

DECISION OF THE COMPETITION COUNCIL

no. 120 of 16.05.2006 regarding the State aid to be granted to S.C. ARTECA S.A. Jilava

The Competition Council,

Taking into consideration the provisions of the European Agreement establishing an association between Romania and the European Communities and their Member States, ratified by Law no.20/1993, published in the Official Gazette, Part I , no. 73 of 12.04.1993;

Taking into consideration the provisions of Competition Law no. 21/1996, republished in Romania's Official Gazette no 742, I Part of 16.08.2005;

Taking into consideration the provision of Law no 143/1999 on State aid, republished in the Official Gazette no. 744/16.08.2005, Part I;

Taking into consideration the provisions of the Regulation regarding the State aid for the rescuing and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1215 of 17.12.2004;

Taking into consideration the provisions of the Regulation regarding the form, contents and other details of the notification of a State aid, published in the Official Gazette, Part I no. 82 of 25.01.2005;

Taking into consideration the provisions of the Regulation regarding state aid for SME, published in the Official Gazette, Part I no. 340 of 19.04.2004, republished,

Taking into consideration Decree no. 57/2004 on the appointment of the Competition Council;

Based on the following,

I. PROCEDURE

- (1)** By the letter no. VP4/1731/14.03.2006, registered at the Competition Council no. RS-AS 47/17.03.2006, the Authority for the State Assets Recovery (hereinafter named AVAS) notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the State aid measures intended to be granted to S.C. ARTECA S.A. Jilava in the privatization context, as individual restructuring aid.

- (2) The Competition Council requested AVAS additional information by letter no. DAAS/535/30.03.2006, regarding the amount of state aid, own financing resources, restructuring measures and compensatory measures. AVAS transmitted the required reply by letters registered with no. DAAS/598/11.04.2006, DAAS/620/17.04.2006, DAAS/627/18.04.2006 and DAAS/699/09.05.2006. The notification became effective at the date when the information was accurate and complete, respectively on 09.05.2006.

II. DESCRIPTION OF FACTS

1. Description of the financial support measures granted to S.C. ARTECA S.A. Jilava

1.1. Legal basis for granting the financial support measures

- (3) The financial support measures granted to S.C. ARTECA S.A. Jilava are established by the following legal acts:
- GEO no. 26/2004 regarding several measures for the achievement of the privatization of the undertakings within the portfolio of AVAS and the consolidation of several privatizations approved with subsequent amendments and completions by Law no. 442/2004;
 - GEO no. 26/2005 regarding the abrogation of the legal provisions concerning facilities for the payment of overdue budgetary obligations, approved with subsequent amendments and completions by Law no. 244/2005;
 - Jilava Local Council's Decision no. 27/23.12.2004 regarding partial exemption of S.C. ARTECA S.A. Jilava from the payment of overdue obligations on 31.12.2003.

1.2. The financial support measures

- (4) The financial support measures notified by AVAS were granted in the context of the privatization of S.C. ARTECA S.A. Jilava and consist of facilities for the payment of overdue obligations not paid before 31.12.2003.
- (5) The financial support in amount of **RON 33,612,376** consists in exemptions - in amount of RON 28,225,458 – and payment scheduling – in amount of RON 5,386,918 - from the payment of budgetary obligations, as follows:

a) Exemptions

- exemption from payment of 97%, in accordance with art. 26 (1) letter a) of GEO no. 26/2004, of the overdue budgetary obligations, representing debits computed until 31.12.2003, amounting to RON 7,017,923;
- exemption from payment, in accordance with art. 26 (1) letter e), (3) letter b) and (4) letter b) of GEO no. 26/2004, of interest and penalties of any type corresponding to overdue obligations considered on 31.12.2003, amounting to RON 18,600,033;

- exemption from payment, in accordance with art. II (2²) of GEO no. 26/2005 approved with subsequent amendments and completions by Law no. 244/2005, of interest and delay penalties amounting to RON 29,175;
- exemption from payment of 97 % until the difference of 3 % is paid in accordance with art. 1.3 of the common order, of AVAS' own receivables representing overdue dividends for 1995-1997, amounting to RON 41,840;
- exemption from payment of 97 % until the difference of 3 % is paid in accordance with art. 1.3 of the common order, of AVAS' own receivables representing restructuring funds granted in accordance with the provisions of Law no. 58/1991, regarding the privatization of undertakings, amounting to RON 57,521;
- total exemption from the payment of damages corresponding to dividends for 1996-1997 and of delay penalties corresponding to restructuring funds granted in accordance with the provisions of Law no. 58/1991, computed until the date of the share ownership transfer (16.07.2004), amounting to RON 96,187;
- exemption from payment of interest and delay penalties corresponding to the debits scheduled for payment at the previous paragraph, amounting to RON 2,142,891;
- exemption from payment of interest and penalties corresponding to overdue budgetary obligations not paid until 31.12.2003, computed until the date of the share ownership transfer, granted in accordance with LCD no. 27/23.12.2004 amounting to RON 239,888.

b) Payment scheduling

- payment scheduling, in accordance with art. 26 (1) letter d) of GEO no. 26/2004, over a period of 5 years, with a grace period of 6 months, of the difference of overdue budgetary obligations not paid until 31.12.2003 (3%) remained the company's duty amounting to RON 217,049;
- payment scheduling, in accordance with art. 26 (3) letter a) and (4) letter a) of GEO no. 26/2004, over a period of 5 years, with a grace period of 6 months, of overdue budgetary obligations not paid until 31.12.2003 amounting to RON 3,326,951;
- payment scheduling, in accordance with art. 17.7 and 17.8 of the share sale-purchase contract no. 51/16.07.2004, of overdue budgetary obligations to the Fund of health social insurance amounting to RON 1,842,918.

2. Beneficiary

- (6) S.C. ARTECA S.A. Jilava is a joint stock company, with headquarters in Jilava, Ilfov County, Prelungirea Sos. Giurgiului no. 33A, with the registration number at the Trade Register J23/974/2000 and CUI 480871.
- (7) The company was privatized in 2004, by signing the shares sale-purchase contract no. 51/16.07.2004. At the date of the signature, the company had a share capital of RON 3,945,000, divided in 1,578,000 shares with nominal value of 2.5 RON/share. The share ownership transfer took place on 16 July 2004.
- (8) The shareholders' structure after privatization, according to Acknowledgement Certificate no. 24824/03.09.2004 is presented in Table no. 1.

Table no. 1 - S.C. ARTECA S.A.'s shareholders' structure after privatization

SHAREHOLDERS	CAPITAL OWNED	
	Number of shares	Percent in the equity (%)
COFERSA COMMODITIES AG	826,803	52.40
Juridical Persons	44,558	2.82
Natural Persons	706,639	44.78
TOTAL	1,578,000	100.00

Source: Notification form

- (9) Through the majority shareholder COFERSA COMMODITIES AG's contribution of working capital in amount of EURO 500,000 equivalent of RON 2,054,900, the Extraordinary General Assembly of Shareholders from 14.09.2004 decided the increase of the share capital through the emission of 821,960 shares arrogated to the majority shareholder. As a result of the increase of the share capital, this had a value of RON 5,999,900 divided in 2,399,960 shares with nominal value of 2.5 RON/share, the shareholders' structure according to Acknowledgement Certificate no. 31569/06.12.2004 being as follows:

Table no. 2 - S.C. ARTECA S.A.'s shareholders' structure after the increase of the share capital

SHAREHOLDERS	CAPITAL OWNED	
	Number of shares	Percent in the equity (%)
COFERSA COMMODITIES AG	1,648,763	68.70
Juridical Persons	35,041	1.46
Natural Persons	716,156	29.84
TOTAL	2,399,960	100.00

Source: Notification form

- (10) According to the provisions stipulated in the sale-purchase contract no. 51/16.07.2004, a new capital injection from the majority shareholder was necessary in order to financially support the company. Therefore, on 15.04.2005, the Extraordinary General Assembly of Shareholders decides a new increase of the share capital through majority shareholder's contribution in cash amounting to EURO 800,000, equivalent of RON 3,292,000. As a result of the increase, the share capital of S.C. ARTECA S.A. Jilava becomes RON 9,292,075 divided in 3,716,830 shares with nominal value of 2.5 RON/share, the shareholders' structure according to Acknowledgement Certificate no.28361/20.05.2005 being the following:

Table no. 3 - S.C. ARTECA S.A.'s shareholders' structure after the increase of the share capital

SHAREHOLDERS	CAPITAL OWNED	
	Number of shares	Percent in the equity (%)
COFERSA COMMODITIES AG	2,965,563	79.79
Juridical Persons	35,041	0.94
Natural Persons	716,226	19.27
TOTAL	3,716,830	100.00

Source: Notification form

- (11) One year prior to privatization, S.C. ARTECA S.A. Jilava had a turnover of RON 14,785,536.8 and an average number of 512 employees, thus being considered a large enterprise.

- (12) The main activity of the company is the manufacturing of other rubber items—code CAEN 2513. The main products of S.C. ARTECA S.A. Jilava are conveyer belts, industrial trapezoidal belts, hoses and other rubber items such as: pressed items, ebonite items, reclaimed rubber and others.

3. Financial status of S.C. ARTECA S.A. prior to privatization

- (13) The evolution of the main economic and financial indicators registered by S.C. ARTECA S.A. Jilava during 2001 - 2004 is as follows:

Table no. 4 – Evolution of turnover and of the exercise for S.C. ARTECA S.A. Jilava in the period 2001-2004

Turnover (RON)			
2001	2002	2003	2004
18,438,075.9	21,599,140.5	14,785,536.8	16,191,020.2
Net result of the exercise (RON)			
-5,462,792.8	-8,518,015	-6,355,295.4	-2,948,548.4

Source: Notification form

As it results from the data presented, the company registered significant losses in the period 2001-2004.

- (14) According to the data from the respective balance sheets, the evolution of the equity for 2001-2004 is presented in the following table:

Table no. 5 – Evolution of equity for S.C. ARTECA S.A. Jilava in the period 2001-2004

Equity (RON)			
2001	2002	2003	2004
-4,529,570.8	-13,304,684.9	-15,403,040.7	-16,296,689

Source: Notification form

It is noticed that during the analysed period, equity registers a drastic decrease, having a negative value.

- (15) At the same time, during the analyzed period, the turnover of the company decreased in real values, the amount of debts increased, as well as the stocks, the net asset decreased in value, liquidity indicators were much below the normal limit, all these indicating a decline of the economic-financial situation of the company.
- (16) The main causes leading to this difficult situation of the company are the following:
- obsolete technology which implies high consumption of raw materials, utilities and lack of funds necessary for technology upgrade which would make the activity more efficient;
 - slow modernization of the products list and slow introduction to fabrication of new, modernized products, with technical characteristics comparable to those of the domestic and external competitors;
 - high operating costs of the production units;

- drastic lack of liquidities;
- maintenance in patrimony of non used assets (spaces and production means in surplus), for whose service the company supports high costs;
- loss of public procurement auctions because of difficult economic-financial situation.

(17) Taking into consideration this difficult situation of the company, A.V.A.S. decided to privatize it, and to grant facilities for the payment of budgetary obligations

4. Relevant markets

(18) S.C. ARTECA S.A. Jilava is active on the following relevant markets: conveyer belts market, industrial trapezoidal belts market and hoses market. The company's products are mainly manufactured on the domestic market, 84.7% from the turnover corresponding to 2003 was achieved on the Romanian market. The company exports a part of its products to USA, Albania, Moldavia, Switzerland, United Arab Emirates and Italy.

(19) The main customers of S.C. ARTECA S.A. Jilava are:

- on the domestic market: Compania Nationala a Huilei Petrosani, B.A. Floresti S.A., S.C. Automobile Dacia S.A. Pitesti, S.C. Pro Auto Industries S.A. Bucuresti, S.C. Rolast S.A Pitesti, S.C. Mittal Steel Galati S.A. Galati;
- on the external market: Amrotrade Company Inc –USA, Sherifi Impex Sh. P.K. – Albania, Agro Hidraulic Chisinau – Moldavia, Romferchim – United Arab Emirates, Cofersa Commodities A.G. - Switzerland, Ribelt Sud Massafra Taranto – Italy.

(20) According to the market study annexed to the restructuring plan of S.C. ARTECA S.A. Jilava, the market shares of the company on the domestic markets are the following:

Table no. 6 – Market shares of the company on domestic market in the period 2001-2003

No.	Products	Market share			
		2001	2002	2003	2004
1.	Conveyer belts	5.81	5.28	2.81	2.92
2.	Industrial belts	7.14	7.02	5.23	3.24
3.	Hoses	8.25	8.36	7.16	7.21

Source: Notification form

(21) The main competitors of S.C. ARTECA S.A. Jilava on the domestic market and their market shares in 2003 (prior to privatization), are as follows:

Table no. 7 – Main competitors of SC ARTECA SA Jilava and their market shares

No.	Company	Market share (%)		
		Conveyer belts	Industrial belts	Hoses
1.	S.C. ARTEGO S.A.	65.49	-	-
2.	S.C. ROLAST S.A.	28.27	-	49.56
3.	S.C. FINCA S.A.	-	-	30.87

4.	S.C. FARTEC S.A.	-	74.16	5.98
5.	S.C. ENERGIA S.A.	-	14.68	-
6.	Others	3.43	5.93	6.43

Source: Notification form

- (22) From the information contained in the market study, it results that, at the end of 2003, the markets of conveyer belts, of industrial belts and of hoses had an upward trend from the point of view of sales dynamic. The estimations made regarding the domestic markets tendency until 2009 reveals an increase of both demand and supply, the demand having a more emphasized increasing trend than the supply. This upward trend is due to the high volume of production units in need of upgrading and to the fact that most domestic companies cannot afford to fully replace the equipment park by new investments, thus having recourse to restoring the parameters of the existing equipment, by repairing and upgrading it.

5. Description of the privatization process

- (23) The privatization of S.C. ARTECA S.A. Jilava was done by negotiation based on final, improved and irrevocable offers. The announcement for the sale of the share package owned by AVAS was published in March 2004 in the media (newspapers „Adevarul”, „Jurnalul National” and „Dimineata”), on the internet and at the undertaking’s headquarters and at AVAS’ headquarters.
- (24) In order to decide who is the most appropriate investor, AVAS established the following pre-qualification criteria:
- turnover of minimum EURO 0.5 million during the last financial exercise;
 - those natural/juridical persons can participate who, as a shareholder/ majority associate, did not conspicuously worsen the economic-financial situation of some companies previously privatised, as a result of fulfilling with delay the assumed obligations in the share sale-purchase agreements concluded with FPS and/or with APAPS
- (25) The presentation dossier contained information regarding the economic-financial and environmental situation of the company, the litigations in which it is involved, the facilities from which it benefited in case it were privatized, the amount of investments necessary in view of restructuring, etc.
- (26) Two dossiers were purchased and two purchase bids were submitted by COFERSA COMMODITIES AG Switzerland and ANALKO E.P.E. Greece. In April 2004 negotiation sessions took place with the admitted bidders. The main aspects that were negotiated were: price per share, amount of development investments, amount of environment investments, guarantees of the obligations assumed by the bidder, clauses with social character. Each time it was requested the improvement of the offer, from the point of view of the price as well as of the amount of investments.

- (27) Following the negotiations, COFERSA COMMODITIES AG Switzerland was the winner and signed the share sale-purchase contract¹ no. 51/16.07.2004.

6. Description of the restructuring program

- (28) The restructuring plan, drawn up by the company in cooperation with the buyer, approved by AVAS, submitted to the Competition Council describes the measures regarding the company's re-organization, technical, financial and environment-related restructuring.
- (29) S.C. ARTECA S.A. Jilava's restructuring is focused on the following main directions:
- Increasing the turnover through the increase of the usage of production capacities;
 - Increasing labour productivity through better organization and distribution of personnel towards direct productive sector;
 - Improving the quality of products manufactured by the company;
 - Reducing fabrication costs in view of achieving profit;
 - Identifying new potential clients on the domestic and external market;
 - Complying with the environmental requirements and reducing pollution;
 - Endowment with new equipments and/or modernization of the existing ones;
 - Relief from historical budgetary debts through state granted facilities;
 - Eliminating surplus production capacities through reorganization of technological flux, dimensioning auxiliary activities in accordance with the remaining productive ones and modernization of some manufacturing lines.
- (30) The restructuring plan, drawn up in cooperation with the buyer and AVAS covers the period 2004-2009. Synthetically, the measures included in the restructuring plan are as follows:

Table no. 8 - Summary of the measures enclosed in S.C. ARTECA S.A. Jilava's restructuring plan

RON

No.	Measures	Implementation Costs			
		Own sources	Buyer's sources	State aid	Total
1.	Organizational restructuring measures	610,000	-	-	610,000
2.	Technological restructuring measures	6,500,000	20,398,980	-	26,898,980
3.	Environmental protection measures	-	1,460,000	-	1,460,000

¹ The main elements of the contract are the following: sale price of the majority share package is of Euro 578.762,1; the buyer will contribute with a working capital of Euro 500,000, within 30 days from the share ownership transfer; the buyer will make environmental investments of Euro 400,000 and development investments of Euro 5,000,000; the buyer will maintain the number of employees until all investments assumed are made.

4.	Financial restructuring measures	2,810,000	2,054,900	33,612,376	38,477,276
5.	TOTAL	9,920,000	23,913,880	33,612,376	67,446,256

Source: S.C. ARTECA S.A. Jilava's restructuring plan

6.1. Organizational and structural restructuring

- (31) The organizational and structural restructuring comprises the following measures:

Table no. 9 - Measures regarding the organisational restructuring of S.C. ARTECA S.A. Jilava -RON

Measure	Deadline	Implementation cost	Financing		
			Own sources	Buyer's sources	State aid
The modernization of the conveyor belts' production line and hall modernization	2004	150,000	150,000	-	-
The decrease of the indirect productive staff by its redirection towards the direct productive sector	2005	-	-	-	-
Reduction of the number of jobs in the executive management	2005	-	-	-	-
Promoting products and the company's image by marketing activities	2007	90,000	90,000	-	-
Investments in the research-development sector in view of acquiring new products/benchmarks and technologies and their integration in the existing production flow	2007	370,000	370,000	-	-
TOTAL		610,000	610,000	-	-

Source: Restructuring program of S.C. ARTECA S.A. Jilava

The first restructuring measure aims at reducing the production capacities that are generating loss and the modernisation of those in function so that a low utilities' consumption is ensured and it also aims at eliminating the raw material and materials loss.

The second restructuring measure aims at reducing the indirect expenses and the increase of labour productivity by redistributing a part of the auxiliary staff in the productive unit.

The third restructuring measure will result in reducing the management outlays and it will also conduct to the elimination of the wasted time through the direct processing of offer demands by the commercial sector personnel.

The fourth restructuring measure aims at increasing the company's turnover and also at increasing the company's notoriousness on the market by developing a national distribution network.

The fourth restructuring measure aims at increasing the technological competitiveness on market level:

- acquisition of an injection mini-pressing machine for products with short series;
- acquisition of a mechanical arrant machine for rubber made products;
- acquisition of a pump extruder for producing rubber tubes and shapes with high size tolerance;
- acquisition of optical size control systems;
- acquisition of equipment for assembling high pressure hoses;
- replacement of vulcanisation technology of lead hoses with free vulcanisation technology.

6.2. Technical and technological restructuring

(32) Technical and technological investments assumed by the company and the Buyer amounts RON 26,898,980 and regards:

Table no. 10 - Measures regarding the technological restructuring of S.C. ARTECA S.A. Jilava -RON

Measure	Deadline	Implementati on cost	Financing		
			Own sources	Buyer's sources	State aid
Reorganizing the technological flow	2007	6,900,000	-	6,900,000	-
Dimensioning the auxiliary activities in accordance with the remaining productive ones	2008	5,650,000	-	5,650,000	-
Investments for development according to the share sale-purchase agreement	2009	7,848,980	-	7,848,980	-
Dismantling the closed production capacities and fitting out the free spaces in view of capitalisation	2009	6,500,000	6,500,000	-	-
TOTAL		26,898,980	6,500,000	20,398,980	-

Source: Restructuring program of S.C. ARTECA S.A. Jilava

The first restructuring measure aims at reducing the production costs and at increasing the economic efficiency through:

- the complete reconstruction of the production flow at the Reclaimed Rubber unit;
- rescheduling and creating a new steam supplying system;
- introducing in the company's range of items the modified bitumen and the bituminous foils;
- technology elaboration and the introduction in the manufacturing process of the antistatic and fire resistant conveyor belts and the heat resistant conveyor belts type HR 1500C;
- merging the production units "Industrial belts" and "Hoses" by dismantling the fix assets from the units "Belts variation" and "Ebonite" and relocating the hoses production equipment in the empty space created after dismantling.

The second restructuring measure consists in reducing the technological expenses with utilities and increasing the labour productivity through:

- replacement of local heating installation in those spaces created for the mechanical unit, central lab and cloakrooms of staff engaged in direct production;
- preparation of utilities installations needed for the functioning of equipment in the manufacturing lines for hoses;
- implementing a system for utilities' consumption registration.

The third measure from the restructuring plan consists in eliminating costs that regard the maintenance of obsolete equipment and replacing the production capacities with a high usage degree with others that are functional by:

- modernising the press machines for the vulcanisation of small sized conveyer belts in order to take over the demand for narrow conveyer belt in the 10m press machine portfolio;
- creating a new production station of compressed air by acquiring new steam rollers with a low wattage consumption;
- creating a stand for voltage evaluation of the electro non-conducting carpets;
- replacement of the present fixed voice telephony exchange with a digital one;
- designing and creating an electric device for re-supplying the equipments in the "Hoses" unit from position trafo PT 48 and PT 8A;
- modernising the press machine for continuous vulcanisation AUMA;
- acquisition of a new saturated steam boiler 4 to/h – 10bar;
- modernisation of the electrical operation device of Repiguet calender;
- endowment with internal means of transportation of raw materials, materials and end products;
- endowing the production units with equipments to inscription the end products.

The fourth restructuring measure takes into consideration renovating the free spaces following the reduction of the production capacities.

6.3. Environmental protection restructuring measures

(33) The environmental protection restructuring measures regard:

Table no. 11 - Environmental protection restructuring measures of S.C. ARTECA S.A. Jilava -RON

Measure	Deadline	Implementation cost	Financing		
			Own sources	Buyer's sources	State aid
Investments foreseen in the complying program from the Environment opinion for privatisation no. 82/20.02.2003 and the privatisation agreement	2006	1,460,000	-	1,460,000	-
TOTAL		1,460,000	-	1,460,000	-

Source: Restructuring program of S.C. ARTECA S.A. Jilava

Environment investments provided to be accomplished are:

- assessment study water purification station;
- rehabilitation of the waste water purification station;
- rehabilitation of the pre-purification station;
- modernisation of the technological installation of natural gas;

- modernisation of the concrete platform (waste area);
- wells modernisation (drilling);
- creating a technological line for recycling waste from polyethylene wrap and obtaining foils and wrap;
- creating an installation for capturing and keeping lead powders and aerosol from the melting crucible of lead ingot.

6.4. Financial restructuring

(34) The financial restructuring encloses the following measures:

Table no. 12 - Financial restructuring measures of S.C. ARTECA S.A. Jilava **RON**

Measure	Deadline	Implementation cost	Financing		
			Own sources	Buyer's sources	State aid
Granting exemptions and payment scheduling for the payment of budgetary obligations	2006	33,612,376	-	-	33,612,376
Working capital injection from which: - investor's contribution - credit contracted in market conditions	2004 2009	2,054,900 1,800,000	- 1,800,000	2,054,900 -	- -
Costs regarding the capitalisation of annulled fixed assets in the form of scrap-iron	2008	50,000	50,000	-	-
Cost of recovery of due commercial claims	2006	960,000	960,000	-	-
TOTAL		38,477,276	2,810,000	2,054,900	33,612,376

Source: Restructuring program of S.C. ARTECA S.A. Jilava

III. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES FOR S.C. ARTECA S.A. Jilava

1. The state aid character of the financial support measures granted to S.C. ARTECA S.A. Jilava

(35) The criteria which allow establishing if a measure constitutes 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 services, or that affect the trade with the Member States represents State aid and is considered incompatible with a normal competitive environment.

- (36) The financial support granted to S.C. ARTECA S.A. and notified by AVAS consists in the State renouncing to collect certain revenues; therefore, resources of the State are involved.
- (37) The financial support is granted to a certain undertaking, namely S.C. ARTECA S.A. Jilava, having, therefore, a selective character.
- (38) Taking into account the fact that the facilities are part of a privatization process, in order to determine whether or not they constitute an economic advantage for S.C. ARTECA S.A. Jilava, the state's behaviour should be compared to that of a private investor/seller (the prudent private investor test). It is considered that the State is acting like a prudent private investor/seller in the privatization context if it can be proved that it obtains the best price for the selling of its shares, respectively the price obtained is higher than the granted facilities. Does the State act like a prudent private investor in case of S.C. ARTECA S.A. Jilava?
- (39) As provided in paragraph 5, Chapter II of the present decision, the privatization of S.C. ARTECA S.A. Jilava proceeded by negotiation on the basis of final, improved bids. The Competition Council notes that AVAS established certain criteria for the pre-qualification of potential investors, criteria which could have decreased the number of bids. Moreover, the procedure was conditioned by the implementation of certain development investments and the compliance with the environmental standards, by maintaining the number of employees.
- (40) The price paid by the buyer for acquiring the majority share package is in amount of Euro 578,762.1 (equivalent of RON 2,083,544). The Competition Council notes that is considerably lower than the amount of facilities granted to S.C. ARTECA Jilava S.A. at privatization, respectively of RON 33,612,376. A private investor seeks to sell the shares for a positive price; while in this case, taking into consideration all the commitments undertook by the Romanian state, the final price is negative.
- (41) A private investor could have accepted a negative price only if the cost of liquidation exceeds the company's privatization cost. AVAS did not undertake any comparative analysis between the liquidation and privatization costs. As a consequence, the Competition Council concludes that in this case the prudent private investor principle cannot be applied to the privatization of S.C. ARTECA S.A. Jilava. Therefore, by granting these facilities the company has an advantage on the relevant market².
- (42) Granting financial support to S.C. ARTECA S.A. Jilava sets the premises for a possible distortion of the competition on the relevant market, since it allows the

² It should be mentioned that generally, the existence of conditions stipulated in the privatization contract is normally sufficient to the non appliance of the prudent private investor test (see par. (24) of the draft decision).

company to stay on this market. Moreover, the financial support measures affect trade with the Member States of the European Union, since the services provided by S.C. ARTECA S.A. Jilava may compete with similar products/services provided in the European Union.

- (43) Therefore, the financial support measures that are granted to S.C. ARTECA S.A. Jilava, in the form of exemptions and payment scheduling of obligations towards AVAS and the state budget, are considered as State aid and fall under the provisions of the Law no.143/1999, republished.

2. Compatibility analysis with the State aid legal framework

- (44) The State aid objective is the restructuring of S.C. ARTECA S.A. Jilava, in order to restore its viability at the end of the restructuring period.
- (45) The restructuring aid is conditioned by the implementation of a viable and coherent restructuring plan, demonstrating the long term viability of the company. To this effect, the Regulation on state aid for rescuing and restructuring firms in difficulty, published in the Official Gazette no. 1215/17.12.2004, issued in application of Law no. 143/1999 on State aid, republished (still referred to as Regulation) states that the restructuring usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient base, generally implying the retreat from actions that are generating losses, the restructuring of the existing activities that may become competitive again and sometimes the diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied by the financial restructuring (capital injections, reduction of indebtedness degree, etc.)
- (46) The Competition Council assesses the State aid to be granted to S.C. ARTECA S.A. Jilava according to the criteria provided in the Regulation. In order to be considered as compatible with a normal competitive environment the state aid must fulfil all criteria.

3. Criteria for granting the state aid for restructuring:

- (47) These are the following:
- Company in difficulty; affiliation to a group of companies;
 - Restoring the S.C. ARTECA S.A. Jilava 's long term viability; restructuring plan;
 - Avoid the undue distortion of competition;
 - Proportionality of the aid (aid limited to the minimum necessary);
 - Observing the "first time, last time" principle;
 - Ensuring the fulfilment of the restructuring plan and permanently monitoring its progress by the Competition Council (monitoring and annual reporting).

4. Firm in difficulty

- (48) In order to benefit from State aid in accordance with the Regulation on State aid for rescuing and restructuring firms in difficulty, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not able to cover its losses either from its own financial resources or from other sources that it may obtain from owners/shareholders or creditors, and which, in the absence of external intervention of the State will almost certainly lead to the company's demise.
- (49) In article 2 of the Regulation, a company is considered as being in difficulty when we are in the presence of the normal characteristics of an firm in difficulty, such as increasing losses, decreasing equity, decreasing turnover, increasing debts, increasing stocks, the net asset decreased in value, liquidity indicators were much below the normal limit.
- (50) In this respect, the Competition Council notes that, according to those provided at paragraph 13,14 and 15, the company fulfils the criteria foreseen under Art. 2 of the Regulation in order for S.C. ARTECA S.A. Jilava S.A. to qualify as "firm in difficulty".

5. Affiliation to a group of companies

- (51) According to the provisions of art. 2 (5) of the Regulation a company belonging or that is taken over by a group is not normally eligible to receive a State aid for rescuing and restructuring, except for the case when it can be proved that the financial difficulties belong to the company itself and are not the outcome of an arbitrary allocation of costs within the group and that these difficulties are much too serious to be handled by group itself.
- (52) The difficulties of S.C. ARTECA S.A. Jilava's are its own, and are due to the company's lack of liquidities prior to privatization. The fiscal facilities granted to the company refer to debts accrued in the years preceding the sale of the majority share package.
- (53) The new majority shareholder of S.C. ARTECA S.A. Jilava is COFERSA COMMODITIES AG Switzerland. According to the authorised declaration no. CH-170.3.021.712.4 of 19.01.2006, COFERSA COMMODITIES AG does not belong to a group of companies and does not possess shares in any other company except for S.C. ARTECA S.A. Jilava. According to the above declaration, COFERSA COMMODITIES AG, registered a net profit of USD 96,062 during 2003-2004, equivalent to RON³ 313,517.
- (54) The Competition Council notes that the majority shareholder could not have coped with the financial difficulties of S.C. ARTECA S.A. Jilava and the restructuring of

³ When calculating the BNR average exchange rate for 2004 was used, respectively 1 USD =3.2637 RON.

the company without a consistent intervention of the State, the company's debts to the State budget being in total amount of RON 33,612,376. The investor committed himself to invest in the company an amount of RON 23,913,880 for the technical and technological restructuring and also for the environment protection restructuring. Compared to the buyer's financial resources this contribution is significant.

- (55) Given the above, the Competition Council considers that the condition foreseen by art. 2 (5) of the Regulation, regarding affiliation to a group of firms is fulfilled.

6. Restructuring plan. Restoring the long term viability of S.C. ARTECA S.A. Jilava

- (56) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan (subject to an assessment by the Competition Council). The restructuring plan, which must be as short as possible, must include the abandonment of loss making activities and it must restore the company's long term viability, thereby allowing it to function with its own resources. The restructuring plan must be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures as well as from taking into consideration external factors such as price and demand variation over which the company has no substantial influence.
- (57) On 16.07.2004, S.C. ARTECA S.A. Jilava was privatized. Given the difficult situation, the company drafted a restructuring program for 2004-2009, together with AVAS and the Buyer. The summary of the company's restructuring measures was presented in subchapter II.6
- (58) The analysis of the restructuring plan and the assessment of the way in which it leads to the achievement of the long term viability of S.C. ARTECA S.A. Jilava, take into consideration the provisions of article 13 of the Regulation.
- (59) The restructuring plan of S.C. ARTECA S.A. Jilava starts from the financial and economic data that reflects the company's activities prior to privatization. This includes the circumstances which led to the difficult financial situation of S.C. ARTECA S.A. Jilava and also the measures which will allow the restoring of the company's long term viability. The Competition Council concludes that the measures foreseen in the restructuring plan aim at counteracting the effects of the company being in difficulty through: assets capitalisation, reorganisation of the production activities, reduction of exploitation expenses, profit generating and the increase of financial possibilities.
- (60) The financial restructuring measures come to counteract the major causes for the company's difficult situation such as lack of liquidities, the high indebtness ratio and maintaining in the patrimony of some non-used assets. The Competition Council concludes that financial restructuring aims at ensuring the fluidity of the company's financial activity. Thus, through assets capitalization (sale, rent) it is

pursued the obtaining of resources needed for financing the restructuring plan, the contribution of working capital allowing the continuation of the current activity and the aid relieves the company from paying some overdue debts, thus making it eligible for attracting credits under the market conditions. This way S.C. ARTECA S.A. Jilava will be able to pay its current debts to the State and to allocate the necessary liquidities in order to implement the necessary programmed investments in view of development and support of the production program for the future.

- (61) By the organizational restructuring measures it is aimed to increase the technological competitiveness at the market's level, to reduce functioning costs of production units and to increase labour productivity.
- (62) Another main cause - precarious technical endowment and high degree of usage of equipments – is eliminated through the technical investments that will be done. These regard the improvement of the functional characteristics of products, the increase of production efficaciousness and of labour productivity, the reduction of power consumption, all these reducing losses, contributing to getting profit from the activity of exploitation and manufacturing products at the highest quality standards. At the same time, the acquisition of certain equipments will allow the company to modernize the products' list (to produce modern products, demanded on domestic and external market), in accordance with the requirements of the market.
- (63) The restructuring plan was drawn up as a result of a diagnosis analyses which stresses the strong and weak points of the company. The strategy of S.C. ARTECA S.A. Jilava aims to preserve the company's strong points, namely: experience in the field, qualified labour force, endowment for a large range of products, the existence of a stable market for the company's products, good price/quality ratio. At the same time, the strategy of the company aims to limit and counteract the weak points with specific measures such as: reduced productivity because of endowment with obsolete equipments, small amount of investments, insufficient delimitation and dimensioning of certain procedural components, deficiencies in the marketing policy of the company, high degree of indebtedness, high production costs and high power consumption.
- (64) The Competition Council ascertains that by applying the measures contained in the restructuring plan, the economic and financial indicators are estimated to improve for 2005 – 2009 as follows:

Table no. 13 – Foreseen evolution of the economic-financial indicators, as a result of the application of restructuring measures
-RON-

	Indicators	2005	2006	2007	2008	2009
1.	Equity	9,292,100	27,858,900	27,858,900	27,858,900	27,858,900
2.	Net turnover	16,500,000	18,500,000	24,000,000	26,500,000	28,000,000
3.	Total revenues, of which:	16,967,000	47,241,400	26,600,000	27,600,000	29,700,000
	-exploitation revenues	16,827,000	19,300,000	26,500,000	27,450,000	29,500,000
	- financial revenues	140,000	150,000	100,000	150,000	200,000
	- extraordinary revenues	0	27,791,400	0	0	0
4.	Total expenses, of which:	17,801,700	16,958,300	22,150,000	23,000,000	23,900,000

	- exploitation	17,241,700	16,728,300	21,850,000	22,750,000	23,650,000
	- financial	560,000	230,000	300,000	250,000	250,000
5.	Gross profit/ Loss	-834,700	30,283,100 ⁴	4,450,000	4,600,000	5,800,000
6.	Assets	38,423,200	8,796,148	8,044,168	9,660,383	12,281,003
7.	Total debts	68,675,100	68,675,100	19,311,348	14,479,968	11,339,583
7.a.	Loans, from which:	25,166,800	5,255,000	2,958,000	975,000	212,000
	- capital contribution	18,566,800	0	0	0	0
	- contracted credit	4,800,000	4,200,000	2,400,000	800,000	200,000
	- interest for the credit	1,800,000	1,055,000	558,000	175,000	12,000
7.b.	Commercial claims	1,579,200	1,400,000	1,300,000	1,300,000	1,300,000
7.c.	Fiscal claims (encloses the exemptions, payment scheduling, increases for payment scheduling and other fiscal debts)	41,826,100	12,556,348	10,112,968	8,959,583	7,281,203
7.d.	Other debts	103,000	100,000	109,000	105,000	100,000
7.	Overdue suppliers payments	1,100,000	1,000,000	950,000	800,000	750,000

Source: S.C. ARTECA S.A. Jilava's restructuring plan

The analysis of the main economic-financial indicators shows the following:

- The increase trend of turnover and revenues at the same time with the decrease of expenses and total debts. The company estimates to register profit starting with 2006.
- The evolution of the total costs in comparison with the total incomes and the turnover show the positive effects of the restructuring measures, the rhythm in which the total costs increase being lower than the rhythm registered by the turnover and the total incomes;
- At the beginning of the restructuring program, most of the debts were represented by commercial and fiscal claims which included debts to the state consolidated budget which were not subject of the exemptions, exemptions, payment scheduling and increases for payment scheduling. After the privatization, due to the credit contracted by the company under market conditions, the total debts shall be maintained a relatively high level during the restructuring period. The credit was contracted to cover the investments and the funding of the working capital, and do not reflect any deficiencies in the company's management.

(65) After implementing the restructuring measures, at the end of the restructuring period, the company estimates to reach the following target indicators as follows:

Table no. 14 – Target economic – financial indicators

1. Net profit	RON	4,872,000
2. Turnover	RON	28,000,000
3. Equity	RON	48.932.800
4. Receivables collection period	days	43
5. Economic profitability	%	8,42
6. Financial profitability	%	9,96
7. Cash flow	RON	1.849.617

Source: S.C. ARTECA S.A. Jilava's restructuring plan

⁴ The higher value of the profit in 2006 is influenced by the fact that the state aid was registered as an income.

- (66) Taking into consideration these facts, the Competition Council considers that the restructuring plan will restore the company's long term viability, which results mainly from the internal measures included in the restructuring plan and is not based on external factors such as the fluctuation of price and demand. The restructuring plan implemented by the company will ensure a significant change which will allow the company, after the end of the restructuring, to entirely cover the costs and to compete on the free market.

7. Preventing excessive distortion of competition

- (67) According to the provisions of the Regulation, in order to minimize, as much as possible, the negative effects on competition on the relevant markets affected by the granted State aid, compensatory measures are necessary. These measures shall be proportionate with the distorting effects caused by the State aid and especially with the company's size and its relative importance on the relevant markets. Reducing the company's presence on the market will be established based on the market study annexed to the notification, as well as on any relevant information and will be part of the restructuring plan.

- (68) According to the provisions of art. 14 (3) of the Regulation, the Competition Council considers that the reduction of production capacities which generate losses does not represent compensatory measure, this being essential in view of restoring the company's viability. According to the information transmitted by AVAS, in view of ensuring the viability, until the end of the restructuring period, the company will reduce its non-viable capacities as follows:

- with 20% compared to the level of 2004 on the conveyer belts market;
- with 20% compared to the level of 2004 on the industrial trapezoidal belts;
- with 25,3% compared to the level of 2004 on the hoses market.

These reductions of the capacities which generate losses consist in closing down and capitalization of the following equipments:

- for conveyer belts: vulcanization press-machine with four levels, 5 acetylene generators and an oscilloscope 10Mhz;
- for trapezoidal belts: a conveyer with chain, 5 acetylene generators, an oscilloscope 10Mhz, a machine for belts manufacturing, 2 electrical cells, a welding machine, a machine ASU 280 2H, a device for tin plate bending, 2 POLISTIF reservoirs, a lathe ANTEC with 6 taxes, 3 automatic multi-axle lathes, an automatic machine of nipple implantation and a PAI 25 press;
- for hoses: a planning machine SH425, an acetylene generator, printer 3830, a machine for belts manufacturing and a platen 1530 type.

- (69) Since S.C. ARTECA S.A. Jilava is a large enterprise, the state aid grantor imposed as compensatory measure the reduction of viable production capacities of the company as follows:

- with 15% compared to the level of 2004 on the conveyer belts market;
- with 14,6% compared to the level of 2004 on the industrial trapezoidal belts;
- with 8% compared to the level of 2004 on the hoses market.

These capacity reductions are irreversible and are part of the restructuring plan. The equipments and installations corresponding to this capacity will be dismantled and capitalized in order to obtain liquidities.

(70) Fixed assets which result from the reduction of viable production capacities which will be dismantled and sold are:

- for conveyer belts: a production line of belts;
- for trapezoidal belts: a production line of trapezoidal variator belts, an installation for processing plasticizers rubber mixture, an extractor variator belts, 2 testing cars 12 places, a machine for coating belts A12, 2 machines for covering belts, 2 machines for coating belts, 2 machines for manufacturing trapezoidal belts, a machine for manufacturing variator belts, a machine for coating variator belts, 3 aggregates monoblock 140T, 4 aggregates press monoblock 250, 2 aggregates press monoblock 400T, a machine for lid polishing, 2 vulcanization press machines with levels, 3 press machines PHM 400, a press machine PHU 350, a vulcanization press machine PH 4, and 2 vulcanization press machines;
- for hoses: a production line of hoses and a line for automotive items.

(71) According to art. 14 of the Regulation, the compensatory measures will be proportional with the effects that distortion competition of the state aid and, especially, with the size and relative importance of the company on the concerned markets. S.C. ARTECA S.A. Jilava has low market shares on the relevant markets on which it is active, respectively 2.81% for conveyer belts, 5.23% for industrial belts and 7.16% for hoses; the annexed market study shows that, through the implementation of the restructuring plan the market shares of the company will not increase. Therefore, the Competition Council finds appropriate the compensatory measures imposed by AVAS.

(72) During the implementation of the restructuring program the production capacities are the following:

Table no. 15 – Evolution of the production capacities for the period 2004 – 2009 - tones -

Products	Production capacity					
	2004	2005	2006	2007	2008	2009
Conveyer belts	2,000	2,000	1,800	1,300	1,300	1,300
Industrial belts	1,300	1,300	1,000	850	850	850
Hoses	1,800	1,800	1,500	1,200	1,200	1,200

Source: Additional information

(73) Considering the above-mentioned facts, the Competition Council estimates that the State aid shall only be used for the company's return to viability without allowing the beneficiary to extend its production capacity while implementing the restructuring plan.

8. Aid limited to the minimum necessary

- (74) In accordance with art. 15 of the Regulation, the State aid intensity and quantum is limited to the minimum necessary in order to allow restructuring. The State aid benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or using external sources obtained under normal market conditions. According to art.15 (2) of the Regulation, for large undertakings a contribution of at least 50% is considered as adequate.
- (75) The total restructuring cost of S.C. ARTECA S.A. Jilava is of RON 67,446,256 and is composed of :
- | | |
|--------------------------------------|-----------------|
| a. Organisational restructuring cost | 610,000 RON; |
| b. Technological restructuring cost | 26,898,980 RON; |
| c. Environmental restructuring cost | 1,460,000 RON; |
| d. Financial restructuring cost | 38,477,276 RON. |
- (76) The restructuring cost of the state aid beneficiary company is supported from:
- | | |
|--|-----------------|
| - Own sources of S.C. ARTECA S.A. Jilava | 9,920,000 RON; |
| - Own sources of the Buyer | 23,913,880 RON; |
| - State aid | 33,612,376 RON. |
- (77) From the total restructuring cost in amount of RON 67,446,256, 50.2% will be financed from its own sources and 49.8% from state aid.
- (78) Its own contribution for covering the restructuring costs is covered by :
- | | |
|---|-----------------|
| - Capital injection of the majority shareholder - | RON 23,913,880; |
| - Bank loan in market terms - | RON 4,800,000; |
| - Revenues from scrap iron capitalization ⁵ - | RON 220,000; |
| - Revenues from renting corporal immobilization assets ⁶ - | RON 1,265,000; |
| - Revenues from immobilization assets selling ⁷ - | RON 3,635,000. |
- (79) In accordance with art. 15 of the Regulation, the State aid intensity and quantum are limited to the minimum necessary in order to allow restructuring according to the existing financial resources of the company and of shareholders or of the group they belong to. In case of S.C. ARTECA S.A. Jilava, the State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost amounts to 49.8%.
- (80) Having in view the above mentioned aspects, the Competition Council considers as significant the contribution of S.C. ARTECA S.A. Jilava to the restructuring costs and considers that the aid is strictly limited to what is strictly needed to restore the company's viability.

⁵ It concerns the selling of the dismantled production capacities.

⁶ It concerns the rental of corporal immobilised assets for which exists contracts already concluded.

⁷ It concerns the sale of fixed assets and a land assessed by independent evaluator.

9. Fulfilling the “first time, last time” principle

- (81) According to the information supplied by AVAS, the company never received restructuring aid in the past. Thus, the provisions of article 24 of the Regulation, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, are observed.

10. Monitoring and annual reporting

- (82) In accordance with article 18 of the Regulation, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail to fulfil the established objectives.
- (83) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to be sure that increases of the production capacities or that major deviation from the achievement of the restructuring measures do not take place and that the State aid will not lead to the creation of complementary liquidities to be used for other activities included in the restructuring program.

IV. CONCLUSIONS

- (84) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to S.C. ARTECA S.A. Jilava, is compatible with a normal competitive environment and does not significantly affect trade with the Member States of the European Union.

DECIDES

- Art. 1.** The financial support measures notified by The Authority for State Assets Recovery, having as beneficiary S.C. ARTECA S.A. Jilava represent State aid according to art. 2(1) of the Law no. 143/1999, republished.
- Art. 2.** On the basis of art. 21 (2) letter c) corroborated with art. 23 (1) letter e) of Law no. 143/1999, republished, the restructuring State aid to be granted to S.C. ARTECA S.A. Jilava, at its privatization is authorised under the condition of fulfilling art. 3 and art. 4 of the present decision.
- Art. 3.** The company is compelled to fully implement the assumed restructuring plan.
- Art. 4.** The company shall reduce its production capacities by 2009 in accordance with the assumed Restructuring Program.

- Art. 5.** If the conditions imposed by the present decision are not fulfilled, the provisions of art. 22 and art. 25 (3) of Law no. 143/1999 on State aid, republished, and art. 194¹ and art. 194² form Fiscal procedure code, modified and completed by GEO no. 129/2005, shall be applied.
- Art. 6.** The value of the State aid to be granted is RON 33,612,376.
- Art. 7.** This decision is applicable as of its date of communication.
- Art. 8.** According to the provisions of art. 32 of Law no.143/1999, republished, the state aid grantors shall submit to the Competition Council information on the granted State aid, for its inventorying and monitoring. The Authority for State Assets Recovery shall submit to the Competition Council annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the date of issuance of this decision.
- Art. 9.** Pursuant to Art. 46 of Law 143/1999 on State aid, republished, this decision may be appealed by the interested persons at the Bucharest, Court of Appeals, the Administrative litigation section, within 30 days from its communication.
- Art. 10.** This Decision shall be communicated by the General Secretariat of the Competition Council to:
- The Authority for State Assets Recovery, str. Cpt. Av. Alexandru Serbanescu, no. 50, sector 1, Bucharest;
 - Ministry of Public Finance, Str. Apolodor nr. 17, sector 5, Bucharest;
 - Local Council of Jilava County, Soseaua Giurgiului nr. 279, localitaty Jilava, county Ilfov;
 - S.C. ARTECA S.A. Jilava, Prelungirea Sos. Giurgiului nr. 33A, localitaty Jilava, county Ilfov, postal code 077120.

PRESEDENT

MIHAI BERINDE