

## **DECISION OF THE COMPETITION COUNCIL**

**no. 113 of 16.05. 2006**

**concerning the rescue aid for**

**National Company of Copper, Gold and Iron „MINVEST” S.A. Deva**

### **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. 160677/21.03.2006, filed with the Competition Council no. RS-AS no.54/21.03.2006, 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 the National Company of Copper, Gold and Iron (MINVEST), as individual rescue aid.

- (2) Since the information submitted was not complete and accurate, the Competition Council requested to MEC further information by letter no. DAAS/526/28.03.2006. MEC submitted its answers to the requested information by letter no. 160764/05.04.2006, filed with the Competition Council no. RG 3059/05.04.2006.
- (3) The notification became effective when the information was precise and complete, respectively on 05.04.2006.

## 2. DESCRIPTION OF MEASURE

### 2.1. Beneficiary

- (4) MINVEST is a joint-stock company with entirely state owned capital, with headquarters in Deva, Hunedoara County, being registered at the Trade Register under J/20/333/1999 and fiscal identification code: R2117946.
- (5) MINVEST was set up in accordance with GO no. 808/13.11.1998, through the reorganization of the Autonomous Regie of Copper Deva and by taking over its patrimony assets and business. The undertaking is organized in 11 branches with legal personality; the extraction and preparation of metalliferous and non-metalliferous minerals are made in 4 mines, 3 quarries and 9 preparation plants.
- (6) The main business is represented by the extraction and preparation of cupriferous, gold and ferrous minerals (cod CAEN 1310, 1320). Among the secondary activities, we find the following: production of equipment for extraction and constructions (code CAEN 2952), extraction of rock for construction (code CAEN 1411), extraction of gravel and grit (code CAEN 1421), activities of technical testing and analyses (code CAEN 7430).
- (7) The undertaking is active in the mining sector and the products obtained are turned to profit only on the domestic market. The market shares of MINVEST in 2005 are the following:

**Table no.1 – MINVEST's market shares**

Categories of products	Market share on romanian market	Market share on European market
copper	16.4%	<0.1%
gold	63.2%	<0.1%
lead	21.0%	<0.1%
zinc	1.4%	<0.1%
ferrous minerals	76.1%	<0.1%

*Source: supplementary information*

(8) The main competitors and their respective market shares are the following:

- copper: SC Cuprumin SA (39.2%), SC MOLDOMIN SA (20%), MIN Bucovina (10.2%), REMIN Baia-Mare (10%), and Baita Stei (4.1%);
- gold: REMIN Baia-Mare (34.8%);
- lead: REMIN Baia-Mare (77.7%);
- zinc: Baita Stei (6.2%), MIN Bucovina (8%), REMIN Baia-Mare (84.4%);
- ferrous minerals (iron, manganese): MIN Bucovina (7.2%), REMIN Baia-Mare (16.7%);

(9) The mining exploitations of the undertaking are situated in Hunedoara, Alba and Harghita counties, respectively in the development region NV and Centre, considered assisted areas in accordance with the provisions of art.87 (3) (a) from the EC Treaty. The areas in which there are the mining exploitations are mono-industrial areas, in which the mining exploitation represents the main income resource for the inhabitants.

(10) At the end of 2005, MINVEST had 2,492 employees and a turnover of RON 44,750 thousand, thus being a large enterprise.

(11) During 2004-2005, the company had the following evolution of the main accounting financial indicators:

***Table no.2 - Evolution of the main economic-financial indicators of the undertaking for the period 2004-2005***  
 [...]<sup>1</sup>

(12) Among the causes that determined the difficult economic-financial situation we can find the following:

- low technological performance of equipments, installations and transportation means due to outdated and obsolete assets;
- technological flow that implies high consumption levels of energy and fuels;
- the 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 measure***

(13) 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 grantor decided to grant MINVEST 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*

---

<sup>1</sup> Confidential data

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 25,112,312, as follows:

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

			RON
	Debt	Accessories <sup>2</sup>	Total facilities
Contributions social insurance	13,556,500	2,212,810	15,769,310
Contributions health insurance	3,694,743	609,628	4,304,371
Contributions unemployment insurance	1,536,679	257,279	1,793,958
Mining royalty	699,817	119,036	818,853
Contributions social insurance - 0,5% professional diseases and work accidents	1,310,604	222,376	1,532,980
Exploitation taxes	61,878	5,223	67,101
Fund for disabled people	24,800	5,839	30,639
VAT to pay	608,952	110,680	719,632
Other debts	57,596	17,872	75,468
<b>TOTAL</b>	<b>21,551,569</b>	<b>3,560,743</b>	<b>25,112,312</b>

*Source: supplementary information*

### **3. ASSESMENT**

#### **3.1. Existence of State Aid**

- (14) 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 the Member States of the European Union, incompatible with a normal competition environment.
- (15) 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 MINVEST, thus having a selective character. 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 MINVEST could compete with other similar products manufactured by undertakings from the European Union.

<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.

- (16) Therefore, the financial support intended to be granted to MINVEST constitutes State aid and is subject to Law no. 143/1999 regarding state aid, republished.

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

- (17) According to Article 2 of the Law no.143/1999 on State aid, republished, the state aid is incompatible with the normal competitive environment. Nevertheless, certain state aid can be considered as compatible and can be authorised by the Competition Council, if it complies with the criteria provided in the Competition Council's regulations and guidelines.
- (18) By analyzing the main economic-financial indicators of MINVEST it is proved the fact that the undertaking has serious 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 not mentioning any other derogation from the normal rules in the field.

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

- (19) [...] <sup>3</sup> Therefore, the criteria foreseen under Article 2 of the Regulation are met to consider MINVEST as a "firm in difficulty".
- (20) 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.
- (21) MINVEST is not belonging 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*
- (22) 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.
- (23) In the case of MINVEST, 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,

---

<sup>3</sup> Confidential data

the Competition Council considers that this support is equivalent to the form required by the Regulation, thereby satisfying the reversibility criterion.

- (24) 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.
- (25) According to the information presented in the notification, the grantor committed to present a restructuring plan or a liquidation plan of MINVEST 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 para.(24), 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.
- (26) The rescue aid is in line with Article 8 (1) (b) of the Regulation, warranted on the grounds of serious social difficulties and have no undue effects on the competitive environment. In fact, if MINVEST ceased its operations this would have serious consequences in terms of employment in Hunedoara, Harghita, Alba counties, as these suffer from a high level of unemployment, as a consequence of closing of other mines. Thus, in the situation of MINVEST liquidation, 2,342 persons will be laid-off, which will increase the level of unemployment from 9.4% to 11.26% in Hunedoara County, from 8.2% to 10.21% in Harghita County, and in Alba County it will reach 9.2% in comparison with 8.5%. Taking into account that mining represents the main subsistence source for the inhabitants of that area, the undertaking'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 (below 0.1%), the Competition Council finds that the aid will not create unacceptable negative effects on the competitive environment and undue adverse spill-over effects on the Member States.
- (27) 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 83,476 RON thousand, as it follows:

$$[- 52,624 + 3,029 + (- 117,358)]/2 = - 83,476$$

- (28) The Competition Council notices that the value of the notified rescue aid is lower than by applying the formula. Taking into account the above, it is considered that the

state aid intended to be granted to MINVEST is limited to the minimum necessary, according to the provisions of Article 8 (1) (d) of the Regulation.

- (29) According to the information submitted by the Ministry of Economy and Commerce, MINVEST has not benefited before of state aid for rescue and restructuring. 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 MINVEST 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 MINVEST, 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 25,112,312.

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 Art. 46 of Law 143/1999 on State aid with subsequent modifications and completions, 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;
- CNCAF Minvest SA., Piata Unirii nr.9, Deva, Hunedoara County .