

DECISION OF THE COMPETITION COUNCIL

no. 115 of 16.05.2006

**concerning the rescue aid for
National Company Minbucovina SA Vatra Dornei**

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. 160770/05.04.2006, filed with the Competition Council no. RS-AS no.65/05.04.2006, 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 Minbucovina SA Vatra Dornei (SCM SA), as individual rescue aid.

- (2) Since the information submitted was not complete and accurate, the Competition Council requested to MEC further information. MEC sent its answers to the requested information by letter no. 2313/11.04.2006. The notification became effective when the information was accurate and complete, respectively on 13.04.2006.

2. DESCRIPTION OF MEASURE

2.1. Beneficiary

- (3) SCM SA has carried on its activity since 01.09.2002, based on the Minister of Industry and Resources Order no 3081/2002 and 3082/2002 and on the General Meeting of Shareholders Decision no 21/2002 of CNMPN REMIN Baia Mare. Thus, it was decided that the company would become an independent commercial society.
- (4) SCM SA is a joint stock company, with entirely state owned capital. The headquarter of the company is in Vatra Dornei, Suceava county. SCM SA has 650 employees and is registered at the Trade Register under no. J33/358/2002 and its fiscal identification code are: 9993340.
- (5) The main business is represented by the extraction and preparation of non-ferrous and rare minerals (including radioactive minerals) (NACE code 1320), the extraction and preparation of ferrous minerals (NACE code 1310). Among the secondary activities, it can be found the following: extraction of rock for construction, the construction demolishes, drilling and feeling out activities for construction, construction works.
- (6) The undertaking activates only on the internal market. The market shares of SCM SA are the following:

Table no.1 – SCM SA's market shares

Categories of products	Market share on Romanian market
copper	10.2%
zinc	8%
ferrous minerals	7.2%

Source: supplementary information

- (7) The main competitors and their respective market shares are the following:
- copper: SC Cuprum SA (39.2%), SC MOLDOMIN SA (20%), REMIN Baia-Mare (10%), MINVEST SA (16.4%) and Baita Stei (4.1%);
 - zinc: Baita Stei (6.2%), REMIN Baia-Mare (84.4%) and MINVEST SA (1.4%);

- ferrous minerals (iron, manganese): REMIN Baia-Mare (16.7%) and MINVEST SA (76.1%).

(8) ¹

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

- low technological performance of equipments, installations and transportation means due to outdated and obsolete assets;
- the revenues obtained cover only partially the production costs;
- the lack of liquidities.

2.2. The financial measure

(10) Considering that the undertaking is in a difficult economic-financial situation, by not having liquidities to pay debts to the state budget, the grantor decided granting to the undertaking a financial support in order to maintain the company in the economical circuit until the end of a restructuring plan/liquidation plan. It will be granted according to *G.E.O. no. 8/2006 regarding the approval of some financial measures for the economic companies 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 7,011,436, as follows:

Table no. 3 - The debt and related accessories of SCM SA

			RON
	Debt	Accessories ²	Total facilities
Contributions social insurance	3,580,050	947,694	4,527,744
Contributions health insurance	942,836	232,915	1,175,751
Contributions unemployment insurance	396,870	98,997	495,867
Mining royalty	271,790	62,370	334,160
Contributions social insurance - work accidents	384,840	87,244	472,084
Exploitation taxes	5,830	-	5,830
TOTAL	5,582,216	1,429,220	7,011,436

Source: Notification form

3. ASSESMENT

3.1. Existence of State Aid

¹ Confidential data

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.

- (11) 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 favoring 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.
- (12) 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 SCM SA, thus having a selective character. The facilities granted will have a favorable effect on the undertaking's economic and financial indicators, especially on its 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 SCM SA could compete with other similar products manufactured by undertakings from the European Union.
- (13) Therefore, the financial support intended to be granted to SCM SA constitutes State aid and is subject to Law no. 143/1999 regarding state aid, republished.

3.2. State aid compatibility

- (14) Article 2 of the Law no.143/1999 on State aid, republished, provides that the aid granted by the state or from state's own resources which distorts or threatens to distort the competition and affects the trade between Romania and the Member States of the European Union 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.
- (15) By analyzing the main economic and financial indicators it is proved the fact that the undertaking had serious financial difficulties during 2004 – 2005. According to the information provided in the notification, the state aid is granted in order to maintain the undertaking's short term activity, until SCM SA restructuring plan is presented. As a consequence, the assessment of the aid compatibility is done in accordance with the rescue aid authorization criteria provided by 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

- (16) In accordance with Article 2(3) of the Regulation on State aid for rescue and restructuring firms in difficulty, a company is considered in difficulty when the company registers losses.
- (17) As it is shown in table no. 2, during 2004-2005, the company faced financial difficulties. Therefore the Competition Council finds out that the criteria foreseen under Article 2 of the Regulation are met to consider the company as a “firm in difficulty”.
- (18) 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.
- (19) The company 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

- (20) 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.
- (21) In the SCM SA case, 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.
- (22) 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.
- (23) According to the information presented in the notification, the grantor committed to present a restructuring plan or a liquidation plan of the company 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 will buy the majority stock, 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.(22), 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.

- (24) The rescue aids is in line with Article 8 (1) (b) of the Regulation, warranted on the grounds of serious social difficulties, and have no unacceptable negative effects on the competitive environment. In fact, if the company ceased its operations this would have serious consequences in terms of employment in the areas where it has working units, as the counties where SCM SA has mining exploitations already suffer from a high level of unemployment, as a consequence of closing of other mines. Thus, in the situation of SCM SA liquidation, the unemployment rate in Suceava County would grow from 8.3% to 23.5%. Taking into account that mining represents the main 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 jobs.
- (25) The Ministry of Economy and Commerce notified to the Competition Council a state aid in amount of RON 7,011,436, considered to be limited at the minimum level necessary in order to maintain the company's activity during a 6 months period, as it is provided by art. 8 par. (1) d) of the Regulation. This amount reflects the company's lack of liquidities and was calculated on the basis of cash-flow necessary from 2005. Also, it was taken into account the rescue aid maximum value of which the company can benefit, according to the formula set out in the Annex of the Regulation, respectively RON 12,314,340. The Competition Council notices that the value of the notified rescue aid is lower than that obtained by applying the formula set up in the Annex, and thus, the rescue aid intended to be granted to the undertaking is limited to the minimum necessary, in order to maintain the company in the economic circuit during a limited period of time, respectively 6 months.
- (26) The Competition Council notes, based on the facts presented at par. (25) that the rescue aid in quantum of RON 7,011,436 represents the minimum level necessary for the company's survival on a short period of time, respectively 6 months, in view of analysing the circumstances that led to the financial difficulties to the undertaking confronted with in order to elaborate a plan which will allow the reconstruction.
- (27) According to the information submitted by the Ministry of Economy and Commerce, SCM SA 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 National Company Minbucovina SA Vatra Dornei 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 the SCM SA 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 7,011,436.

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 it.

Art. 8. Pursuant to Art. 46 of Law 143/1999 on State aid, republished, the present 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, no.152 Calea Victoriei, sector 1 Bucharest;
- Commercial Company Minbucovina S.A. Vatra Dornei , no.1 Mihai Eminescu street, Vatra Dornei, Suceava County .