

**DECISION OF THE COMPETITION COUNCIL**  
**no. 122 of 22.05.2006**  
**concerning the state aid notified by**  
**the Authority for the Recovery of State Assets**  
**to be granted to SC FORTUS SA Iasi**

**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 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 Decree no. 57/2004 on the appointment of the Competition Council's members,

**Based on the following,**

**1. PROCEDURE**

(1) By letter no. VP/4390/10.11.2005 filed with the Competition Council no. RS-AS 107/14.11.2005 the Authority for the Recovery of State Assets (hereinafter AVAS) has notified based on art. 15 from Law no. 143/1999 on state aid, republished, the individual state aid for the restructuring of SC FORTUS SA Iasi within the privatization process.

(2) The Competition Council requested from AVAS supplementary information by letters no. RS-AS 107/06.12.2005, RS-AS 107/12.12.2005 and CC/3/05.01.2006. AVAS replied by submitting letters no. VP4/5115/20.12.2005 and no. VP4/30/12.01.2006 filed with the

Competition Council no. RG 9907/21.12.2005, respectively no. RG 270/16.01.2006<sup>1</sup>. By address no. VP4/724/31.12.2006, filed with the Competition Council no. RG 975/02.02.2006, AVAS requested to postpone the analysis of the state aid following the change in the amount of facilities to be granted and of the company's restructuring plan. These changes were submitted to the Competition Council on 08.02.2006 (letter no. VP4/900/07.02.2006 filed with the Competition Council no. RG 1321/08.02.2006). The notification became effective on 09.02.2006.

## 2. DESCRIPTION OF THE STATE AID MEASURES

### 2.1. Legal basis for granting the aid

- Law no. 137/2002 regarding some measures for the speeding up of privatization<sup>2</sup>;

### 2.2. Beneficiary of the measures – SC FORTUS SA Iasi

(3) The state aid beneficiary is SC FORTUS SA Iasi<sup>3</sup> (hereinafter FORTUS), a company established after Combinatul de Utilaj Greu Iasi was set up in 1976. FORTUS was incorporated under Law no. 15/1990 and GD no. 1254/1990 by taking over the net worth of Combinatul de Utilaj Greu Iasi.

(4) FORTUS was privatized in 2003 when the share sale-purchase agreement no. 22/28.06.2003 was concluded between AVAS and SC METAEXPORTIMPORT SA Bucuresti. The ownership structure after privatization is presented in tabel no. 1. The transfer of the share ownership rights took place on 25.09.2003.

**Tabel no. 1 Ownership structure at FORTUS after privatization**

SHAREHOLDERS	EQUITY HOLDINGS		Shareholders equity (ROL thousand)
	Number held	of shares Equity holdings (%)	
SC METAEXPORTIMPORT SA	22,808,542	81.3757	570,213,550
SIF II MOLDOVA	5,153,925	18.3881	128,848,125
Other shareholders	66,199	0.2362	1,654,975
<b>TOTAL</b>	<b>28,028,666</b>	<b>100.000</b>	<b>700,716,650</b>

Source: AVAS Notification

<sup>1</sup> Supplementary information requested from AVAS are available to all interested parties.

<sup>2</sup> GD no. 577/2002 regarding approval of methodological norms for the application of GEO no. 88/1997 regarding the privatization of commercial companies, with subsequent modifications and completions; GEO no. 26/2004 regarding certain measures for completing the privatisation of the companies in AVAS' portfolio and consolidating some privatisations, approved with amendments and completions by the Law no. 442/2004; GEO no. 8/2003 regarding the incentives for the restructuring, reorganization and privatization of national companies and commercial companies held by the state; GD no. 238/2003 for the approval of the companies within the APAPS portfolio benefiting from loans based on the provisions of art. 10 (3) of GEO no. 8/2003 regarding the incentives for the restructuring, reorganization and privatization of national companies and commercial companies held by the state; GD no. 621/2004 regarding the stock conversion of the APAPS claims held at some commercial companies, resulted from loan agreements concluded based on provisions of art. 10 of GEO no. 8/2003; GD no. 1.249/2003 regarding the list of companies within APAPS portfolio benefiting of provisions of art. 14 of GEO no. 8/2003; GD no. 1.233/2003 for the approval of the list of companies within APAPS portfolio benefiting from the extension of payment facilities provided at art. 8 of Law no. 137/2002 regarding some measures for the speeding up of privatization; Law no. 244/2005 for the approval of GEO no. 26/2005 regarding the rescission of the legal provisions related to granting of facilities for the payment of overdue budgetary obligations.

<sup>3</sup> The company is incorporated at the Registry of Commerce: J/22/683/1991, CUI: R1958479 and headquartered in Bulevardul Poitiers no. 10, Iasi, Iasi county;

(5) The main business of FORTUS is the manufacturing of metallurgical equipment (CAEN code 2951). Besides this main activity, the company also produces cast steel and cast iron parts, forged and moulded parts and mechanically welded constructions which are exclusively used in the manufacturing process of complex technological equipment, none of these being sold to third parties.

(6) The technology system of FORTUS is highly flexible, allowing the manufacturing of a wide range of highly complex equipment, of large weights and sizes. The company manufactures complex technological equipment used in the steel industry, metallurgy, shipbuilding, cement industry, chemical and petrochemical industry, ecology, food processing industry, irrigations, mining.

(7) The economic and financial results of FORTUS based on balance sheet data, prior to privatization, as well as in the first year after privatization are the following:

<b>Tabel no. 2      Balance sheet economic and financial results for Fortus</b>			
<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Turnover (RON)</b>			
51,317,100	28,495,700	32,358,600	42,182,200
<b>Turnover in Romania (RON)</b>			
37,662,220	11,891,950	17,676,810	22,473,450
<b>Loss (RON)</b>			
-24,731,100	-35,924,400	-44,069,800	-27,533,900

*Source: AVAS Notification*

Data presented above shows that that prior to privatization, as well as in the first year after privatization, the company made a loss. FORTUS mainly works for the domestic market, the export having the following weight in the turnover: 26.6% in 2001, 58.2% in 2002, 45.4% in 2003, 46.7% in 2004.

(8) FORTUS is a large enterprise because the number of employees does not fall within the limits imposed by the Regulation on state aid for small and medium enterprises, with subsequent modifications and completions. Thus:

- 81.4% of the company is held by SC METAEXPORTIMPORT SA, therefore FORTUS and SC METAEXPORTIMPORT SA are linked enterprises within the meaning of art. 2 (7) of the Regulation on state aid for small and medium enterprises, with subsequent modifications and completions;
- the number of employees and the financial highlights are the following:
  - at the end of 2004 FORTUS had 2,193 employees and the majority shareholder 70;
  - in 2004 the company's turnover was of RON 42,182,200 and that of the majority shareholder was of RON 9,743,283.

### **2.3. Financial position of FORTUS prior to privatization**

(9) Prior to privatization, FORTUS was in a difficult situation shown by:

- decrease of turnover in real prices of about 52.86% in 2002 compared to the previous year and of 53.12% in 2003 compared to 2001;

- increase of losses compared to 2001, by 45.26% in 2002, respectively by 78.20% in 2003; the cumulated company losses in 3 years (2001-2003) is of RON 10,472,351;
- decrease of cash flow due to a low recovery of receivables and payment of debts which do not ensure available cash to carry out business;
- increase of company debts due to lack of liquidity;
- increase of financial burdens, shown by intermediate liquidity which much below the minimum limit of admissible margin of 0.5, confirming the company is unable to generate required liquidities to make payments from its current activity;
- decrease of net worth – the own capital of the company registering negative values since 2002 showing the company lost its net worth.

(10) Causes leading to the company being in difficulty:

- operation of obsolete technology, leading to declines in production;
- the fall in traditional markets of the former COMECON with consequences in the loss of many economic relationships where FORTUS was a party;
- lack of a significant and constant order book due to problems confronting the entire Romanian industry;
- macro-economic issues affecting the entire Romanian economy with consequential impact on the company.

(11) Taking into consideration this difficult situation, AVAS decided to privatize FORTUS and to grant some facilities conditioned by the implementation of some restructuring measures. According to information from the notification, the privatization presentation file informed the potential investors of the facilities for the payment of overdue budgetary payments.

## **2.4. Financial support measures for FORTUS**

(12) At privatisation, the company was granted support totalling RON 119,125,582 consisting of:  
[...]<sup>4</sup>

## **2.5. Relevant markets**

(13) FORTUS is active on the complex technological equipment. The restructuring plan is accompanied by a market study called „Market study for the manufacturing of heavy technological equipment”. The market study was drafted by a team of the company’s specialists and mainly presents the following:

- general characteristics of the complex equipment market also heavy equipment;
- analysis and trends of the domestic market for heavy equipment;
- analysis and trends of the external market for heavy equipment.

(14) The complex equipment manufactured by FORTUS are used in the steel industry, metallurgy, shipbuilding, cement industry, chemical and petrochemical industry, ecology, food processing industry, irrigations, mining, energetical industry, machines construction. According

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<sup>4</sup> Confidential data

to the market study, the company holds a share of 18% on the domestic market of complex equipment.

(15) The main domestic competitors of FORTUS are presented in the table below:

**Table no. 3 FORTUS competitors on the domestic market**

<b>Product</b>	<b>Competitors</b>
Equipment for the steel industry	SC PROMEX SA Braila SC CUG Cluj ISPAT SIDEX Galati
Equipment for the metallurgic industry	SC UPETROLAM SA Bucuresti SC CUG Cluj FAUR Bucuresti ISPAT SIDEX Galati
Casting equipment	TC ORION Campina PIESE TURNATE Calan
Equipment for the cement industry	FAUR Bucuresti KVAERNER IMG Bucuresti COMMET Tecuci
Shipbuilding components	KVAERNER IMG Bucuresti ELNAV Galati SC PROMEX SA Braila
Equipment for the power generating industry	UCM Resita IUG Craiova SC CUG Cluj KVAERNER IMG Bucuresti
Equipment for the mining industry	UNIO Satu Mare GRIMEX Tg. Jiu UMEG Baia Mare
Cold deformation equipment	SC CUG Cluj MIRFO Tg. Jiu
Equipment for petrochemical industry	GRIRO Bucuresti UMUC Bucuresti UPETROM Ploiesti UTCHIM Gaesti
Fittings for gas transport networks	ARIO Bistrita

*Source:Market study*

(16) On the external market, FORTUS exports complex equipment to: Europa (Russia), Middle East, Central and South East Asia, Africa, North America and South America. FORTUS holds a share of under 0.1% of the world market.

(17) Among company's competitors on the external market: AZOVMASH Mariupol Ukraine, OMZ Russia, CK Slovakia, NEW NICHIBU Japan, AKERS Suedia, RADOMIR Bulgaria, VOEST ALPINE Austria, SVEDALA Canada, HUTA Ostrovice Poland, etc.

(18) The market study shows that in the following period the market for complex equipments will increase, except for complex equipment for the steel industry. Worldwide, the market of complex equipment will have the same evolution trends.

## **2.6. Description of the privatisation process**

(19) AVAS decided on the privatization of the company based on final enhanced and irrevocable offers. The privatization process was initiated on 21.10.2002 by the publication in the daily newspaper „Adevarul” and the local newspaper “Ziua de Iasi”, in the international press (“WALL STREET JOURNAL EUROPE” and “NINE O’CLOCK”), on the INTERNET, at AVAS headquarters and at the company premises of the sale announcement for the shares held by AVAS at FORTUS. The deadline for the submission of offers was set for 16.12.2002.

(20) The company file, compiled in view of selling the share package held by AVAS contained information on the financial, legal and environmental status of the company, as well as debts that would be exempted.

(21) Because at the deadline no tender book was purchased, the advertising campaign was re-launched. The new announcement was published on 16.04.2003 in the same publications (“ADEVARUL”, “ZIUA DE IASI”, “WALL STREET JOURNAL EUROPE”), on INTERNET, at AVAS headquarters and the company’s premises, with a new offer submission deadline for 05.05.2003.

(22) Subsequent to this, a tender book was purchased by SC METAEXPORTIMPORT SA Bucuresti. On 05.05.2003 a single offer was submitted by SC METAEXPORTIMPORT SA Bucuresti. After the analysis of prequalification documents and of participation documents requested, SC METAEXPORTIMPORT SA Bucuresti was admitted for negotiation. According to the legislation in force, in order to improve the financial offer (price and investment amount), negotiations were started with the qualified bidder on 27.06.2003.

(23) The privatization process was finalized by signing the share sale-purchase agreement no. 22/28.06.2003, the main features of the transaction being as follows:  
[...]<sup>5</sup>

## **3. DESCRIPTION OF THE RESTRUCTURING PROGRAM**

(24) Company and the majority holder have drafted a comprehensive restructuring plan for the period 2004-2008, comprising organizational, technological, environmental and financial measures. The restructuring plan was approved by AVAS.

(25) The restructuring plan submitted by AVAS contains the causes which led to FORTUS’s difficulties, as well as measures to ensure the long term viability of the company. AVAS estimates that by implementing the plan the company will become profitable and secure the

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<sup>5</sup> Confidential data

necessary financial resources to conduct business without debts to the consolidated budget of the state or the local budgets.

(26) In brief, the restructuring program entails the following measures:

**Table no. 4**                      **Summary of the restructuring measures for FORTUS**                      - RON thousand -

No.	Measures	Assessment of implementation costs			
		Total cost	Own sources	Investor sources	State aid
1.	Organizational restructuring measures	72,110.0	72,110.0	-	-
2.	Technological restructuring measures	14,028.9	-	14,028.9	-
3.	Environmental restructuring measures	3,187.9	-	3,187.9	-
4.	Financial restructuring measures	149,898.7	4,907.3	25,865.9	119,125.5
	<b>TOTAL RESTRUCTURING COSTS</b>	<b>239,225.5</b>	<b>77,017.3</b>	<b>43,082.7</b>	<b>119,125.5</b>

*Source: Restructuring plan of FORTUS*

(27) The implementation of the restructuring plan requires a financial effort of RON 239,225.5 thousand, of which RON 43,082.7 thousand is assumed by the majority shareholder, RON 77,017.3 thousand by the company, and the state contributes to the financial restructuring of the company with RON 119,125.5 thousand. This plan is expected to restore the viability of the company in 2008 (at the end of the restructuring period).

### **3.1. The organisational restructuring**

(28) The organizational restructuring of the company requires a financial effort of RON 72,110.0 thousand entirely borne by the company. In summary, the organizational restructuring is presented as follows:

[...] <sup>6</sup>

### **3.2. Technological restructuring**

(29) The technological restructuring measures require an implementation effort of RON 14,028.9 thousand entirely provided by the majority shareholder and refer to:

[...] <sup>7</sup>

### **3.3. Restructuring measures for environmental protection**

(30) Investments in environmental protection amounting RON 3,187.9 thousand are borne by the majority shareholder from own sources and are presented in table no. 7.

[...] <sup>8</sup>

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<sup>6</sup> Confidential data

<sup>7</sup> Confidential data

<sup>8</sup> Confidential data

### **3.4. Financial restructuring**

(31) At privatization, the company required financial restructuring for the normal functioning of the manufacturing activity, besides other restructuring measures assumed through the restructuring plan.

(32) In the case of FORTUS, the financial restructuring contains financial support from the State granted at privatization, consisting of exemptions from the payment of overdue obligations to the consolidated state budget, local budgets and AVAS, in total amount of RON 119,125.5 thousand. In order to carry out the financial restructuring, the Buyer contributes an amount of RON 25,865.9 thousand representing working capital.

(33) The financial restructuring contains the following measures:  
[...]<sup>9</sup>

The restructuring plan, through its financial component, gives the possibility to increase cash flow, to secure a stable cash-flow, which will ease the financial activity of the company.

## **4. STATE AID ASSESSMENT OF THE MEASURES**

### **4.1. The State aid character of the notified measures**

(34) The criteria, which allow to establish if a measure is 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.

(35) The financial support granted to FORTUS and notified by AVAS consists in the State renouncing to collect certain revenues; therefore, resources of the State are involved.

(36) The financial support measures aim only undertakings to be privatized, among which FORTUS. Thus, the financial support granted to this company is selective.

(37) The argument that debt cancellation or rescheduling represents an advantage is valid only in a non-privatization context. In the present case, debt cancellation and rescheduling are part of the privatization package and, as a consequence, it should be established whether these represent State aid. Thus, in order to assess whether an economic advantage is granted to FORTUS through these facilities, the behaviour of the State should be compared to that of a private investor/seller acting in similar conditions, i.e. the private investor test should apply.

(38) Normally, an investor/creditor shall seek to obtain a positive price, that is a price higher than the amount of the debts. Nevertheless, in this case the price is negative, i.e. smaller than

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<sup>9</sup> Confidential data



the value of the facilities. An investor/creditor might be predisposed to accept a negative price, should the cost of privatization be less than the cost of liquidation. In the present case, such an analysis is not possible as AVAS informed the Competition Council that no comparative analysis of the liquidation and privatization costs was conducted. Consequently, the decision to privatize the company could not have been made on the above basis.

(39) Further, considering the additional social costs and the costs of liquidating the company (such costs are not usually borne by a private investor/creditor), the State opted to privatize and grant the facilities mentioned as part of the privatization process. In this context, the private creditor/investor principle as set out above is not applicable to the privatisation of FORTUS.

(40) Granting financial support to FORTUS sets the premises for a possible distortion of the competition on the relevant markets, since it allows the company to stay on these markets. Moreover, there is no doubt that the financial support granted to FORTUS may affect trade with the Member States of the European Union, since the products manufactured by the company may compete with similar products manufactured in the European Union.

(41) To conclude, the Competition Council considers that the financial facilities granted to the company at privatization are considered to represent State aids and fall under the scope of the Law no. 143/1999 on State aid, republished.

## **4.2. Compatibility with the State aid legal framework**

(42) Art. 2 of the Law no. 143/1999 on State aid, republished, foresees that State aid granted by the State or from State resources that distort or threaten to distort competition and affect trade with the Member States are incompatible with a normal competitive environment.

(43) The State aid objective is the restructuring of FORTUS in order to restore its viability at the end of the restructuring period.

(44) The Competition Council evaluates the State aid granted to FORTUS, in accordance with the criteria stipulated in 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 the Law no. 143/1999 on State aid, republished. To be considered compatible with a normal competitive environment, the State aid must fulfil the criteria set in the above mentioned Regulation.

(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 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 again competitive and sometimes the diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied the financial restructuring (capital injections, reduction of debts degree, etc.).

(46) The aid granted upon the privatization of FORTUS is considered as individual state aid for restructuring and is to be granted based on a restructuring plan for 2004-2008, drafted by the company together with the buyer and AVAS with the main objective being the restoration of the company's viability until the end of the implementation period.

(47) The Competition Council assesses the state aid granted to FORTUS according to criteria provided in the Regulation on state aid for rescuing and restructuring firms in difficulty, as follows:

- eligibility of the company - company in difficulty;
- restoring the company's long term viability;
- avoid undue distortion of competition;
- aid limited to the minimum necessary (proportionality of the aid);
- observing the "first time, last time" principle;
- ensuring the fulfilment of the restructuring plan and permanently monitoring its progress;
- affiliation to a group of companies.

#### **4.2.1. Eligibility of FORTUS – 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 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty, a company is considered as being in difficulty when more than half of its own capital, as the accounting records of the company show, and more than a quarter of its capital was lost during the last 12 months, and a company, irrespective of its legal status, is considered in difficulty when it fulfils the conditions to allow the application of the procedure concerning the legal reorganization and the bankruptcy.

(50) In this respect, the Competition Council notes that, according to the company's balance sheet, FORTUS registered a loss in 2003 of RON 44,069,786 representing 59.15% of the shareholders equity (RON 74,500,751), the loss being 95.35% from operations. In 2002, at a shareholders equity of RON 49,112,890 the company had a loss of RON 35,924,412 representing 73.15% from the shareholders equity (the loss was 94.78% from operations). Besides, with a total debt of RON 116,194,730 in 2003, representing 56% of the shareholders' equity, the company can be considered to fulfil the criteria to undergo the judicial reorganization and bankruptcy procedure.

(51) In view of the above the Competition Council finds that the criteria foreseen under Art. 2 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty are met in order for FORTUS to qualify as a "firm in difficulty".

#### **4.2.2. Restoring the long term viability of the company**

(52) Difficulties confronting FORTUS led to the drastic reduction in its business activities, coupled with the cumulation of debts to the state budget which attracted delay penalties higher than overdue debts.

(53) Subsequent to the privatization in 2003, a restructuring plan for 2004-2008 has been drawn up. The summary of the measures included in the company's restructuring plan has been presented in chapter 3.

(54) The assessment of the restructuring plan and of the way in which it leads to the restoration of the company's long term viability has in view the provisions of article 13 of the Regulation on State aid for rescuing and restructuring firms in difficulty.

(55) According to article 13, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on the restructuring plan. The restructuring plan, which must be as short as possible in time, must include the abandonment of loss making activities and to offer the company long term viability, thereby allowing it to function with its own resources. The restructuring plan must to 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 over which the company has no substantial influence.

(56) The restructuring plan of FORTUS starts from the financial and economic data that reflects the company's activities in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong and weak points of the company as well as the circumstances that led to the difficulties the company faces.

(57) FORTUS strategy aims to preserve the strong points, respectively: the company has over 100 patents, qualified and experienced staff, a highly integrated manufacturing process. At the same time, the company's strategy aims at limiting and counteracting with adequate measures the weak points, i.e. the obsolete and outdated fixed assets, the outdated, costly technologies.

(58) The implementation of the measures provisioned by the restructuring plan financed by the company and the majority shareholder, as well as by the state by facilities granted to the company for the payment of budgetary obligations is foreseen to improve the financial - economic indicators in the period 2004-2008 as follows:

[...] <sup>10</sup>

(59) As a result of accomplishing the measures provisioned by the restructuring plan, at the end of the restructuring period the company forecasts to reach the following target indicators:

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<sup>10</sup> Confidential data

**Tabel no. 10** **Target financial-economic indicators**

1. Net profit	RON	1,327,200
2. Turnover	RON	99,315,000
3. Employees	persons	2,171
4. Equity	RON	69,190,200
5. Receivables collection period	Days	47.5
6. Debt payment period	Days	345.1
7. Indebtedness ratio	%	137.6
8. Return on assets	%	0.8
9. Return on equity	%	1.9
10. Cash flow	RON	19,000

Source: Restructuring plan of FORTUS

(60) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the restoration of the long term viability of FORTUS.

#### **4.2.3. Preventing any excessive distortion of the competition (compensatory measures)**

(61) According to the provisions of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granted have on the competition on the relevant markets, compensatory measures are needed. These measures will be proportional with the distorting effects caused by the aids and especially with the size and relative importance of the company on the relevant markets. The reduction of the company's presence on the market will be set based on the market research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

(62) According to the market study on which the restructuring plan is based, FORTUS has a market share of 18% on the domestic market of complex equipment.

(63) According to information sent by AVAS, in order to reach viability by the end of the restructuring period, the company will reduce its non-viable production capacities, as follows: [...]<sup>11</sup>

These losses of capacities are not considered compensatory measures within the meaning of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty because, according to information from AVAS these reductions of capacities contribute to the elimination of the loss making activities absolutely required to restore viability.

(64) The reductions of viable production capacities proposed by the state aid grantor as compensatory measures to diminish the distorting effect of granting the aid over competition are the following:

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<sup>11</sup> Confidential data

**Tabel no. 12**                      **Reductions of viable production capacities**

Product	MU	Capacity in 2003 (before restructuring)	Capacity in 2008 (end of restructuring)	Reductions of production capacities (%)
Cast steel parts	tonnes	4,600	1,000	21.7
Cast iron parts	tonnes	5,500	4,500	81.8
Forged-moulded parts	tonnes	4,500	2,500	55.6
Technological equipment	tonnes	14,000	6,000	42.9

*Sursa: Planul de restructurare al FORTUS*

These capacity reductions are irreversible and are an integral part of the restructuring plan. Equipments and installations related to these capacities will be dismantled and sold for liquidity.

(65) According to provisions of art. 14 from the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, stipulating that compensatory measures will be proportionate with the distorting effects of the state aid over the competition and considering the market share held by the company on the relevant markets, the Competition Council considers that in the case of FORTUS, reductions of production capacities proposed through the restructuring plan are sufficient.

(66) In light of the above, the Competition Council notes that the State aid shall be used exclusively for restoring the company's viability, not allowing the beneficiary, while implementing the restructuring plan, to extend its production capacity.

#### **4.2.4. Aid limited to the minimum necessary (proportionality of the aid)**

(67) In accordance with art. 15 of the Regulation on the rescue and restructuring of firms in difficulty, the State aid intensity and quantum is limited to the minimum necessary for implementing the restructuring plan. The State aid benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art. 15 (2) of the Regulation, for large undertakings a contribution of at least 50% is considered adequate.

(68) The total restructuring cost of FORTUS is RON 239,225.5 thousand and is composed of:

- Organisational restructuring cost                      RON 72,110.0 thousand
- Technological restructuring cost                      RON 14,028.9 thousand
- Environmental restructuring cost                      RON 3,187.9 thousand
- Financial restructuring cost                      RON 149,898.7 thousand

(69) The total restructuring cost of FORTUS, in amount of RON 239,225.5 thousand is supported from the following sources:

- company own sources                      RON 77,017.3 thousand
- own sources of the Buyer                      RON 43,082.7 thousand
- State aid                      RON 119,125.5 thousand

(70) The Competition Council notes that the company's own sources and of the majority shareholder in total amount of RON 120,100.0 thousand represent 50.2% of the of the total restructuring costs are provided from the following sources:

[...]<sup>12</sup>

(71) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 49.8%.

(72) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 50.2% to the restructuring costs, this showing the trust in the practical value of the restructuring and the fact that the amount and intensity of the state aid were strictly limited to allow the restructuring according to the existing financial resources of the company and the Buyer. As a consequence, the ability of the company to apply any liquidity surplus for aggressive activities, with the possible distortion of the market, is reduced.

#### **4.2.5. Observing the „first time, last time” principle**

(73) FORTUS never received restructuring aid in the past. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

#### **4.2.6. Affiliation to a group of companies**

(74) According to the provisions of art. 2 (5) of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, a company belonging to a group is not normally eligible to receive State aid for rescuing and restructuring, except for the case when it can be proved the financial difficulties belong to the company itself are not the outcome of an arbitrary allocation of costs within the group and that the said difficulties are much too serious to be handled by the group itself.

(75) The fiscal facilities intended to be granted to FORTUS refer to historical debts – consequence of the economic results obtained in the years preceding the sale of the majority share package, so they are the company's own.

(76) Following the privatization of the company and the conclusion of the privatization agreement no. 22/28.06.2003 the new owner of FORTUS is SC METAEXPORTIMPORT SA Bucuresti which is part of a 6 companies group. The members of the group are: SC METAEXPORTIMPORT SA Bucuresti, SC METALTRANS SA Bucuresti, SC METALBESTA SRL Bucuresti, SC METPREST SRL Galati, SOCOMEX SARL Beirut – Liban si METALL EXIM Ltd. Cyprus (established in 2004). AVAS and the aid beneficiary have submitted data on the economic-financial situation of this group of companies to the Competition Council.

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<sup>12</sup> Confidential data

(77) According to balance sheets companies within the group ended fiscal year of 2003 with a loss (total loss of RON 324,175) except for SC METALEXPORTIMPORT SA which made a profit of RON 1,056,363. At the same date, total group debts were in amount of RON 47,003,679 i.e. 55 times higher than the profit obtained.

(78) The Competition Council notes that, at privatisation, the Buyer paid for 81.38% of FORTUS shareholders equity a price of RON 2,263,976. Also, it is entirely financing the technological and environmental restructuring measures of FORTUS in amount of RON 17,216,800 and bring working capital in amount of RON 8,750,000 the contribution of SC METALEXPORTIMPORT SA to the financing of the restructuring program being of RON 25,966,800.

(79) Therefore, the Competition Council considers that SC METALEXPORTIMPORT SA could not have coped with the financial difficulties of FORTUS and the restructuring of the company without a consistent intervention of the State, the company's debts to the consolidated State budget, AVAS and the local budgets being in total amount of RON 119,125,582. As compared with the financial resources of the group of which SC METALEXPORTIMPORT SA is a member, this contribution is deemed significant.

#### **4.2.7. Monitoring and annual reporting**

(80) In accordance with article 18 the Regulation on State aid for rescue and restructuring firms in difficulty, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.

(81) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities are not registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of complementary liquidities to be used for other activities contained in the restructuring program.

### **5. CONCLUSIONS**

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

### **DECIDES**

**Art. 1.** The financial support measure notified by the Authority for the Recovery of State Assets for SC FORTUS SA Iasi represents a 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) letter c) corroborated with art. 23 (1) e) of the Law no. 143/1999 on state aid, republished, the restructuring aid that is going to be granted to

SC FORTUS SA Iasi at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

**Art. 3.** The company is compelled to fully implement the assumed restructuring plan.

**Art. 4.** The company shall reduce the production capacities until 2008 according to the assumed restructuring plan.

**Art. 5.** If the conditions imposed by the present decision are not observed, the provisions of article 22 of the Law no. 143/1999 on State aid, republished shall apply.

**Art. 6.** The amount of the State aid that is going to be granted is of RON 119,125,582.

**Art. 7.** The present decision becomes applicable as of communication.

**Art. 8.** In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished the Authority for State Assets Recovery shall submit to the Competition Council information on the State aid granted in order to inventory and monitor. In addition, the Authority for State Assets Recovery shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must include the necessary data on the (physical and value) stage of implementation of the restructuring plan. At the same time, information on the enforcement of compensatory measures related to the capacity reductions imposed by the present decision will be submitted.

**Art. 9.** In accordance with article 46 of the Law no. 143/1999 on State aid, republished the present decision can be appealed by interested parties at the Appeals Court, the Administrative Litigation Section within 30 days from its communication.

**Art. 10.** The present decision shall be communicated by the General Secretary of the Competition Council to:

- Autoritatea pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- SC FORTUS SA, Iasi, B-dul Poitiers nr. 10, judetul Iasi.

**PRESIDENT**

**MIHAI BERINDE**