

## **DECISION of the Competition Council**

**no. 144 from 22.06.2006  
regarding the State aid to be granted to  
S.C. UZINA MECANICA BABENI S.A.**

### **The Competition Council,**

Taking into consideration the provisions of the European Agreement establishing an association between Romania and the European Communities and their Member States, ratified by Law no.20/1993, published in the Official Gazette, Part I , no. 73 of 12.04.1993;

Taking into consideration the provisions of Competition Law no. 21/1996, republished in Romania's Official Gazette no 742, I Part of 16.08.2005;

Taking into consideration the provision of Law no 143/1999 on State aid, republished in the Official Gazette no. 744/16.08.2005, Part I;

Taking into consideration the provisions of the Regulation regarding the State aid for the rescuing and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1215 of 17.12.2004;

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

Taking into consideration the provisions of the Regulation on state aid for small and medium size enterprises, published in the Official Gazette, Partea I no. 340 of 19.04.2004, with subsequent modifications and amendments;

Taking into consideration Decree no. 57/2004 on the appointment of the Competition Council.

### **Based on the following,**

## **1. PROCEDURE**

- (1) By the letter no. 160738/628/03.04.2006, registered at the Competition Council no. RS-AS 63/03.04.2006, the Ministry of Economy and Commerce (hereinafter named

MEC) notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the individual state aid for the restructuring of SC UZINA MECANICA Babeni SA (hereinafter named UZINA MECANICA) within the privatization context.

- (2) The Competition Council requested to MEC further information by letters no. DAAS/619/14.04.2006, DAAS/647/26.04.2006, DAAS/675/03.05.2006 and DAAS/701/09.05.2006, regarding the restructuring measures, its own financing sources and their certainty, compensatory measures, etc.
- (3) The notification became effective when all information was accurate and complete, respectively on 25.05.2006.

## **II. DESCRIPTION OF FACTS**

### **1. Description of the state aid measures to be granted to UZINA MECANICA**

#### ***1.1. Legal basis***

- (4) MEC notified the financial measures granted to UZINA MECANICA on the basis of the following legal acts:
  - Law no.137/2002 on measures to accelerate privatization, with subsequent amendments and completion;
  - EGO no. 88/1997 on the privatisation of commercial companies, with the subsequent amendments and completions;
  - GD no. 577/2002, Art. 281, of the on the approval of the Methodological Norms for the enforcement of the EGO no. 88/1997 on the privatisation of commercial companies, with the subsequent amendments and completions;
  - GD no. 101/2004 regarding the approval of the extension of the payment facilities provided at art. 18 from the Law no. 137/2002 on the acceleration of the privatization, with the subsequent amendments and completions, for certain companies from the portfolio of the Ministry of Economy and Commerce – The Office of State Portfolio and Privatization in Industry (OPSPI);
  - EGO no. 26/2005 regarding the abrogation of the legal provisions on granting facilities for the payment of overdue budgetary obligations, approved by Law no. 244/2005.

#### ***1.2. Financial support measures***

- (5) The financial support measures notified by MEC are granted within the privatization context to UZINA MECANICA, and consist of facilities for the payment of overdue obligations to the consolidated budget of the State.
- (6) The financial support amounting of RON 1,411,262 consist of exemptions - in amount of RON 919,336 – and rescheduling – in amount of RON 491,926 - to the payment of outstanding budgetary obligations, as it follows:

**a) Exemptions**

- Exemption from the payment of 85% of overdue budgetary obligations at 31.12.2002, in accordance with art. 18 par. (1) letter a) from Law no. 137/2002, with subsequent amendments and completion and on the basis of the G.D. no. 101/2004: RON 474,680;
- Exemption from the payment of interests and delay penalties overdue budgetary obligations at 31.12.2002: in accordance with art. 18 par. (1) letter c) from Law no. 137/2002 with subsequent amendments and completion and on the basis of the G.D. no. 101/2004: RON 444,656;

**b) Rescheduling**

- Payment rescheduling, in accordance with art. 18 par. (1) letter a) from Law no. 137/2002, over a period of 5 years, with a grace period of 6 months, of 15% of the overdue budgetary obligations considered on 31.12.2002: RON 83,771;
- Payment rescheduling, in accordance with art. 18 par. (4) from Law no. 137/2002, over a period of 5 years, with a grace period of 6 months, of the overdue budgetary obligations considered on 31.12.2002: RON 408,155.

**2. Beneficiary**

- (7) UZINA MECANICA is a joint stock company, with headquarters in Babeni, Valcea county, with the registration number at the Trade Register J38/481/2001 and CUI R 14363324.
- (8) UZINA MECANICA has been active since 1981, within the Industrial Plant for Special Equipments Bucharest and then it was a branch of RATMIL Bucharest and of the National Company ROMARM Bucuresti, being set up as undertaking on the basis of GD no. 952/2001.
- (9) UZINA MECANICA was privatized in 2004, by signing the shares sale-purchase contract no. 03/07.04.2004, concluded between the MEC – The Office of the State Portfolio and Privatization in Industry (OPSPI) and Babeni Employees' Association. The Employees' Association became the only shareholder of the company, buying 1,891,652 shares, with face value of RON 0.25 / share.
- (10) The main activity of UZINA MECANICA consists in:
- civil production: spare parts and accessories for extractive industry, furniture, wood packs, metallic constructions, processing and impregnation of wood etc.
  - military production: dismemberment and cassation of ammunition and loading and assembling of artillery ammunition.
- (11) UZINA MECANICA was centred upon military production; after 1991, the number of orders from the National Defence Ministry was considerably reduced and, consequently, the company had to reorient towards civil production. The capacity

initially projected for the military production was partially converted on flows of civil production. Currently, the company has both civil and military activities, the military production representing 10% from total activities.

- (12) Currently, the civil production of UZINA MECANICA is centred on the following products: spare parts for the extractive industry; crates; timber; furniture; metallic manufactures –containers.
- (13) In 2004, UZINA MECANICA had an average number of 197 employees and a turnover of RON 2,616,506.2 ( 645,516 Euro) being an autonomous enterprise; it results that UZINA MECANICA fulfils all conditions in order to be considered a medium–size enterprise, in the meaning of Regulation regarding state aid for small and medium size enterprises.

### 3. Financial situation of UZINA MECANICA before privatization

- (14) The economic-financial results of UZINA MECANICA, on the basis of the data contained in the balance sheets corresponding to the last 2 years prior to privatization, are the following:

*Table no. 1 - Economic-financial results of the company in 2002 - 2003*

Indicator	2002	2003
Turnover (RON)	2,518,789.1	3,070,345.8
Result of the exercise (RON)	- 1,286,501.0	- 1,246,730.0
Own capitals (RON)	2,822,215.0	1,630,212.2
Total debts (RON)	2,269,058.9	3,800,606.6
Total stocks (RON)	277,986.9	464,049.6
Recovery period of claims (days)	107.4	149.47
Liquidity ratio (%)	54.1	48.79

*Source: UZINA MECANICA's restructuring program*

As it can be observed from the table, every year of the analysed period the company has significant losses. The company has also a drastic decrease of its capitals and an increase of the amount of debts and stocks, all these indicating a decline of the economic-financial situation of the company.

- (15) The main causes leading to the difficult situation of the company are the following:
- the company was projected and set up to produce military technique but the change of the geopolitical context led to the reduction of special production orders from the State; the effort to adapt, with the production capacities specific to military production to new production profiles implied supplementary costs and led to the fact that debts to the State budget were not paid in due time and delay penalties were accumulated;
  - reduced degree of usage of production capacities and high exploitation costs;
  - compulsoriness to maintain functioning the military production capacities, which generated high costs;

- bad management and lack of an adequate marketing policy;
- deficiencies of the organisational structure and of the IT system;
- precarious technological endowment especially regarding capacities for wood products and the existence of obsolete equipments;
- lack of liquidities;
- keeping in patrimony of some unused assets, others than the military ones, for which the company support supplementary costs.

(16) Taking into consideration this difficult situation, the MEC decided to privatize the company simultaneously with granting some facilities for the payment of overdue budgetary obligations.

#### 4. Relevant market

(17) UZINA MECANICA is active (in the civil sector) on the markets of production and trading of spare parts for the extractive industry, metallic manufactures, furniture and other wood-made products. The geographical area is represented by the territory of Romania. Export deliveries were occasional and with an insignificant total amount (8 containers in 2004), with low chances to export in the futures.

(18) According to the market study annexed to the restructuring plan of UZINA MECANICA, drafted by the consultancy SC ROM Benchmarking & Consulting SRL, the market shares held by the company are as follows:

*Table no. 2 – Market shares of UZINA MECANICA*

Product	Market share on the domestic market (%)
Spare parts for extractive industry	0,27
wooden-made products (apart from furniture)	0,08
Furniture	0,15
Metallic manufacture	0,04

*Source: Market Study*

The data presented show that the company's products have very low weight on the relevant markets, the company's production being capitalised mainly at local level.

(19) The main competitors for UZINA MECANICA are:

- on the market of spare parts for the extractive industry: PCC Sterom SA Campina, UPET Targoviste;
- on the market of wood and wood-made products processing: SC Cozia Forest SA; SC Deco Design SRL, SC Haty SRL;
- on the market of furniture pieces: SC Libertatea SA, Quasar Forest International SRL., Novae Sarmis, Sorinex LTD; Mar Leasing SRL, SC Elvila SA
- on the market of metallic manufacture: SC Uzina Mecanica Valcea, SC Imsat SA.

(20) The main beneficiaries UZINA MECANICA's products are:

- for spare parts for the extractive industry: SN Petrom BA Floresti; SN Petrom ATA Leordeni;
- for furniture and wood processed products: SC UM Orastie SA, SC UM SADU SA, SC Tohan Zarnesti, SC Rompiro Orastie, SC UM Rm.Valcea SA, SC UM Cugir SA, SC Romstilex SA Babeni, SC Sinorom Ramnicu-Valcea SA, SC Titano Grup SRL Ramnicu Valcea;
- for metallic manufacture: SC Uzina Mecanica Valcea, SC Hervil SA Valcea, SC Valmar SA Valcea, S.C. Wallace Tiernan Germania.

(21) From the market study annexed to the restructuring plan it results that for the next years, the markets where UZINA MECANICA is active are increasing, these trends being foreseen on the basis of demands of products specific to the company in sectors such as constructions, extractive industry, road transportations of merchandise, rural tourism and others.

## **5. Privatization process**

(22) In 2003, the MEC -OPSPI started the privatization process of UZINA MECANICA, by selling through negotiation based on final offers, improved and irrevocable, the shares held by the state in the company.

(23) The privatization announcement was published on 11.09.2003, in the following newspapers: Ziarul Financiar, Adevarul, Tribuna de Sibiu, Curierul de Valcea and Gazeta de Sud.

(24) The presentation file was purchased by Mecanica Babeni Employees' Association, SC Consal Trade SRL and SC Remat Bucuresti Sud SA. Following the analysis of the submitted offers, the share package was bought by Mecanica Babeni Employees' Association.

(25) The privatization process was finalized by signing the share sale-purchase contract no. 03/07.04.2004, which was concluded with the following main and special obligations assumed by the Buyer:

- The Buyer commits that, until the full achievement of the investment program:
  - will not decide to modify the core business of the company, without the prior written consent of the Seller or to change the juridical status of the company;
  - will not decide for the voluntary wind up, spin-off, merger, reorganization or bankruptcy of the company;
  - will not sell or lease the assets of the company, so that the company is not in a position to carry out its statutory business;
- The Buyer commits to overtake and respect all rights and obligations regarding the collective labour contract, the individual contracts and other legal provisions concerning labour conditions and remuneration and not to implement restructuring programs leading to collective layoffs;

- The Buyer commits to observe the legal provisions in force regarding the preparation of the national economy and of the territory for defence, as well as those in the field of preservation the defence production capacities;
- The Buyer commits to complete the company's status with the following tasks of the Board of Directors:
  - achieving with priority the orders required for the national defence, during peace and war periods;
  - keeping the secret regarding the production, assimilation, delivery of special products, technical documentation and technology of military products, according to the provisions of the Romanian law;
  - achieving the tasks of the company according to the Mobilization Plan of the national economy;
  - preserving the manufacturing profile for special production capacities;
  - ensuring the functioning and maintenance status of the equipments related to special capacities;
- the Buyer commits to achieve investments for development and environment protection amounting to Euro 600,175 and a working capital injection of Euro 100,000.

## **6. Description of the restructuring program**

- (26) The company elaborated a restructuring program, composed of measures regarding organization, management, environment, technical and financial restructuring.
- (27) UZINA MECANICA's restructuring is focused on the following main directions:
- increasing the efficiency of the company's activity through the redesign of the management and IT systems;
  - increasing the quality of products and superior capitalization of the existing resources simultaneously with cost reductions;
  - intensifying the marketing activity to better fulfil demand on the market and identifying new clients;
  - endowing with new technologies and modernizing existing technologies in accordance with the investment program assumed;
  - relieving from historical budgetary obligations through facilities received from the State;
  - greater working conditions;
  - controlling environment pollution through the environment investments assumed.
- (28) The restructuring plan of UZINA MECANICA, elaborated together with the Buyer and the MEC, covers the period 2004-2010. Synthetically, the measures included in the restructuring plan are as follows:

**Table no. 3 – Summary of the measures enclosed in the restructuring plan**

No.	Measures	RON Evaluation implementation costs			
		own sources	Investor's sources	State aid	TOTAL COST
1.	Organisational and managerial measures	115,200	-	-	115,200
2.	Technical measures	-	1,800,630	-	1,800,630
3.	Environment protection measures	-	630,000	-	630,000
4.	Financial restructuring measures	-	360,000	1,411,262	1,771,262
	<b>TOTAL</b>	<b>115,200</b>	<b>2,790,630</b>	<b>1,411,262</b>	<b>4,317,092</b>

Source: Restructuring program of UZINA MECANICA

### **6.1. Organisational and managerial restructuring**

- (29) The organisational and managerial restructuring of UZINA MECANICA comprises the following measures:

**Table no. 4 – Measures regarding organisational and managerial restructuring**

- RON-					
Measure	Deadline	Implementation effort	Own sources	Investor's sources	State aid
Redesign of the organisational structure from the point of view of management units	31.07.2007	3,000	3,000	-	-
Redesign of the decision-making system by establishing and setting the hierarchy for the decisional authority and the decision-making competencies	31.07.2006	400	400	-	-
Elaborating a control system for assessing management performance and developing management techniques	31.07.2007	1,200	1,200	-	-
Redesigning and integrating the information system through the consolidation of the information database at the level of each organizational structure	31.07.2008	65, 600	65, 600	-	-
Promoting the company's products with consultancy from certain specialists in the field	31.07.2009	15,000	15,000	-	-
Elaborating and implementing the program for improving work conditions	31.07.2009	30,000	30,000	-	-
<b>TOTAL</b>		<b>115,200</b>	<b>115,200</b>	<b>-</b>	<b>-</b>

Source: Restructuring program of UZINA MECANICA



## 6.2. Technical restructuring

(30) The future technological investments, amounting to RON 1,800,630 refer to:

*Table no. 5 - Measures on technical restructuring*

Measure	Deadline	Implementation effort	- RON-		
			Own sources	Investor's sources	State aid
Acquisition of new installations and equipments in order to obtain high value added products	31.12. 2009	1.368.630	-	1.368.630	-
Modernization of technologies for wood drying	31.12.2006	432.000	-	432.000	-
<b>TOTAL</b>		<b>1.800.630</b>	<b>-</b>	<b>1.800.630</b>	<b>-</b>

*Source: Restructuring program of UZINA MECANICA*

Through the technical and technological restructuring, the company aims to improve the parameters of equipments as well as to modernize technologies by purchasing new equipments or retechnologising of the existing ones. According to the restructuring plan, the company will purchase a pneumatic rotative press ST 2500, installations to lay on adhesives 9001, saw with horizontal band, electro- pump Caprari type, machine for processing edges, drier platform exhaustor line and charging boiler functioning on sawdust, furniture finishing line, press for joining wood boards, wood processing equipments, line for doors and windows of slaty wood, with laminated glass.

## 6.3 Restructuring measures for environmental protection

(31) The restructuring measures for environmental protection refer to:

*Table no. 6 - Restructuring measures for environmental protection*

Measure	Deadline	Implementation effort	- RON-		
			Own sources	Investor's sources	State aid
Rehabilitation of the neutralization station corresponding to the galvanizing workshop	12.07.2008	90,000	-	90,000	-
Rehabilitation of the purification station	12.07.2006	18,000	-	18,000	-
Release of the site of the thermal plant from the area from the remained reinforced steel structures, debris and coverage with vegetable stratum	12.07.2009	471,600	-	471,600	-
Controlled and selective storage of waste	20.12.2005	3,600	-	3,600	-
Replacement of reservoirs	12.07.2007	36,000	-	36,000	-
Monitoring air emissions	20.12.2005	10,800	-	10,800	-
<b>TOTAL</b>		<b>630,000</b>	<b>-</b>	<b>630,000</b>	<b>-</b>

Source: Restructuring program of UZINA MECANICA

#### 6.4. Financial restructuring

- (32) The financial restructuring of UZINA MECANICA comprises the following measures:

Table no. 7 - Measures of financial restructuring

- RON -					
Measure	Deadline	Implementation effort	Own sources	Investor's sources	State aid
Exemptions and rescheduling for the payment of overdue budgetary obligations to the State's budget	31.12 2010	1,411,262	-	-	1,411,262
Infusion of working capital	31.12. 2004	360,000	-	360,000	
<b>TOTAL</b>		<b>1,771,262</b>	<b>-</b>	<b>360,000</b>	<b>1,411,262</b>

Source: Restructuring program of UZINA MECANICA

### III. ASSESMENT OF THE FNANCIAL SUPPORT MEASURES for UZINA MECANICA

#### 1. The state aid character of the financial support measures which are granted to UZINA MECANICA

- (33) The criteria which allow establishing if a measure constitutes State aid, are foreseen in art. 2 (1) of Law no.143/1999 on State aid, republished. Thus, any support measure granted by the State, from State resources or resources of the local administration, no matter the form, that distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the provision of certain services, or that affect trade between Romania and the Member States represents State aid and is considered incompatible with a normal competitive environment.
- (34) The financial support intended to be grant to UZINA MECANICA and notified by MEC consist in renouncing by the State to certain incomes, therefore implies state resources.
- (35) The financial support measures are granted to a certain undertaking, namely UZINA MECANICA, thus having a selective character.
- (36) Taking into consideration the fact that the facilities are granted in a privatization context, in order to assess whether an economic advantage is granted to UZINA MECANICA, the behaviour of the State should be compared to that of a prudent private investor/seller acting in similar conditions (the private investor test). It can be considered that the State is acting like a prudent private investor/seller in the

privatization context if it can be proved that it obtains the best price for the selling of its shares, respectively the price obtained is higher than the amount of the facilities to be granted. Does the State act like a prudent private investor in case of UZINA MECANICA?

(37) As shown at Chapter II (5) of the present decision, the privatization of UZINA MECANICA took place by negotiation based on final bids, improved and irrevocable. The procedure was conditioned by the implementation of certain investments for development and compliance with the environmental standards, by depositing of certain working capital, by the assuming of all obligations in the employment contract, by the realization of those orders required by national defence, during peace or war periods, by the accomplishment of commitments that the company undertook according to The mobilisation plan of the national economy, by the maintaining of the production profile for the special production capacities, etc.

(38) [...] <sup>1</sup>

(39) A private investor would have accepted a negative price only if the costs of liquidation have exceeded the privatization costs. MEC did not carry out a comparative analysis between the privatisation costs and the costs of liquidation. Consequently, the Competition Council considers that the principle of prudent private investor does not apply in case of UZINA MECANICA's privatization. Thus, by granting facilities to the company, an advantage is created on the relevant market <sup>2</sup>.

(40) Granting the financial support SC UZINA MECANICA creates the premises for the potential distortion of competition on the relevant markets, since the company is allowed to maintain its position on these markets. In addition, there is no doubt that the financial support granted to the company could affect the trade with the Member States, since its products could compete, with similar products provided by companies from the European Union.

(41) Therefore, the financial support measures to be granted to UZINA MECANICA in the form of exemptions and payment rescheduling of overdue obligations towards the state budget are considered State aid and fall under the provisions of State aid Law no. 143/1999, republished.

## **2. The State aid compatibility with the legislation in the field**

(42) The State aid objective is the restructuring of UZINA MECANICA in view of company's return to viability at the end of the restructuring period.

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<sup>1</sup> Confidential data

<sup>2</sup> In any event, the fact that there are conditions attached to the privatization contract (see paragraph 25) is normally sufficient to dislodge the application of the private investor principle.

- (43) The restructuring State aid is conditioned by the accomplishment of a feasible, coherent restructuring plan to prove the company's long term viability. For this, the Regulation on state aid for rescuing and restructuring firms in difficulty, published in the Official Gazette no. 1215/17.12.2004, issued in application of Law no. 143/1999 on state aid, republished (hereinafter called Regulation), provides that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on a more efficient basis, usually meaning the redrawn from those activities generating losses, 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, reduction of the indebtedness degree, etc.).
- (44) The Competition Council assesses the State aid granted to UZINA MECANICA, according to the criteria foreseen in the Regulation. In order to consider it compatible with the normal competitive environment, the State aid must fulfil all the following criteria:
- Firm in difficulty status; affiliation to a group of firms;
  - the restructuring plan; restoration of UZINA MECANICA's long-term viability;
  - Preventing any excessive distortion to 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.

### **3. Firm in difficulty**

- (45) In order to benefit of 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 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.
- (46) Based on those presented in table no.1 it is shown that between 2002-2003, the company has been confronted with financial difficulties. The company fulfils the characteristic signs of a "firm in difficulty" such as: it registers significant losses, drastic decrease of its capitals, increase of total debts, increase of the total stocks, decrease of liquidities and the decrease of net assets. In view of the above, the Competition Council finds that the criteria foreseen under article 2 of the Regulation are met in order in order to qualify UZINA MECANICA as a "firm in difficulty".

### **6. Affiliation to a group of firms**

- (47) According to the provisions of art.2 (5) of the Regulation, a company belonging to a group or taken over by a group is not normally eligible to receive State aid for rescue and restructuring, except for the case when it can be proven that the financial difficulties belong to the company itself and are not the outcome of an arbitrary allocation of costs within the group and that the difficulties are much too serious to be handled by the group itself.
- (48) The difficulties of UZINA MECANICA are its own and do not result from an arbitrary allocation of costs within the group; the fiscal facilities intended to be granted to this company refer old debts and delay penalties related to these debts, consequence of the economic results obtained prior to privatization.
- (49) Following the company's privatisation process, the new owner of UZINA MECANICA is the Employees' Association, which does not obtain turnover and does not hold shares to a different company. Thus, after privatization, UZINA MECANICA does not belong to a group, being eligible to receive restructuring state aid.

#### **7. The restructuring plan. Restoring the long term viability of UZINA MECANICA**

- (50) According to article 13 from the Regulation, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on this restructuring plan. The restructuring plan, whose duration must be as short as possible, has to comprise the abandonment of the loss making activities and to 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.
- (51) In 2004, UZINA MECANICA was privatized. In order to overcome the difficult situation, the company elaborated a restructuring plan for the period 2004 -2010, together with the Buyer and MEC. The synthesis of the measures comprised in the restructuring plan of UZINA MECANICA was presented in Subchapter II.6.
- (52) The assessment of the restructuring plan and of the way in which it leads to the restoration of UZINA MECANICA's long term viability has in view the provisions of article 13 of the Regulation.
- (53) The restructuring plan of UZINA MECANICA starts from the technical and economic data that reflects the company's activities in the period prior to privatization. This includes the causes which led to the company's difficult financial situation and the measures which will restore the long term viability. The Competition Council notes that the measures included in the restructuring plan intend

to counteract the causes which led to the company being in difficulty and aim at: reorganization of the activities and redesigning the management system, reduction of the exploitation expenses, efficiency of the technological flows, increase of products quality, profit generating and also at the increase of cash flow.

- (54) As shown before, a problem that the company encountered was the necessity to reorient the production, by limiting the activities for producing the military technique and the re-conversion of the production capacities specific for the civil production sector. UZINA MECANICA focused all efforts for adapting the existing capacities for the manufacturing of civil products and attracting clients.
- (55) The financial restructuring measures come to counteract the major causes for the company being in difficulty such as lack of liquidities and the high indebtedness. The Competition Council concludes that financial restructuring aims at bringing fluidity to the company's financial activity. Thus, the working capital contribution allows the continuation of the current activity and the state aid relieves the company from the payment of historical debts. In addition, for obtaining resources needed for restructuring, the company makes use of assets capitalization. This way, UZINA MECANICA will be able to pay its current debts towards the state and to redistribute its liquidities for making the foreseen necessary investments.
- (56) Through the organizational and managerial restructuring measures it is aimed to reduce the production costs and the increase of labour productivity. By structuring the responsibility centres it is aimed to better centralize the activities for supply and distribution of products; the implementation of an integrated IT system will determine the metering of each section and will guarantee a rigorously cost control in view of reducing the specific consumption. By redesigning the management system it is aimed to increase the quality of decision and the management process and implicitly to increase efficiency of the company's activity. In addition, through a product promotion policy, supported by participation to fairs, exhibitions, mass media advertising, personal contacts, it is intended to increase the company's contract portopholio. Also, it is pursued the achievement of the program for the improvement of labour conditions, having as an effect the increase of labour productivity.
- (57) Another main cause – the low technical endowment and the high usage degree of equipments – is eliminated through the technical investments intended to be made. These aim at the improvement of the operating features of products, the increase of production efficiency and labour productivity, the reduction of power consumption, all of these contributing to the reduction of losses, the obtaining of a profit from the exploitation activity and products manufactured at the highest quality standards. Furthermore, the acquisition of certain installations will allow the company to manufacture modern, new products, in accordance with the market's demands.
- (58) The strategy of UZINA MECANICA aims at preserving the strong points, such as: fair prices for products, integrated production capacities for most activities, which allows the manufacturing of a large range of products, qualified workforce,

experience and know-how. At the same time, the company's strategy aims at limiting and counteracting, with appropriate measures, the weak points such as: lack of an adequate marketing policy, IT and decisional system not sufficiently developed, obsolete and outdated equipments, low degree of utilizing the production capacities, high indebtedness degree.

- (59) Through the restructuring plan, the company dimensions its financing resources for restructuring, based on its own resources on the one hand, and on the other hand based on the Buyer's resources that ensures technical, environmental investments and working capital required to carry on the activity.
- (60) By the enforcement of the measures stated in the restructuring plan, for the period 2004-2010, it is foreseen the improvement of the financial - economic indicators, as follows:

**Table no.8 - Evolution forecast of the financial - economic indicators, after applying the restructuring measures**

		-RON-						
Indicators		2004	2005	2006	2007	2008	2009	2010
A	Total revenues, of which:	3,290,000	6,490,000	9,727,600	9,858,600	9,858,600	9,971,100	9,971,000
	- Exploitation	3,285,200	6,490,000	9,727,600	9,858,600	9,858,600	9,971,100	9,971,000
	- financial	4,800	-	-	-	-	-	-
B	Total expenditures, of which:	4,850,000	8,020,000	9,238,200	9,277,900	9,197,000	9,231,900	9,175,600
	- exploitation	4,848,500	8,020,000	8,925,200	9,052,200	9,052,200	9,159,400	9,159,400
	- financial	1,500	-	312,900	225,700	144,700	72,500	16,200
C	Gross result	-1,560,000	-1,530,000	489,400	580,700	661,600	739,200	795,500

Source: Restructuring Plan of UZINA MECANICA

- (61) 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. 9 - Target financial- economic indicators**

1. Gross profit	Thousand RON	795.5
2. Turnover	Thousand RON	9,971
3. Number of employees	pers.	197
4. Own capital	Thousand RON	5,397.3
5. Receivables collection period	days	43.8
6. Debt payment period	days	51.1
7. Economic profitability	%	15
8. Financial profitability	%	12
9. Cash flow	Thousand RON	845.7

Source: UZINA MECANICA

- (62) Taking into account the presented data, the Competition Council considers that the proposed restructuring plan will lead to restoring the long term viability of UZINA MECANICA, viability that mainly results from the internal measures included in the restructuring plan and it is not based on external factors such as price and demand variation.

## 8. Preventing any excessive distortion of competition (compensatory measures)

- (63) According to the provisions of the Regulation, in order to minimize as much as possible the negative effects that the State aid granted has on competition on the relevant markets, compensatory measures are needed. The reduction of the company's presence on the market will be set based on the market research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.
- (64) The compensatory measures imposed to the company in view of avoiding any significant distortion of competition, consist in irreversible reduction of viable production capacities, until the end of the restructuring period, as presented in Table no. 10. The fixed assets accrued after these reductions of capacities, that will be dismantled and sold, are the following: 5 lathes, 3 rectifying machines, mechanic press PMSD 24, a milling machine with superior axe, 2 machines for stopper rejecting and milling.

**Table no. 10 – Production capacities reduction until the end of the restructuring period**

Product category	Measure unit	Production capacity at the end of 2003	Production capacity at the end of 2010	Reduction of viable production capacity, compared to 2003 (compensatory measures)	Reduction of non-viable production capacity, compared to 2003
1. Spare parts, from which:					
- press axel	piece/year	2,000	1,400	500	100
-chrome plated piston	piece/year	3,000	2,500	400	100
- skin-hardened shell	piece/year	20,000	15,000	4,000	1000
2. Wood-made product, from which:					
- timber	mc/ year	4,000	3,800	150	50
- crates	piece/year	50,000	40,000	8,000	2,000
3. Furniture pieces	mc/ year	2,000	1,800	100	100



4. Metallic manufacture	tones/ year	40	30	2	8
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*Source: Additional information*

According to art. 14 paragraph (3) of the Regulation, the Competition Council notes that the reduction of the production capacities that are generating loss, presented above, do not represent compensatory measures; they are absolutely necessary to restore the company viability.

- (65) UZINA MECANICA holds low market shares on the relevant markets on which it activates (lower than 0.5%). As a consequence, according to art. 14 of the Regulation which stipulates that the compensatory measures will be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the affected markets, Competition Council considers as sufficient the compensatory measures imposed by MEC.
- (66) Regarding the aforesaid, the Competition Council considers that the State aid is to be used only for the company's return to viability. The beneficiary will not be allowed while implementing the restructuring plan to extend its production capacity.

#### **9. Aid limited to the minimum necessary (proportionality of the aid)**

- (67) In accordance with art. 15 of the Regulation on the rescue and restructuring of firms in difficulty, the State aid intensity and quantum is limited to the minimum necessary in order to allow restructuring according to the existing financial resources of the company and of shareholders. The State aid benefiting company must significantly contribute to the restructuring program, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art.15 (2) of the Regulation, for medium-sized undertakings a contribution of at least 40% is considered adequate.
- (68) The total restructuring cost of UZINA MECANICA amounts 4,317,092 and is composed of :
- organizational and managerial restructuring cost                      RON 115,200;
  - technical restructuring cost    RON 1,800,630;
  - environmental restructuring cost    RON 630,000;
  - financial restructuring cost    RON 1,771,262.
- (69) The company's restructuring cost is supported from the following resources:
- UZINA MECANICA own resources    RON 115,200;
  - Investor's capital injection    RON 2,790,630;
  - State aid    RON 1,411,262.
- (70) From the total restructuring cost, 67.3%, respectively RON 2,905,830, represents the company's own contribution.
- (71) The company's own contribution, for covering the restructuring cost is assured by:

- |   |   |                |
|---|---|----------------|
| - Buyer's sources                                       | - | RON 2,790,630; |
| - Revenues from the rental of fixed assets <sup>3</sup> | - | RON 115,200.   |

- (72) According to art.15 of the Regulation the State aid intensity and amount need to be limited to the minimum restructuring costs required, in order to allow restructuring in accordance with the company's existing financial resources, of its shareholders or of the group to which it belongs. In case of UZINA MECANICA, the State aid intensity, calculated as a ratio between the amount of state aid and total restructuring cost is of 32.7%.
- (73) In view of the above mentioned aspects, the Competition Council considers as significant the own contribution of UZINA MECANICA to sustain the restructuring costs and considers the aid limited to the minimum necessary to allow the restoration of the company's viability.

#### **10. Observing the „first time, last time” principle**

- (74) According to the information submitted by MEC, UZINA MECANICA 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.

#### **11. Annual monitoring and reporting**

- (75) 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.
- (76) 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.

### **IV. CONCLUSIONS**

- (77) Having in view the above mentioned aspects, the Competition Council ascertains that the individual State aid intended to be granted to UZINA MECANICA is compatible with a competitive normal environment and does not significantly affect the trade with the Member States of the European Union.

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<sup>3</sup> It concerns already rented assets, for which the company has contracts concluded.

## **DECIDES**

**Art. 1.** The financial support measures notified by the Ministry of Economy and Commerce for SC UZINA MECANICA Babeni SA represent State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.

**Art. 2.** Based on the provisions of article 21(2) letter c) corroborated with article 23 (1) letter e) of the Law no. 143/1999, republished, the restructuring aid that is going to be granted to SC UZINA MECANICA Babeni SA at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

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

**Art. 4.** The company shall reduce the production capacities until 2010 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 1,411,262 .

**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, the Ministry of Economy and Commerce shall submit to the Competition Council information on the State aid granted in order to be inventoried and monitored. In addition, the Ministry of Economy and Commerce 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 Appeal Court, 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:

- The Ministry of Economy and Commerce, Calea Victoriei no. 152, sector 1, Bucharest;
- SC UZINA MECANICA Babeni SA, Str. Uzinei, no. 1, Localitatea Babeni, Jud. Valcea, postal code 245100.