

**DECISION OF THE COMPETITION COUNCIL**  
**no. 130 of 29.05.2006**  
**regarding the state aid to be granted to**  
**S.C. ENERGOUTILAJ S.A. Bucuresti**

**THE COMPETITION COUNCIL,**

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

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette, 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 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. VP4/1878/22.03.2006, registered at the Competition Council with no. RS-AS /55/22.03.2006, the Authority for State Assets Recovery (AVAS) notified based on art. 15 of the State Aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC ENERGOUTILAJ SA Bucuresti, (hereinafter known as ENERGOUTILAJ) within the privatization process.

(2) The Competition Council requested the Authority for State Assets Recovery supplementary information.

(3) The notification became effective when information was accurate and complete, respectively on 12.04.2006.

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

### **2.1. Legal base**

(4) The state aid measures to be granted to ENERGOUTILAJ are based on the following:

- Law no. 137/2002, art.18, on certain measures for accelerating the privatization;
- Government Decision no. 577/2002, art.281, on the approval of the Methodology for applying the Emergency Government Ordinance no. 88/1997 on the privatization of undertakings, with the subsequent amendments and completions, and of the Law no. 137/2002 on certain measures for accelerating the privatization;
- Government Ordinance no.26/2004 on certain measures for the completion of 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;
- GO no. 94/2004 on the regulation of certain financial measures;
- EGO no. 26/2005 on the abolishment of the legal provisions related to the allocation of the facilities for the payment of the overdue budgetary obligations, amended and completed by the Law no. 244/2005;
- Law no. 244/2005 for the approval of the EGO no. 26/2005 on the abolishment of the legal provisions related to the allocation of the facilities for the payment of the overdue budgetary obligations.

### **2.2. Financial incentives to be granted to ENERGOUTILAJ**

(5) The measures of financial support notified by the Authority for State Assets Recovery are granted in the context of privatization of ENERGOUTILAJ; the company is to benefit from facilities provided in the Law no. 137/2002, i.e. write-off and rescheduling of some overdue obligations to the state budget, local budgets and AVAS, as of 31.12.2001.

(6) The facilities concerning payment of overdue obligations to the state budget, local budgets and AVAS to be granted to ENERGOUTILAJ amount RON 19,193,712 consisting of exemptions in amount of RON 17,428,821 and payment reschedulings in amount of RON 1,764,891, as follows: [.....]

## **3. BENEFICIARY OF THE AID MEASURES (ENERGOUTILAJ)**

(7) ENERGOUTILAJ is a joint-stock company with headquarters in Bucharest city, no. 26 Actiunii Street, with registration number to the Trade Register J/40/2567/91 and CUI 368143. When the Shares sale- Purchase contract was signed, the company had shareholders equity of RON 4,630,020 divided in 1,852,008 shares with a face value of RON 2.5.

(8) ENERGOUTILAJ esti was established as a joint stock company in 1990 based on the GD no. 1200/1990. ENERGOUTILAJ arose from the Factory „Atelierele Centrale Energoutilaj”, which became in 1977 the heavy equipments for constructions factory Energoutilaj Bucuresti. The company was split up from the factories Electroconstructia and Electromontaj, which were established in 1949. ENERGOUTILAJ ensured, during its 50 years of existence, mechanization services with heavy equipments for constructions and transports within the energy sector, being known especially for its services related to the handle of heavy weights and ballaster workings.

(10) In 2003 ENERGOUTILAJ was privatized by signing the share sale-purchase agreement no. 65 on 24.12.2003, concluded between the APAPS (at present AVAS) and SC ELECTROAPARATAJ SA Bucuresti, as the Buyer. The shareholders structure following the privatisation is presented in Table no. 2.

**Table no. 2 Shareholders structure after privatisation at SC ENERGOUTILAJ SA Bucuresti**

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares	Percentage of equity held (%)
SC ELECTROAPARATAJ SA	1,328,300	71.7221
Other shareholders	523,708	28.2779
<b>Total</b>	<b>1,852,008</b>	<b>100.00</b>

*Source: Notification form*

(11) At the date of the privatization, the undertaking had 466 employees and a turnover of RON 7,684,378, being therefore a large undertaking.

(12) The company's activity is structured on production sub-units situated in different areas of the country: Bucharest (with working points at Chiscani and Constanta), Bacau (with working points at Iasi and Piatra Neamt), Campina, Deva, Timisoara (with working point at Oravita), Turceni (with working point at Turnu Severin) and Ramnicu Valcea (with working points at Sibiu and Curtea de Arges).

(13) The core business of ENERGOUTILAJ consists of mechanization services in constructions and transport, as follows:

- renting construction's equipments with the related personnel, CAEN code 4550;
- renting auto-vehicles with driver (merchandise road transport), CAEN code 6024.

(14) ENERGOUTILAJ owns a large range of equipments for construction, such as: excavators with tires or caterpillars, auto-crane, caterpillar cranes frontal loaders, bulldozers, as well as auto- transportation means (auto- tip-up truck, lorry auto- tugs, tugs and trailers).

(15) Although the company's auto- park encloses a large number of auto-vehicles and equipments (562 pieces), their age is advanced (approx. 16 years), presenting a high degree of oldness and obsolation. In 2003, from a total amount of 562 equipments, only 220 were operable. On the date when the privatization contract was signed, the equipments' situation was the following:

[.....]

From the above-presented data it results that, at the privatization's date, approx. 95% of the equipments owed by the company had over 10 years.

(16) From the technical characteristics point of view, the company's equipments (equipments and auto-vehicles) can be grouped in two categories, namely the following:

- Equipments common to more than one type of construction and transport workings;
- Special construction equipments, adapted to the energetical workings. This category also includes high capacity auto- cranes (80 – 140 t used weight) and high capacity tugs trailers (designated for overall dimensions transports).

### 3.1. The financial situation of ENERGOUTILAJ before privatization

(17) The economic – financial results recorded by ENERGOUTILAJ, before the privatization, based on the balance sheets, are the followings:

**Table no. 4 The economic – financial results based on the data included in the balance sheet**

2001	2002	2003
Turnover (RON)		
8,409,586.7	9,126,739.9	7,684,377.9
Net Profit/Loss (RON)		
63,825.0	74,840.1	- 323,008.4

*Source: Notification Form*

(18) As it results from the presented data, before the privatization, the company records losses. The turnover has a general decreasing trend during the assessed period, the company recording a decrease in the economic – financial situation, being influenced by the increase of the operating expenses, the reduction in receiving claims, the increase in the stocks' volume, at the same time by the accumulation of high debts owed to the State budget and to the suppliers.

(19) According to the data of the balance sheets for the last 3 years, the company register's continuous operating losses, the positive result during 2001-2002 being influenced by the financial and exceptional result.

**Table no. 5 - The evolution of the gross and operating result**

- RON -

	2001	2002	2003
Gross result, from which:	+86,578	+109,058	-307,571
- operating	- 173,196	- 188,578	- 355,307
- financial	+ 257,810	+ 101,119	+ 47,736
- exceptional	+ 19,639	+ 196,517	-
Uncovered loss	- 1,496,466	- 1,421,625	- 1,421,625
Total loss	- 1,409,888	-1,312,567	-1,729,196

*Source: Notification Form*

(20) In fact, the balance sheet does not reflect the real financial position of the company, due to the fact that the debts to the state budget (debts, penalties and delay increases), were recorded as off-balance sheet items. Thus, in 2001-2003 the following debts were not considered:

**Table no. 6** **Off-balance sheet company debt position** - RON -

Indicator	2001	2002	2003
Off balance sheet debts	4,942,388.2	4,942,388.2	8,404,169.8

*Source: Supplementary information*

(21) The financial exercise result including debts in the balance sheet is as follows:

**Table no. 7 - Financial result, after inclusion of debts** - RON -

Indicator	2001	2002	2003
Shareholders equity	4,630,020	4,630,020	4,630,020
Operating revenues	8,458,151.4	9,160,564.3	9,540,335.8
Operating expenses	8,631,347.7	9,349,142.4	9,895,842.9
Operating result (loss)	-173,196.3	-188,578.1	-355,507.1
Financial revenues	258,243.3	101,118.6	47,735.7
Financial expenses	433.0	-	-
Off balance sheet short term debts	4,942,388.2	4,942,388.2	8,404,169.8
Restated financial expenses	4,942,821.2	-	3,461,781.6
Restated financial result	- 4,684,577.9	101,118.6	-3,414,045.9
Extraordinary revenues	9,963.7	233,387.7	-
Extraordinary expenses	7,999.8	36,870.4	-
Extraordinary result	1,963.9	196,517.3	-
Gross result of exercise (restated)	-4,855,810.3	109,057.8	-3,769,553.0
<b>Total loss (current+not recovered), restated with off balance sheet debts</b>	<b>-6,352,276.3</b>	<b>-6,243,218.5</b>	<b>-10,012,771.5</b>

*Source: Supplementary information*

In 2003 (last year before privatization) the exercise result deteriorated significantly. In this year the operating loss almost doubled compared to previous year, the company working under breakeven point. In 2003, the cumulated loss is double than the shareholders equity.

(22) The causes that led to the difficult situation of the company are:

- By their specific, the activities of renting equipment for constructions and auto-vehicles are in close relation to the workings financed almost entirely from the state budget and the local budgets, fact generating difficulties in financing the company's specific activities. Taking into account that ENERGOUTILAJ's clients were mainly State owned construction companies; the reduction in their activity had a negative consequence on the demand's volume as far as the company's services were concerned. Under these conditions, the turnover of ENERGOUTILAJ decreased, in comparable prices, from RON 8.4096 mil., in 2001, to RON 5.7123 mil., in 2003, namely with 32%;

- The seasonal character of the construction activity which affects the company's activity; the existing financial blockage in the economy also affected ENERGOUTILAJ's cash-flow and determined the delay in the payment of the obligations to the state budget and the social security budget. The average period to recover the claims was of 204 days in 2001, 160 days in 2003, 124 days in 2004, much over the normal level of 30-60 de days;
- The outdated in efficient technical endowments, with high specific consumption;
- Insufficient working capital;
- The lack of investment funds which did not allow the replacement or the improvement in the technical performances of the equipments.

#### 4. RELEVANT MARKETS

(23) ENERGOUTILAJ is active on the following markets:

- The market of construction equipments' rental;
- The market of auto-vehicles' rental.

The rental of construction equipments represents 66% form the company's turnover in 2004, while the auto-vehicles' rental represents 34% from the company's turnover in the same year.

(24) The company's activities span the entire Romanian territory<sup>1</sup>.

(25) The company's market shares reduced in 2004, compared to 2001, as follows:

- On the market of construction equipments' renting, from 2.2% in 2001 to 1.7% in 2004;
- On the market of out-vehicles' renting, from 3.24% in 2001 to 2.73% in 2004.

In accordance with the market study annexed to ENERGOUTILAJ restructuring plan, the company's market shares on the relevant markets, in 2004, are the following:

**Table no. 8 – Market shares of the company on the domestic market**

Services	UM	2004
<b>Rental of equipments for constructions</b>		
Total domestic market	mil. RON	334.0260
SC ENERGOUTILAJ SA's incomes from the rental of equipments for constructions	mil. RON	5.6878

<sup>1</sup> Until 2003, ENERGOUTILAJ has acted on the external market only within the field of merchandise road transport, the company having 8 Roman truck (long vehicle) in order to perform the service of auto-vehicles' renting for external transports. The lack in the demand for the autovehicles owned by ENERGOUTILAJ, which were only endowed with non- Eur and Eur I systems, determined a low utilization degree of these assets, the company performing transports only in and from the countries within the Balcaninc Peninsula, which environmental provisions allow the access of such vehicles. Therefore, starting with 2004, the company decide to give up to this service.

<b>SC ENERGOUTILAJ SA 's market share</b>	(%)	<b>1.70</b>
<b>Rental of auto-vehicles</b>		
Total domestic market	Thousand tons	283,871
SC ENERGOUTILAJ SA's incomes from the rental of auto-vehicles	Thousand tons	7,758
<b>SC ENERGOUTILAJ SA's market share</b>	(%)	<b>2.73</b>

*Source: the notification form, the annexed market study*

From the presented data it can be observed that ENERGOUTILAJ does not have a dominant position on the relevant markets.

(26) The beneficiaries of the company's services are the following:

- Undertakings activating in the construction field (contractors) who use ENERGOUTILAJ's services in order to cover their need for construction equipments for the pending projects;
- Undertakings that are active on the construction materials' processing field, who use ENERGOUTILAJ's services in order to transport different products (concrete prefab, beams, structure elements for buildings, products for the metalling constructions' industry);
- Undertakings that are active in different economic fields (trade, processing industry for goods which purchase ENERGOUTILAJ's services in order to carry on their own projects or for merchandise transport;
- Undertakings that are active in the transport field (dispatch offices, transporters, etc) which, by purchasing ENERGOUTILAJ's services, are able to perform and/or complete their own services.

(27) ENERGOUTILAJ s main competitors on the domestic market are as follows:

- On the market of construction equipments' rental: ICSIM SA, Apolodor Comimpex SRL, SUT Arcom, Util Grant SRL;
- On the market of autovehicles' rental: Van der Vilst International Transport & Services Romania SRL, Holleman Bucharest Special Transport SRL, General Transport SA, Transchim SRL.

(28) The market shares of ENERGOUTILAJ's main competitors on the market of construction equipments' rental are as follows:

**Table no. 9 – The market shares f the main competitors of SC ENERGOUTILAJ SA on the market of construction equipments' rental**

<b>Renting installation for constructions</b>	<b>Indicator</b>	<b>UM</b>	<b>2004</b>
<b>Total domestic market</b>	Turnover	mil. RON	334.03
<b>ENERGOUTILAJ</b>	Turnover	mil. RON	5.69
	<b>Market share</b>	<b>%</b>	<b>1.70</b>
<b>I.C.S.I.M.</b>	Turnover	mil. RON	44.63
	<b>Market share</b>	<b>%</b>	<b>13.36</b>
<b>Apolodor Comimpex SRL</b>	Turnover	mil. RON	44.05
	<b>Market share</b>	<b>%</b>	<b>13.19</b>

<b>SUT Arcom</b>	Turnover	mil. RON	4.00
	Market share	%	<b>1.20</b>
<b>Util Grant SRL</b>	Turnover	mil. RON	3.21
	Market share	%	<b>0.96</b>
<b>Other companies</b>	Market share	%	<b>68.56</b>

Source: Notification form, the annexed market study

(29) The market shares of ENERGOUTILAJ's main competitors on the auto rental market are as follows:

**Table no. 10 – The market shares of ENERGOUTILAJ's main competitors on the auto rental market**

<b>Renting auto-vehicles</b>	<b>Indicator</b>	<b>UM</b>	<b>2004</b>
<b>ENERGOUTILAJ</b>	Turnover	mil. RON	2.94
	Market share	%	<b>2.73</b>
<b>Van der Vilst International Transport &amp; Services Romania SRL</b>	Turnover	mil. RON	17.60
	Market share	%	<b>16.35</b>
<b>Holleman Bucharest Special Transport SRL</b>	Turnover	mil. RON	12.43
	Market share	%	<b>11.54</b>
<b>General Transport SA</b>	Turnover	mil. RON	5.86
	Market share	%	<b>5.44</b>
<b>Transchim SRL</b>	Turnover	mil. RON	13.25
	Market share	%	<b>12.31</b>
<b>Other companies</b>	Market share	%	<b>51.64</b>

Source: Notification form, the annexed market study

(30) From the offer's point of view, the market for construction equipments' rental as well as the market of auto rental is highly competitive, there being a large number of undertakings. At the level of 2003, there were approx. 1,500 undertakings on the market which had as their main activity object the merchandising of road transport. In the field of renting construction equipments there were 432 active undertakings.

(31) The entrance barriers on these markets are relatively small, the investment in a construction installation of average capacity or in a transport mean is not very large, and the professional level necessary to exploit the construction equipments or the autovehicles for transport does not raise any specific problems. As a result, in the construction field it can be seen the undertakings' tendency to form their own mechanized and auto parks.

(32) The trends on the company's two specific markets are of increase, as an effect to the development in the construction field, to the really high prices existing on the merchandise' railway transport market and of the higher flexibility of the merchandise road transport. It is estimated that within the next 5 years, the construction market will expand with approx. 10% per year, while the merchandise road transport market will increase in an annual rhythm enclosed between 3% and 10%, fact that will also lead to



similar increases on the market of construction equipments' rental and on the market of auto-vehicles' rental.

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

(33) In accordance with the legal provisions, the selling of the majority share package held by APAPS in ENERGOUTILAJ was based on final offers, improved and irrevocable.

(34) In 2003, APAPS offered for sale the majority share package held in ENERGOUTILAJ representing 71.72215 % of the equity share, divided in 1,328,300 shares.

(35) The privatization process started with the publication of the privatization announcement, on 03.09.2003, in two national newspapers, namely AZI and ZIUA, at the same time being posted at the company and APAPS headquarters. The deadline for submitting the offers was 20.05.2004.

(36) Two dossiers were purchased, and on the deadline, namely on 26.09.2003, only one offer was submitted, by ELECTROAPARATAJ.

(37) Until 14.11.2003, APAPS' Negotiation Commission conducted negotiations with the bidder, requesting for an improvement in the financial and technical offer. On 18.11.2003 the bidder submitted the final offer, improved and irrevocable. Taking into account that the price/share was significantly lower than that proposed by APAPS, another improvement in the offer was requested. On 18.12.2003, the bidder improved its financial offer and thereby closing share selling-buying contract no. 65/24.12.2003.

(38) The transfer of the ownership right on the shares took place on 06.01.2004.

(39) Through the share selling-buying contract a number of obligations were imposed on the Buyer, with the purpose of ensuring the company's return to viability within 5 years from the date when the ownership transfer took place. [.....]

(40) The Shares sale-purchase contract was closed under the resolutive clause by which the contract ends *de jure*, without any formality in advance, the parts returning to their previous situation, if the Common Orders for granting the facilities for the company's obligations, owed and overdue on 31.12.2001, are not already issued by the budgetary creditors and the involved public body (in accordance with the provisions of art. 18 of the Law no. 137/2002 with the subsequent amendments and completions).

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

(41) The restructuring plan elaborated by the company and Buyer, approved by AVAS and presented to the Competition Council, describes measures concerning structural

reorganization, technical restructuring, investments in environmental protection and financial restructuring of the company.

(42) The restructuring of ENERGOUTILAJ aims at improving the economic-financial and efficiency indicators and to restore the long term viability [.....]

(43) 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 reaches viability by the end of the restructuring period. The restructuring plan of the company analysed the causes which led to the difficult financial situation of ENERGOUTILAJ and contains measures to be implemented by the company to ensure its long-term viability. By applying these measures AVAS forecasts that the company should return to viability and be in a position to utilize its own financial resources in order to properly carry out its activity, without debts owed to the consolidated State budget or local budgets.

(44) The restructuring programme drafted by the company together with the buyer and AVAS covers the period 2004-2008. The measures contained in the restructuring plan are as follows:

**Table no. 11 – 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	416,000.0	[.....]	[.....]	[.....]
2.	Technical and technological measures	11,389,760.0	[.....]	[.....]	[.....]
3.	Measures for environment protection	59,380.0	[.....]	[.....]	[.....]
4.	Financial restructuring measures	25,123,597.0	[.....]	[.....]	[.....]
	<b>TOTAL RESTRUCTURING COST</b>	<b>36,988,737.0</b>	[.....]	[.....]	[.....]

*Source: Restructuring plan of SC ENERGOUTILAJ SA*

(45) The achievement of the restructuring programme involves a financial effort in value of RON 36,988,737.0 and aims at restoring ENERGOUTILAJ to viability in 2008 (the end of the restructuring period).

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

(46) The organizational and managerial restructuring contains the following measures:

**Table no. 12 – Measures on the organizational and managerial restructuring**

-RON-

Measure	Deadline	Implementing effort	Financing		State aid
			[.....]	[.....]	
<b>Expenses related to:</b> Rental of premises and sale of inventories/rehabilitation of outlasts	2008	5,000.0	[.....]	[.....]	[.....]
Reorganization of the marketing department, preparation and implementation of marketing strategy	2006	20,000.0	[.....]	[.....]	[.....]
Outsourcing the repair activities of equipments and vehicles	2008	100,000.0	[.....]	[.....]	[.....]
Reduction of personnel (severance payments)	2005	56,000.0	[.....]	[.....]	[.....]
Sale of not-profitable assets	2006	10,500.0	[.....]	[.....]	[.....]
Upgrading IT system	2005	70,000.0	[.....]	[.....]	[.....]
Outsourcing of management for remote/not profitable subunits	2007	150,000.0	[.....]	[.....]	[.....]
Sale of profitable assets	2006	4,500.0	[.....]	[.....]	[.....]
<b>TOTAL</b>		<b>416,000.0</b>	[.....]	[.....]	[.....]

Source: Restructuring plan of SC ENERGOUTILAJ SA

Outsourcing the auxiliary activity of repairs to equipment and vehicles will allow the company to focus on its main activity and to avoid expenses with investments and authorisations in own shops. Also, repair equipment can be sold.

The company will sell by auction assets and equipments no longer operational or not profitable. Those which will remain unattractive will be sold as scrap iron.

Reducing slow moving stocks related to sold or dismantled assets will free up storage space in total surface of 6,000 sqm. which will be rented out.

Reduction of personnel is carried out in relation to outsourcing of auxiliary activities and has as purpose increasing the flexibility of organizational structure and the flexibility towards market changes. The company will identify subunits that are both profitable and non profitable and look to lease the non-profitable ones.<sup>2</sup>

## 6.2. Technical and technological restructuring

(47) Investments in technology committed by the company and Buyer amount RON 11,389,760.0.

<sup>2</sup> At privatization the company had 16 subunits, among which some profitable (Bucuresti, Campina) and other non-profitable. Also, there are difficulties in managing equipments and coordinating remote personnel. Therefore, in order to make the activity more efficient the company decided to lease remote or not profitable subunits by tenants assuming risks and expenses from operating equipments and premises, in exchange of a monthly rent paid in advance.

**Table no. 13 – Measures on the technical and technological restructuring**

- RON -

Measure	Deadline	Implementing effort	Financing		State aid
			Own sources SC ENERGOUTILAJ SA	Buyer's sources	
Building rehabilitation	2008	8,124,160.0	[.....]	[.....]	[.....]
Acquisition of equipments	2008	1,065,600.0	[.....]	[.....]	[.....]
Rehabilitation of vehicles and equipments	2008	2,200,000.0	[.....]	[.....]	[.....]
<b>TOTAL</b>		<b>11,389,760.0</b>	[.....]	[.....]	[.....]

Source: Restructuring plan of SC ENERGOUTILAJ SA

The technical restructuring measures involve investments to acquire equipments which will replace a part of those dismantled, rehabilitation and maintenance of vehicles and equipments which the company maintains in function during the entire program period, revamping building hydro insulation, revamping the heating and ventilation systems, revamping the water and natural gas supply to the administrative and production premises, revamping /construction of sewerage system.

### 6.3. Measures on the environmental restructuring

(48) According to the restructuring plan, environmental investments to be made by ENERGOUTILAJ are in total amount of RON 59,380.0 of which investments from Buyer's sources in amount of RON 50,840.0 and investments realized from company sources in amount of RON 8,540.0. These investments are meant to comply with criteria of environmental permits.

**Table no. 14 - Measures on the environmental restructuring**

- RON -

Measure	Deadline	Implementing effort	Financing		State aid
			Own sources SC ENERGOUTILAJ SA	Buyer's sources	
Monitoring of discharged water, of emissions from ventilated halls and increase efficiency of ventilation at headquarters	2006	5,140.0	-	5,140.0	-
Concrete ceiling for underground storage facility, concrete ceiling of lubricant warehouse, separator for oil products at SUT Sibiu	2005	12,886.0	5,886.0	7,000.0	-
Realizing collection/discharge/evacuation of waste water system, protection of surface at SUT Oravita	2004	13,650.0	-	13,650.0	-
Rehabilitation of sewerage network			-	1,500.0	-

at PL Chiscani	2004	1,500.0			
Septical tank and fat separator at SUT Turceni	2006	6,264.0	2,654.0	3,610.0	-
Dismantling fuel tank, rebuilding of affected area, waste water treatment installation at SUT Deva	2004	18,455.0	-	18,455.0	-
Rehabilitation of sewerage, upgrading of heating station at SUT Campina	2004	1,485.0	-	1,485.0	-
<b>TOTAL</b>		<b>59,380.0</b>	<b>8,540.0</b>	<b>50,840.0</b>	<b>-</b>

Source : Restructuring plan of SC ENERGOUTILAJ SA

#### 6.4. Financial restructuring

(49) The financial restructuring contains the following measures:

Table no. 15 – Measures on financial restructuring

Measure	Deadline	Implementing effort	Financing		State aid
			Own sources SC ENERGOUTILAJ SA	Buyer's sources	
Working capital contribution of majority shareholder	2008	2,800,000.0	[.....]	[.....]	[.....]
Expenses related to reduction in slow moving stocks	2006	10,000.0	[.....]	[.....]	[.....]
Facilities for the payment of overdue debts to the state budget	2008	19,193,712.0	[.....]	[.....]	[.....]
Payment of some debts to the state budget	2005	2,000,225.0	[.....]	[.....]	[.....]
	2006	300,000.0	[.....]	[.....]	[.....]
Cost of contracting loans at market terms	2006	45,000.0	[.....]	[.....]	[.....]
	2008	75,165.0	[.....]	[.....]	[.....]
Cost of recovery of exigible commercial claims	2007	10,000.0	[.....]	[.....]	[.....]
Payment of debts cumulated at the state budget after 31.12.2001 which were not subject to fiscal facilities according to Law no. 137/2002	2004	689,495.4	[.....]	[.....]	[.....]
<b>TOTAL</b>		<b>25,123,597.0</b>	[.....]	[.....]	[.....]

Source: Restructuring plan of SC ENERGOUTILAJ SA

The restructuring plan, by its financial restructuring component, gives the possibility to increase the cash flow easing the financial activity of the company. In this way, the company will be able to payback all its current debts to the State and to allocate

liquidities necessary for the planned investments, in order to develop and sustain the productive programme.

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

(50) The criteria based on which it is established that a measure represents State aid are provided by art 2 par. (1) of the 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 resources of the State or 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.

(51) The financial support granted to ENERGOUTILAJ and notified by AVAS consists of revenue renouncement by the State, thus being involved State resources.

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

(53) Considering that the facilities are granted during the privatization process, in order to determine if such facilities confer ENERGOUTILAJ 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"). It can be considered that the State acts at privatization as a prudent private investor/seller if it can be proved that by selling its shares it obtains the best price (the price obtained is higher than the facilities granted). Competition Council analyzed if the State acted as a prudent private investor in case of ENERGOUTILAJ

(54) As described in Chapter 5 of the present decision, the privatization of ENERGOUTILAJ took place by negotiation based of final offers, improved and irrevocable. The Competition Council learns that this is also conditional on the implementation of certain investments measures, relating to technology, managerial, financial and environmental improvements, as well as achieving 70% of the company's turnover from its core activity.

(55) [.....]

(56) A private investor will accept a negative price only if the costs of winding-up been exceeds the privatization costs. AVAS informed the Competition Council about the fact that prior to privatization, no comparative analysis between the two costs has been done. Consequently, the Competition Council considers that the principle of prudent private investor does not apply in case of ENERGOUTILAJ privatization. Thus, by granting facilities to the company, an advantage is created on the relevant market.

(57) Granting financial support to SC ENERGOUTILAJ SA creates grounds for a possible competition distortion on the relevant markets since the company is allowed to maintain or even consolidate its position on these markets. Also, there is no doubt 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.

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

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

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

(60) 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.).

(61) The Competition Council assesses the State aid granted to ENERGOUTILAJ 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**

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

- Firm in difficulty status;
- ENERGOUTILAJ long-term viability restoration;
- Preventing any excessive distortion to competition;
- Restructuring costs and benefits proportionality (aid limited to minimum necessary);
- Fulfilling the "one 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**

(63) 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>3</sup>.

(64) In this respect, based on those mentioned at 3.1 the Competition Council retains that the company registered losses the year prior to privatization. Thus, according to par. 21, in 2003 the operating loss doubled compared to the previous year, the company working under breakeven point and the total loss is more than twice the shareholders equity.

(65) Considering the above mentioned facts, the Competition Council considers that the company is in difficulty, with the meaning of the Regulation, being therefore eligible to receive restructuring aid.

## **11. RESTORING THE COMPANY’S LONG TERM VIABILITY**

(66) 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.

(67) With a view to overcome the difficult situation, the company drafted, in collaboration with the Buyer (SC ENERGOUTILAJ SA) and AVAS, a restructuring plan for the period 2004-2008. Main measures included in the ENERGOUTILAJ restructuring plan were presented in Chapter 6.

(68) 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.

(69) The restructuring plan of ENERGOUTILAJ is based on the technical - economical data that reflects the company’s activity in the period prior to privatization. This plan was elaborated as a result of a diagnosis analysis emphasizing the company’s strengths and

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<sup>3</sup> Art.2 alin.(1) of the Regulation



weaknesses, as well as the circumstances leading to the difficulties that the company currently faces.

(70) ENERGOUTILAJ strategy envisages the maintenance of the strengths, namely: national network of working points, expertise in carried out activity, adequate endowment for large sized transports for energy sector, relatively stable market and with an increasing trend, stable number of beneficiaries. Moreover ENERGOUTILAJ strategy focuses on the limitation and counterbalancing, by means of appropriate measures, of weaknesses, as: certain obsolete and ageing fixed assets, lack of necessary liquidities required for new products assimilation, debt to budgetary creditors, high costs.

(71) By applying the restructuring measures, ENERGOUTILAJ aims to alleviate deficiencies through organizational restructuring and capital injection for investments, so as the company reaches viability at the end of the restructuring period. SC ENERGOUTILAJ SA is committed to achieve the maximum of its technical potential, to reduce operating expenses by selling old equipment with high operating costs, selling the lorries, outsourcing maintenance and repair activities, leasing the management of remote units, investments in modernizing the fleet, more professional marketing activity. The Competition Council notes that, by means of implementation of the measures comprised in the restructuring plan, to which both the company and the buyer, through capital injections, and the state, through facilities granted to the company for the payment of its budgetary obligations, for the period 2004 – 2008, shall contribute, to an improvement of the economical-financial indicators is foreseen, as follows:

[.....]

(72) 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:

**Table no.17 - Target financial- economic indicators**

1. Net profit	RON thou.	818
2. Turnover	RON thou.	5,740
3. Employees number	pers.	130
4. Equity	RON thou.	14,107
5. Claims recovery period	days	72
6. Debts payment period	days	154
7. Indebtness ratio	%	17
8. Economic profitability	%	4.95
9. Financial profitability	%	5.84
10. Cash flow	RON thou.	3,103

*Source: Restructuring plan of SC ENERGOUTILAJ SA*

(73) 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)**

(74) 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 research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

(75) According to the information submitted by AVAS, as a result of the restructuring plan implementation in view of restoring the viability and adapting to the environmental requests, the company will reduce its production capacities, but will aim to improve the efficiency of its existing capacity. At the same time, the company will reduce a series of viable production capacities as a compensatory measure. [.....]

(76) As mentioned at the previous paragraph, the reductions of capacities concern both viable equipments and vehicles. As stated in the analysis of gross margin and profitability of the ENERGOUTILAJ, from the total number of 166 running equipments and vehicles to be reduced until the end of the restructuring period, 74 belong to profitable categories. For the majority, the profit margin is over 70%. These reductions in viable capacities are 45% of the total capacities' reduction and 34% of the total running capacities in 2003.

(77) ENERGOUTILAJ has small market shares on the relevant markets on which it operates, respectively: 1.70% on the constructions equipments' renting market and 2.73% on the vehicles' renting market. Subsequently, having regard to the provisions of art. 14 of the Regulation which stipulates that the compensatory measures will be proportional with the distorting effects of the State aid over competition and especially with the size and relative importance of the company on affected markets, the Competition Council considers that, in case of ENERGOUTILAJ the reductions mentioned above are sufficient, consequently, no further substantial reduction of productive capacity are needed.

(78) Moreover, the market study annexed to the restructuring plan shows that, by applying the restructuring programme and as an effect of the increase of competition from the companies with a superior technical endowment, ENERGOUTILAJ will reduce its market share as follows:

- on the constructions equipments' renting market: from 1.70% to 0.71%;
- on the vehicles' renting market: from 2.73% to 0.81%.

Thus, SC ENERGOUTILAJ SA will not undertake any activities that might lead to the significant distortion of competition on the markets that it operates on.

(79) The reductions of capacities operated by the company are irreversible and represent part of the restructuring plan. The equipments and the machines afferent to this capacity will be taken out of function and capitalized with the aim to obtain liquidities.

(80) 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 productive capacity.

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

(81) 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, using own resources, including the sale of assets, rental of assets or loans contracted under normal market conditions.

(82) The total restructuring cost of SC ENERGOUTILAJ SA is 36,988,737.0 RON and consists of:

- Organizational restructuring cost –	416,000 RON
- Technological restructuring cost –	11,389,760 RON
- Environmental restructuring cost –	59,380 RON
- Financial restructuring cost –	25,123,597 RON

(83) The total restructuring cost of SC ENERGOUTILAJ SA, amounting 36,988,737 RON, is supported from the following resources:

- SC ENERGOUTILAJ SA own resources	5, 056,790 RON
- Investor's capital injection	12,738,235 RON
- State aid	19,193,712 RON

(84) From the total restructuring cost, 48.1% will be financed from the company's own resources and from the majority shares buyer's own resources and 51.9 % from financial support granted by the state.

(85) Beneficiary and buyer's own contribution of 48.1 % for covering the restructuring cost is in amount of 17,795,025 RON [.....]

(86) The State aid intensity calculated as a ratio between the value of the State aid and the total restructuring cost is of 51.9 %.

(87) Regarding the aforesaid, the Competition Council considers as significant the beneficiary's contribution of 48.1% for sustaining the restructuring costs.

#### **14. OBSERVANCE OF “ONE TIME, LAST TIME” PRINCIPLE**

(88) ENERGOUTILAJ did not ever 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.

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

(89) 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 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.

(90) The fiscal facilities intended to be granted to ENERGOUTILAJ 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.

(91) [.....]

(92) [.....]

(93) The Competition Council considers that the majority shareholder, as well as the group members, could not face both ENERGOUTILAJ financial difficulties and those of the restructuring process without the state’s intervention.

(94) Taking into account these facts, the Competition Council considers that the condition stipulated by art. 2 (5) of the Regulation, on group affiliation, is fulfilled.

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

(95) 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.

(96) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities 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.

## **17. CONCLUSIONS**

(97) Taking into account the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to ENERGOUTILAJ Bucuresti 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 ENERGOUTILAJ Bucuresti 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 ENERGOUTILAJ Bucuresti 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 2008 according to the assumed restructuring plan.

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

**Art. 6.** The value of the State aid that is going to be granted is of RON 19,193,712.

**Art. 7.** The present decision becomes applicable since its 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 ENERGOUTILAJ SA Bucuresti, Str. Actiunii nr. 26, sector 4, Bucuresti.

**PRESIDENT**

**MIHAI BERINDE**