

**DECISION OF THE COMPETITION COUNCIL**  
**no. 129 of 29.05.2006**  
**regarding the state aid to be granted to**  
**S.C. FORTPERS CUG SA Cluj-Napoca**

**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, Part I, no. 742 from 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 from 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, from 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 reasons,**

## **1. PROCEDURE**

(1) By address no. VP4/2621/02.05.2006, registered at the Competition Council with no. RS-AS/75/02.05.2006, the Authority for State Assets Recovery (AVAS) notified, in the name of all grantors, based on art. 15 of the State Aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC FORTPRES CUG SA Cluj-Napoca, within the privatization process

(2) The Competition Council requested the Authority for State Assets Recovery supplementary information.<sup>1</sup>

(3) The notification became effective when information was accurate and complete, respectively on 15.05.2006.

## **2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES**

### **2.1. Legal base for granting the financial support**

(4) The financial support measures to be granted to SC FORTPRES CUG SA Cluj-Napoca are based on the following:

- Government Ordinance no. 26/2004 on certain measures for completion the APAPS portfolio companies' privatisation and the consolidation of certain privatisations, approved with subsequent amendments and completions by Law no. 442/2004 on certain measures for the completion of AVAS portfolio companies' privatization;
- EGO no. 26/2005, with subsequent amendments and completions by Law no. 244/2005.

### **2.2. Financial support measures to be granted to SC FORTPRES CUG Cluj-Napoca**

(5) The measures of financial support notified by the Authority for State Assets Recovery are granted in the context of privatization of SC FORTPRES CUG SA Cluj-Napoca; the company is to benefit from facilities consisting in the cancelation and rescheduling of some obligations to the state budget, local budget and AVAS, overdue and not paid on 31.12.2003. The rules on the basis of which the mentioned facilities are to be granted are foreseen in the EGO no. 26/2005, approved with subsequent amendments and completions by Law no. 244/2005, corroborated with the provisions of art. 26 of EGO no. 26/2004 approved with subsequent amendments and completions by Law no 442/2004.

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<sup>1</sup> The Competition Council requested additional information by addresses no. DAAS/686/05.05.2006 and DAAS/715/10.05.2006. AVAS submitted information by address no. VP4/2828/11.05.2006 and by address from 15.05.2006, registered at the Competition council with no. CC/591/11.05.2006 and DAAS/744/15.05.2006.

(6) The facilities concerning payment of overdue obligations to the state budget, local budgets and AVAS to be granted to SC FORTPRES CUG Cluj-Napoca amount in total RON 13,037,582 consisting of exemptions in amount of RON 10,811,242 and payment rescheduling in amount of RON 2,226,340, as follows:

**Table no. 1 Facilities that SC FORTPRES CUG Cluj-Napoca benefits from**

<b>No.</b>	<b>FACILITY</b>	<b>AMOUNT - RON -</b>
1.	Exemption from the payment of overdue budgetary obligations	3,895,590
2.	Exemption from the payment of interests and penalties related to the overdue budgetary obligations	5,495,807
3.	Rescheduling of overdue budgetary obligations	895,626
4.	Exemption from the payment of own claims, budgetary and commercial obligations assumed by AVAS	1,380,138
5.	Payment rescheduling of own claims, budgetary and commercial obligations assumed by AVAS	1,330,714
6.	Exemption from the payment of interests and penalties related to the overdue obligations to the local budget of Cluj-Napoca	39,707
	<b>TOTAL</b>	<b>13,037,582</b>

*Source: Notification form*

### **3. BENEFICIARY OF THE FINANCIAL SUPPORT (SC FORTPRES CUG SA Cluj-Napoca)**

(7) SC FORTPRES CUG SA Cluj-Napoca is a joint-stock company with headquarters in Cluj-Napoca, Bulevardul Muncii no. 18, with registration number to the Trade Register J/12/42/91 and CUI 202956. When the Shares sale-purchase contract was signed the company had an equity capital of RON 5,176,155 divided in 2,070,462 shares with a face value of RON 2.5

(8) SC FORTPRES CUG SA Cluj-Napoca was established as a joint stock company in 1990 based on the GD no.1296/1990.

(9) SC FORTPRES CUG SA Cluj-Napoca arose from the split up of the Combine Works for Heavy Equipment Cluj-Napoca, being the successor of the Factory for Heavy Machines within Combine Works.

(10) In 2004 SC FORTPRES CUG SA Cluj-Napoca was privatized by signing the share sale purchase agreement no. 75 of 11.11.2004, concluded between AVAS and the company Industrialnii Soiuz Dombassa from Ukraine as buyer. The shareholders structure following the privatisation is presented in Table no. 2.

**Table no. 2 Shareholders' structure after privatisation at SC FORTPRES CUG SA Cluj-Napoca**

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares	Percentage of equity held (%)
Industralnii Soiuz Dombassa	1,921,339	92.7976
SIF Banat-Crisana	103,523	5.0000
Natural persons	45,600	2.2024
<b>Total</b>	<b>2,070,462</b>	<b>100.00</b>

*Source: Notification form*

(11) At the date of the privatization, the undertaking had 346 employees and a turnover of RON 14,012.6, being therefore a large undertaking.

(12) The company's activity is structured in two production units whose activity is integrated in proportion of 95%:

- The technological equipment Unit for warm sectors (SUTSC);
- The mechanic-welding Unit (MS), organised in 2 production workshops, respectively: The workshop for assembly and welding and the Workshop for mechanical processing.

(13) FORTPRES produces and sales, based on beneficiaries' demands, assemblies and sub-assemblies or equipment parts (including the repairing and replacement of different sub-assemblies) required for the metallurgical and steel industry, for the machines and equipments industry and also for metallic construction.

(14) The undertaking produces both on domestic market and also for export. The turnover achieved on the domestic and external market is as follows:

**Table no. 3 – Turnover in current prices**

Indicators	- RON -		
	2002	2003	2004
Total turnover	15,408,300	12,552,400	14,012,682
Turnover on domestic market	8,295,600	6,304,800	3,221,082
Turnover on external market	7,112,700	6,217,600	10,790,800

*Source: Notification form*

(15) The main activity of SC FORTPRES CUG SA Cluj-Napoca consists in the manufacturing of equipments for metallurgical engineering, CAEN code 2951.

(16) The secondary activities developed by the undertaking consist in manufacturing based on beneficiaries' demands, with the technical documents provided by the beneficiary, of certain products or their sub-assemblies such as: metallic construction and their constituent parts, structures and metallic carpentry, reservoirs, tanks and metallic containers, machine-tools parts, equipments for lifting and maneuvering, equipments for mining, quarries and constructions, other machines and equipments.

(17) SC FORTPRES CUG SA is endowed with equipments of large dimensions for mechanical processing (line for processing parts weighing 80 tones, preparation line for

iron-plate-made parts with size 10mx40m, automatic and semi-automatic welding line for some mechanic-welded constructions of high size and weight), testing equipments, maneuvering and lifting equipments of large and extra large size, lathe carousel type with processing diameters of 5 and 8 meters, universal lathes with diameters between 1,5 and 2 meters and lengths between 4 and 6 m, furnace for thermal treatment of the welded sub-assemblies, with hearth area of 80 square meters. The equipments are of medium performance, with an usage rate between 35% and 95%.

### 3.1. The financial situation of SC FORTPRES CUG SA Cluj-Napoca before privatization

(18) According to the data of the balance sheets, the evolution of the main economic-financial indicators registered by SC FORTPRES CUG SA between 2002-2004 was the following:

**Table no. 4 – The evolution of the main indicators of SC FORTPRES CUG SA between 2002-2004**

INDICATORS	2002	2003	2004
Equity capital (RON thousand)	5,176.1	5,176.1	5,176.1
Turnover (RON thousand)	15,408.300	12,552.400	14,012.682
Turnover in compared prices (RON thousand)	15,408.300	11,001.400	11,237.000
The net result of the exercise– profit/loss (RON thousand)	7.967	- 324.726	-7,321.648
Own capital (RON thousand)	4,656.5	4,332.5	1,776.0
Total debts ( RON thousand )	11,870.1	15,365.3	18,166.4
Indebtedness degree (%)	255	355	1023
Intermediary liquidity (%)	0.09	0.25	0.31

*Source: Notification Form*

As it results from the economic-financial indicators of SC FORTPRES CUG SA, before the privatization, the company records losses in the analyzed period and the turnover, expressed in compared prices, has a decreasing trend. Own capital is considerably decreasing and the loss overpasses the equity capital in 2004. At the same time, total debts register a significant increase. Accordingly, the indebtedness degree, calculated as a ratio between total debts and own capital, increased progressively and, in 2004, the total debts overpassed 10 times the value of its own capital. The intermediary liquidity registers low values and this shows that the working capital could not cover the current debts, which had a huge impact on the company's activity.

(19) [...] <sup>2</sup>

## 4. RELEVANT MARKETS

(20) SC FORTPRES CUG is active on the following relevant markets:

- the market of metallic constructions and metal made products;
- the market of machines and equipments for metallurgy, mining and constructions;
- the market of machine tools manufacturing and their components.

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<sup>2</sup> Confidential information

(21) In 2004, the production of metallic constructions and metal made products represents approx. 38% from the total company's turnover and the production of machines and equipments for metallurgy, mining and constructions represents approx. 32% from the total company's turnover.

(22) According to the market study annexed to the restructuring plan, SC FORTPRES CUG SA holds small shares on the markets where it is active. The company's market shares on the domestic market are as follows:

*Table no. 5 – The company's market shares on the domestic market*<sup>3</sup>

Products categories	UM	2004
<b>Metallic constructions and metal made products</b>		
Total domestic market	thousand RON	1,520,400
Sales SC FORTPRES CUG SA	thousand. RON	733.3
<b>Market share</b>	(%)	<b>0.048</b>
<b>Machines and equipments for metallurgy, mining and constructions</b>		
Total domestic market	thousand RON	2,688,000
Sales SC FORTPRES CUG SA	thousand RON	1,545.1
<b>Market share</b>	(%)	<b>0.057</b>

*Source: Notification form, market study annexed*

The data presented show that FORTPRES does not hold a dominant position on the relevant markets.

(23) On the external markets FORTPRES holds insignificant shares.

(24) [...]<sup>4</sup>

(25) [...]<sup>5</sup>

(26) [...]<sup>6</sup>

(27) [...]<sup>7</sup>

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<sup>3</sup> Between 2002-2004, the company did not produce machine tools and components for the domestic market, this production being exclusively addressed to the external market. The production of machine tools and components represents in 2004 approx. 20% from the total company's turnover.

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<sup>5</sup> Confidential information

<sup>6</sup> Confidential information

<sup>7</sup> Confidential information

(28) The evolution of the markets of FORTPRES' products is mainly determined by the evolution of the sectors of machine manufacturing, metallurgical and constructions which represent the main destinations of the company's products.

(29) [...] <sup>8</sup>

(30) [...] <sup>9</sup>

(31) [...] <sup>10</sup>

## **5. DESCRIPTION OF THE PRIVATIZATION PROCESS**

(32) In accordance with the legal provisions, the selling of the majority share package held by AVAS in SC FORTPRES CUG was based on negotiations on final offers, improved and irrevocable.

(33) In 2004, AVAS offered for sale the majority share package held at SC FORTPRES CUG, representing 92.7976 % from equity share, divided in 2,070,462 shares, with a face value of RON 2.5.

(34) The privatization process started with the publication of the privatization announcement, on 16.03.2004, in the national newspaper ADEVARUL, on the internet, at the same time being posted at the company's and AVAS' headquarters. The deadline for submitting the offers was of 180 days, until 12.09.2004.

(35) In order to choose an adequate investor, the following pre-qualification criteria were set:

- experience, tradition and presence on the market of at least 2 years in the production and/or commercialization of the products currently manufactured by the company (products from the metallurgical industry, metallic constructions and of the machine and equipments industry).
- Only the natural/juridical persons can participate to the privatization process that, as a shareholder/ majority associate, did not conspicuously worsen the economic-financial situation of some companies previously privatized.

(36) Six dossiers were purchased, and on the deadline, namely on 14.06.2004, two offers were submitted, one by SC GEROMIX gMBh Switzerland and Gebr. Gmb Metailwarenfabric Germany and the second by Industrialnîi Soiuz Dombassa – Ukraine.

(37) At the negotiation meeting of 22.07.2004, after analysing the offers, the Negotiation Commission has noted that the offers did not observe the legislation and AVAS's requests provided by the Presentation File and has decided the elimination of the bidders.

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<sup>8</sup> Confidential information

<sup>9</sup> Confidential information

<sup>10</sup> Confidential information

(38) By AVAS decision no. P/5678/23.07.2004 it was approved the republication of the privatization announcement on 26.07.2004. On 19.08.2004, the deadline for submitting the offers, Industrialnii Soiuz Dombassa – Ukraine submitted the offer. After checking the bidder documents, the Negotiation Commission noted that the prequalification criteria were observed and on 24.08.2004 the Negotiation Commission admitted the company for negotiations.

(39) The APAPS' Negotiation Commission conducted negotiations with the bidder, requesting for an improvement of the financial and technical offer. On 23.09.2004 the bidder submitted the final offer, improved and irrevocable. The privatization was finalized by signing the selling-buying contract no. 75/11.11.2004 concluded between AVAS and Industrialnii Soiuz Dombassa – Ukraine.

(40) The transfer of the ownership right on the shares took place on 24.11.2004.

(41) [...] <sup>11</sup>

## **6. DESCRIPTION OF THE RESTRUCTURING PROGRAMME**

(42) The restructuring plan presented to the Competition Council covers the period 2005-2009. It was elaborated by the company and Buyer and approved by AVAS and describes measures concerning organizational and managerial, technical, environmental and financial restructuring aiming at intervening over the causes that lead the company to a difficult situation.

(43) The restructuring of SC FORTPRES CUG SA aims at the following objectives:

- reorganization of the technologic flow;
- modernization of the equipments park;
- manufacture of the new products to satisfy the domestic and external demands;
- implementation of the new technologies;
- reduction of the costs ( raw materials, materials, utilities);
- a better promotion of the products;
- investments in environment protection.

(44) The restructuring plan attached to the notification aims to alleviate existing deficiencies, both through organizational restructuring as well as through a capital injection for investments, so as the company to become viable by the end of the restructuring period. By applying the restructuring plan, the company aims at reaching the viability by realization of the following objectives:

- an efficient utilization of the production capacity and improvement of the activity performances;

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<sup>11</sup> Confidential information

- increase of the productivity;
- reach the financial equilibrium;
- diversification of the clients portfolio;
- conformity with the environment requests.

(45) The measures contained in the restructuring plan are as follows:

**Table no. 6 – Synthesis of measures contained in the restructuring plan**

- RON -

No.	Measures	Assessment of implementation costs			
		Total	Company's own sources	Investor's source	State aid
1.	Organizational and managerial measures	3,975,000	325,000	3,650,000	-
2.	Technical and technological measures	6,492,500	540,000	5,952,500	-
3.	Measures for environment protection	500,000	-	500,000	-
4.	Financial restructuring measures	16,377,582	165,000	3,175,000	13,037,582
	<b>TOTAL RESTRUCTURING COST</b>	<b>27,345,082</b>	<b>1,030,000</b>	<b>13,277,500</b>	<b>13,037,582</b>

*Source: Restructuring plan of SC FORTPRES CUG SA*

(46) The achievement of the restructuring programme involves a financial effort in amount of RON 27,345,082 and aims at restoring SC FORTPRES CUG's viability in 2009 (the end of the restructuring period).

### **6.1. Organizational and managerial restructuring**

(47) [...] <sup>12</sup>

### **6.2. Technical and technological restructuring**

(48) [...] <sup>13</sup>

### **6.3. Environmental restructuring**

(49) [...] <sup>14</sup>

### **6.4. Financial restructuring**

(50) [...] <sup>15</sup>

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<sup>12</sup> Confidential information

<sup>13</sup> Confidential information

<sup>14</sup> Confidential information

<sup>15</sup> Confidential information

## **7. ASSESSMENT OF FINANCIAL SUPPORT MEASURES – STATE AID CHARACTER OF NOTIFIED MEASURES**

(51) The criteria at the basis of the assessment of the State aid character of a measure are provided by art 2 par. (1) of Law no. 143/1999 on State aid, republished. Thus, the State aid represents any measure of support from the State or from the local administrative authorities, or from the State's resources or those of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union, being considered incompatible with a normal competitive environment.

(52) The financial support granted to FORTPRES and notified by AVAS consists of revenue renouncement by the State; thus, State resources are involved.

(53) The financial support measures are granted to a certain undertaking, namely FORTPRES, having thus a selective character.

(54) Considering that the facilities are granted during the privatization process, in order to determine if such facilities provide SC FORTPRES SA with an economic advantage, the State's behaviour must be compared with that of a private investor/seller in the same situation (test "prudent private investor").

(55) As described in Chapter 5 of the present decision, the privatization of SC FORTPRES SA took place by negotiation based of final offers, improved and irrevocable. The Competition Council notes that, at privatisation, AVAS imposed on the Byer, through the sale-purchase contract, certain conditions<sup>16</sup>.

(56) [...] <sup>17</sup>

(57) A private investor would have accepted a negative price only if the costs of winding-up have exceeded the privatization costs. AVAS informed the Competition Council on the fact that prior to privatization; no comparative analysis between the two costs has been carried out. Consequently, the Competition Council considers that the principle of prudent private investor does not apply in case of SC FORTPRES SA's privatization. Thus, by granting facilities to the company, an advantage is created on the relevant market.

(58) Granting financial support to SC FORTPRES SA creates grounds for a possible competition distortion on the relevant markets since the company is allowed to maintain

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<sup>16</sup> Note should be made that, generally, the existence of conditions stipulated in the privatisation contract-Chapter 5 of the present Decision- leads to non-application of the private investor test

<sup>17</sup> Confidential information

or even consolidate its position on these markets. Also, there is no doubt on the fact that the financial measures affect the trade with the EU Member States since the products made by the company compete with similar products of some companies from EU on markets on which operates.

(59) Therefore, the financial support measures to be granted to SC FORTPRES SA are considered State aid and fall under the provisions of State aid Law no. 143/1999, republished.

## **8. THE STATE AID COMPATIBILITY WITH THE LEGISLATION IN FORCE**

(60) The State aid objective is the restructuring of FORTPRES with a view to the company's return to viability at the end of the restructuring period.

(61) The restructuring State aid is conditioned upon the accomplishment of a feasible, coherent restructuring plan to prove the company's long term viability. To this end, the Regulation on state aid for rescuing and restructuring firms in difficulty, hereafter the Regulation, provides that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on an efficient basis, usually meaning ceasing generating losses activities, restructuring the existing activities which can become competitive again and sometimes their diversification towards new, profitable activities. The industrial restructuring must be usually followed by the financial restructuring (capital injections, reducing the debts degree, etc.).

(62) The Competition Council assesses the State aid granted to FORTPRES according to the criteria provisioned in the above-mentioned Regulation. In order to consider it compatible with the normal competitive environment, the State aid must fully fulfil the criteria therein.

## **9. CRITERIA TO BE FULFILLED IN VIEW OF GRANTING RESTRUCTURING AID**

(63) Financial support measures stipulated by par. 2.2. have to be granted based on the following:

- Firm in difficulty status;
- SC FORTPRES SA's long-term viability restoration;
- Preventing any excessive distortion to competition;
- Restructuring costs and benefits proportionality (aid limited to minimum necessary);
- Fulfilling the "first time- last time" principle;
- Assurance of the fulfilment of the measures included in the restructuring plan and monitoring, by the Competition Council, its implementation (annual monitoring and reporting).

## **10. FIRM IN DIFFICULTY**

(64) In order to benefit from State aid in accordance with the Regulation, the company must be in difficulty. According to the Regulation, the Competition Council considers that “a company is in difficulty when it is not capable to cover its losses either from its own financial resources or from resources it can obtain from the owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost lead to its economic market failure on short or medium term”<sup>18</sup>.

(65) Thus, based on those mentioned at par. 3.1., the Competition Council considers that, prior to privatization; FORTPRES registers losses, the turnover in comparable prices has a decreasing trend, an increasing indebtedness degree and a reduction in equity. Thus, total loss is more than two times higher than the value of the registered capital in 2003; in 2004, total debts are 10 times higher than equity's value.

(66) Considering the above mentioned facts, the Competition Council considers that the company is in difficulty, within the meaning of art. 2 of the Regulation.

## **11. RESTORATION OF LONG TERM VIABILITY**

(67) According to the article 13 of the Regulation on State aid for rescuing and restructuring firms in difficulty, the granting of a restructuring State aid is conditioned upon the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on this restructuring plan. The restructuring plan, whose duration must be as short as possible, has to comprise ceasing of loss generating activities and to lead to the company's long term viability restoration, allowing it to function by means of its own resources. The restructuring plan must be based on a realistic approach of market conditions and restoring the viability have to result mainly from internal measures within the restructuring plan, as well as from taking into consideration the external factors, such as price and demand variation, factors on which the company has no determinant influence.

(68) With a view to overcome the difficult situation, the company drafted, in collaboration with the Buyer and AVAS, a restructuring plan for the period 2005-2009. Main measures included in the FORTPRES restructuring plan were presented in Chapter 6.

(69) The analysis of the restructuring plan and of the evolution towards the long term viability takes into account the provisions of art. 13 of the Regulation.

(70) The restructuring plan of FORTPRES is based on the technical - economical data that reflect the company's activity in the period prior to privatization. This plan includes

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<sup>18</sup> Art.2 alin.(1) of the Regulation

the circumstances leading to the difficulties that the company currently faces, as well as measures to ensure the company's long term viability. The Competition Council considers that the measures included in the restructuring plan counterbalance the premises of the company's difficult situation, aiming at modernise and bring efficiency to technological flows, reduce production costs, profit generation, as well as increase of financial means.

(71) [...] <sup>19</sup>

(72) [...] <sup>20</sup>

(73) [...] <sup>21</sup>

(74) [...] <sup>22</sup>

(75) [...] <sup>23</sup>

(76) [...] <sup>24</sup>

(77) After implementing the restructuring measures, the company forecasts to reach the following target indicators by 2009:

**Table no.13 - Target economic and financial indicators**

1. Net profit	thousand RON	400
2. Net turnover	thousand RON	32,500
3. Equity	thousand RON	15,530
4. Claims recovery period	days	55.38
5. Debts payment period	days	125.16
6. Indebtedness degree	%	72.76
7. Return on assets	%	1.22
8. Return on equity	%	2.58
9. Cash flow	RON	3,937

*Source: SC FORTPRES SA's restructuring plan*

(78) Up to now, the company implemented a part of the restructuring measures, respectively: the measure regarding rehabilitation of buildings and production halls has been achieved 70%, new equipments have been bought according to the program, the environmental investments are in the final phase (the dying equipment has been already modernized), the sale-purchase agreement for the available assets has been concluded and the investor contributed with a working capital amounting to RON 3,175,000.

<sup>19</sup> Confidential information

<sup>20</sup> Confidential information

<sup>21</sup> Confidential information

<sup>22</sup> Confidential information

<sup>23</sup> Confidential information

<sup>24</sup> Confidential information

(79) As for the above, the Competition Council notes that criteria set at art. 13 of the Regulation are met, related to the restoration of the company's long term viability.

## **12. PREVENTING ANY EXCESSIVE DISTORTION OF COMPETITION (COMPENSATORY MEASURES)**

(80) According to the provisions of the Regulation on State aid for rescue and restructuring of firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granted have on competition on the relevant markets, compensatory measures are required. These measures shall be proportionate to the distorting effects caused by the aid taking into consideration the size and relative importance of the company on the relevant markets. The reduction of the company's presence on the market shall be set based on the market study attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan. Giving up loss making activities, absolutely necessary to restore viability, will not be considered as reductions of capacity or of the market presence when compensatory measures are analyzed.

(81) According to the information submitted by AVAS, during the implementation of the restructuring plan, the company will give up production capacities consisting in 39 machines and equipments representing 32.7% of the company's total capacity. From these 26 machines and equipments represent viable production capacities, whose irreversible reduction was imposed by AVAS as compensatory measure to minimize the distortion effects of the state aid on competition. The total reduction of FORTPRES' production capacities in 2009 compared to 2004 is as follows:

*Table no. 14 – Reductions of SC FORTPRES CUG SA's capacities*

Name	Total capacity in 2004 (tones)	Total capacity at the end of 2009 (tones)	Capacity reductions	
			tones	%
<b>Total</b>	5.990	4.030	1.960	32,7
Metallic constructions	1.700	710	990	58,2
Metallurgic equipment	3.500	2.720	780	22,3
Machine tools and components	790	600	190	24,1

*Source: Notification form*

(82) Capacity reductions are irreversible and are part of the restructuring plan. The equipments and the devices corresponding to this capacity will be sold in view of obtaining liquidities.

(83) According to the market study annexed to the restructuring plan, SC FORTPRES SA holds small shares on the markets where it is active<sup>25</sup>. Taking into consideration the provisions of art. 14 of the Regulation, which stipulates that the compensatory measures

<sup>25</sup> See par. 22

will be proportional with the distorting effects of the State aid on competition and especially with the size and relative importance of the company on affected markets, the Competition Council considers that, in the case of SC FORTPRES SA no substantial reductions of the production capacities are needed.

(84) Regarding the aforesaid, the Competition Council considers that the State aid will be used only for restoring the company's viability, without allowing the beneficiary, during the implementation of the restructuring plan, to extend its production capacity.

### **13. AID LIMITED TO MINIMUM NECESSARY (PROPORTIONALITY OF AID)**

(85) In accordance with art.15 of the Regulation, the State aid intensity and amount must be limited to what is absolutely necessary for allowing the restructuring, depending on the company's and shareholders' existing financial resources. The beneficiary must significantly contribute to the restructuring program, by its own resources, including the sale of assets, rental of assets or loans contracted under normal market conditions.

(86) [...] <sup>26</sup>

(87) [...] <sup>27</sup>

(88) The total restructuring cost will be financed 52.3% from the company's own sources and from the buyer of the majority share package and 47.7% from financial aid granted by the state.

(89) Beneficiary and buyer's own contribution of 52.3% to cover restructuring costs is in amount of RON 14,307,500 and is ensured by:

- majority shareholder's capital contribution – RON 13,277,500;
- certain revenues from assets selling – RON 1,800,000.

(90) The State aid intensity calculated as a ratio between the value of the State aid and the total restructuring cost is of 47.7%.

(91) Regarding the aforesaid, the Competition Council considers as significant the beneficiary's contribution of 52.3% for sustaining the restructuring costs.

### **14. OBSERVING “FIRST TIME, LAST TIME” PRINCIPLE**

(92) SC FORTPRES SA did not previously receive any restructuring aid. Thus, the provisions of article 24 of the Regulation, stating that the restructuring aid for firms in difficulty must be granted only once, are observed.

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<sup>26</sup> Confidential information

<sup>27</sup> Confidential information

## **15. AFFILIATION TO A GROUP OF COMPANIES**

(93) According to the provisions of art.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 proven 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 the difficulties are much too serious to be handled by the group itself.

(94) The fiscal facilities intended to be granted to SC FORTPRES CUG SA consist of debts prior to privatization – as an effect of economic results obtained the years prior to the moment when the majority of the shares were sold, so the debts belong to the company.

(95) As it was presented in Chapter 5, following the privatization, the majority share package of SC FORTPRES CUG SA Cluj-Napoca was purchased by Industrialnîi Soiuz Dombassa from Ukraine.

(96) [...] <sup>28</sup>

(97) The Competition Council notes that, taking into consideration the difficult economic situation of the company at privatization, FORTPRES could not cover more than 3,8% of the restructuring costs and, as a consequence, the majority shareholder assumed a contribution to the restructuring program representing 48% from the total cost of the restructuring.

(98) The Competition Council considers that the majority shareholder could not handle both the financial difficulties of SC FORTPRES CUG SA and the company's restructuring without the State's intervention.

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

## **16. ANNUAL MONITORING AND REPORTING**

(100) In accordance with article 18 of the Regulation, the Competition Council permanently monitors the implementation of the restructuring plan, in order to ensure the company fulfils the established objectives.

(101) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to ensure that increases of the production capacities and major deviation from the achievement of restructuring measures will not be recorded, and that the State aid will not lead to the creation of supplementary liquidities, which could be used for other activities than the ones included in the restructuring program.

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<sup>28</sup> Confidential information

## **17. CONCLUSIONS**

(102) Taking into account the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC FORTPRES CUG SA Cluj-Napoca is compatible with a normal competitive environment and does not significantly affect the trade with the Member States of the European Union.

## **DECIDES**

**Art. 1.** The financial support measures intended to be granted to SC FORTPRES CUG SA Cluj-Napoca represent State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.

**Art. 2.** Under the provisions of article 21(2) letter c) corroborated with article 23 (1) letter e) of the Law no. 143/1999, republished, the restructuring aid intended to be granted to SC FORTPRES CUG SA Cluj-Napoca at its privatization is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

**Art. 3.** The company is obliged to fully implement the assumed restructuring plan. The amendment of the restructuring plan will be done only with the observance of the provisions of art.19 of the Regulation on state aid for rescue and restructuring firms in difficulty, put in force by the Order of the Competition Council President no.501/23.11.2004, published in Official Gazette no.1215/17.12.2004.

**Art. 4.** The company shall reduce the production capacities until 2009 according to the assumed restructuring plan.

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

**Art. 6.** The value of the State aid that is going to be granted is of RON 13,037,582.

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

**Art. 8.** In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished, AVAS shall submit to the Competition Council information on the State aid granted in order to be inventoried and monitored. In addition, AVAS 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 demonstrate that the company observed the compensatory measures concerning the reduction of the production capacities imposed by the present decision.

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

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

- AVAS, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti ;
- SC FORTPRES CUG SA Cluj-Napoca, Bulevardul Muncii nr. 18, Cluj-Napoca;
- Public Finance Ministry- National Fiscal Agency, Apolodor Street nr. 17, sector 5, Bucuresti ;
- Cluj-Napoca Local County, Motilor Street nr. 1, Cluj-Napoca