

**DECISION OF THE COMPETITION COUNCIL**  
**no. 110/16.05.2006**  
**regarding the rescue aid for**  
**SC BAITA SA STEI**

**THE COMPETITION COUNCIL,**

With regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993;

With regard to the provisions of the *Competition Law no. 21/1996*, republished in the Official Gazette no. 742, Part I, of 16.08.2005;

With regard to the provisions of the *State aid Law no. 143/1999*, republished in the Official Gazette, Part I, no. 744 of 16.08.2005;

With regard to the provisions of the *Regulation on the form, contents and other details of the notification of a State aid*, published in the Official Gazette Part I, no. 82/25.01.2005,

With regard to the provisions of the *Regulation on State aid for the rescue and restructuring of firms in difficulty*, published in the Official Gazette, Part I, no. 1215, of 17.12.2004;

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members;

**Based on the following,**

**1. PROCEDURE**

- (1) By address no. 160677 of 21.03.2006, filed with the Competition Council no. RS-AS 53 of 21.03.2006, the Ministry of Economy and Commerce has notified based on art. 15 of the *State Aid Law no. 143/1999*, republished, the state aid to be granted to S.C. BAITA S.A. STEI according to the provisions of EGO no. 8/2006 *for approving certain financial measures for the undertakings under the authority of the Ministry of Economy and Commerce in 2005*, as individual rescuing aid.
- (2) As the information submitted were not exacted and completed, the Competition Council requested to the Ministry of Economy and Commerce supplementary

information by addresses no. 531 from 29.03.2006 and no.560 from 05.04.2006. MEC submitted the answers by address no.160764 din 05.04.2006.

- (3) The notification became effective when the information were exacted and completed, respectively on 05.04.2006.

## 2. FACTS

### 2.1. The beneficiary

- (4) S.C. BAITA S.A. Stei, named BAITA, is a stock exchange company, 100% hold by the State, located in Bihor, Bihor County, registered at the Trade register with no. J05/893/2001 and fiscal code R 14322197.

- (5) BAITA was set up by the following normative and constitutive act:

- Government Decision no. 771 of 16.08.2001, regarding the programme of measures for reorganizing, restructuring and diminishing losses of national Company of *Cuprum, Aurum and Iron „ Minvest” S.A. Deva, article 1, pct. D, published in the Official Gazette of Romania no. 562/10.09.2001*
- *Decision no. 26/20.03.2002 of General Assembly of Shareholders of Minvest SA. The special mandate no.108/2002, issued by the Ministry of Industry and Resources (Ministry of Economy and Commerce currently) by which the externalization and transformation in commercial company of the Subsidiary Baita was decided.*

- (6) The main object of activity is represented by the extraction and preparation of non-ferrous and rare minerals (NACE code 1320). BAITA has developed its activity in the Exploitation Field Baita (framed in the development-exploitation perimeter Baita- Bihor for the following substances: Cu, Mo, Bi,W,Pb,Zn,B,Au,Ag).

- (7) According to the information provided by the grantor, Baita is not active on the external market.

- (8) The share market of BAITA and its competitors on the internal market

**Table no.1:** The share market of BAITA and its competitors on the internal market

The internal producers	The share market for Cuprum concentrate	The share market for Pb concentrate	The share market for Zn concentrate	The share market for ferrous minerals (iron, manganese)
C.N.M.P.N Remin S.A. Baia Mare	10.1%;	77.7%	84.4%	16.7%

C.N. Minvest S.A. Deva	16.4%;	21.0%	1.4%	76.1%
S.C. Moldomin S.A. Moldova Noua	20.0%;	-	-	-
S.C. Cuprumin S.A. Abrud	39.2%;	-	-	-
S.C. Minbucovina S.A.	10.2%	-	8.0%	7.2%
S.C. BAITA Stei S.A.	4.1%	1.3%	6.2%	-
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: The notification form for S.C. BAITA S.A. Stei

(9) [...] <sup>1</sup>

(10) The beneficiary is located in Bihor county – North West development region, considered assisted area according to Article 87 (3) (a) form EC Treaty, being a mono-industrial area, specific to the mining sector. The main revenue sources for the habitants of this region is obtained from the activity developed in the mining exploitation

(11) BAITA has had at the end of 2005, 341 employees and a turnover of RON 20,153 thousands, being considered as large enterprise. The restructuring programme of BAITA provides a reduction of the number of workers from 341 to 291 employees.

(12) The Company has registered in period 2003-2005 the following evolution of the financial indicators:

**Table no. 2 The evolution of the main economic-financial during the period 2003-2005**

- thousands RON-			
INDICATOR	2003	2004	2005
Losses	-5,506	-5,931	-3,512
Turnover	18,264	19,099	17,812

Source: Notification for BAITA

As results form the data provided in the table no. 2, the Company registered big losses in the relevant period.

(13) The financial situation was caused by the following:

- *Debts not paid to the consolidated budget of State due to the fact that the revenues from the sales of the concentrates does not cover the production cost*
- *The prices for the main products are maximal prices established by Government Decision which are not actualized by taking into consideration the price on the external market.*

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<sup>1</sup> Confidential dates

- *The production costs varied significantly after 1990 due to the energy increased prices which are not correlated with the prices for the sold products*

## 2.2. The measures of financial support

(14) Due to the difficult financial situation of Baita and due to the fact that the company does not have the liquidities for paying the debts related to the year 2005, the grantor (i.e. Ministry of Economy and Commerce) decided to grant a financial support to the company. The basis for granting the aid is represented by *G.E.O no. 8/2006 for the approval of financial measures for the undertakings under the authority of Ministry of Economy and Commerce* in 2005. The Ministry notified the aid which consists in stay of payment( for 6 months) in order to be exempted, of overdue taxes for 2005 as well as of the related interest and penalties, in amount of RON **2,945,531** as follows:

**Table no. 3 – The debt and related accessories of Baita**

Budgetary obligation	Debt	Accessories <sup>2</sup>	Total (RON)
- contribution to social insurance	1,463,942	378,210	1,842,152
- unemployment fund	149,728	39,986	189,714
- healthy fund	390,280	102,525	492,805
- CAS professional diseases, work accidents	163,798	42,034	205,832
- mining relevance	16,740	2,594	19,334
- mining fee	146,737	37,648	184,385
- guarantee for environment protection	9,775	1,516	11,291
<b>TOTAL</b>	<b>2,341,000</b>	<b>604,513</b>	<b>2,945,513</b>

Source: Notification for S.C. BAITA S.A. Stei

## 3. State aid assessment

### 3.1. State aid character

(15) The criteria, which allow establishing if a measure is State aid, are presented in art. 2 (1) of Law no. 143/1999 on State aid, republished. Thus, any support measure granted by the State or from State resources or resources of the local administration, no matter the form, that distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the provision of certain

<sup>2</sup> Debts and related accessories will be stayed of payment from the date of issue of a decision by the Competition Council. Accessories are calculated until the date of stay of payment.

services, or that affect the trade with the Member States represents State aid and is considered incompatible with a normal competitive environment.

- (16) The granted financial support consists in foregoing by the State in obtaining some revenues, therefore State resources are involved. This is granted to BAITA, therefore is selective. Granting such exemptions will have a favourable effect on the company's indicators, especially on cash-flow. Thus, the company is conferred an advantage, being favoured against its competitors. The notified financial support measure affects trade with the Member States of the European Union as long as products offered by BAITA can compete with similar products of companies from the European Union.
- (17) To conclude, the financial facilities granted to the company are considered to represent state aid and fall under the scope of the Law no. 143/1999 on State aid, republished.

### **3.2. State aid compatibility**

- (18) Art. 2 of the Law no. 143/1999 on State aid, republished, foresees that State aid granted by the State or from State resources that distort or threaten to distort competition and affect trade with the Member States are incompatible with a normal competitive environment. However, certain state aids may be considered compatible and can be authorized by the Competition Council, if it complies with the criteria provided in the Competition Council's regulations and guidelines.
- (19) The analysis of the economic-financial indicators of BAITA shows that the company confronts financial difficulties; according to the information in the notification form, the State aid is granted to maintain the company's activity in the short term, until a restructuring plan is presented. Consequently, the analysis of the State aid's compatibility will be done according to the authorisation criteria for rescue aids, stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty, published in the Official Gazette no. 1215/17.12.2004 (hereinafter named Regulation). The Competition Council considers that this is the only regulation applicable in this case, since the grantor has not invoked any other derogation from the normal rules in this field.

#### *Eligibility of the company. Firm in difficulty and affiliation to a group of companies*

- (20) In article 2 (2) of the Regulation, a public company is considered as being in difficulty when it presents the usual characteristics of a company in difficulty, namely loss increase, turnover decline, a drop in cash inflows, debt growth.
- (21) As shown by the evolution of the economic-financial indicators for the last 3 years, S.C. BAITA Stei S.A. is in difficulty because:

- The value of loss registered is increasing, reaching RON 3,512.0 thousand in 2005;
  - Debt to suppliers and the budget has increased up to RON 14,374,750 thousand;
  - The intermediary liquidity indicator has decreased in 2005 as compared to 2004 and 2003.
- (22) According to the provisions of the Regulation, a company belonging to a group or taken over by a group is not normally eligible to receive State aid for rescuing and restructuring, except for the case when it can be proved the financial difficulties belong to the company itself are not the outcome of an arbitrary allocation of costs within the group and that the said difficulties are much too serious to be handled by the group itself.
- (23) BAITA is not part of a group of firms and is therefore eligible to receive State aid for rescuing.

Criteria for the authorisation of a rescuing aid, stipulated at art. 8 (1) of the Regulation

- (24) Normally, the rescue aid must consist of liquidity support in the form of loan guarantees or loans and temporary in duration; any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.
- (25) In the case of BAITA, the aid is not in such a form, i.e. it comprises stay of payment in order to be exempted of overdue debts to the State budget; nevertheless, the Competition Council considers that this support is equivalent to the form required by the Regulation, thereby satisfying the reversibility criterion.
- (26) According to the provisions of art.8 par. (1) letter c) of the Regulation, the rescuing aid must be accompanied upon notification by a commitment of the grantor to supply the Competition Council, within a 6-month deadline, starting with the authorisation date of the rescuing aid, or by a restructuring or liquidation plan, or the proof that the loan has been fully reimbursed and/or the guarantee has expired.
- (27) According to the information provided in the notification form, the grantor has committed to supply, within 6 months from the authorisation date of the rescuing aid, a restructuring or liquidation plan for BAITA. In the event of restructuring, the privatisation of the company is envisaged, if a potential investor to buy the majority share package is found, and the rescuing aid shall be part of the restructuring plan. In any event, if a restructuring plan is not submitted by the grantor during the 6 months period provided at para.(26), the state will claim back the debts stayed of payment and the related penalties, representing an amount equal to or equivalent to the rescue aid, thus all prior debts shall become due.

- (28) The analysed State aid observes the provisions of art.8 par. (1) letter b) of the Regulation, according to which rescuing aid must be justified by serious social reasons and must not induce unacceptable negative effects over the competitive environment. In fact, the ceasing of BAITA's activity shall seriously impact on unemployment in the Bihor area, considering that this is already confronted with a high unemployment rate, following the closing of other mines.
- (29) The consequences of not granting the rescuing aid to BAITA would be catastrophic, meaning first of all the lay-off of the entire personnel existing at present, as well as the total and definitive shutting down of the mining extraction and processing activity in the county of Bihor.
- (30) Considering that the main employment source for the local workforce is mining, and the main qualification is in the mining sector, shutting down this unit would lead to an increase of the unemployment rate and would aggravate the economic-social situation of the area. Unemployment in the Bihor county is 5.3%, but following the ceasing of mining exploitation, this will considerably increase, reaching around 21.5%. Furthermore, considering that the company is not active on the foreign market, the Competition Council considers that the aid shall not induce unacceptable negative effects over the competitive environment and over trade with the Member States.
- (31) In accordance with art. 8 par. (1) letter d) of the Regulation, the rescuing aid must be limited to the sum necessary in order to maintain the company in the economic circuit for the duration for which it has been authorised. Applying the formula foreseen in the Annex to the Regulation, based on the data provided by the supplier, it results that the maximum liquidities needed by the company to maintain its activity for 6 months amount to RON 2,945,513 as follows:
- $$\text{RON } [-2,768,513 + 721,000 + (-6,513,334 - 192,091)]/2 = -4,376,469$$
 and the value requested for exemption is RON 2,945,513
- (32) Considering the above-mentioned, the Competition Council considers that the notified State aid, in amount of RON **2,945,513** to be granted to BAITA, is limited to the minimum necessary, thus observing the provisions of art. 8 par. (1) lit. d) of the Regulation.
- (33) According to the information provided by the Ministry of Economy and Commerce, BAITA has not benefited from State aid previously. Consequently, the notified aid fulfils the "first time, last time" principle, as foreseen at art. 8 par. (1) letter e) of the Regulation.

## DECIDES

**Art. 1.** The financial support measure to be granted to S.C. BAITA Stei S.A. Baia Mare represents a State aid according to article 2(1) of the *Law no. 143/1999 on State aid*, republished.

**Art. 2.** Based on the provisions of article 21 (2) letter c) corroborated with art. 23 (1) e) of the *Law no. 143/1999 on state aid*, republished, the rescuing aid that is going to be granted to BAITA, is authorized with the condition to observe the provisions of article 3 of the present Decision.

**Art. 3.** The Ministry of Economy and Commerce shall submit the company's restructuring or liquidation plan to the Competition Council, within 6 months from the issuing of the present decision.

**Art. 4.** If the conditions imposed by the present decision are not observed, the provisions of article 22 of the *Law no. 143/1999 on State aid* republished and of GO 129/2005 regarding the fiscal code shall apply.

**Art. 5.** The amount of the State aid that is going to be granted is of RON 2,945,513.

**Art. 6.** The present decision becomes applicable as of communication.

**Art. 7.** In accordance with the provisions of article 32 of the *Law no. 143/1999 on State aid*, republished, the Ministry of Economy and Commerce shall submit to the Competition Council information on the State aid granted in order to inventory and monitor.

**Art. 8.** In accordance with article 46 of the *Law no. 143/1999 on State aid*, republished, the present decision can be appealed by interested parties at the Appeals Court, the Administrative Litigation Section within 30 days from its communication.

**Art. 9.** The present decision shall be communicated by the General Secretariat of the Competition Council to:

- The Ministry of Economy and Commerce, 152 Calea Victoriei, sector 1 Bucharest;
- S.C. Baita Stei S.A. - 9 Cuza Voda str, county of Bihor.