

DECISION OF THE COMPETITION COUNCIL

no. 111 of 16.05.2006

**concerning the rescue aid for
MOLDOMIN Moldova Noua**

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, content and other details regarding the state aid notification, published in the Official Gazette, Part I, no. 82, of 25.01.2005

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

With regard to the provisions of the Guidelines regarding the qualification of an enterprise as a SME, published in the Official Gazette, Part I, no. 314, of 14.04.2005,

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 letter no.160643/15.03.2006, filed with the Competition Council no. RS-AS 45/16.03.2006, the Ministry of Economy and Commerce (MEC) notified based on art. 15 of *Law no. 143/1999 on state aid, republished*, the state aid measures intended to be granted to MOLDOMIN, as individual rescue aid.

- (2) The Competition Council requested MEC further information, by letter no. DAAS/524/28.03.2006. MEC forwarded the requested information by letter no. RG/3032/04.04.2006.
- (3) The notification became effective as of the date when the information was accurate and complete, namely on 05.04.2006.

2. DESCRIPTION OF THE FACTS

2.1. The Beneficiary

- (4) MOLDOMIN is a joint-stock company, with entirely state owned capital, with headquarters in Moldova Noua, Caras Severin county, registered at the Trade Register under no. J11/233/1999 and fiscal identification code: 11932018.
- (5) MOLDOMIN was set up on 08.02.2001, by detachment from the National Company MINVEST Deva. The main business is represented by non-ferrous and rare ores extraction and processing (CAEN code 1320). The core product manufactured by the company is copper in copper concentrates. The company carries out its activity in three main subunits, namely: the Suvorov Mine, the Banatite Quarry and the Processing Plant.
- (6) The undertaking is active in the mining sector, owning a share of 20% on the domestic market of copper concentrate and of approximately 2.5% on the European market. The main competitors and their respective market shares are the following: CUPRUMIN Abrud (39.2%), MINVEST Deva (16.4%), REMIN Baia-Mare (10.1%), MIN Bucovina (10.2%) and Baita Stei (4.1%).
- (7) The beneficiary is located in Moldova Noua, in a mono industrial area, that is part of the Western development region, considered an assisted region in accordance with the provisions of art. 87 (3) (a) of the EC Treaty.
- (8) At the end of 2005, MOLDOMIN had 931 employees and a turnover of RON 60,289 thousand, thus being a large enterprise.
- (9) During 2003-2005, the company had the following evolution of the main accounting financial indicators: [...] ¹
- (10) Among the causes that determined the difficult economic-financial situation we can find the following:
 - outdated and obsolete production equipment, with high consumptions of electricity, fuel and lubricants;

¹ Confidential data.

- low technological performance of equipment during the technological flow;
- revenues obtained from the selling of copper concentrates cover only partially the production costs, the price for basic product being established through government decision;
- lack of liquidities.

2.2. *The financial support measure*

- (11) Considering that the undertaking is in a difficult economic-financial situation, by not having liquidities to pay debts to the state budget for 2005, the supplier decided to grant MOLDOMIN a financial support. This will be granted in accordance with *G.E.O. no. 8/2006 regarding the approval of some financial measures for the economic agents under the supervision of the Ministry of Economy and Commerce for 2005* and consists in stay of payment (for six months) in order to be exempted of overdue taxes for 2005 as well as of the related interest and penalties, in amount of RON 6,026 thousand.

Table no. 2 *The debt and related accessories of MOLDOMIN*

- thousand RON-

Financial support	Debit	Accessories ²	Total facilities
- mining royalty	73	8	81
- risk and work accidents fund	377	42	419
- contributions social insurance employer	3,475	390	3,865
- contributions health insurance employer	924	104	1,028
- contributions unemployment insurance employer	421	47	468
- fund for disabled people	148	17	165
TOTAL	5,418	608	6,026

Source: Notification form

3. ASSESMENT

3.1. *Existence of State Aid*

- (13) The criteria on which it is established whether a measure represents state aid are foreseen in article 2 (1) of the *Law no.143/1999 regarding state aid*, republished. Thus, state aid is any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings, the production of certain goods or the provision of certain services is, insofar as it affects trade between Romania and

²Debts 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.

the Member States of the European Union, incompatible with a normal competition environment.

- (14) By granting the financial support the State renounces to obtaining certain revenues, therefore the State's own resources are involved. This is granted to a certain undertaking, namely MOLDOMIN, thus having a selective character. The granting of the financial support will have a positive effect on the economic-financial indicators of the undertaking, especially on the cash flow. Therefore, the undertaking will benefit from an advantage since it is favoured compared to its competitors. The notified financial support measure will affect the trade between Romania and the Member States of the European Union since the products provided by MOLDOMIN could compete with other similar products manufactured by undertakings from the European Union.
- (15) Therefore, the financial support intended to be granted to MOLDOMIN constitutes State aid and is subject to *Law no. 143/1999 regarding state aid*, republished.

3.2. State aid compatibility

- (16) According to Article 2 from Law no.143/1999 on State aid, republished, the state aids 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 the normal competitive environment. Nevertheless, certain state aid can be considered as compatible and can be authorised by the Competition Council, if complies with the criteria provided in the Competition Council's regulations and guidelines.
- (17) By analyzing the main economic-financial indicators of MOLDOMIN it is proved the fact that the undertaking confronts financial difficulties; according to the information provided in the notification, the state aid is granted in order to maintain the undertaking's short term activity, until a restructuring plan is presented. As a consequence, the assessment of the aid compatibility is done in accordance with the Regulation on state aid for rescuing and restructuring firms in difficulty, applied through the Competition Council's Order no. 501/23.11.2004, published in the Official Gazette no.1215/17.12.2004 (hereinafter Regulation). The Competition Council considers that no other state aid rules can be applied in this case, the grantor did not mention any other derogation from the normal rules in the field.

Undertaking's eligibility. Firm in difficulty and the undertaking's affiliation to a group

- (18) As shown in table no.1, during 2003-2005, the company faced serious financial difficulties. Thus, the company presents usual signs of a firm in difficult, such as: diminishing turnover, losses, reducing of capital and high degree of endowment.

Therefore, the criteria foreseen under Article 2 of the Regulation are met to consider MOLDOMIN as a “firm in difficulty”.

- (19) According to the Regulation, a company belonging to or being taken over by a larger business group is not normally eligible for rescue and restructuring aid, except where it can be demonstrated that the firm’s difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (20) MOLDOMIN does not belong to a group and therefore is eligible to receive rescue aid.

Conditions for authorising a rescue aid, stipulated in Article 8 (1) of the Regulation

- (21) 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.
- (22) In the case of MOLDOMIN, 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.
- (23) According to the provisions of Article 8 (1) (c) of the Regulation, the rescue aid must be accompanied, on notification, by an undertaking given by the grantor to submit to the Competition Council, no later than 6 months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or the proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.
- (24) According to the information presented in the notification, the grantor committed to present a restructuring plan or a liquidation plan of MOLDOMIN within 6 months from the authorisation of the rescue aid. In the restructuring scenario a privatisation of the company is envisaged if a potential investor can be found, and the rescue aid will be a 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 par. (23), 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.
- (25) The rescue aid analysed is in line with the provisions of Article 8 (1) (b) of the Regulation, warranted on the grounds of serious social difficulties and have no unduly effects on the competitive environment. According to the information in the notification form, the Moldova Noua area is confronted with a difficult situation concerning employment. Thus, of the total population of 28,765 inhabitants, only 18,772 inhabitants represent apt labour force. Out of these, only 3,100 persons actually have jobs, which leads to an employment rate of only 16.6%. The ceasing of

MOLDOMIN's activity and the personnel's lay off would lead to the growth of unemployment in the area, since in this case, the unemployment rate would increase from the current level of 9.36% up to 21.9%. Considering this situation and the fact that Moldova Noua is a mono industrial mining area – copper ores, the company's bankruptcy would generate an ingravescence of the social problems, due to the lack of perspective in finding a new job. Moreover, taking into account the low market share of the company on the European market (approx. 2.5%), the Competition Council finds that the aid will not create unacceptable negative effects on the competitive environment and unduly adverse spill-over effects on the Member States.

- (26) According to Article 8 (1) (d) of the Regulation, the rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. Applying the formula set out in the Annex of the Regulation to the data provided by the grantor, resulted that the maximum of liquidities needed by the company to maintain its activity for 6 months is of RON 15,923,556, as it follows:

$$[-14,523,424 + 4,597,771 + (-216,304,710 - (-194,383,252))]/2 = -15,923,556$$

- (27) Taking into account the above, it is considered that the state aid notified, in amount of RON 6,026,000, intended to be granted to MOLDOMIN is limited to the minimum necessary, according to the provisions of Article 8 (1) (d) of the Regulation.
- (28) According to the information provided by the Ministry of Economy and Commerce, MOLDOMIN has not benefited before of state aid for rescuing and restructuring before. Therefore, the notified aid complies with the “one time, last time” principle, as set out in Article 8 (1) (e) of the Regulation.

DECIDES

Art. 1. The financial support measure intended to be granted to MOLDOMIN represents 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) (c) corroborated with Article 23 (1) (e) of the Law no. 143/1999 on state aid, republished, the rescue aid for MOLDOMIN is authorized with the condition to observe the provisions of Article 3 of the present Decision.

Art. 3. The Ministry of Economy and Commerce must submit to the Competition Council the company's restructuring or liquidation plan, within 6 months from the date of issuance of the present Decision.

Art. 4. If the condition imposed by the present decision is not observed, the provisions of Article 22 of the Law no. 143/1999 on State aid, republished shall apply.

Art. 5. The amount of the State aid intended to be granted is of RON 6,026 thousand.

Art. 6. The present decision becomes applicable as of its date 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. Pursuant to Article 46 of *Law 143/1999 on State aid*, republished, this decision may be appealed by the interested persons at the Bucharest Court of Appeal, administrative section, within 30 days from its communication.

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

- The Ministry of Economy and Commerce, Calea Victoriei nr.152, sector 1 Bucharest;
- MOLDOMIN, 1 Dunarii str., Moldova Noua, Caras-Severin county.