

DECISION OF THE COMPETITION COUNCIL

no. 114 of 16.05.2006

**concerning the rescue aid for
CUPRU MIN**

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 no.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 CUPRU MIN, as individual rescue aid.

- (2) The Competition Council requested to MEC further information by letter no. DAAS/530/29.03.2006. MEC replied by letter no. 160.738/03.04.2006 and no.160.759/05.04.2006.
- (3) The notification became effective on 05.04.2006.

2. DESCRIPTION OF THE MEASURE

2.1. The Beneficiary

- (4) CUPRU MIN is a joint-stock company, with entirely state owned capital, with headquarters in Abrud, Alba county, being registered at the Trade Register under no. J01/64/1999 and fiscal identification code: 11551757.
- (5) CUPRU MIN was set up on 01.04.2002, by detachment from the National Company MINVEST Deva and by taking over the assets and liabilities of one of the subsidiaries of this undertaking, Avram Iancu S.A. Abrud subsidiary, as well as its main business.
- (6) The main business is represented by the extraction and preparation of copper ore from Rosia Poieni and the valorification of copper concentrate (code CAEN 1320). Among the secondary activities, we find the following: extraction of andesite and limestone for construction (code CAEN 1411) and rent of equipments for mining exploitation (code CAEN 7134).
- (7) The undertaking is active in the mining sector, owning a share of 39,2% on the domestic market of copper concentrate and of approximately 0,3% on the European market. The main competitors and their respective market shares are the following: MOLDOMIN Moldova Noua (20%), MINVEST Deva (16,4%), REMIN Baia-Mare (10,1%), MIN Bucovina (10,2%) and Baita Stei (4,1%).
- (8) The beneficiary is situated in the area of Apuseni mountains – Centre development region, considered assisted area in accordance with the provisions of art.87 (3) (a) from the EC Treaty. This is a mono industrial area, in which the mining exploitation from Baia de Aries, Zlatna, Rosia Montana and Rosia Poieni represents the main income resource for the inhabitants¹.
- (9) At the end of 2005, CUPRU MIN had 932 employees and a turnover of RON 74,089 thousand, thus being a large enterprise.
- (10) During 2003-2005, the company had the following evolution of the main accounting financial indicators:

¹ In the Strategy for the mining industry it is foreseen that the activity of mining exploitation at Aries, Zlatna and Rosia Montana should be ended.

Table no.1 Evolution of the main economic-financial indicators of the undertaking for the period 2003-2005

- thousand RON-

INDICATOR	2003	2004	2005
Turnover	74,862	79,863	74,089
Result of the exercise	-7,999	-490.8	-16,102
Capital	-17,131	-17,475	-33,420

Source: Notification form

As it results from the data presented in table no.1, the undertaking had losses and negative capital during the period analyzed.

- (11) 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

- (12) 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 CUPRU MIN 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 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; the total amount of facilities is of RON 2,858.72 thousand, as it follows:

Table no. 2 - *The debt and related accessories of Cupru Min*

-thousand RON-

		Debit	Accessories ²	Total facilities
1.	Contributions social insurance	1,287.3	185.14	1,472.44
2.	Contributions health insurance	413.0	59.43	472.43
3.	Contributions unemployment insurance	175.0	25.20	200.20
4.	Mining royalty	360.0	49.36	409.36

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.

5.	Contributions social insurance - 0,5% professional diseases and work accidents	154.0	22.29	176.29
6.	Exploitation taxes	55.0	6.70	61.70
7.	Fund for disabled people	58.0	8.30	66.30
	TOTAL	2.502,3	356,42	2,858.72

Source: Notification form

3. ASSESSMENT

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 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 CUPRU MIN, thus having a selective character. The granting of 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 CUPRU MIN could compete with other similar products manufactured by undertakings from the European Union.
- (15) Therefore, the financial support intended to be granted to CUPRU MIN 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 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 CUPRU MIN 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 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) Article 2 (2) of the Regulation lays down that a company is regarded as being in difficulty where more than half of its capital, as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months.
- (19) As shown in table no.1, during 2003-2005, the company's capital was reduced with RON 16,289 thousand - which represents „more than half of the capital”- and only during the previous year the company registered a loss of its capital of RON 15,945 thousand - which represents „more than one quarter of this capital”. Therefore, the criteria foreseen under Article 2 (2) of the Regulation are met to consider CUPRU MIN 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) CUPRU MIN 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 CUPRU MIN, the aid is 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.

- (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 CUPRU MIN 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 CUPRU MIN ceased its operations this would have serious consequences in terms of employment in the area of Apuseni mountains, as the whole region suffers from a high level of unemployment, as a consequence of closing of other mines. Thus, in the situation of CUPRU MIN liquidation the level of unemployment in the area of Apuseni mountains will increase from 41,7% to 53,6% and the unemployment rate in Alba county will reach 9,5%, compared to 8,9%. According to the information presented in the notification, from the incomes obtained by the 932 employees of CUPRU MIN, other 3,450 persons are supported, representing their family members. Taking into account that mining represents the main subsistence source for the inhabitants of that area, the undertaking's bankruptcy would generate an aggravation 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 (0.3%), 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 RON 9,609 thousand, as it follows:

$$[-16,021+6,671 + (-69,306-(-59,437))]/2 = -9,609$$

- (28) Taking into account the above, it is considered that the state aid notified, in amount of RON 2,858.72 thousand, intended to be granted to CUPRU MIN is limited to the minimum necessary, according to the provisions of Article 8 (1) (d) of the Regulation.
- (29) The Ministry of Economy and Commerce confirm that CUPRU MIN has not benefited before of state aid for rescuing 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 CUPRU MIN 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 CUPRU MIN 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 2,858.72 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 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;
- S.C. CUPRU MIN S.A., Piata Petru Dobra nr.1, localitatea Abrud, judetul Alba.