

DECISION OF THE COMPETITION COUNCIL
no. 143 of 21.06.2006

regarding the state aid to be granted to

S.C. Metalurgica S.A. Reghin

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 the form, content and other details of the State aid notification, published in the Official Gazette, Part I, no. 82 of January 25, 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 Guidelines on SMEs, published in the Official Gazette, Part I, no. 314, of 14.04.2005,

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. THE PROCEDURE

(1) By address no. VP4/2631/02.05.2006 registered at the Competition Council with no. RS-AS 73/02.05.2006, the Authority for State Assets Recovery (AVAS) notified based on art. 15 from the State aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC Metalurgica SA Reghin (hereinafter METALURGICA) in the context of its privatization.

(2) The Competition Council requested to AVAS supplementary information by addresses DAAS/684/05.05.2006 since the information were not complete and accurate. AVAS sent the answers by the address VP4/2902/13.05.2006 .

(3) The notification became effective when information was accurate and complete, respectively on 13.05.2006.

2. DESCRIPTION OF THE AID MEASURE

2.1. Legal base of the aid measure

(4) The State aid measures for METALURGICA are instituted by the following legal acts:

- Law no. 137/2002 on the acceleration of privatization;
- Government Decision no. 577/2002 on the approval of the Methodological Norms for the enforcement of the Emergency Government Ordinance (EGO) no. 88/1997 on the privatization of commercial companies, with the subsequent amendments and completions;
- EGO no. 8/2003 on the stimulation of the restructuring, reorganization and privatization of national companies with prevailing state capital as well as of the regie autonomous subordinated to public local administrative authorities, with subsequent modifications and completions;
- EGO no. 95/2003 on taking over by AVAB of budgetary debts in view of transfer to National Fund of Social Health Insurance, approved with subsequent modifications and completions;
- GO no. 147/2004 on approving the extension of payment facilities provided by art. 18 of the Law 137/2002 on the acceleration of privatization, for some companies being under APAPS portfolio;
- GO no. 592/2004 for approving The list of the companies being under APAPS portfolio, benefiting from the provisions of art. 14 of EGO no. 8/2003;
- EGO no. 26/2004 on some measures for the completion of APAPS portfolio companies' privatization and the consolidation of some privatization, approved with amendments and completions by Law no.442/2004;
- Law no. 244/2005 for approving EGO no. 26/2005 on the abrogation of legal provisions that refers to the granting of payment facilities

(5) The measures of financial support consist of facilities to the payment of overdue obligations amounting of RON 11,158,206, as follows:

Table no. 1 – Facilities

No	Facility	Amount -RON-	Grantor
1.	Postponement to payment, in view of exemption, of 97% from the budgetary obligations due on 31.12.2002	2,734,926	MFP ¹
2.	Postponement to payment, in view of exemption, of the interests and penalties due to delay payment afferent to budgetary obligations	7,105,171	MFP
3.	Postponement to payment, in view of exemption, of 97% from AVAS's debts representing dividends due on 31.12.2001 and damages afferent to dividends unpaid, calculated until the date of signing the Privatization Contract	148,616	AVAS
4.	Annulment of the penalties afferent to payment obligations towards SC FDFEE ELECTRICA TRANSILVANIA SUD SA	67,451	MEC ²
5.	Annulment of penalties afferent to payment obligations towards SC DISTRIGAZ NORD SA	32,702	MEC
6.	Annulment of the penalties afferent to payment obligations towards SNTGN TRANSGAZ SA Medias	206,112	MEC
7.	Exemption from the payment of the interests and penalties afferent to the budgetary obligations due to Reghin Local Council, overdue on 31.12.2002, calculated and updated until the date of transfer of property right	306,608	Reghin Local Council
	TOTAL POSTPONMENTS AND EXEMPTIONS	10,601,586	
8.	The conversion into shares of payment obligations to FDFEE ELECTRICA TRANSILVANIA SUD SA, representing 98% from the obligations due on 30.11.2002, updated with the payments made until 23.04.2004	67,660 ³	MEC
9.	The conversion into shares of payment obligations to SC DISTRIGAZ Nord SA, representing 98% from the obligations due on 30.11.2002, updated with the payments made	488,960	MEC

¹ Ministry of Public Finance.

² Ministry of Economy and Trade.

³ The financial support granted as conversions into shares of the overdue debts was calculated as difference between the total amount of converted debts and the selling price of shares.

	until 23.04.2004		
	TOTAL CONVERSIONS	556,620	
	TOTAL FACILITIES	11,158,206	

Source: Notification form

3. BENEFICIARY OF THE AID MEASURES –METALURGICA

(6) METALURGICA is a joint-stock company, located in Reghin, Mures County. It was registered in the Registry of Trade under no. J26/202/1991 and CUI 1236434, fiscal attribute R. The beneficiary is located in the Center Development Region that, according to Art. 87(3)(a) of EC Treaty, is considered assisted zone.

(7) METALURGICA was privatized in 2003, by signing the share sale-purchase agreement no. 43/26.09.2003. Following the transfer of the property right to the shareholders on 02.10.2003, the shareholders structure according to the registration request no. 3488/23.04.2004 is as follows:

Table no. 2 Shareholders structure after privatization at Metalurgica

Shareholders	Capital share		Share capital - RON -
	Number of shares	Percentage in share capital (%)	
SC LAZAR SRL Reghin	1,826,595	96.3912	4,566,487.5
PPM	68,001	3.5885	170,002.5
Other shareholders –natural persons	384	0.0203	960.0
Total	1.894.980	100.0000	4,737,450.0

Source : Notification form

(8) At the end of 2002, the company has had 310 employees and a turnover of RON 2,490,247, thus being considered as large enterprise.

(9) The main activity of METALURGICA consist of production of machine parts and accessories for motor vehicles and of motors for motor vehicles (NACE code 3430) and of production and selling casting steel and cast iron products (NACE code 2751 and 2752). These products are codified according to the European Combined Nomenclature at position 73.25.99.90. The main products made by the company are the following:

- auto spare parts and accessories: mechanic and hydraulic cylinders, braking tambours, drags, water pump, axis, clutch sprindle;
- casting steel and cast iron products.

(10) Before the privatization METALURGICA has undertook its activity on two platforms - R1 and R2 - the production activity being structured as follows: Cast iron casthouse R1, Steel Casthouse R1, Mechanic R1 si R2, Auto accessories and Toolhouse R1 and Casthouse R2.

(11) The company has as secondary activity the production of trailers and semi - trailers, projecting various products necessary in own workshop, the thermal treatment operation, physics and chimics analysis in own laboratory.

4. RELEVANT MARKET

(12) Metalurgica operates on the following relevant markets: the market of moulded cast iron and steel products and the market of the auto spare parts and accessories. Until 2003, the products were marketed only on domestic market.

(13) According to the market research annexed to the restructuring plan, the market share of the company on the domestic market is, as follows:

- casting steel and cast iron products: 0.04 %;
- auto spare parts and accessories: 20%.

(14) The main competitors of the company and the market share hold by them are the following:

- a) casting steel and cast iron products: SC Saturn SA Alba-Iulia (13%), SC Neptun SA Câmpina (9%), SC Automobile Dacia SA Pitești (9%), SC Semifabricate SA Brașov (3%) etc.;
- b) For the auto spare parts and accessories: SC Spit Bucovina SA Suceava (25%), SC Tramet SRL Ploiești (10%), SC Pulsor SA Scornicești (10%), SC Asam SA Iasi (8%), SC UAMT SA Oradea (5%) etc.

(15) The beneficiaries of casting steel and cast iron products are companies from vehicles industry, agriculture, mining and railway transport and the clients of accessories and auto spare parts are national producers of small and big motor vehicles, the storehouses and the auto spare parts shops. Thus, the main beneficiaries of products made by Metalurgica are the following:

- For casting steel and cast iron products: SC Automecanica SA Mediaș, SC Automecanica SA Mârșa, SC Roman SA Brașov, SC Subansamble Auto SA Sfântu Gheorghe, SC Compa SA Sibiu, SC U.A.M.T. SA Oradea, SC Rocar SA București, SC Aro SA Câmpulung, SC Automobile Dacia SA Pitești, SC Mecanica SA Codlea, SC Romvag SA Caracal, SC Talc Dolomită SA Hunedoara;
- For the auto spare parts and accessories: SC Automobile Dacia SA Pitești, SC Maviproduct SRL Reghin, SC Farcom SRL Sibiu, SC Obiectiv SRL Bistrița, SC Aprotem SA Iași, SC Topautocom SRL Brașov, SC Agro Dunărea SA Galati, SC TPSUT Rovinari, SC Comat SA Bacău, SC Comat SA Baia Mare etc.

(16) According to the annexed market study, the demand on domestic market for casting steel and cast iron products and for accessories and auto spare parts will increase in the next 5 years. The reason for this is, on one hand the accelerated development pace of

vehicles industry and, on the other hand the modernization of the auto parks, having in view that not all undertakings can purchase new transport means, the reparation and modernization of the existing ones being necessary.

5. THE FINANCIAL SITUATION OF THE COMPANY PRIOR TO PRIVATIZATION

(17) The evolution of the main economic-financial indicators registered by Metalurgica in the period 2001-2003 are the following:

Table no. 3 - The evolution of the main indicators in the period 2001-2003

Indicators	2001	2002	2003
Turnover (RON)	3,379,095.8	2,490,246.7	1,744,719.6
Gross output (RON)	- 1,266,659.9	- 4,951,154.9	- 3,337,838.6
Exploitation output (RON)	-771,971	-836,181	-3,339,383.5
Own capitals (RON)	-2,064,606.4	-7,015,473.6	-10,418,147.2
Total debts (RON)	9,846,882.6	14,662,868	17,583,333.1
Total stocks (RON)	2,540,345.1	2,761,435	2,920,413.2
Recovery period of claimes (days)	160	206	205

Source: Notification form

(18) From the analysis of economic-financial indicators in the above table, it can be noted that the company registered each year substantial losses; in the same time it registered a decrease of the turnover, an significant increase of the debts, a decrease of the own capitals having negative values, and an increase of stocks, all these indicating a decline of the economic-financial situation of the company.

(19) The main causes leading to this difficult situation of the company were the following:

- outsize of production surfaces and keeping in patrimony of some unused assets for which the company pays high costs;
- existence of a difficult production flow, with working phase alternating between the two platforms, it involving supplementary time and travels between working places, inefficient transport and supply;
- existence of old technology involving high consumptions and low productivity;
- lack of liquidities;
- low quality of products;
- bad management and an inadequate marketing policy.

(20) Having in view the difficult situation of the company, AVAS decided to privatize the company by granting facilities to the payment of budgetary obligations.

6. PRIVATIZATION PROCESS

(21) In 2003, AVAS offered to sale, by meaning of negotiation based on final and irrevocable offers, the shares controlling interest hold by Metalurgica, representing of 96,39% from share capital, respectively 1,826,595 shares.

(22) The advertisement related to the selling of the shares owned by APAPS (AVAS) from METALURGICA was published on 14.06.2003 in the central newspaper “Jurnalul national”, as well as in the local press, on the Internet and at the headquarters of the company and APAPS.

(23) As following the first selling advertisement no purchasing offer was registered, APAPS renewed the advertisement on 01.08.2003.

(24) The selling offer was stating that the potential investors could request in writing according to the legislation in force direct access to data and information of technical, economic, financial and legal nature concerning the company. At the same time, in the presentation file was mentioned that the company would benefit from debts payment facilities towards the public creditors in accordance with the legal provisions.

(25) The presentation file of the companies was bought by SC LAZAR SRL Reghin, which submitted afterwards the sole purchasing offer. The submitted offer was accepted by APAPS and the negotiations with this investor begun.

(26) The privatization process was finalized by signing the share sale-purchase Contract no. 43/26.09.2003, concluded between AVAS and SC LAZAR SRL Reghin. The main conditions based on which the contract was concluded are the following:

- the payment by the investor of a price of RON 0.2520 per share, respectively RON 460,301.94 for the share package bought;
- during the investment period, the company should ensure a minimum of 70% of the turnover coming from the company's main activity;
- to observe all rights and obligations resulted from the collective employment contract and to maintain during the investment period the number of employees existing at the time when the contract was signed;
- to make environment investments of EURO 56,000 from own sources on a one year period, in accordance with the environment program attached to the environment notices and those negotiated with the Agency for Environment Protection;
- to make development investments of EURO 360,000 for a period of 3 years;
- to assure a working capital of EURO 100,000 within 180 days from the transfer of the property right over the shares.

7. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(27) The restructuring plan presented to the Competition Council covering the period 2004-2008 was worked out by the company and the buyer and approved by AVAS. This plan includes restructuring measures of organizational, technological, financial nature and environment investments aiming to intervene on the causes which determined the difficult situation of METALURGICA.

(28) The restructuring of METALURGICA aims at the following major directions:

- reorganization of the activity so that the production to be focused on platform R1, in order to make it profitable;
- modernization and re-organization of the technological production flow;
- production of competitive products at the market requests' standards;
- diminishing the production costs (raw materials, materials, utilities);
- gaining new clients through a better promotion of the company's products;
- greater working conditions;
- ensuring financial balance;
- complying with the environment requirements.

(29) The measures included in the restructuring plan are synthetically presented below:

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

- RON -

No	Measures	Total Cost	Financing		
			Own sources	Investor's sources	State aid
1.	Organizational restructuring	5,977,120	5,977,120	-	-
2.	Technological restructuring	2,815,000	1,344,080	1,470,920	-
3.	Measures on environment protection	290,000	60,400	229,600	-
4.	Financial restructuring	13,559,075	2,000,000	400,899	11,158,206
	TOTAL RESTRUCTURING COST	22,641,195	9,381,600	2,101,389	11,158,206

Source: Restructuring program of Metalurgica

7.1. Organizational restructuring

(30) The organizational restructuring contains the following measures:

Table no. 5 – Organizational restructuring measures

-RON -

No.	Measure	Deadline	Cost	Financing		
				Own sources	Buyer's sources	State aid
1.	Concentrating the production activity on a single platform -	Oct. 2006	1,268,000	1,268,000	-	-

	R ₁					
2.	Rearrangement of the industrial platform R ₁	Oct. 2006	1,331,000	1,331,000	-	-
3.	Reorganization of measurement labs	Oct. 2006	200,000	200,000	-	-
4.	Implementation and certification of the ISO 9001 quality management system	Dec. 2007	107,000	107,000	-	-
5.	Dismantling of platform R ₂ and capitalization of the assets and related metallic waste	Nov. 2006	2,398,120	2,398,120	-	-
6.	Modernization of technical-social annexes	Dec. 2006	490,000	490,000	-	-
7.	Rehabilitation of the roofs' waterproofing	Oct. 2006	180,000	180,000	-	-
8.	Development of the marketing and management activity	July 2004	3,000	3,000	-	-
TOTAL			5,977,120	5,977,120	-	-

Source: Restructuring program of Metalurgica

7.2. Technological restructuring

(31) The technological restructuring measures involve a cost of RON 2,815,000 and are financed both by the company and by the Buyer; they are synthetically presented in the table no. 6.

Table no. 6 - Technological restructuring measures

- RON-

No.	Measure	Deadline	Cost	Financing		
				Own sources	Buyer's sources	State aid
1.	Modernization of Steel Casthouse R ₁	June 2008	1,830,000	1,124,980	705,020	-
2.	Modernization of cast iron Casthouse R ₁	June 2006	985,000	219,100	765,900	-
TOTAL			2,815,000	1,344,080	1,470,920	-

Source: Restructuring program of Metalurgica

The modernization of the steel Casthouse supposes: re-designing of technological flow for easily fusible models, creating thus a technological line made of 4 dryers for clusters fitted with transporting chains, 5 posts for inter-phased work fitted with a blending chest for paint and pressing equipment; the replacement of induction ovens with others equipped with melting installation with static generator and rearrangement of bakelite line and of sand station in order to reduce the transport duration and the labour work.

The modernization of cast iron Casthouse R₁ consists in technological upgrading of cast iron melting and cleaning sectors, modernization of the preparation of blending making-up and making up cast iron stations. The most important modernization will be made to the melting cast iron sector that supposes building up of a melting installation with a generator of medium frequency, modification of magnetic polls, complete recovery of cooling installation, complete recovery of the hydraulic tilt installation, acquisition and fitting of a transformer of 1600 kW-20/0.6 kV power, relocation of condensers and recovery of the over metallic melting pot.

7.3. Restructuring measures related to the environment protection

(32) Restructuring measures related to the environment protection aim at environment investments included in the Conformity Program, enclosed to the environment notice, in amount of RON 290,000, of which RON 60,400 are financed by the company and the rest of RON 229,600 by the investor.

7.4. Financial restructuring

(33) The financial restructuring includes the following measures:

Table no. 8 - Financial restructuring measures

- RON-

N o.	Measure	Deadline	Cost	Financing		
				Own sources	Buyer's sources	State aid
1.	Facilities for the payment of overdue budgetary debts	Dec. 2006	11,158,206	-	-	11,158,206
2.	Infusion of working capital	Oct. 2008	2,400,869	2,000,000	400,869	
	Total		13,559,075	2,000,000	400,869	11,158,206

Source: Restructuring program of Metalurgica

8. ASSESSMENT OF THE SUPPORT MEASURES - THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(34) The criteria used to establish if a measure represents or not state aid is presented at art 2 align. (1) of Law no. 143/1999 on the state aid, republished. According to the law, the state aid represents any support measure taken by the state or by the local administration authorities, or from state resources or from those of the local administration, regardless the form, which distort or threaten to distort the competition, by giving an advantage to certain undertakings, to the production of certain services or that affects the trade between Romania and the member States of the European Union, being considered as incompatible with the normal competitive environment.

(35) The financial support granted to METALURGICA consists in renouncing by the State to certain incomes, therefore implies state resources.

(36) The financial support is granted to a certain undertaking, namely METALURGICA, having therefore a selective character.

(37) Taking into account that the facilities are granted within the privatization process, in order to assess if these gives an economic advantage to METALURGICA, it should be analysed the State's behaviour compared with that of a private investor/ seller in the same situation (the private prudent investor's test). The state will be considered as acting as a private prudent investor/ seller if it is proved that it obtains the best price from the sale of its shares (i.e. the price obtained is greater than the debts).

(38) The price paid by buyer for the acquisition of the main share package of RON 460,301.94 is considerably lower than the amount of the facilities granted to METALURGICA, namely RON 11,158,206. A private investor/seller could accept a negative price only if the liquidation costs exceed the costs related to the privatization. AVAS brought to the Competition Council's knowledge the fact that prior to the privatization it did not conduct a comparative analysis of liquidation and privatization costs of METALURGICA.

(39) Taking into consideration the above mentioned facts, as well as the conditions stipulated in the privatisation contract (see para. 26), the Competition Council concludes that in this case the prudent private investor principle cannot be applied to the privatization of METALURGICA. Therefore, granting of these facilities shall have an favourable effect on the firm's economic-financial indicators, mainly on cash-flow, granting the company an advantage on the relevant markets.

(40) There is no doubt that the financial measures granted to METALURGICA could affect the trade with the Member States of the European Union, because its products compete on the market with other similar products manufactured by firms from the Member States of the European Union.

(41) Therefore, the financial support measures granted METALURGICA within privatisation process (see para. 5) are considered as state aid and fall under the incidence of the Law no.143/1999, republished.

9. THE STATE AID'S COMPATIBILITY WITH THE LEGISLATION IN THE FIELD

(42) The state aid's objective is restructuring of METALURGICA in order to make the company viable again at the end of the restructuring period.

(43) The restructuring aid is conditioned by the implementation of a viable and coherent restructuring plan, demonstrating the long term viability of the company. To this effect, the *Regulation on state aid for rescuing and restructuring firms in difficulty*, (hereinafter named Regulation), published in the Official Gazette no. 1215/17.12.2004, issued in application of the *Law no. 143/1999 on State aid*, republished, states that the restructuring

usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient base, generally implying the retreat from actions that are generating losses, the restructuring of the existing activities that may become again competitive and sometimes the diversification towards new and profitable activities. The industrial restructuring must in principle go together with the financial restructuring (capital injections, reduction of the indebtedness ratio, etc.).

(44) The Competition Council assesses the state aid granted to METALURGICA, according to the criteria provisioned in the Regulation, envisaging:

- the firm's sectoral eligibility;
- status of firm in difficulty and group affiliation;
- restructuring plan; restoration of viability on the long term;
- prevention of excessive distortion of competition;
- correct dimensioning of the state aid measure, which shall be limited to the minimum necessary (proportionality of the state aid);
- observing the "first time, last time" principle;
- ensuring the fulfilment of the restructuring plan's objectives and permanently monitoring its implementation.

9.1. Sectoral eligibility

(45) According to art.1 of *Regulation on state aid for rescue and restructuring and closure aid in the steel sector*, applied through Order of the Competition Council's President no. 40/02.03.2005, „state aid for rescue and restructuring firms in difficulty in the steel sector, as defined in Annex no. 1 to Multisectoral Framework on regional state aid for large investment projects, is forbidden”.

(46) As shown in para. (9), the company also produces and commercializes casting steel and cast iron products, code CN 73.25.99.90; these are not steel products in the meaning of Annex 1 to the Multisectoral Regulation on regional state aid for large investment projects.

(47) According to the beneficiary's statement and information submitted by AVAS, METALURGICA has not the capacity of manufacturing „steel products” and does not intend to produce and commercialise such products in the future.

(48) Regarding the presented facts, the Competition Council considered that, the company is eligible for receiving restructuring state aid, from the point of view of the sector in which it acts, as far as it doesn't commercialize/will not commercialize any steel product listed in the Annex 1 to the Multisectoral Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions.

9.2. Firm in difficulty

(49) In order to benefit from State aid according to the Regulation, the company must be in difficulty. The Competition Council considers that “a firm is in difficulty when it is not able to cover its losses either from its own financial resources or from other sources that it may obtain from owners/shareholders or creditors, and which, in the absence of external intervention of the State will almost certainly lead to the company’s demise.

(50) According to Article 2 (2) (b) of the Regulation “a joint stock company is considered as being in difficulty when more than half of its equity, as the accounting records of the company show, and more than a quarter of its equity was lost during the last 12 months”.

(51) In this respect, the Competition Council notes that, according to paragraph (17), the firm registered a RON 8,353,540.8 equity loss during 2001-2003, representing “more than half of its equity” and a RON 3.402.673,6 loss in the last 12 months, representing “more than a quarter of this capital”. Thus, there are fulfilled the criteria foreseen under Art. 2 (2) (b) of the Regulation in order to qualify METALURGICA as a “firm in difficulty”.

9.3. Group affiliation

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

(53) The difficulties of METALURGICA are its own and do not result from an arbitrary allocation of costs within the group; they are due to the high amount of delay penalties related to debts accrued prior to privatization.

(54) METALURGICA does not belong to a group of firms; as a result of the privatization, its new main shareholder is SC LAZAR SRL Reghin, who does not control any other undertakings and is not subject to control by any other firm or group of firms.

(55) According to the balance sheets and to information submitted by AVAS, SC LAZAR SRL Reghin realised in 2002 a profit of RON 582,621.4. Therefore, SC LAZAR SRL Reghin did not dispose of the necessary financial resources to cover the debts of METALURGICA in amount of RON 11.158.206 without state’s intervention. Moreover, through the privatisation contract, the Buyer committed to invest Euro 416,000 and to ensure a working capital of Euro 100,000.

(56) Considering the above mentioned facts, one could conclude that SC LAZAR SRL Reghin used all its financial resources in order to support METALURGICA's restructuring.

9.4. Restoration of long term viability

(57) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan (subject to an assessment by the Competition Council). 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.

(58) Given the difficult situation of METALURGICA at privatization, the restructuring of the company was decided and a restructuring program was drafted for 2004-2008. The summary of the restructuring measures of METALURGICA was presented in chapter 7.

(59) The analysis of the restructuring plan and the assessment of the way in which it leads to the achievement of the long term viability of METALURGICA take into consideration the provisions of article 13 of the Regulation.

(60) METALURGICA's restructuring plan starts from the technical-economic data reflecting the company's activity during the period prior to the privatization. It includes the premises leading to the difficult financial situation of the company, as well as the measures to ensure the firm's long term viability. The Competition Council considers that the measures included in the plan counterbalance the causes of the firm's difficult situation, having as objective the reorganization, modernizing and efficiency of the technological flows, reduction of production costs, increasing the quality of products, making profit, as well as increasing of liquidities.

(61) The organisational restructuring measures have as objective the reduction of the costs with maintenance and functioning of the production units, as well as the increase of working efficiency. By means of joining together the activities on a single platform and re-arranging them appropriately, the simplification of the technological flows, the elimination of auxiliary times, of additional movements among working positions, efficiency of the supplying and transport activity and reducing utilities costs are obtained. Moreover, a detailed control of the costs, in view of reducing specific consumptions and bringing efficiency to the production activity shall be carried out. Reorganising the measurement laboratories and endowing them with the necessary equipments and implementing and certifying a quality management system will have as effect manufacturing competitive products from the quality/price ratio point of view.

Dismantling of certain assets and their capitalisation have as objective the obtaining of resources required by the restructuring program, elimination of additional costs generated by their maintenance, as well as solving certain environmental related issues. For a better promotion of the products and in order to find new market segments, the company aims to improve and develop its marketing department. As a result of the implementation of certain marketing measures, starting 2004, the company succeeded in attracting its first external partners from Germany, Austria and Hungary.

(62) Technological investments shall solve one of the main problems causing the firm's difficult situation, namely the heavy technological flow, poorly mechanised and the high level of usage of the production installation. Technical investments imply mainly the acquisition of modern, low-consuming technologies and materials, and have envisaged the mechanisation of high work volume operations. Therefore, the ensurance of a coherent and efficient technological flow, superior quality products, increased production and work efficiency, reduced specific consumption are envisaged, having as effect the reduction of the losses and profits from the exploiting activity.

(63) The financial restructuring measures aim at solving major problems causing the difficult situation, namely the lack of liquidities and the high level of the indebttness degree. The Competition Council finds that the financial restructuring aims at bringing fluidity to the firm's financial activity. Thus, the injection of work capital ensures the liquidities required by the current activity and the state aid relieves the company from payment of certain overdue obligations. Consequently, METALURGICA will be able to cover its current debts to the state and dispose of the necessary liquidities for realising the envisaged investments.

(64) The restructuring strategy aims at maintaining the company's strong points, namely: tradition in producing the castings and auto spare parts, existence of qualified working force and the capacity to adapt at client's requirements. Moreover, METALURGICA strategy aims to limit and counteract with proper measures the weak points, such as: deficient management, ageing and obsolete assets, generating high consumption of fuel and energy, low productivity, financial blocking, low level of fixed assets usage.

(65) By implementing the measures enclosed in the restructuring program, an improvement of the economic-financial indicators is foreseen, as follows:

Table no.11. The forecasted evolution of the economic- financial indicators

– RON –

Nr. crt	Indicator	2004	2005	2006	2007	2008
1.	Total incomes, out of which:	5,500,000	8,000,000	10,000,000	11,010,000	11,100,000
	Exploiting incomes	5,479,500	7,993,500	9,993,500	11,000,000	11,000,000
	Net turnover	3,500,000	5,500,000	8,500,000	9,500,000	10,000,000
	Financial incomes	20,500	6,500	6,500	10,000	100,000
	Extraordinary incomes	-	-	-	-	-

2.	Total costs, out of which:	7,000,000	8,500,000	9,800,000	10,805,000	10,875,000
	Exploiting costs	6,985,000	8,300,000	9,595,000	10,700,000	10,800,000
	Financial costs	15,000	200,000	205,000	105,000	75,000
	Extraordinary costs	-	-	-	-	-
3.	Gross result	-1,500,000	-500,000	200,000	205,000	225,000
4.	Current assets	3,000,000	2,950,000	3,815,000	3,850,000	3,900,000
5.	Total debts	13,300,000	14,700,000	4,300,000	3,600,000	2,650,000

Source: Restructuring program

By analysing the main forecast economic-financial indicators the increasing trend of the turnover and incomes has resulted, as well as the decrease in total debts. It is forecast the firm registers profit starting with 2006.

(66) According to the data included in the balance sheets afferent to 2004 and 2005, the company registered a positive trend, as follows: in the first two years of privatization, the firm reduced its losses from RON 3,337.8 thousand in 2003 down to RON 1,559.2 thousand in 2004 and to RON 417.2 thousand in 2005, respectively. This progress is due to finalizing certain measures included in the restructuring plan (realising roof waterproofing, management and marketing efficiency, environmental investments), as well as implementing more than 70% of other measures: joining together the activities on platform R1 and its re-arranging, modernising of iron Casthouse and injection of work capital. Moreover, all the other restructuring measures were initiated, this leading to an improvement in efficiency. Taking into consideration the above-mentioned facts, the Competition council concludes that the company has a real potential of becoming viable by the end of the restructuring period.

(67) After implementing the restructuring measures, the company foresees to reach the following target indicators by 2008:

Table no. 12 Targeted economic- financial indicators

Gross profit	RON	225,000
Turnover	RON	10,000,000
Employees number	Pers.	250
Own capital	RON	8,857,568
Recovery duration of the accounts receivable	Days	58
Debts payment duration	Days	59
Indebtness degree	%	18
Financial profitability	%	2
Cash flow	RON	765,000

Source: Restructuring programme of Metalurgica

As regards the above mentioned aspects, the Competition Council considers that the proposed restructuring plan will lead to the restoring of the viability of METALURGICA on long term. This viability is mainly emerging from the internal measures contained by

the restructuring plan and it is not based on external factors as price and demand fluctuation. The restructuring plan which will be implemented by the company will assure a significant change that will allow it, after the finalization of the restructuring process, to cover entirely the costs and to compete on its own on the free market.

9.4. Prevention of any excessive distortion of the competition (compensatory measures)

(68) According to the Regulation in order to minimize as much as possible the negative effects of granting State aid over competition on the relevant markets, compensatory measures are needed. These measures will be proportional with the distorting effects caused by the aid and, especially, with the size and relative importance of the company on the relevant markets. The decrease of the company's presence on the market is established on the basis of a market study enclosed to the notification form as well as of any other relevant information and will be part of the restructuring plan.

(69) According with the information received, during the implantation of the restructuring plan the companies gives up to unviable production capacities from 11,000 tones to 2,450 tones for casting steel and cast iron products and from 30,000 tones to 16,000 tones for auto spare parts and accessories. In conformity with article 14(3) of the Regulation, the Competition Council notes that these reductions of production capacities generating losses do not represent compensatory measures. They are absolutely necessary to restore the company viability.

(70) Taking into account that METALURGICA is a large company, in order to avoid the distortion of competition AVAS imposed as compensatory measures irreversible reductions of viable production capacities by 950 tones for casting steel and cast iron products and by 6,000 tones for auto spare parts and accessories. These irreversible reductions are part of the restructuring plan. Thus 47 equipments consisting in: lathes, drills, shooting machines, presses, millers, saws, sanding installations, etc., will be dismantled and sold.

(71) Having regard the above mentioned aspects, the Competition Council considers that the State aid will be used only for restoring the company's viability without allowing to the beneficiary, during the implementation of the restructuring plan, to extend its production capacity.

9.5. Aid limited to minimum necessary (the aid proportionality)

(72) In conformity with article 15 of the Regulation, the amount and intensity of State aid will be limited to the minimum necessary in order to allow the restructuring in terms of existing financial resources of the company and shareholders. The beneficiary of the State aid must bring a significant contribution to the restructuring plan through its own

resources, inclusively from the selling of non essential assets for the company survival or from external financing in market conditions.

(73) The total restructuring cost of METALURGICA is of RON 22,641,195 and it consists in:

- organizational restructuring cost	RON 5,977,120,
- technological restructuring cost	RON 2,815,000,
- environment restructuring cost	RON 290,000,
- financial restructuring cost	RON 13,559,075.

(74) The restructuring cost of METALURGICA is sustained from the following sources:

- own sources of the company	RON 9,381,600,
- investor's sources	RON 2,101,389,
- State aid	RON 11,158,206.

(75) The own contribution of the State aid beneficiary to covering the restructuring cost in amount of RON 11,482,989 represent 52.72 % and is assured by:

- main shareholder's sources:	RON 2,101,389;
- revenues from assets capitalization ⁴ :	RON 4,281,600;
- revenues from scrap iron selling:	RON 3,100,000;
- banking credits contracted under market conditions ⁵ :	RON 2,000,000.

(76) In case of METALURGICA the State aid intensity, calculated as ratio between the value of the State aid and the total restructuring cost, is of 47.28%.

(77) The Competition Council considers that the beneficiary contribution for the implementation of the restructuring plan of 52.72% as adequate. This shows trust in the practical value of the restructuring, as well as the fact that the value and intensity of State aid are strictly limited to allow restructuring according to the existing financial resources of the company and of the majority shareholders. As a consequence, the ability of the company to use any surplus liquidity for aggressive activities, with the possible distortion of the market, is prevented.

9.6. Observance of „first time last time” principle

(78) According to the information sent by AVAS, METALURGICA did not receive any other restructuring aid. This means that the article 24 of the Regulation which stipulates that the restructuring aid must be granted only once was observed.

⁴ A great part of the assets has already been capitalized and the rest has been evaluated by an independent expert.

⁵ The company concluded credit contracts with Banca Comerciala Romana and Carpatica Bank, Reghin branches.

9.7. Annual monitoring and reporting

- (79) In accordance with article 18 of the Regulation, the Competition Council permanently monitors the implementation of the restructuring plan to assure the fulfillment of the established objectives.
- (80) The Competition Council shall monitor the implementation of the restructuring plan until the end of the period to assure that any increase of the production capacities, major deviations from the achievement of restructuring measures and that the State aid shall not lead to supplementary liquidities that could be used for other activities than those included in the restructuring program.

10. CONCLUSIONS

- (81) Taking into account the above mentioned aspects, the Competition Council ascertains that the individual State aid intended to be granted to METALURGICA 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 measures granted to METALURGICA within privatization represent State aid according to article 2(1) of the *Law no. 143/1999, republished*.

Art. 2. Based on article 21(2)(c) corroborated with article 23(1)(e) of *Law no. 143/1999, republished*, the restructuring State aid granted to METALURGICA at its privatization is authorized, under the condition of fulfilling articles 3, 4 and 5 of the present Decision.

Art. 3. The company must implement in whole the assumed restructuring plan. The modification of the restructuring plan shall be done only observing the provisions of art. 19 of Regulation on the State aid for rescue and restructuring firms in difficulty, applied by Order of Competition Council's President no. 501/23.11.2004, published in Official Gazette no.1215/17.12.2004.

Art. 4. The company shall reduce its production capacities by 2009, in accordance with the assumed Restructuring Program.

Art. 5. The company shall not trade steel products enclosed in Annex 1 to the Multisectoral Framework on regional State aid for large investment projects, with further modifications and completions, published in the Official Gazette, Part I, no. 165/17/03/2003.

Art. 6. If the conditions imposed by the present Decision are not fulfilled, the provisions of article 22 of the Law no. 143/1999 on State aid, republished, shall be applied.

Art. 7. The value of the State aid is of RON 11,158,206.

Art. 8. The present Decision becomes applicable as of its date of communication.

Art. 9. According to the provisions of article 32 of the *Law no.143/1999*, republished, the Authority for State Assets Recovery shall send to the Competition Council information on the State aid granted for its inventory and monitoring. In addition, the Authority for State Assets Recovery shall send to the Competition Council annual report on the implementation of the restructuring plan. The first report shall be sent within 6 months since the issuance of the decision. The following reports should prove that the company observed the compensatory measures related to the reduction of the production capacities imposed by the present decision.

Art. 10. According to the provisions of article 46 of the *Law no.143/1999 on State aid*, republished, the present Decision may be appealed by the interested persons at the Bucharest Court of Appeal, administrative contentious section, within 30 days from the communication.

Art. 11. The present Decision shall be communicated by the General Secretariat of the Competition Council to:

- The Authority for State Assets Recovery, 50, Cpt. Av. Alexandru Serbanescu street, sector 1, Bucharest;
- The Ministry of Public Finance, 17, Apolodor street, sector 5, Bucharest;
- The Ministry of Economy and Trade, 152, Calea Victoriei, sector 1, Bucharest;
- Reghin Local Council, 41, P-ta Petru Maior street, Reghin, Mures county;
- SC METALURGICA SA REGHIN, 17-19, Ierbus street, Reghin, Mures county, postal code 700180.

PRESIDENT

MIHAI BERINDE