivering; (the majority of thereof demand a payment grace of 30-90 days);
- technical worn out of the equipments of around 65%, which suppose a low productivity of thereof, a bad quality and a high production costs; all these make it very difficult to maintain on the market and the company cannot face the competition;
- overestimated stocks for finished products – at the privatization moment there was a ballast of approximately 700 tons products having an important value, which could hardly be sold at low prices. This situation lead to the impossibility to cover the costs for materials and employment, to the reduction of the working capital turnover and supposed attracting sources for carrying on the production (sources which lead to the increase of the production costs due to the interest rates) and had a negative impact on the company's image on the market;
- overestimated stocks of other materials (in the value of approximately ROL 5,000,000 thousand) which cannot be used in the production process;
- high level of interest; thus, the losses due to the interest paid for the credits contracted by the company being important;
- excedentary employed persons.

(69) The restructuring plan is based on a market analysis according to which it is estimated a production increase for purls, fibers and polyester foils on the domestic market with approximately 5% per year during the restructuring period, as well as an increase with 5% compared to the previous year of prices; this percentage has in view the evolution of the inflation rate and the prices increase for raw materials and oil. Also, it is estimated an increase of the volume of sales of the company's products on the external market with 5% per year during 2003-2006. The Competition Council notes that the restructuring plan is not based on a realistic market study which must present the evolution of demand and offer on the relevant markets during the restructuring period. Thus, it is estimated the production of the company, but it is not correlated with the evolution of demand on the purls, fibers and polyester foil markets. Following that, the Competition Council doubts that the products of the company will be sold on the market, taking into account that the company did not estimate the evolution of the demand on the fibers, purls and polyester foil market.

(70) Moreover, the Competition Council doubts that the products of the company will be sold in the situation when there is overcapacity of the market and the company confronts not only with strong competition, but also with low quality of its own products and high production costs. Also, the company has high stocks of finished products which cannot be sold or which have been sold to low prices; in the information completing the notification form, it is mentioned that the company does not even cover the production costs through prices, which imposed contracting credits for carry on the activity.

(71) The Competition Council underline that it did not have the documentation certifying the existence of a demands portfolio which could assure the selling of the products. In this case, there is a danger that

the company operates on stocks and is not capable to recover even the restructuring costs, which could rise doubts on the restoring of viability.

(72) The Competition Council considers that the restructuring measures which are to be implemented do not solve all the problems to which the company confronts with and it is not certain that through the restructuring plan the target objectives would be reached as long as there is not a direct connection between the negative factors on the company and the restructuring measures. In these conditions it is uncertain that at the end of the restructuring period the estimated economic and financial indexes shall be reached considering that these indexes have been established based on an optimistic hypothesis, being estimated an improvement of thereof each year.

(73) The Competition Council underlines the contradictory character of the information presented, respectively the contradiction between the level of the economic and financial target indexes and the fact that the company estimates a negative value of the cash flow at the end of the restructuring period (point II. E. 5 of the present decision) which proves, once again, that the restructuring plan does not assure the revival of the company and the company cannot finance the activity through its own sources.

(74) Considering the presented facts, the Competition Council doubts that the proposed restructuring plan shall lead to the restoration of viability of S.C. TEROM S.A. Iasi on long term.

(75) The Competition Council notes that, during the investigation, it noticed that, even the restructuring period began in 2003, in present, the economic and financial situation of the company got worse. The company could not pay back its current debts towards the State budget and the General Division of Public Finances has distrain upon 4 production halls, the finished products stock and the current cash count during the forced execution procedure for recovery the budgetary liabilities. Moreover, the comments of S.C. TEROM S.A. following the publication of the note for opening the investigation underlines the bad situation of the company. All these facts sustain the doubts of the Competition Council regarding the capacity of the restructuring plan to restore the viability of the company on long term.

4. Aid limited to minimum

(76) According to the provisions of art. 14 from the Regulation on State aid for rescue and restructuring firms in difficulty, the amount and intensity of the aid must be limited to the strict minimum necessary for a restructuring based on the financial sources of the company and the shareholders.

(77) [...] ⁴

(78) The Competition Council notes that S.C. TEROM S.A. Iasi did not mentioned which are the financing sources for covering 17.6% of the restructuring costs and did not supplied the justification documents certifying the existence, even the potential, of such sources, without including any State aid.

(79) [...] ⁴

(80) The Competition Council notes that the loan with no interest granted by the buyer to the company is not an entirely real contribution to covering the restructuring costs; the company has to reimburse those founds. As a contribution of the buyer can be considered only the interest of this loan that the company does not have to pay. Thus, the Competition Council doubts as regards the buyer's own contribution to the restructuring plan.

⁴ Confidential data

(81) By the letter sent on 16.03.2005, AVAS has mentioned to the Competition Council that there is the probability of canceling the selling-purchase contract for the privatization of the company because the buyer did not pay the price of shares. This fact proves that the investor does not have the financial capacity to support the restructuring measures, undertaken at the moment of signing the privatization contract.

(82) The beneficiary of the state aid mentions in the notification form that, in 2004, he shall sell assets in the value of ROL 53,900 mill. and scrap iron in the amount of ROL 10,000 mill., but he did not specified whether these sources will be used for financing the restructuring measures.

(83) The Competition Council has doubts about the limitation to the minimum necessary of the aid, having in view the uncertainty regarding the own real contribution of the company and the buyer's to the restructuring plan. In this situation, an extra-liquidity might be created which could be used by the company for activities not linked to the restructuring process, activities which could lead to the distortion of competition on the relevant markets.

5. Avoiding the semnificative distortion of the competitive environment

(84) According to the provisions of Regulation on State aid for rescue and restructuring firms in difficulty, in view to minimize as much as possible the negative effects on the competition on the relevant markets, as the positive effects of granting the State aid to overcome the negative ones, compensatory measures must be taken.

(85) According to the information supplied by the grantor and the beneficiary, the company shall conserve 2 technological lines for polyester fibers (line 2 spinning and line 4 from « Fibers » Section) and for textile fibers a technological line shall be conserved (line 3 spinning from « Purls» Section).

(86) The Competition Council underlines that these production capacities shall be conserved, not destroyed or sold; thus, they can anytime be put into function again. Thus, the Competition Council doubts about the negative effects of the State aid.

6. Observance of „one time, last time” principle

(87) S.C. TEROM S.A. does not received state aid for restructuring before; thus, the provision of art. 18 from the Regulation on State aid for rescue and restructuring firms in difficulty, which stipulates that the restructuring aid must be granted only one, is observed.

V. CONCLUSIONS

(88) Considering all the presented facts, according to the investigation results, the Competition Council notes that the State aid granted to S.C. TEROM S.A. Iasi, in the amount of ROL 209,427,414,758 is incompatible with the provisions of Law no. 143/1999 on State aid, with subsequent amendments and completions, as well as with the provisions of Regulation on State aid for rescue and restructuring firms in difficulty. Therefore, granting the State aid can distort the competitive normal environment and the international treaties to which Romania is part.

(89) The Competition Council noticed during the investigation that, out from the total State aid in the amount of ROL 209,427,414,758, the company has received, prior to issuing of the present decision,

the exemption from payment of debts towards the State budget and unpaid until 31.12.2001, in total amount of ROL 23,843,896,393.

(90) State aid granted to S.C. TEROM S.A. Iasi previous to the present decision fulfils the conditions stipulated in art. 3¹ from the Law no. 143/1999 on State aid, with subsequent amendments and completions, being considered unlawfull aid, granted without being authorised by the Competition Council and must be applied the provisions of art. 17 from the Law.

DECIDES

Art. 1. Based on art. 12 paragraphs (1) and (2) letter d) from the Law no. 43/1999 on State aid, with the subsequent amendments and completions, it is forbidden the granting of individual State aid for the restructuring of S.C. TEROM S.A. Iasi for privatisation, in the amount of ROL 209,427,414,758.

Art. 2. The State aid granted to S.C. TEROM S.A. Iasi previous to issuing the present decision, in the amount of ROL 23.843.896.393, together to the interest for thereof, shall be recovered by the State aid grantor according to the provisions of art. 17 paragraph (4) from the Law no. 143/1999 on State aid, with the subsequent amendments and completions.

Art. 3. The present decision will be applicable from the date of its communication.

Art. 4. According to the provisions of art. 29 from the Law no. 143/1999 on State aid, with the subsequent amendments and completions, the present decision may be appealed by the interested parties at the Court of Apel Bucharest, Administrative Contentious Section in a period of 30 days from the communication.

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

- The State Assets Capitalization Authority , 50 Cpt. Av. Alexandru Serbanescu, sector 1, Bucuresti;
- S.C. TEROM S.A. Iasi, 27-29Calea Chisinaului, zip code 700177, Iasi, Iasi County.

Art. 6. The General Secretariat and the Directorate for Authorization of State Aid within the Competition Council shall pursue the fulfillment of the present decision.

PRESIDENT

MIHAI BERINDE