

DECISION OF THE COMPETITION COUNCIL
no. 125 from 24.05.2006

regarding the State aid to be granted to
S.C. AGMUS S.A. Iasi

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 Regulation on the form, content and other details provided in the complaint regarding the State aid notification, adopted by Order no. 528/31.12.2004, published in the Official Gazette of Romania no.82/25.01.2005;

Taking into consideration the provisions of the Guidelines regarding the qualification of an enterprise as an SME, published in the Official Gazette Part I, no. 314 of 14.04.2005;

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. VP4/1565/07.03.2006, registered at the Competition Council no. RS-AS 44/13.03.2006, 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 SC AGMUS SA Iasi in the privatization context, as individual restructuring aid.

- (2) Since the information provided was not complete and accurate, the Competition Council requested AVAS additional information by letter no. DAAS/523/28.03.2006. AVAS transmitted the required reply by letter no. DCS/1214/10.04, registered at the Competition Council with RG 3309/11.04.2006.
- (3) The notification became effective at the date when the information was accurate and complete, respectively on 11.04.2006.

2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

- (4) The financial support measures will be granted to SC AGMUS SA on the basis *GEO no.26/2004 regarding several measures for the achievement of the privatization of the undertakings within the portofolio of AVAS and the consolidation of several privatizations, modified, completed and approved by Law no. 442/2004.*
- (5) The support measures consist of facilities for the payment of overdue obligations, in amount of RON 9,478,641, respectively exemptions in amount of RON 8,402,924 and payment scheduling to the consolidated state budget and to the local budget of Iasi County, in amount of RON 1,075,717, as follows:

Table no. 1 - Facilities to be granted to SC Agmus SA Iasi

| No. | Facility | Amount -RON- | Grantor | Legal basis |
|-----|---|-----------------|--------------------|---|
| 1. | Exemption from the payment of 95% of the overdue budgetary obligations unpaid until 31.12.2003 | 2,417,912 | MFP ¹ | GEO no. 26/2004 (art. 26 par. 1) lett. a)) |
| 2. | Exemption from the payment of interest, penalties of any type corresponding to overdue budgetary obligations unpaid until 31.12.2003 | 5,562,549 | MFP | GEO no.26/2004 (art. 26 par. (1) lett.e), par. (3), lett. b) and par.(4) lett.b)) |
| 3. | Exemption from the payment of interest, and delay penalties corresponding to debits towards the National Unique Fund of Social Health Insurance | 329,126 | AVAS | GEO no. 26/2004 |
| 4. | Exemption from the payment of interest and penalties corresponding to overdue obligations to the local budget not paid until 31.12.2003, computed until the | 93,337 | Local Council Iasi | LCD no. 99/2005 |

¹ Ministry of Public Finances.

| | | | | |
|----|--|------------------|--------------------|---|
| | date of the share ownership transfer | | | |
| | TOTAL EXEMPTIONS | 8,402,924 | | |
| 5. | Payment scheduling, 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 (5%) remained the company's duty | 127,259 | MFP | GEO no.26/2004 (art. 26 par. (1), lett. d)) |
| 6. | Payment scheduling, over a period of 5 years, with a grace period of 6 months, of overdue budgetary obligations not paid until 31.12.2003 | 472,573 | MFP | GEO no.26/2004 (art. 26 par. (3), lett. a) and par.(4) lett.a)) |
| 7. | Payment scheduling of debts to the National Unique Fund of Social Health Insurance, overtaken for recuperation by AVAS | 369,088 | AVAS | GEO no. 26/2004 |
| 8. | Payment scheduling of obligations to the local budget | 106,797 | Local Council Iasi | LCD no.99/2005 |
| | TOTAL PAYMENT SCHEDULING | 1,075,717 | | |
| | TOTAL FACILITIES | 9,478,641 | | |

Source: Notification form

3. BENEFICIARY OF THE FINANCIAL SUPPORT MEASURES – SC AGMUS SA

- (6) SC AGMUS SA is a joint stock company, with headquarters in Iasi, Iasi county, with the registration number at the Trade Register J22/270/1991 and CUI 1990119, fiscal attribute R. The company is situated in the North East Development Region, which is considered an assisted area, in accordance with the provisions of Art. 87(3)(a) of the EC Treaty.
- (7) SC AGMUS SA was privatized in 2004, by signing the shares sale-purchase contract no. 56/30.07.2004. The shareholders' structure after privatization is presented in Table no. 2.

Table no 2 - SC AGMUS SA's shareholders' structure after privatization

| SHAREHOLDERS | CAPITAL OWNED | |
|------------------|------------------|---------------------------|
| | Number of shares | Percent in the equity (%) |
| SC TESS CONEX SA | 438,975 | 69.975 |
| SIF Moldova | 125,662 | 20.031 |
| Others | 62,698 | 9.994 |
| TOTAL | 627,335 | 100 |

Source: Notification form

- (8) At the end of 2004, the company had an average number of 191 employees and a turnover of RON 2,115,500, respectively Euro 521,933, so two of the criteria

stipulated in the *Regulation regarding state aid for small and medium-sized enterprises* are fulfilled in order to consider SC AGMUS SA as a medium sized enterprise. After the share ownership transfer, SC AGMUS SA became a linked enterprise, according to art. 7 lett. a) of the *Regulation for amending and completing the Regulation regarding state aid for small and medium-sized enterprises*, and the total number of employees of the two companies is 950. Therefore, the company will be considered a large enterprise.

- (9) SC AGMUS SA is a traditional producer of custom-made machine tools, special-purpose machine tools, plant units and transfer lines. SC AGMUS SA's main activity consists in production of machine tools for metal processing (code CAEN 3520). The main products manufactured by SC AGMUS SA are:
- metal made spare parts for machine tools and equipments;
 - machine tools for metal and wood processing: milling machine MFC 160-2; straight-toothed gears; couplings for extraction pipes API-5CT, hydraulic cylinder.
- (10) The production activity is structured in production departments, such as: Mechanical machining, Erection of machines-maintenance, Cutting numerical control machines, Winding and mechanical-energetic. The company has as secondary activities: fabrication of bearings, gearings and mechanical transmission devices, metallic profiles construction, production of parts and accessories for cars, etc.

4. RELEVANT MARKETS

- (11) SC AGMUS SA is active on the following relevant markets: metal made spare parts for machine tools and equipments and machine tools for metal and wood processing. The company's products are manufactured mainly on the domestic market.
- (12) According to the market study, annexed to the restructuring plan of SC AGMUS SA, the market shares of the company on the domestic markets are as follows:
- for metal made spare parts for machine tools and equipments: 2.52%,
 - for machine tools for metal and wood processing: 4.05%,
- SC AGMUS SA has low market shares on the relevant markets where it is active.
- (13) On the domestic market of machine tools and spare parts for machine tools 210 companies are competing, from which 5 companies own approximately 55.05% of the total turnover realized in this sector. These are: SC Tess Conex SA Iasi, SC Titan Masini Grele SA Bucuresti, SC World Machinery SA Bacau, SC MES SA Suceava and SC I.A.M.U. SA Alba.
- (14) The customers are companies from the automobile industry, metallurgic industry, construction materials industry, wood and furniture industry and pharmaceutical industry. Therefore, the main beneficiaries of SC AGMUS SA's products are:

- for metal made spare parts for machine tools and equipments: SC Asam SA Iasi, Iulius Group Iasi, SC Tehnoutilaj SA Husi, SC Ispat Sidex SA Galati, SC VII Rom Service SA Bucuresti, SNP Petrom SA Bucuresti;
- for machine tools for metal and wood processing: SC IRI SRL, SC Petrotub SA Roman, SC Asam SA Iasi, SC VII Rom Service SA Bucuresti.

(15) According to the annexed market study, the demand on the domestic market of machine tools for metal and wood processing and of spare parts for machine tools will have an increase tendency due to large modernization programs of the companies from the machines manufacture, metallurgic and wood processing field.

5. FINANCIAL STATUS OF THE UNDERTAKING PRIOR TO PRIVATIZATION

(16) The evolution of the main economic and financial indicators registered by SC AGMUS SA between 2001-2003 is the following:

Table no. 3 - The evolution of the main indicators of SC AGMUS SA between 2001-2003

| INDICATORS | 2001 | 2002 | 2003 |
|---|------------|------------|------------|
| Turnover | 2,228,032 | 1,969,309 | 1,946,442 |
| Gross result | -2,557,322 | -2,512,431 | -1,843,168 |
| Result from exploitation | -633,849 | -1,450,785 | -1,845,300 |
| Own capital (RON) | -1,174,183 | -3,662,838 | -5,504,828 |
| Total debts (RON) | 5,878,050 | 7,807,343 | 8,939,299 |
| Receivables (RON) | 933,332 | 801,407 | 688,510 |
| Duration of receivables collection (days) | 151 | 146 | 127 |
| Indebtedness degree (%) | 500 | -213.15 | -162.39 |
| Intermediary Liquidity (%) | 0.17 | 0.10 | 0.08 |

Source: Notification form

(17) The analysis of the above-presented economic and financial indicators, registered by SC AGMUS SA prior to privatization, shows: a decrease of the turnover, a significant increase of the amount of debts, a deterioration of equity which had negative values, liquidity indicators much below the normal limit, all these indicating a decline of the economic-financial situation of the company.

(18) The main causes leading to this difficult situation of the company are the following:

- disappearance of a sector of the sale market for special-purpose machine tools and unique equipments demanded through special orders;
- obsolete technology which implies high utility consumption and implicitly high production costs;
- insufficient training of personnel;

- precarious endowment with data processing equipment and the lack of an IT system;
- lack of liquidities.

(19) Taking into consideration this difficult situation, AVAS decided to privatize the company, and to grant facilities for the payment of budgetary obligations.

6. DESCRIPTION OF THE PRIVATIZATION PROCESS

(20) In 2004, AVAS offered for sale, through negotiation, the main shares package owned in SC AGMUS SA, representing 69.975% of its equity, namely 438,975 shares.

(21) In March 2004, the privatization process started through the publication of the sale offer in the newspapers „The Wall Street Journal”, “Bursa” and “Ziua de Iasi”, at the undertaking’s headquarters and at AVAS’ headquarters.

(22) In order to decide the most appropriate investor, AVAS established the following pre-qualification criteria: the bidder must have a minimum 3 year experience in the field of machine manufacturing and a minimum turnover of EURO 500,000 during the last financial exercise.

(23) Through the shares sale offer, potential buyers were informed about the possibility to request, in written form, according to the legislation in force, direct access to the technical, economic, financial and legal data concerning the company. Moreover, the presentation dossier stipulated that the undertaking would benefit from facilities for the payment of debts due to the budgetary creditors, in accordance with the legal provisions.

(24) Two presentation dossiers were bought and until the deadline, 20.05.2004, one purchase bid was submitted from SC TESS CONEX SA in association with Mr. Slusaru Dorin. The offer was admitted and negotiations with the investor started.

(25) [...]².

7. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(26) The restructuring plan for 2005 – 2009 submitted to the Competition Council was drawn up by the company in cooperation with the buyer and approved by AVAS. This plan includes the measures required to carry out the company’s re-organization, technical, financial and environment restructuring aiming to intervene on the causes which determined the difficult situation of SC AGMUS SA Iasi.

² Confidential data.

- (27) SC AGMUS SA Iasi's restructuring is focused on the following main directions:
- modernization and reorganization of the manufacturing technological flow;
 - manufacturing new products in order to fulfil the requirements of the domestic and external demand;
 - reduction of production costs (with raw materials, materials and utilities);
 - gaining new clients through a better promotion of the company's products.

- (28) By implementing the restructuring plan, the company aims to accomplish the following objectives:

- to efficiently use production capacities and to improve the performance of the company's main activity;
- to increase labour productivity;
- to achieve financial balance;
- to diversify the clients' portfolio;
- to comply with environmental requirements.

- (29) Synthetically, the measures included in the restructuring plan are as follows:

Table no. 4 - Summary of the measures enclosed in the restructuring plan

- RON -

| No. | Measures | Total cost | Financing | | |
|-----|-----------------------------------|-------------------|------------------|--------------------|------------------|
| | | | Own sources | Investor's sources | State aid |
| 1. | Organisational Restructuring | 2,615,512 | 93,000 | 2,522,512 | - |
| 2. | Technological Restructuring | 5,045,433 | 3,269,200 | 1,776,233 | - |
| 3. | Environmental protection measures | 198,218 | 9,900 | 188,318 | - |
| 4. | Financial Restructuring | 11,189,163 | 859,522 | 851,000 | 9,478,641 |
| | TOTAL COST RESTRUCTURARE | 19,048,326 | 4,231,622 | 5,338,063 | 9,478,641 |

Source: SC AGMUS SA's restructuring plan

- (30) Implementing the restructuring program requires a total financial effort amounting to RON 19,048,326 and aims to restore SC AGMUS SA SC's viability.

7.1. Organizational restructuring

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

Table no. 5 - Measures on the organizational restructuring

- RON -

| No. | Measure | Deadline | Cost | Financing | | |
|-----|---|------------|-----------|-------------|-----------------|-----------|
| | | | | Own sources | Buyer's sources | State aid |
| 1. | Reorganization of the company on directorates, departments and activities | 30.04.2005 | 1,000 | 1,000 | - | - |
| 2. | Rehabilitation of buildings and production halls | 31.07.2006 | 2,484,195 | - | 2,484,195 | - |
| 3. | Development of the marketing | 30.08.2005 | 2,000 | 2,000 | - | - |

| | | | | | | |
|--------------|--|------------|------------------|---------------|------------------|---|
| | department and its endowment with the necessary means | | | | | |
| 4. | Achievement of an IT program and endowment with data processing equipments | 31.12.2006 | 88,317 | 50,000 | 38,317 | - |
| 5. | Training programs for the existing work force | 31.12.2006 | 40,000 | 40,000 | - | - |
| TOTAL | | | 2,615,512 | 93,000 | 2,522,512 | - |

Source: SC AGMUS SA' s restructuring plan

7.2. Technological restructuring

(32) The technological restructuring measures imply a cost of RON 5,045,433 and are financed by both the company and the buyer; these are synthetically presented in table no. 6.

Table no.6 - Measures on the technological restructuring - RON-

| No. | Measure | Deadline | Cost | Financing | | |
|--------------|--|------------|------------------|------------------|------------------|-----------|
| | | | | Own sources | Buyer's sources | State aid |
| 1. | Acquisition of high performance equipments (machines, equipments, devices and special accessories) | 31.12.2009 | 4,236,733 | 2,643,000 | 1,593,733 | - |
| 2. | Modernization of existing equipments | 31.12.2009 | 407,500 | 225,000 | 182,500 | - |
| 3. | Restructuring of technological flows through re-disposal of some equipments | 31.12.2006 | 80,000 | 80,000 | - | - |
| 4. | Acquisition of measurement and control equipments for testing and standardization labs. | 31.12.2009 | 321,200 | 321,200 | - | - |
| TOTAL | | | 5,045,433 | 3,269,200 | 1,776,233 | - |

Source: SC AGMUS SA' s restructuring plan

7.3. Environmental protection restructuring measures

(33) The environmental protection restructuring measures regard environment investments comprised in the Compliance Program, annex to the environment opinion amounting to RON 198,218, from which RON 9,900 are financed by the company and the rest of RON 188,318 by the investor.

7.4. Financial restructuring

(34) The financial restructuring encloses the following measures:

Table no. 8 - Financial restructuring measures - RON-

| No | Measure | Deadline | Cost | Financing | | |
|----|---------|----------|------|-------------|-----------------|-----------|
| | | | | Own sources | Buyer's sources | State aid |

| | | | | | | |
|----|--|------------|-------------------|----------------|----------------|------------------|
| 1. | Facilities for the payment of overdue budgetary payments | 31.12.2006 | 9,478,641 | 0 | 0 | 9,478,641 |
| 2. | Capitalization of assets through sale and/or rental | 31.12.2009 | 859,522 | 859,522 | - | - |
| 3. | Infusion of working capital | 31.07.2005 | 851,000 | 0 | 851,000 | |
| | Total | | 11,189,163 | 859,522 | 851,000 | 9,478,641 |

Source: SC AGMUS SA's restructuring plan

The restructuring plan, by its financial restructuring component, gives the possibility to ensure a stable cash flow, which will ease and relieve the company's financial and production activity.

8. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(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 to be granted to SC AGMUS SA consists in the fact that the State renounces to collect certain revenues; therefore, the State's resources are involved.

(37) The financial support is granted to a certain undertaking, namely SC AGMUS SA having, therefore, a selective character.

(38) By the financial support measures which are to be granted³, such as exemptions from the payment and payment scheduling, an economic advantage is given to SC AGMUS SA. Granting these facilities will have a favourable effect on the company's economic and financial indicators, particularly on cash-flow. Therefore the company has an advantage, being favoured in comparison to its competitors.

(39) The assumption that the facilities indicated above represent an advantage is valid in a non privatisation context. Where such facilities are part of a privatization package, they should be analysed in terms of whether or not they constitute state aid, by applying the prudent private investor test⁴. The State is acting like a prudent private investor/seller in the privatization context if it obtains the best price for selling its shares. The price paid by the buyer for the acquisition of the main share package of RON 482,872.5 is considerably lower than the amount of the facilities to be

³ See point (5) of the Decision.

⁴ We note that, in general, the existence of the conditions stipulated in the privatization contract– see point (25) - leads to the non-application of the prudent private investor test.

granted to SC AGMUS SA, namely RON 9,478,641. However, a prudent investor/creditor may be willing to accept a negative price if the cost of the privatization is less than the costs of liquidation. AVAS informed the Competition Council that they did not undertake any comparative analysis of SC AGMUS SA's liquidation and privatization costs prior to the privatization decision.

- (40) Taking into account all the above, including any social costs assumed by the buyer, the Competition Council concludes that in this case the prudent private investor principle cannot apply to the privatization of SC AGMUS SA. Therefore, granting these facilities constitutes an advantage to the company as indicated at paragraph (38).
- (41) At the same time, there is no doubt that the financial measures affect the trade with the Member States of the European Union, because SC AGMUS SA's products/services compete with other similar products manufactured by firms from the European Union.
- (42) Therefore, the financial support measures that are to be granted to SC AGMUS SA, in the privatization context, are considered State aid and fall under the provisions of the *Law no.143/1999*, republished.

9. COMPATIBILITY WITH THE STATE AID LEGAL FRAMEWORK

- (43) The State aid objective is the restructuring of SC AGMUS SA in order to restore its viability at the end of the restructuring period.
- (44) 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*, (hereinafter named Regulation), published in the Official Gazette no. 1215/17.12.2004, issued in application of the *Law no. 143/1999 on State aid*, republished, 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. The industrial restructuring must in principle go together with the financial restructuring (capital injections, reduction of the indebtedness ratio, etc.).
- (45) The Competition Council assesses the State aid to be granted to SC AGMUS SA according to the criteria provided in the Regulation, envisaging:
- the firm's eligibility – firm in difficulty and affiliation to a group of firms;
 - restoring the company's long term viability;
 - avoid the undue distortion of competition;

- correct dimensioning of the State aid, which must be 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;

9.1. FIRM IN DIFFICULTY

- (46) In order to benefit from State aid according to the Regulation, the company must be in difficulty. The Competition Council considers that “a firm 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.
- (47) According to Article 2(2)(b) of the Regulation, a joint stock company is considered as being in difficulty when more than half of its equity, as the accounting records of the company show, and more than a quarter of its equity was lost during the last 12 months.
- (48) In this respect, the Competition Council notes that, according to what was mentioned in paragraph (16), the company registered a loss in amount of RON 1,841,990 in the last 12 months before restructuring, from RON -3,622,838 in 2002 to RON -5,504,828 in 2003, which represents “more than half of its equity”, thus being fulfilled the criterion foreseen under Article 2(2) (b) of the Regulation in order for S.C. AGMUS S.A. to qualify as “firm in difficulty”.

9.2. AFFILIATION TO A GROUP

- (49) According to the provisions of Article 2 (5) of the Regulation, a company belonging to a group is not normally eligible to receive State aid for rescue 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 the group itself.
- (50) The difficulties of S.C. AGMUS S.A are its own and do not result from an arbitrary allocation of costs within the group; they are due to the high amount of delay penalties related to debts accrued prior to privatization.
- (51) [...] ⁵.
- (52) [...] ⁶.

⁵ Confidential data.

⁶ Confidential data.

- (53) The profit made by the companies within the group is insufficient to cover debts accrued by SC AGMUS SA prior to privatization. In addition, through the privatization contract, SC Tess Conex SA committed itself to invest in the company an amount of Euro 1,200,000 and to ensure a working capital of Euro 200,000, respectively approx. RON 4,900,000.
- (54) Based on the above analysis, the Competition Council concludes that the group of which SC AGMUS SA is part of after privatization does not have the financial capacity to deal with the company's difficulties, respectively to cover its overdue debts to the state, in amount of RON 9,478,641.

9.3. RESTORING THE COMPANY'S LONG TERM VIABILITY

- (55) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan, which represents the basis for the assessment made by the Competition Council regarding the state aid. The restructuring plan, whose duration must be as short as possible, must include the abandonment of loss making activities and it must offer the company the 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 over which the company has no substantial influence.
- (56) Given the difficult situation of SC AGMUS SA at privatization, the restructuring of the company was decided and a restructuring program was drafted for 2005-2009. The summary of the restructuring measures of AGMUS SA was presented in chapter 7.
- (57) 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 SC AGMUS SA take into consideration the provisions of article 13 of the Regulation.
- (58) The restructuring plan of SC AGMUS SA starts from the technical-economic data that reflect the company's activities in the period prior to privatization. This includes the causes that led to the difficult financial situation of SC AGMUS SA as well as the measures which will ensure 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, by modernizing and making more efficient the technological flows, by reducing production costs, by increasing the quality of the products, by obtaining profit as well as by increasing financial possibilities.
- (59) By the organizational restructuring measures, it is intended to reduce the functioning costs of production departments and to increase labour productivity.

Through the reorganization of the company on directorates and departments, it is intended to undertake the activity on complex working units, which to completely carry out an order, until the finished products. The rehabilitation of production areas and the implementation of an integrated IT program aim at reducing the time corresponding to internal transportation and handling and at ensuring a strict cost control in view of reducing specific consumptions and of increasing production efficiency. In order to obtain high quality products it is necessary to increase the professional level of the working force, through courses organized by its own specialists or by specialized firms. At the same time, it is necessary to train the working force in what regards the new integrated system of data storage and the handling of machine tools with numerical control and automatic machine tools that will be purchased. Considering that in the last years the company was confronted with a reduction of its custom made machine tools market, SC AGMUS SA focuses on the manufacturing of spare parts for machine tools for which there is an increasing demand. For a better promotion of the products and in order to find new market segments, the company aims to improve and develop its marketing department.

- (60)** Through the technical investments, it is aimed to eliminate an important cause which determined the company's difficult situation, namely the precarious technical endowment and the high worn out ratio of production equipments. These aim at obtaining products with a high degree of complexity and value added, at increasing manufacture efficiency and labour productivity, at reducing energetic consumption, all these having as effect the reduction of losses, the achievement of an increased profit from exploitation activity. In order to eliminate the non – compliant products from the preliminary phases of the production process, the company will endow the testing and standardization lab with measurement and control devices, thus contributing to the increase of the quality of the whole range of fabrication process.
- (61)** The financial restructuring measures come to counteract the major causes for the company's difficult situation such as lack of liquidities and the high indebtedness ratio. The Competition Council concludes that financial restructuring aims at ensuring the fluidity of the company's financial activity. Thus, through assets capitalization (sale and rent) it is pursued to obtain the necessary resources for financing the restructuring plan, as well as to solve some related environment problems. The investor's contribution of working capital ensures the necessary liquidities for current activities and the state aid relieves the company from paying some overdue debts. This way S.C. AGMUS S.A. will be able to pay its current debts to the State and to allocate the necessary liquidities in order to implement the necessary investments in view of the development and support of the production program for the future.
- (62)** The restructuring strategy aims to preserve the company's strong points, namely: the tradition in machine tools fabrication, flexibility and the capacity to adapt fast to clients' demands, management systems implemented according to ISO 9001/2000. At the same time it is aimed to limit and eliminate the weak points with specific measures such as: the equipment has a high worn out ratio, they have large energy

consumption, part of the working force is not specialized, low productivity, high degree of indebtedness.

- (63) By applying the measures contained in the restructuring plan the economic and financial indicators are estimated to improve as follows:

Table no.11 Estimated evolution of the economic and financial indicators – RON –

| Description of indicators | | 2005 | 2006 | 2007 | 2008 | 2009 |
|---------------------------|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| 1 | Total revenues, of which: | 6,226,252 | 17,701,300 | 12,337,000 | 17,752,000 | 24,002,500 |
| | - Operating revenues | 6,223,352 | 9,300,000 | 12,335,500 | 17,750,000 | 24,000,000 |
| | - Net turnover | 5,812,760 | 8,950,000 | 11,950,000 | 17,377,000 | 23,745,000 |
| | - Financial revenues | 2,900 | 1,300 | 1,500 | 2,000 | 2,500 |
| | - Extraordinary revenues | 0 | 8,400,000 | 0 | 0 | 0 |
| 2 | Total expenses, of which: | 7,585,025 | 9,141,195 | 11,535,000 | 16,435,230 | 22,475,000 |
| | a) operating | 7,573,325 | 8,981,195 | 11,335,000 | 16,185,230 | 22,325,000 |
| | b) financial | 11,700 | 160,000 | 200,000 | 250,000 | 150,000 |
| | c) extraordinary | 0 | 0 | 0 | 0 | 0 |
| 6 | Gross profit(+) / Loss(-) | -1,358,773 | 8,560,105 | 802,000 | 1,316,770 | 1,527,500 |
| | Profit tax | -11,247,073 | -2,686,968 | -1,884,968 | -568,198 | 0 |
| 7 | Net profit (+) / Loss (-) | -1,358,773 | 8,560,105 | 802,000 | 1,316,770 | 1,283,100 |
| 8 | Current assets - total, of which: | 2,161,760 | 1,950,430 | 2,272,391 | 3,467,858 | 3,858,940 |
| | a) Inventories | 1,003,800 | 850,430 | 1,050,886 | 1,764,000 | 1,915,000 |
| | b) Receivables | 1,117,130 | 1,050,000 | 1,191,505 | 1,638,858 | 1,883,940 |
| | c) Cash and investments | 40,830 | 50,000 | 30,000 | 65,000 | 60,000 |
| 9 | Debts - total, of which: | 14,122,322 | 8,214,449 | 8,352,551 | 8,029,408 | 5,913,965 |
| | a) loans and assimilated debts | 0 | 335,400 | 852,400 | 1,144,400 | 2,744,100 |
| | b) commercial debts | 1,146,096 | 1,800,000 | 1,500,000 | 1,100,000 | 800,000 |
| | c) fiscal debts and health and social insurance debts | 11,330,226 | 1,810,549 | 1,513,086 | 1,297,943 | 682,800 |
| | d) other debts | 1,646,000 | 4,268,500 | 4,487,065 | 4,487,065 | 1,687,065 |

From data in the table above it can be noticed that the company's activity will improve, which is shown by the evolution of turnover and profit. Thus, the turnover will increase approximately by 4 times in 2009 against the 2005 level; the estimated profit will be used to cover losses prior to privatization.

Up to present, the company has achieved part of the restructuring measures, respectively: reorganization of activity by departments and sectors, rehabilitation for 50% of the buildings and production halls, setting up of the marketing department and implementation of IT software and hardware. In addition, investments were started to assure the technological and environmental restructuring of the company, the investor already having contributed RON 2,854,074.

- (64) After implementing the restructuring measures, the company foresees to reach the following target indicators by 2009:

Table no.12 Target economic and financial indicators

| | | |
|-------------------------------|------|------------|
| Gross profit | RON | 1,283,100 |
| Turnover | RON | 23,745,000 |
| Number employees | Pers | 195 |
| Equity | RON | 5,219,338 |
| Receivables collection period | Days | 28.56 |
| Debt payment period | Days | 90.33 |
| Economic efficiency | % | 10.31 |
| Financial efficiency | % | 19.78 |
| Cash-flow | RON | -26,125 |

Source: SC AGMUS SA's restructuring program

The restoration of the company's long term viability results mainly from internal measures included in the restructuring plan. In order to assess whether the company will become viable at the end of the restructuring period, it was also taken into account the evolution of the markets on which it will act. Given the above, the Competition Council considers that the proposed restructuring plan will lead to the restoring of S.C. AGMUS S.A's long term viability.

9.4. PREVENTING EXCESSIVE DISTORSION OF COMPETITION (COMPENSATORY MEASURES)

(65) 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 granting of 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. Stopping and completely quitting losses generating activities, which are absolutely necessary for restoring the viability, will not be considered reductions of capacities or of market presence when the compensatory measures are analysed.

(66) According to the information received, during the implementation of the restructuring plan, the company will give up non viable production capacities, consisting of 31 machines and equipments, such as: lathes, milling machines, boring machines, seesaws. These are not considered compensatory measures according to the Regulation, because they represent reductions of non viable capacities absolutely necessary for restoring the viability.

(67) Considering that SC AGMUS SA is a large enterprise, in order to avoid the distortion of competition, AVAS imposed as compensatory measures the following irreversible reductions of the viable production capacities which are part of the restructuring plan:

- reduction of the capacity for machine tools for metal and wood processing with Euro 162,400, from Euro 2,252,400 in 2004 to Euro 2,090,000 in 2009;

- reduction of the capacity for metal made spare parts for machine tools with Euro 255,200, from Euro 4,245,200 in 2004 to Euro 3,890,000 in 2009.

Thus, 18 equipments which contribute to the achievement of the company's main activity will be made available and capitalized, such as: lathes, milling machines (type gears Y315, X63W), grinding machines, boring machines, shears, and compressors.

- (68) 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.

9.5. STATE AID LIMITED TO THE MINIMUM NECESSARY (PROPORTIONALITY OF AID)

- (69) In accordance with the provisions of Article 15 of the Regulation, the State aid amount and intensity must be limited to the minimum necessary, to allow the restructuring according to the company's and shareholders' existing financial resources. The State aid beneficiary must bring a significant contribution to the restructuring plan by its own resources, inclusively through the sale of assets which do not essentially contribute to the company's survival, or through external financing under market conditions.

- (70) SC AGMUS SA SA's total restructuring cost is of RON 19,048,326 and is made of:

| | |
|-------------------------------------|-----------------|
| - organizational restructuring cost | RON 2,615,512, |
| - technological restructuring cost | RON 5,045,433, |
| - environmental restructuring cost | RON 198,218, |
| - financial restructuring cost | RON 11,189,163. |

- (71) SC AGMUS SA's restructuring cost is financed from the following sources:

| | |
|-------------------------|----------------|
| - company's own sources | RON 4,231,622, |
| - investor's sources | RON 5,338,063, |
| - state aid | RON 9,478,641. |

- (72) The state aid beneficiary's own contribution for covering the restructuring costs in amount of RON 9,569,685 RON, represents 50.2% and is ensured by:

| | |
|---|----------------|
| - capital from the main shareholder: | RON 5,338,063; |
| - revenues from fixed assets capitalisation ⁷ : | RON 37,475; |
| - revenues from rental (fixed assets and spaces) ⁸ : | RON 822,047; |
| - bank loan under market terms ⁹ : | RON 3,372,100. |

⁷ The assets have been assessed by an independent evaluator.

⁸ The company has concluded rental contracts for equipments and spaces which cover the whole restructuring period.

⁹ Raiffeisen Bank Iasi by the letter no. 4598/30.03.2006 confirmed that SC AGMUS SA could access credit facilities amounting to RON 3,372,100.

(73) In the case of SC AGMUS SA, the State aid intensity, calculated as a ratio between the value of the State aid and the total restructuring cost, is of 49.8%.

(74) The Competition Council considers as adequate the beneficiary's contribution of 50.2% to the implementation of the restructuring plan. This shows trust in the practical value of the restructuring, as well as the fact that the value and intensity of State aid are strictly limited to allow restructuring according to the existing financial resources of the company and of the majority shareholders. As a consequence, the ability of the company to use any surplus liquidity for aggressive activities, with the possible distortion of the market, is prevented.

9.6. FULFILLING THE „FIRST TIME, LAST TIME” PRINCIPLE

(75) SC AGMUS SA did not previously receive restructuring State aid. Therefore, the provisions of Article 24 of the Regulation, stipulating that the restructuring State aid must be granted only once, are observed.

9.7. MONITORING AND ANUAL REPORT

(76) In accordance with the provisions of Article 18 of the Regulation, the Competition Council permanently monitors the restructuring plan's implementation so that the established objectives are fulfilled

(77) Consiliul Concurentei will monitor the restructuring plan's implementation until the end of the period, in order to ensure that there will be no increases in the production capacities, serious diversions from the restructuring measures and that the State aid will not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program

10. CONCLUSIONS

(78) Taking into consideration the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC AGMUS SA is compatible with the normal competitive environment and does not significantly affect trade with the Member States of the European Union.

DECIDES

Art. 1. The financial support measures intended to be granted to SC AGMUS SA Iasi represent State aid according to Article 2(1) of the *Law no. 143/1999 on state aid, republished*.

Art. 2. On the basis of Article 21 (2)(c) corroborated with Article 23 par. (1) (e) of *Law no. 143/1999, republished*, the restructuring State aid to be granted to AGMUS SA at its

privatization is authorised, under the condition of fulfilling Article 3 and Article 4 of the present decision.

Art. 3. The company is compelled to fully implement the assumed restructuring plan. The modification of the restructuring plan shall be done only if the provisions of Article 19 of Regulation on the State aid for rescue and restructuring firms in difficulty, applied by Order of Competition Council's President no. 501/23.11.2004, published in the Official Gazette no.1215/17.12.2004 are fulfilled.

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 Article 22 of Law no. 143/1999 on State aid, republished, shall be applied.

Art. 6. The value of the State aid to be granted is of RON 9,478,641.

Art. 7. This decision is applicable as of its date of communication.

Art. 8. According to the provisions of Article 32 of Law no.143/1999, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the granted State aid, for its inventorying and monitoring. At the same time, 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. The following reports should prove that the company fulfilled the compensatory measures on production capacities' reduction imposed by the present decision.

Art. 9. Pursuant to Article 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, Bucuresti;
- SC AGMUS SA, str. Chisinaului no. 32, Iasi, Iasi county, postal code 700180.