

DECISION OF THE COMPETITION COUNCIL
no. 127 of 29.05.2006
concerning the state aid notified by
the Authority for the Recovery of State Assets
to be granted to SC RODIPET SA Bucuresti

COMPETITION COUNCIL,

With regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993,

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette no. 742, Part I, of 16.08.2005,

With regard to the provisions of the State aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 of 16.08.2005,

With regard to the provisions of the Regulation on the form, content and other details regarding the state aid notification, published in the Official Gazette, Part I, no. 82, of 25.01.2005

With regard to the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 17.12.2004,

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members,

Based on the following,

1. PROCEDURE

(1) By letter no. DCS/811/07.03.2006, filed with the Competition Council no. RS-AS 43/09.03.2006, the Authority for the Recovery of State Assets (hereinafter AVAS) notified based on art. 15 from *Law no. 143/1999 on state aid, republished*, the individual state aid for the restructuring of SC RODIPET SA Bucuresti within the privatization process.

(2) The Competition Council requested to AVAS further information by letter no. CC/469/17.03.2006. AVAS replied by letters no.DCS/811/29.03.2006 and no.

DCS/1249/07.04.2006, filed with the Competition Council no. DAAS/538/31.03.2006, respectively no. RG 3306/11.04.2006. The notification became effective on 11.04.2006.

2. DESCRIPTION OF THE STATE AID MEASURES

2.1. Legal basis for granting the aid

- Law no. 137/2002 regarding some measures for accelerating the privatization process¹;

2.2. Beneficiary of the measures – SC RODIPET SA Bucuresti

(3) The State aid beneficiary is SC RODIPET SA Bucuresti² (hereinafter RODIPET). The company was set up on the basis of GO no. 45/1991 and in accordance with the provisions of Law no.15/1990, through the reorganisation of the former Department for Press Delivery, which was set up in 1952.

(4) RODIPET was privatized in 2003, by signing the share sale-purchase agreement no. 62/23.12.2003, concluded between AVAS, on the one hand and SC MAGNAR SYSTEMS COM SA, on the other hand; the shareholders structure after privatization is presented in table no. 1. The share ownership transfer took place on 10.05.2004.

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

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares held	Percentage from the social capital (%)
SC MAGNAR SYSTEMS COM SA	90,574	100
TOTAL	90,574	100

Source: Notification AVAS

(5) The company has 44 agencies with headquarters in county residences (40 agencies) and in Bucharest (4 agencies), each agency having more selling points.

(6) The main business of RODIPET is retail commerce of books, newspapers and stationery products (code CAEN 5247).

¹ GO no. 577/2002 regarding the approval of Methodological standards of application of GEO no. 88/1997 on privatisation of companies, with subsequent amendments and completions, GO no. 45/2004 for ending the privatisation of companies in difficulty from APAPS' portofolio, approved with completions by Law no. 361/2004, modified and completed by Law no. 442/2004 of approval of GEO no. 26/2004; GEO no. 95/2003 regarding the taking over of budgetary receivables by AVAS in view of swerving them to the National fund for social health insurance, with subsequent amendments and completions by Law no. 557/2003.

² At the date of signing the privatization contract, the company had a share capital of ROL 2,264,350 thousand divided in 90,574 shares with a face value of ROL 25,000/share; the company is registered at the Trade Register under no.: J/40/1085/1991, CUI: 1581009 fiscal attribute R, headquarters in: Piata Presei Libere no. 1, Bucuresti, postal code 013701;

(7) The economic-financial results of RODIPET, based on balance sheet data prior to the privatization are the following:

Tabel no. 2 Economic-financial results, based on balance sheet data

2001	2002	2003
Turnover (RON)		
74,950,404	99,915,228	127,208,712
Losses (RON)		
9,368,059	5,857,650	6,799,200

Source: Notification AVAS

The company does not export, its entire turnover being made on the domestic market. As shown by the data presented above, the company had losses prior to privatisation.

(8) RODIPET is a large enterprise, since its number of employees exceeds the limits imposed by the Regulation on State aid for SMEs, with the subsequent amendments and completions. Thus:

- the company was owned 100% by SC MAGNAR SYSTEMS COM SA, therefore RODIPET and SC MAGNAR SYSTEMS COM SA are related companies within the meaning of Art. 2 (7) of the Regulation on State aid for SMEs, with the subsequent amendments and completions; SC MAGNAR SYSTEMS COM SA is part of the group of undertakings MIAMI GROUP(see point 77);
- the number of employees and financial values are the following:
 - at the end of 2003, the average number of employees of RODIPET was 3,015, and of the majority shareholder 27; all that companies of the MIAMI GROUP had 964 employees;
 - the turnover made by the company was RON 127,208,712, while the majority shareholder made a turnover of RON 7,996,298; all that companies of the MIAMI GROUP made a total turnover of RON 52.911.891.

2.3. Financial position of RODIPET prior to privatization

(9) Prior to privatization, RODIPET was in a difficult economic-financial situation shown by:

- 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 is much below the minimum limit of the admissible margin of 0.5; this fact confirms the incapacity of the company to generate the necessary liquidities for making the payments from the current activity.

(10) Among the causes that led to the difficulties that the company is confronted with, one can enumerate:

- severe lack of investment funds which impeded the replacement of obsolete technology;
- exploitation of obsolete technology owned by the company (rolling stock, kiosks, etc.);
- decreased number of readers of print media and the threat from on-line press.
- lack of coherent policies and strategies in marketing.

(11) Taking into consideration this difficult situation, AVAS decided to privatize RODIPET and to grant some facilities conditioned by the implementation of some restructuring measures. According to the 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 RODIPET

(12) Hence, at privatisation, the company was granted support totalling RON 48,465,759, consisting of:

- conversion in shares of the budgetary receivables not payed on the date of the share ownership transfer, representing taxes, contributions, including employees' individual contributions and any other budgetary revenues, amounting to RON 16,415,858;
- payment scheduling over a period of 5 years, with a grace period of 6 months of the overdue budgetary obligations considered on 10.05.2004 (the date of the share ownership transfer) representing contribution to the supplementary pension, individual contribution to social insurance, employees' contribution of 1% to the budget of the Fund for the payment of unemployment benefit as well as employees' contribution of 7% for health insurance, VAT detained in customs, tax on wages revenues, tax on dividends and other withholding taxes, amounting to RON 52,602;
- exemption from the payment of interest, of increment and delay penalties of any type corresponding to the budgetary obligations converted in shares, computed until the date of the conversions and not payed, amounting to RON 19,545,736;
- exemption from the payment of interest and penalties of any type corresponding to the budgetary obligations scheduled for payment, computed until the date of the share ownership transfer and not paid, amounting to RON 7,848,489;
- exemption from the payment of interest and penalties corresponding to the budgetary obligations scheduled for payment, computed between the date of the share ownership transfer and the date of the rendering of the common order, amounting to RON 176,090;
- conversion in shares of the overdue receivables of the Regie Autonomous "Administration of State Protocol Patrimony", not payed until the date of the share ownership transfer, amounting to RON 669,263;
- exemption from the payment of interest, of increment and delay penalties of any type corresponding to the budgetary obligations converted in shares, computed until the date of the conversions and not payed, amounting to RON 834,551;
- exemption from the payment of overdue obligations not payed by 30.06.2003 to the budget of the national fund for health insurance as well as of interest and the corresponding penalties of any type, amounting to RON 365,784;
- conversion in shares of its own receivables and of those resulted from credits administrated by APAPS, amounting to RON 10,810;
- full or partial exemption from the payment of budgetary obligations overdue on the date of the share ownership transfer to local budgets, representing taxes, contributions and other revenues, as well as its own receivables as well as full or partial exemption from the payment of delay interest and of penalties of any type, overdue and not payed on the date of the share ownership transfer, amounting to RON 1,246,576;
- concession of the lands that are public or private property of the state, where the selling points of the company are situated (except for those from Bucharest), amounting to RON 1,300,000.

2.5. Relevant markets

(13) RODIPET is active on the market of distribution and retail selling in kiosks/ selling points of print media and of other complementary products (stationary, books, telephone cards, coffee, tobacco, sweets etc.). The company has attached to the restructuring plan a „Market study” drawn up in cooperation with DELOITTE & TOUCHE CONSULTANTA SRL. The market study presents mainly the following aspects:

- analysis of the markets on which the company operates (market of distribution and retail selling in kiosks/ selling points of print media and of other complementary products) over the period 2001-2003;
- analysis of competition on the internal markets;
- evolution tendencies of this market over the period 2004-2008.

(14) According to this market study, the size of the relevant markets on which the company operates and its market shares during 2001-2003 are the following

Tabel no. 3 Size of the relevant markets and market shares held by RODIPET during 2001-2004

	Specification	MU	Year		
			2001	2002	2003
Distribution and selling of print media and of other complementary products	Market size	thousand RON	101,214	189,016	297,728
	RODIPET's market share	%	70.0	50.0	40.8

Source: Market study

The company does not export, its services being intended only for the domestic market.

(15) RODIPET's main competitors and their respective market shares are the following:

- HIPARION GROUP 16.0%
- NDC GROUP 2000 14.5%
- HACHETTE 3.5%
- SYMMETRIA 10.0%
- CONPRESS GROUP 14.0%
- ACCESS PRESS 5.0%
- others 6.2%

(16) The market study points out for the future an increase tendency of the market of distribution and retail selling in kiosks/ selling points of print media and of other complementary products with 9%-10% until 2008. According to the same study, the foreseen evolution of the market share of the company until the end of the restructuring period is the following

Tabel no. 4 **Market shares for RODIPET between 2004-2008**

	Market share held by RODIPET (%)				
	2004	2005	2006	2007	2008
Distribution and selling of print media and of other complementary products	30.8	25.5	20.0	20.0	20.0

Source: Market study

For 2004 and 2005, the predictions of the market study were reclaimed in accordance with the economic-financial results achieved by the company, the market shares for these years being the ones actually achieved. Thus, the reduction tendency of the market share of RODIPET is confirmed as a result of the implementation of the restructuring plan as well as a result of the entrance of new competitors on the market since the market of distribution and retail selling in kiosks/selling points of print media and of other complementary products is a free market, without entrance barriers. At the same time, the reduction of the market share of RODIPET was and will be determined by the strong competition from the on-line media.

2.6. Description of the privatisation process

(17) According to the provisions of GO no. 924/1999 regarding the approval of FPS' mandate for the sale of a share package of RODIPET, as last ammended, FPS was mandated to sell the 70% share package of RODIPET to preselected strategic investors, members of the Association of Press Publishers. The following companies were part of this Association:

«Adevarul» SA, «Pro International» SRL, «Ringier Romania» SRL, «Curentul» SRL, «Expres» SRL, «RSA», «Cicero» SA, «Ring Press» Bucuresti, «Editura Noul Cinema» SRL, «C.C.A. Intact» SA, «Casa Editoriala Femeia» SRL, «Tribuna Economica» SA, «Trust de Presa Crom» SA, «Omega Press Investment» SA, «Privirea» SA and «Trustul de Presa National» SRL. In view of accelerating the privatisation process as well as of ensuring its transparency, GO no. 1133/25.09.2003 abrogated the provisions of GO no. 924/1999, and the privatisation of RODIPET was achieved in accordance with the provisions of Law no. 137/2002 on measures to accelerate privatization, with subsequent amendments and completions.

(18) The privatization of the company was based on negotiations on final enhanced and irrevocable offers. The privatization process was initiated on 10.11.2003 by the publication, in the daily newspapers „Adevarul” and „Evenimentul”, at the company's headquarters and at AVAS headquarters of the announcement regarding the modification of pre-qualification criteria, the deadline for submission of bids being 20.11.2003.

(19) Only the bidders, juridical persons, who proved to fulfil the following pre-qualification criteria could participate to negotiations:

- the bidder must prove through documents (letter of bank guarantee) that he has the capacity to bring into the company a capital of USD 1,000,000 in one month time from the signiture of the share sale-purchase agreement;

- the bidder must present documents that reflect his experience of at least 5 years in the field of press delivery and/or complementary products and that he is not majority shareholder of undertakings which activate in the field of press publishing;
- as a shareholder/ majority associate, he 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.

(20) After the announcement was made, 5 presentation files were bought by the following:

- SC MAGNAR SYSTEM COM SA
- SC RINGIER ROMANIA SRL
- SC SUPREMO CORPORATION SRL
- SC HERO PRODEXIM SRL
- SC CASA DE EDITURA SI PRESA EOROMEDIA SA Oradea.

(21) At the deadline for the submission of the bids (20.11.2003) 2 purchase bids were submitted by SC MAGNAR SYSTEM COM SA and SC HERO PRODEXIM SRL. On 21.11.2003 the envelopes containing the documents of the two bidders regarding the fulfilment of the pre-qualification criteria were opened. After their analysis, the negotiation Commission ascertained that SC HERO PRODEXIM SRL did not fulfil one of the prequalification criteria and, as a result, it was eliminated.

(22) In the framework of the negotiation sessions, that took place between 26.11.2003-03.12.2003 with SC MAGNAR SYSTEM COM SA, the single bidder which fulfilled the prequalification criteria, the negotiation Commission required the improvement of the initial bids (in what regards the price/share as well as the investments amount assumed), as well as the improvement of the business plan presented.

(23) Privatization process ended with the signing of the share sale-purchase agreement no. 62/23.12.2003, through which SC MAGNAR SYSTEM COM SA purchased the entire share package of 100% put on sale by AVAS (APAPS). The main elements of the transaction are the following:

- the transaction price was of 25,025 ROL/share;
- the buyer committed himself to maintain the existing number of employees at the date of signing of the agreement for a period of 5 years;
- the buyer committed himself to provide a capital injection of USD 2,000,000 in order to support the current activity of the company, as it follows: USD 1,000,000 within 30 days from the signing of the agreement, and the rest of USD 1,000,000 within one year from the same date;
- the buyer committed himself to invest for development over a period of 5 years from the date of the transfer of the share ownership right an amount of EURO 3,750,000.

3. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(24) The company has drafted a restructuring plan for the period 2004-2008, comprising organizational, technological, and financial measures. The restructuring plan has been drawn up by the company and the buyer and was approved by AVAS.

(25) The restructuring plan submitted by AVAS contains the causes which led to RODIPET's difficulties, as well as measures to ensure the long term viability of the company. AVAS estimates that by implementing the measures comprised in the restructuring plan, the company will become profitable and will secure its own financial resources in order to properly conduct business without debts to the consolidated budget of the state, to local budgets or to AVAS.

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

Tabel no. 5 Summary of the restructuring measures for RODIPET - thousand RON -

No.	Measures	Assessment of implementation costs			
		Total cost	Own sources	Bayer sources	State aid
1.	Organizational restructuring measures	7,208.3	125.0	7,083.3	-
2.	Technological restructuring measures	88,042.5	18,842.0	69,200.5	-
3.	Financial restructuring measures	48,466.0	-	-	48,466.0
	TOTAL COST RESTRUCTURING	143,716.8	18,967.0	76,283.8	48,466.0

Source: Restructuring plan of RODIPET

(27) The implementation of the restructuring plan requires a financial effort of RON 143,716.8 thousand, of which RON 76,283.8 thousand are committed by the Bayer, RON 18,967.0 thousand are committed by the company while the State contributes to the company's financial restructuring with RON 48,466.0 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 organisational restructuring of the company implies a financial effort of RON 7,208.3 thousand and, in brief, is the following:

Tabel no. 6 Measures regarding the organisational restructuring of RODIPET - thousand RON -

Measure	Deadline	Implementation effort	Financing sources		State aid
			Company sources	Investor sources	
Fitting out the headquarters, offices and administrative areas	2006	6,858.3	-	6,858.3	-
Training of personnel	2008	350.0	125.0	225.0	-
TOTAL	-	7,208.3	125.0	7,083.3	-

Source: Restructuring plan of RODIPET

(29) The measures of fitting out the headquarters, offices and administrative areas were requested by the necessity to improve the presentation and operational standard of the company at European level. The implementation costs of these measures are totally borne by the Investor. The measures of training of the employees are essential so that the company will be able to cope with the continuously developing market. They will be implemented starting with 2005 and will last until the end of the restructuring period.

3.2. Technological restructuring

(30) The proposed technological restructuring measures refer to:

Tabel no. 7 Measures regarding the technological restructuring of RODIPET - thousand RON -

Measure	Deadline	Implementation effort	Financing sources		State aid
			Company sources	Investor sources	
Investments for improving the quality of kiosks; acquisition of new kiosks which replace the old kiosks	2008	48.372,3	11.872,3	36.500,0	-
Investments for acquisition of new IT performant programs and equipments	2008	5.540,9	1.445,9	4.095,0	-
Investments in the rolling stock (used for the transportation of print media from the producer to the selling point)	2008	7.778,9	-	7.778,9	-
Investments to upgrade existing shops (in rural area)	2008	26.350,4	5.523,8	20.826,6	-
TOTAL	-	88.042,5	18.842,0	69.200,5	-

Source: Restructuring plan of RODIPET

The total implementation costs of these measures are of RON 88,042.5 thousand from which the investor is ensuring RON 69,200.5 thousand, and the company RON 18,842.0 thousand.

3.3. Financial restructuring

(31) At privatization, the company needed financial restructuring for the normal functioning of the production activity, besides other restructuring measures assumed through the restructuring plan. In the case of RODIPET, the financial restructuring comprises the financial support from the State granted at privatisation amounting to RON 48,466.0 thousand, consisiting in facilities granted for the payment of overdue obligations to the consolidated state budget, local budgets and to AVAS.

(32) The restructuring plan, through the financial restructuring component allows the increase of cash flow and ensures a stable cash flow, which will relieve and alleviate the financial situation of the company.

4. STATE AID ASSESMENT OF THE MEASURES

4.1. The state aid character of the notified measures

(33) The criteria which allow to establish 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.

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

(35) The financial support measures granted on the basis of the governmental decrees, mentioned in the present decision at paragraph 2.1, concern only the companies to be privatised, among which RODIPET. Thus, the financial support granted to this company is selective.

(36) 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 process and, as a consequence, it should be established whether these represent State aid. Therefore, in order to assess whether an economic advantage is granted to RODIPET through these facilities, the behaviour of the State should be compared to that of a private investor/seller acting under similar conditions, i.e. the private investor test should apply.

(37) Normally, an investor/creditor shall seek to obtain a positive price, namely a price higher than the amount of the debts. Nevertheless, in this case the price is negative, i.e. smaller than 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, such a comparative cost couldn't have influenced AVAS's decision whether to privatize or liquidate the company.

(38) Furthermore, 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 to grant the facilities mentioned as part of the privatization process. In this context, the Competition Council concludes that the private investor test is not applicable to the privatisation of RODIPET³.

(39) Granting financial support to RODIPET 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 RODIPET may affect trade with the Member States of the European Union, since the services provided by the company may compete with similar services provided in the European Union.

(40) To conclude, 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.

³ In any event the fact that there are conditions attached to the privatization package (see paragraph 23 above) is normally sufficient to dislodge the application of the private investor principle.

4.2. Compatibility with the State aid legal framework

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

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

(43) The Competition Council evaluates the State aid granted to RODIPET, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty. To be considered compatible with a normal competitive environment, the State aid must fulfil the criteria set in the above mentioned Regulation.

(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 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 by the financial restructuring (capital injections, reduction of debts degree, etc.).

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

(46) The Competition Council assesses the state aid granted to RODIPET 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 RODIPET-firm in difficulty

(47) 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.

(48) 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.

(49) In this respect, the Competition Council notes that, according to the company's balance sheet, in 2003 (privatisation year) RODIPET registered a loss in amount of RON 6,799,200 to an equity of RON 226,435 thousand. This loss represents 30 times the amount of shared capital. Besides, with a total debt of RON 39,410,725 in 2003, which exceeded 174 times the total value of the share capital, the company can be considered to fulfil the criteria to undergo the judicial reorganization and bankruptcy procedure.

(50) 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 RODIPET to qualify as a "firm in difficulty".

4.2.2. Restoring the long term viability of the company

(51) The difficulties faced by RODIPET led to the drastic reduction in its business activities, coupled with the cumulation of debts to the state budget and AVAS which attracted increment and delay penalties higher than overdue debts.

(52) 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.

(53) 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

(54) According to the article mentioned above, 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, 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.

(55) The restructuring plan of RODIPET 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.

(56) The strategy of RODIPET aims at preserving the strong points, respectively: the company has a distribution network on national level and qualified personnel with experience in the field. 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 high operating expenses and the lack of investments..

(57) The implementation of the measures provisioned by the restructuring plan financed by the company and the buyer, as well as by the state, through the facilities granted to the company for the payment of budgetary obligations is foreseen to improve the economic- financial indicators in the period 2004-2008⁴ (optimist scenario),, as follows:

Table no. 8 Estimates of the economic and financial indicators subsequent to the implementation of the restructuring measures
-RON-

Indicators		2004	2005	2006	2007	2008
1	Total revenues, of which:	146,742,750	269,682,000	557,890,145	690,270,767	739,549,301
	Turnover	146,510,550	269,411,100	557,605,700	689,972,100	739,235,700
	Financial revenues	232,200	270,900	284,445	298,667	313,601
	Extraordinary revenues	-	-	-	-	-
2	Total expenses, of which:	131,346,593	253,127,400	520,752,445	642,986,067	685,187,800
	a) operating	131,328,233	250,994,600	518,619,145	640,852,167	68,053,300
	b) financial	18,360	2,132,800	2,133,300	2,133,900	2,134,500
	c) extraordinary	-	-	-	-	-
3	Gross profit (+) / Loss (-)	15,396,157	16,554,600	37,137,700	47,284,700	54,361,501

Source: RODIPET's restructuring plan

(58) 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:

Tabel no. 9 Target economic and financial indicators

1. Net profit	RON	54.361.500
2. Turnover	RON	739.235.700
3. Employees	pers.	3.410
4. Equity	RON	152.828.874
5. Receivables collection period	zile	13,09
6. Debt payment period	zile	30,61
7. Indebtedness ratio	%	7,15
8. Return on assets	%	26,41
9. Return on equity	%	0,36
9 Cash flow	RON	25.691.435

Source: RODIPET's restructuring plan

(59) 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 RODIPET.

⁴ The fact that the restructuring plan ensures the company's viability is proved by the improvement of the main economic-financial indicators starting with the first restructuring year. Thus, the company's turnover was RON of 162,790 thousand in 2004 and the profit obtained was in amount of RON 7,785 thousand.

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

(60) According to the provisions of the Regulation regarding State aid for rescuing and restructuring 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.

(61) 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 selling capacities by closing 12 selling points (kiosks), located in Bucharest that caused losses to the company. Thus, the kiosks situated to the following addresses will be closed:

- Bulevardul Alexandra Obregia – Intersectia Turnu Magurele;
- Piata Ferentari;
- Soseaua Alexandriei – Intersectie Strada Posada;
- Soseaua Panduri – Intersectie 13 Septembrie;
- Bulevardul Nicolae Balcescu – Intersectie Traian Vuia;
- Soseaua Oltenitei – Intersectie Sura Mare;
- Strada Resita – Intersectie Strada Huedin;
- Piata Crangasi – Metrou Constructorilor;
- Strada Dezrobirii;
- Bulevardul Constantin Brancoveanu – Intersectie Strada Lamotesti;
- Calea Rahovei – Intersectie Strada Iancu Jianu;
- Calea Plevnei – Intersectie Intrarea Ursuletului.

The reductions of non-viable delivery capacities represent 0.8% of the total capacity (12 non-viable kiosks compared to 1,430 kiosks that the company owned in 2005).

(62) This reduction of the selling capacities are not considered compensatory measures as stipulated in the Regulation regarding State aid for rescuing and restructuring of firms in difficulty because, according to information from AVAS these reductions of the selling points (kiosks) contribute to the elimination of the loss making activities absolutely required to restore viability.

(63) The reductions of viable selling capacities proposed by the state aid grantor and by the aid beneficiary as compensatory measures to diminish the distorting effect of granting the aid over competition consist in closing of 137 kiosks (selling points) located in Bucharest, in areas with a high selling potential, representing viable selling capacities. These reductions of the selling capacity are irreversible and are an integral part of the restructuring plan.

(64) As a consequence of closing these 137 viable selling points, AVAS specifies in the additional information supplied in completion of the notification, that RODIPET will reduce its

selling capacities with 9.7% (137 viable kiosks to be closed compared to 1,418 kiosks that the company owns after the reduction of the non-viable capacities).

(65) According to the market study on which the restructuring plan is based, RODIPET held, in 2003, a market share of 40.8 % on the market of distribution and retail selling in kiosks/selling points of print media and other complementary products. This market study shows that by applying the restructuring plan, RODIPET will reduce its market share up to 20% in 2008, and in this way it won't implement activities that will lead to a serious distortion on the relevant market. Moreover, in order to reduce the negative effects that the State aid granted has on the market conditions, The Competition Council will enforce supplementary compensatory measures, respectively, for a period of 2 years after the ending of the restructuring period, the company should not increase its market share over the one held in 2008 (the last restructuring year).

(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 selling 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 in order to allow restructuring according to the existing financial resources of the company and of shareholders. 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 RODIPET is of RON 143,716.8 thousand and is composed of :

- Organisational restructuring cost	RON 7,208.3 thousand
- Technological restructuring cost	RON 88,042.5 thousand
- Financial restructuring cost	RON 48,466.0 thousand

(69) The total restructuring cost of RODIPET, in amount of RON 143,716.8 thousand, is supported from the following sources:

- own sources of the Buyer	RON 76,283.8 thousand
- company's own sources	RON 18,967.0 thousand
- state aid	RON 48,466.0 thousand

(70) According to information supplied in completion of the notification, the own contribution of the Buyer and of the company in amount of RON 95,950.8 thousand (66.3% of the total restructuring cost) is provided from the following sources:

- capital injection in amount of RON 76,283.8 thousand of the majority shareholder;
- credit in amount of Euro 4,900,000, respectively RON 18,967,900 (to an exchange rate of 1 Euro=38,710 RON at the date of contracting the credit, respectively 19.12.2004), contracted by the company in the market conditions - credit contract no. 13/19.12.2004 with BANCPOST;

(71) State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 33.7%.

(72) Given the above, the Competition Council notes that the own financing sources are certain and considers sufficient the own contribution of 66.3% to support the restructuring costs, this showing 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 restructuring according to the existing financial resources of the company and the Buyer. As a consequence, the ability of the company to apply any surplus liquidity for aggressive activities, with the possible distortion of the market, is avoided.

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

(73) RODIPET 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 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.

(75) The fiscal facilities intended to be granted to RODIPET 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 debts.

(76) Following the company’s privatisation process and after signing the share sale-purchase agreement no. 62/23.12.2003, the new owner of RODIPET became SC MAGNAR SYSTEMS COM SA which purchased the entire share package (100% of the share capital).

(77) The Competition Council notes that SC MAGNAR SYSTEMS COM SA is part of the group of undertakings MIAMI GROUP. To that group of undertakings also belong: SC MONALISA INVESTMENTS SRL, SC SUPREMO CORPORATION SRL, SC EURO HOTELS & SUITES SRL, CFR MESAGERIE SA Bucharest, SC ALFA EL ROMANIA SRL, SC CHIRIGIU MALL SRL and BAALBECK TOURISM SARL LIBAN. AVAS and the State Aid Beneficiary have submitted data on the economic-financial situation of this group of companies to the Competition Council.

(78) According to the balance sheets, the companies in the group obtained at the end of 2003 a net total profit of RON 1,224,537.0 At the same date, the cumulated debt amount was RON 25,219,561.2 over 5 times the profit made.

(79) The Competition Council notes that, at privatisation, SC MAGNAR SYSTEMS COM SA paid for the 100% equity package of RODIPET a price of RON 226,661.4. Furthermore, the Buyer's contribution to financing the restructuring programme is of RON 76,283,800, namely 53.1% of the total restructuring costs.

(80) Therefore, the Competition Council considers that SC MAGNAR SYSTEMS COM SA could not have coped with the financial difficulties of RODIPET and the restructuring of the company without a consistent intervention of the State, the company's debts to the consolidated State budget and towards AVAS being in total amount of RON 48,465,759. As compared with the financial resources of the group of companies that includes SC MAGNAR SYSTEMS COM SA this contribution is significant.

4.2.7. Monitoring and annual reporting

(81) 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 established objectives.

(82) 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.

5. CONCLUSIONS

(83) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to RODIPET 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 measure notified by the Authority for the Recovery of State Assets for SC RODIPET SA Bucharest represents State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.

Art. 2. Based on the provisions of Article 21 (2) letter c) corroborated with art. 23 (1) e) of Law no. 143/1999 on state aid, republished, the restructuring aid that is going to be granted to SC RODIPET SA Bucharest at privatization, is authorized under the condition to observe the provisions of articles 3, 4 and 5 of the present Decision

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

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

Art. 5. Until the end of 2010, the company won't increase its market share on the market of distribution and retail selling in kiosks/selling points of print media and of other complementary products, over the level reached in 2008, respectively 20% according to the market study presented.

Art. 6. 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. 7. The amount of the State aid intended to be granted is of RON 48,465,759.

Art. 8. The present decision becomes applicable as of communication.

Art. 9. 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 inventorise 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 stage (physical and in amount) of implementation of the restructuring plan. At the same time, information on the enforcement of compensatory measures related to the selling capacities imposed by the present decision will be submitted.

Art. 10. 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. 11. The present decision shall be communicated by the General Secretary of the Competition Council to:

- The Authority for the Recovery of State Assets, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- SC RODIPET SA, Piata Presei Libere no. 1, Bucharest; postal code 013701.

MIHAI BERINDE
PRESIDENT