

DECISION OF THE COMPETITION COUNCIL

No. 156 of 11.07.2006

**regarding the State Aid for
SC GIRUETA SA Jilava**

THE COMPETITION COUNCIL,

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

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

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

Taking into consideration the provisions of the Regulation on form, content and other details regarding the State Aid notification, published in the Official Gazette of Romania, Part I, no. 82 of 25.01.2005,

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

Taking into consideration the provisions of the Regulation regarding State Aid for small and medium-sized enterprises, published in the Official Gazette of Romania, Part I, no. 340 of 19.04.2004, with the subsequent amendments and completions,

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,

I. PROCEDURE

- (1) By letter no. VP4/2922/15.05.2006, registered at the Competition Council with no. RS-AS 88/16.05.2006, the Authority for State Assets Recovery (hereinafter named AVAS), as state aid grantor, has notified, based on Article 15 of Law no. 143/1999 on

State aid, republished, the individual state aid for the restructuring of SC GIRUETA SA Jilava (hereinafter named GIRUETA), within its privatization process.

- (2) As the transmitted information was not complete and accurate, the Competition Council requested additional information from AVAS, by address no. DAAS/770/18.05.2006. AVAS has sent the required reply by letter no. DCS/1588/24.05.2006.
- (3) Notification became effective on the date the information was exact and accurate, namely 24.05.2006.

II. DESCRIPTION OF THE FACTS

1. Legal basis for granting the financial support

- (4) The notified financial support measures, granted to GIRUETA, are set up by the following acts:
- Law no. 137/2002 regarding certain measures for accelerating privatization;
 - EGO no. 40/2002 on budgetary arrears recovery;
 - Law no. 191/2004 regarding the approval of GO no. 36/2004 for modifying and completing Law no. 137/2002 regarding certain measures for accelerating privatization;
 - GD no. 577/2002 regarding the approval of Methodological Norms for the application of EGO no. 88/1997 regarding the privatization of companies, with the subsequent amendments and completions;
 - EGO no. 26/2004 regarding certain measures for completing the privatization of companies in the AVAS' portfolio and consolidating certain privatizations, amended and completed by Law no. 442/2004, with subsequent amendments;
 - EGO no. 37/2004 regarding measures for diminishing the arrears in economy
 - Law no. 244/2005 for the approval of GEO no. 26/2005 regarding the abrogation of legal provisions on granting facilities at the payment of overdue budgetary obligations.

2. Notified financial support measures

- (5) The notified financial support measures consist of postponements of payment at taxes and fees payment in view of exemption, in amount of RON 5,722,027 and also of exemption from payment of interests and penalties of any kind, in amount of RON 1,289,145, as follows:

Table no. 1 – Facilities granted at the privatization of GIRUETA

No. crt.	Measure	Amount -RON-
1.	Postponement of payment in view of the exemption of 95% of obligations to the State social insurance budget, overdue on 31.12.2001	693,192

2.	Postponement of payment in view of exemption of delay interests and penalties corresponding to the obligations due and not paid on 31.12.2001, calculated and updated until the date of the share ownership transfer (25.08.2003)	2,095,212
3.	Exemption from the payment of the delay interests and penalties corresponding to the overdue obligations to the State social insurance budget on 31.12.2001, calculated from the date of share ownership transfer, until the common Order issuing	83,795
4.	Postponement of payment in view of the exemption of 95% of obligations to the State budget, overdue on 31.12.2001	977,282
5.	Postponement of payment in view of the exemption of the delay interests and penalties corresponding to the obligations to State budget	1,905,405
6.	Exemption from payment of delay interests and penalties corresponding to the obligations to the State budget overdue on 31.12.2001, calculated from the date of share ownership transfer (25.08.2003) until the common Order issuing	195,413
7.	Exemption from the payment of delay interests and penalties of any kind, calculated until the date of the share ownership transfer, corresponding to the overdue budgetary obligations by 31.12.2001, representing taxes withheld at source	877,781
8.	Exemption from the payment of the delay penalties corresponding to the Unemployment Insurance budget	78,407
	TOTAL MPF FACILITIES¹	6,906,487
9.	Postponement of payment in view of exemption of 95% from the AVAS' own receivables, due and not paid by 31.12.2001, and their corresponding delay penalties, and funds due on 31.12.2002, and their corresponding delay penalties, calculated until the date of signing of share sale-purchase agreement	50,936
10.	Exemption from payment of delay penalties corresponding to AVAS' own receivables, calculated from the date of the share sale-purchase agreement signing, until the date of issuing the common Order	5,738
	TOTAL AVAS FACILITIES	56,674
11.	Cancellation of contractual penalties corresponding to the obligations due to FDFEE Electrica Muntenia Sud – SDFEE Bucharest	32,542
12.	Cancellation of the delay penalties related to the obligations due to SC DISTRIGAZ SUD SA – Bucharest Branch	1,859
	TOTAL MEC FACILITIES²	34,401
13.	Exemption from the payment of taxes, fees, contributions, interests and penalties of any kind, corresponding to the budgetary obligations due to the Jilava' Local Council	12,068
14.	Cancellation of contractual penalties corresponding to the obligations due to RADET Bucharest	1,542
	TOTAL FACILITIES	7,011,172

Source: The notification form

3. Beneficiary of the financial support measures – GIRUETA

(6) GIRUETA is a joint stock company headquartered in Jilava, Ilfov County, and is registered with the Trade Registrar under no. J40/439/1991, with the unique registration code no. R477558. The beneficiary is situated within the Bucuresti-Ilfov

¹ Ministry of Public Finance

² Ministry of Economy and Commerce

Development Area, which is considered as assisted area under art. 87(3) (a) from EC Treaty.

- (7) The beneficiary has a mechanical profile, and it is, mainly, manufacturing elevating machines and equipment³ (NACE code 2922), equipment for breaking/sorting aggregates and metallic structures. As secondary activity, the company is producing other agricultural and forestry machines and equipment. The products designed, manufactured and assembled by the company are mainly used in the building industry.
- (8) The company was privatized in 2003, by signing of the share sale-purchase agreement no. B 030/25.08.2003. The ownership structure after privatization is presented in Table no. 2.

Table no. 2 – Shareholders’ structure of GIRUETA after privatization

Shareholders	Equity holdings	
	Number of shares	Shareholdings (%)
S.C. COMNORD S.A. Bucharest	802,424	97.2206
Other shareholders (natural persons)	22,940	2.7794
TOTAL	825,364	100.0000

Source: The notification form

- (9) By the end of 2003, the company registered a total number of 206 employees and a turnover of RON 2,484 thousand. Since S.C. COMNORD S.A. holds 97% from the company’s shares after privatization, these two firms are “linked companies” under *Regulation on state aid for SMEs*, with subsequent amendments and completions. These companies are registering a total number of 436 employees, which is exceeding the ceiling of 250, stipulated in the above mentioned Regulation. Consequently, GIRUETA is a large company.

4. Relevant markets

- (10) GIRUETA is operating on the following relevant markets: elevating machines and equipment, equipment for breaking/sorting aggregates, and metallic structures and parts. The company’s products are marketed only on domestic market.
- (11) Accordingly to the market survey, attached to the Restructuring plan of GIRUETA, the market shares held by the company on the internal markets are the following:

³ Hoisting crabs, running bridges and rolling girders, elevators for materials, dollies and machinery

- elevating machines and equipment: [...] ⁴,
- equipment for breaking/sorting aggregates: [...] ⁵,
- metallic structures and components: [...] ⁶.

One can see that the firm holds small market shares on the relevant internal markets on which it is operating.

- (12) Both the market for elevating machines and equipment, and the market for equipment for breaking/sorting aggregates are specialized ones, where large groups of firms are acting. The company has faced a lack of demand for these types of products, during the period prior to privatization. Since the company has obsolete manufacturing technologies for these products, an outdated know-how and it has not the capacity to modernize them, in order to reach the competitiveness level requested by the market, and taking into consideration its business opportunities, it became necessary for the company to leave these markets and to focus its activity on the metallic structures market, which – according to the market survey – is considered as a “niche market”, suitable for carrying on a profitable activity.
- (13) The company is intending to produce, on the metallic structures market, the following specialized products: structures for industrial halls/storehouses, structures for buildings which have a special regime concerning their height, structures for road infrastructure (inside and outside cities – roads and highways). These are to be addressed, especially, to business firms from the real estate field, as well as to foreign business groups that are opening their activities in Romania, such as banks, insurance firms, etc.
- (14) Among the main competitors of GIRUETA on the market for metallic structures and components are the following: COIFER Bucharest (34.58%), CELPI Bucharest (15.22%), ARCOM Bucharest (12.95%), REPSTEEL Calarasi (3.69%), etc.
- (15) According to the attached market survey, the evolution of the demand, on the internal market, for the following years, for metallic structures will have an ascending trend. This is based on the buildings sector development, on the growing demand of new and modern buildings, on the intensifying of large works for building and modernizing the infrastructure.

5. Company's financial situation prior to privatization

- (16) The evolution of the main economic and financial indicators registered by GIRUETA, during 2001-2003, is the following:

Table no. 3 - Evolution of GIRUETA' main indicators during 2001-2003

⁴ Confidential data.

⁵ Confidential data.

⁶ Confidential data.

INDICATORS	2001	2002	2003
Turnover (RON)	2,169,416	3,002,186	2,484,613
Gross outcomes (RON)	-1,296,353	-1,804,288	-2,618,388
Own capital (RON)	-1,279,845	-3,084,133	-5,714,427
Total debts (RON)	6,195,040	8,030,326	10,635,965
Receivables (RON)	82,973	550,530	547,099
Receivables collection period (days)	136	66	79
Intermediary liquidity (%)	1.16	1.43	0.07

Source: The notification form

- (17) The analysis of data included into the table shows that the company has faced, prior to privatization, a difficult economic and financial situation, highlighted by turnover diminishing, increasing losses and debts. The debts accumulating, especially debts to State, led to negative own capitals, besides cumulated debts. Also, analyzing the intermediary liquidity indicator, it results that the company was not able to generate the necessary cash-flows for its current payments. This is also explained by the long duration for receivables collecting.

6. Description of the privatization process

- (18) In 2003, APAPS (AVAS) has offered for sale, through the method of negotiating on the basis of firm and final offers, the majority shares package held at GIRUETA, representing 97.2206% of the company's registered capital, respectively 802,424 shares.
- (19) The privatization process started on 10.03.2003, through publication of the sale offer in the "Ultima Ora" daily newspaper, on the Internet, at the company's and at APAPS' headquarters. As after the first sale announcement no purchase offer has registered, APAPS made a new publicity; so, a new sale announcement was published on 07.07.2003.
- (20) Through the shares sale offer, the potential bidders have been notified that they may make a written request, according to the legislation in force, for direct access to technical, economic, financial and legal data and information concerning the company. At the same time, within the presentation file, it was specified that the company will benefit from facilities such as those for payment of debts towards budgetary creditors, according to legal provisions.
- (21) At the offers submitting deadline, 2 purchase offers were registered, one on the behalf of S.C. COMNORD S.A., and one of the behalf of the Consortium BROADHURST IMSAT. Since the offer submitted by the last one included conditioning provisions which had broken legal rules, negotiations have been continued with S.C. COMNORD S.A.

- (22) The privatization has been completed by signing of the shares sale-purchase Agreement no. B 030/25.08.2003, concluded between APAPS (AVAS) and SC COMNORD SA Bucharest. The contractual terms were the following: [...]⁷

7. Description of the restructuring program

- (23) The restructuring plan, that covers the period 2004-2008, was drawn up by the company and the buyer and approved by AVAS, in order to restore the viability of the company, by organizational, technological, environmental and financial measures.
- (24) The restructuring plan includes measures for reorganization and for relocating the manufacturing flows and of the spaces with technical and technological destinations, these measures being required by the necessity of rational use of the manufacturing spaces and of the work force, in order to diminish the general administrative expenses and to increase the labour productivity, by relieving the company's patrimony of assets which are no longer needed, and which might be capitalized with a view to bring financial resources. Also, both the technological and environmental investments assumed by the buyer, through the share sale-purchase agreement, and the company's financial restructuring, through granting payment facilities for the overdue debts, are taken into consideration.

Table no. 4. Synthesis of GIRUETA's restructuring plan - thousand RON -

No. crt.	Measure	Deadline	Cost	Financing		
				Own sources	Buyer's sources	State Aid
A.	Measures regarding the company's organizational restructuring					
1.	Relocating the manufacturing flows	2007			-	-
2.	Assets capitalization (lands, production halls)	2007			-	-
	TOTAL A				-	-
B.	Measures regarding the technological restructuring					
1.	Modernizing the cutting flow	2006			-	-
2.	Modernizing the preparation / protection coating	2005			-	-
3.	Modernizing the welding equipment	2008			-	-
4.	Re-dimensioning and modernizing the activity of metallic structures assembling, and of other works performed by its own elevating equipment	2005				-
5.	Modernizing the IT system	2007			-	-
6.	Modernizing the operations for metallic profiles processing (technological line for mechanical cutting, boring, and marking)	2006			-	-
7.	Modernizing the operations for the	2008			-	-

⁷ Confidential data.

	preparation of metallic profiles' surfaces (technological line for profiles sandblasting and painting)					
8.	Modernizing the storage crane – the gantry type	2007			-	-
	TOTAL B					-
C.	Environmental investment					
1.	Valuation and technical proposal for the system of pluvial water collection and discharge, and for the installations dedicated to waste water collection	2004		-		
2.	Execution of waterproofing works, and execution of installations for pluvial waters collection, including a modified sewage line	2004		-		
3.	Execution of water supply system	2004		-		
4.	Deallocation of the department for founding and sandblast cleaning	2004		-		
5.	Execution and assembling of the cutting table, together with the installation for noxas exhausting, and air-blower acquisition	2004		-		
6.	Acquisition of the 1000 KVA transformer	2004		-		
	TOTAL C			-		
D.	Measures regarding the financial restructuring					
1.	Payment facilities	2004		-	-	
	TOTAL D					
	TOTAL GENERAL		[...] ⁸	[...] ⁹	[...] ¹⁰	[...] ¹¹

Source: The restructuring plan of GIRUETA

(25) The total restructuring cost of GIRUETA is of RON [...] ¹² thousand and is composed of:

- organizational restructuring cost RON [...] ¹³ thousand,
- technological restructuring cost RON [...] ¹⁴ thousand,
- environmental restructuring cost RON [...] ¹⁵ thousand,
- financial restructuring cost RON [...] ¹⁶ thousand.

⁸ Confidential data.

⁹ Confidential data.

¹⁰ Confidential data.

¹¹ Confidential data.

¹² Confidential data.

¹³ Confidential data.

¹⁴ Confidential data.

¹⁵ Confidential data.

¹⁶ Confidential data.

III. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES

The state aid character of the notified measures

- (26) The criteria which allow to establish if a measure constitutes State aid, are presented in Article 2 (1) of Law no.143/1999 on State aid, republished. Thus, any support measure granted by the State or from State resources or resources of the local administration, no matter the form, that distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the provision of certain services, or that affect the trade with the Member States represents State aid and is considered incompatible with a normal competitive environment.
- (27) The financial support granted to GIRUETA in the privatization context consists in the fact that the State renounces to collect certain revenues; therefore, resources of the State are involved. The financial support is granted to a certain undertaking, namely GIRUETA having therefore a selective character.
- (28) By the financial support measures which are to be granted¹⁷ under the form of postponents and exemptions from the payment of overdue debts, an economic advantage is given to GIRUETA. Granting these facilities will have a favourable effect on the company's economic and financial indicators, particularly on cash-flow. Therefore the company has an advantage, being favoured in comparison with its competitors.
- (29) The assumption that the facilities indicated above represent an advantage is valid in a non privatisation context. Where such facilities are part of a privatization package, they should be analysed in terms of whether or not they constitute state aid, by applying the prudent private investor test¹⁸. The State is acting like a prudent private investor/seller in the privatization context if it obtains the best price for the selling of its shares. The price paid by the buyer for the acquisition of the main share package of RON [...] ¹⁹ is considerably lower than the amount of the facilities to be granted to GIRUETA, namely RON 7,011,172. However, a prudent investor/creditor may be willing to accept a negative price if the cost of the privatization is less than the costs of liquidation. AVAS informed Competition Council that they did not undertake any comparative analysis of GIRUETA's liquidation and privatization costs prior to the privatization decision.
- (30) Taking into account all the above, including any social costs assumed by the buyer, the Competition Council concludes that in this case the prudent private investor

¹⁷ See paragraph (5) from the present decision.

¹⁸ It should be mentioned that generally the existence of conditions stipulated in the privatization contract leads to the non appliance of the prudent private investor test (see par. (22) of the draft decision).

¹⁹ Confidential data.

principle cannot be applied to the privatization of GIRUETA. Therefore, granting of these facilities constitutes an advantage to the company as indicated at paragraph (28).

- (31) There is no doubt that the financial measures affect the trade with the Member States of the European Union, because GIRUETA's products compete with other similar products manufactured by firms from the Member States.
- (32) Therefore, the financial support measures that are to be granted to GIRUETA are considered as State aid and fall under the provisions of the *Law no.143/1999 on State aid*, republished.

Compatibility with the state aid legal framework

- (33) The State aid objective is the restructuring of GIRUETA in order to restore its viability at the end of the restructuring period.
- (34) The restructuring aid must be 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 called 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.).
- (35) The Competition Council assesses the State aid to be granted to GIRUETA according to the criteria provided in the Regulation, envisaging:
 - the firm's eligibility – firm in difficulty and affiliation to a group of firms;
 - restoring the company's long term viability;
 - prevention of excessive distortion of competition;
 - correct dimensioning of the State aid, which must be limited to the minimum necessary (proportionality of the aid);
 - observing the "first time, last time" principle;
 - ensuring the fulfilment of the restructuring plan and permanently monitoring its progress;

Firm in difficulty

- (36) In order to benefit from State aid according to the Regulation, the company must be in difficulty. It is considered 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".

- (37) According to Article 2 (3) of the Regulation "a company is considered as being in difficulty when we encounter all common characteristics of a firm in difficulty: increase of losses, decrease of turnover, increase of stocks volume, production overcapacity, decrease of cash flow, increase of debts, increase of financial tasks and decrease or disappearance of net assets".
- (38) From the data presented in paragraphs (16) and (17) of the present decision, it results that GIRUETA has the characteristics of a firm in difficulty, as they were defined in Article 2 (3) of the Regulation.

Affiliation to a group

- (39) 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 too serious to be handled by the group itself.
- (40) The difficulties of GIRUETA are its own and do not result from an arbitrary allocation of costs within the group; they are due to the high amount of penalties related to debts accrued prior to privatization.
- (41) Following the company's privatisation, the majority shareholder of GIRUETA is S.C. COMNORD S.A. Bucuresti. In 2003, this company had, according to AVAS' information, a turnover of RON 63,301,447, debts of RON 22,323,244 and a result of the exercise of RON 2,792,388. This profit is approx. 2,5 times lower than the debts accumulated by GIRUETA until privatization, thus being insufficient to cover them. In addition, according to the privatisation contract, S.C. COMNORD S.A. committed itself to invest Euro [...] ²⁰ in the company.
- (42) Based on the above analysis, the Competition Council concludes that the majority shareholder of GIRUETA did not have the financial capacity to deal with the company's difficulties, respectively to cover its overdue debts to the state, in amount of RON 7,011,172.

Restoring the company's long term viability

- (43) According to Article 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

²⁰ Confidential data.

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 variation over which the company has no substantial influence.

- (44) Given the difficult situation of GIRUETA at privatization, the restructuring of the company was decided and a restructuring program was drafted for the period 2004-2008. The summary of the restructuring measures of GIRUETA was presented in chapter II 7. This plan was conceived starting from the causes that led to the company's difficulties and from the diagnosis analysis that highlights the strong and weak points.
- (45) Prior to privatization, the two markets sections, respectively the market for elevating machines and equipment, and the market for equipment for breaking/sorting aggregates narrowed; the company did not have orders for this type of products. Therefore, compared to the level of activity, the company disposed of overdimensioned personnel and working areas, and the number of units and their placement created an inefficient working structure. Consequently, the company renounces to produce these types of products and concentrates its activity on producing metallic structures. Through the organisational restructuring it is aimed, on the one hand, to identify the viable and strictly necessary flows for production, flows that will be replaced in a new conception and will be modernized in order to comply with the quality and labour efficiency parameters, and, on the other hand, the capitalization of assets which are no longer necessary in the new production structure. At the same time, prior to the implementation of the restructuring plan the number of employees was reduced with approximately 33%, and during the restructuring period it will be naturally reduced, arriving at 115.
- (46) Other causes that negatively influenced the company's activity were: inappropriate technical endowment (equipments with high power consumption), low quality of products, incapacity to adapt in due time to the market's demands. In order to eliminate these drawbacks, the restructuring plan contains a series of measures which consist in the modernization and rehabilitation of viable capacities, namely investments in equipments and installations, absolutely necessary in order to rehabilitate GIRUETA's viability, which will lead to the increase of productivity and of the products' quality. By the acquisition of the IT systems for the accounting activities and administration records and for the technical and technological design of products, it is aimed to increase the control of execution technologies, as well as to increase reaction speed for answering the clients' demands.
- (47) Taking into account that GIRUETA was bought by a renown company active in the civil building field, the company will conduct common projects such as „integrated solutions - turn-key projects” for industrial and civil constructions. Within these projects will be use both the construction-assembling capacities of the Buyer and the metallic structures capacities of GIRUETA.

- (48) The restructuring strategy aims to preserve the company's strong points, namely: experience in conducting major projects in the field of metallic structures, personnel with high specialised knowledge, the capacity to offer not only metallic products, but also complex turn-key projects. At the same time it is aimed to limit and counteract, with appropriate measures, the weak points such as: surplus of production capacities, obsolete equipments with high energy consumption, slow adaptation to market's demands, lack of liquidities.
- (49) By applying the measures contained in the restructuring plan the economic and financial indicators are estimated to improve as follows:

Table no.5 Estimated evolution of the economic and financial indicators - RON –

Indicators		2004	2005	2006	2007	2008
1	Total revenues, of which:	5,040	7,450	8,405	16,411²¹	10,650
	- Operating revenues	5,000	7,400	8,300	16,281	10,500
	- Net turnover	4,300	5,500	8,000	9,500	10,000
	- Financial revenues	40	50	105	130	150
	- Extraordinary revenues	-	-	-	-	-
2	Total expenses, of which:	5,500	7,345	8,251	9,080	10,460
	a) operating	5,500	7,330	8,181	9,010	10,460
	b) financial	-	15	70	70	-
	c) extraordinary	-	-	-	-	-
3	Gross profit(+) / Loss(-)	-500	100	154	7,331	190
4	Debts	3,050	3,050	2,417	1,800	1,800

From the above data it is revealed that the company's activity will register an ascending trend, fact proved by the evolution of the turnover, which will gradually increase, and by the profit registering. After restructuring, GIRUETA will cover all costs, including amortization and financial expenses and will be able to function with its own resources.

From the data submitted by AVAS, up to the present, the company achieved the restructuring measures that had as deadlines the years 2004 and 2005 and implemented, in proportion of more than 50%, a large part of the technological restructuring measures, which led to an improvement of the production activity and implicitly to the improvement of the economic and financial indicators and also to an increase of the products' quality and productivity.

- (50) As a result of accomplishing the measures provisioned by the restructuring plan, the company forecasts to reach in 2008, the following target indicators:

Table no.6 Target economic -financial indicators

Turnover	RON thousand	10,000
Employees	Persons	115
Own capitals	RON thousand	14,154
Receivables collection period	days	35
Debt payment period	days	65
Indebtedness ratio	%	13

²¹ In 2006, the revenues and the profit are influenced by the sellings of fix assets and land.

Return on assets	%	11
Cash flow	RON thousand	1,664

Source: GIRUETA's restructuring plan

Taking into account the above data, the Competition Council considers that the restoration of company's viability mainly results from the internal measures included in the restructuring plan, namely the reorganization of activity and the retechnologization of the production flows. At the same time, in order to assess whether the company will become viable at the end of the restructuring period, it was also taken into account the favorable evolution of the metallic structures market. Given the above, the Competition Council considers that the proposed restructuring plan will lead to the restoring of GIRUETA's long term viability.

Preventing any excessive distortion of the competition (compensatory measures)

- (51) According to the provisions of the Regulation, in order to minimize as much as possible the negative effects on competition on the relevant markets affected by granting of State aid, compensatory measures are necessary. These measures shall be proportionate with the distorting effects caused by the State aid and especially with the company's size and its relative importance on the relevant markets. Reducing the company's presence on the market will be established based on the market study annexed to the notification, as well as on any relevant information and will be part of the restructuring plan. Stopping and definitely renouncing to the loss generating activities, which are absolutely necessary to restore viability, will not be considered as reduction of capacities or as reduction of its presence on the market, when the compensatory measures are analysed.
- (52) Restructuring of GIRUETA involves renouncing to produce elevating machines and equipments and installations for breaking/sorting aggregates and strengthening the company's position on the market of metallic structures, without operating aggressive activities on this market that will lead to the distortion of competition.
- (53) In order to restore viability until the end of the restructuring period, the company will reduce its non-viable capacities for the manufacturing of metallic structures and components from 2,400 tones in 2004 to 2,200 tones in 2007. This reduction of capacities is not considered compensatory measure according to the Regulation, since these capacities are loss making.
- (54) Taking into consideration the fact that the company is a large enterprise that holds, according to the informatin included in the market study, a market share of 6.6% on the metallic structures market, compensatory measures are required on this market, in order to prevent distortion of competition. The compensatory measures consist in irreversible reduction of viable production capacities, that are part of the restructuring plan, respectively the reduction of the manufacturing of the metallic structures and components from 2,200 tones in 2007 to 1900 tones in 2008, namely 12,5%. In this respect, 61 assets will be dismantled, such as: lathes, grinders, machines for boring, milling, mortising etc.

- (55) Taking into consideration the low market share held by the company on this relevant market, the Competition Council considers these reductions of capacities as sufficient. Considering the above-mentioned facts, the Competition Council estimates that the State aid shall only be used for the company's return to viability, without allowing the beneficiary to extend its production capacity while implementing the restructuring plan.

Aid limited to the minimum necessary (proportionality of the aid)

- (56) In accordance with the provisions of art. 15 of the Regulation, the State aid amount and intensity must be limited to the minimum necessary, to allow restructuring according to the company's and shareholders' existing financial resources. The State aid beneficiary must bring a significant contribution to the restructuring plan by its own resources, inclusively through the sale of assets which do not essentially contribute to the company's survival, or through external financing under market conditions.
- (57) GIRUETA's total restructuring cost is of RON [...] ²². The own contribution of State aid beneficiary for covering the restructuring costs in amount of RON [...] ²³, represents 57.76% and is ensured by: [...] ²⁴
- (58) In case of GIRUETA the State aid intensity, calculated as a ratio between the value of the State aid and the total restructuring cost, is of 42.24%.
- (59) The Competition Council considers adequate and certain the beneficiary's contribution (a large enterprise) of 57.76% to the implementation of the restructuring plan. This shows trust in the practical value of the restructuring, as well as the fact that the amount and intensity of State aid are strictly limited to allow restructuring according to the existing financial resources of the company and of the majority shareholder. 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.

Fulfilling the „first time, last time” principle

- (60) According to the information submitted by AVAS, GIRUETA did not previously receive restructuring State aid. Therefore, the provisions of Article 24 of the Regulation, stipulating that the restructuring State aid must be granted only once, are observed.

²² Confidential data.

²³ Confidential data.

²⁴ Confidential data.

Monitoring and annual report

- (61) In accordance with the provisions of Article 18 of the Regulation, the Competition Council permanently monitors the restructuring plan's implementation so that the established objectives are fulfilled.
- (62) The Competition Council shall monitor the restructuring plan's implementation until the end of the period, in order to ensure that there will be no increases in the production capacities, nor any serious deviation from the restructuring measures and that the State aid shall not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program.

Conclusions

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

DECIDES

Art. 1. The financial support measures intended to be granted to GIRUETA represent State aid according to Article 2 (1) of the *Law no. 143/1999, republished*.

Art. 2. On the basis of Article 21 (2) (c) corroborated with Article 23 (1) (e) of *Law no. 143/1999, republished*, the restructuring State aid to be granted to GIRUETA at its privatization is authorised, under the condition of fulfilling Article 3 and 4 of the present decision.

Art. 3. The company is compelled to fully implement the assumed restructuring plan. The modification of the restructuring plan shall be done only if the provisions of art. 19 of the 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 the Official Gazette no.1215/17.12.2004 are fulfilled.

Art. 4. The company shall reduce its production capacities by 2008, in accordance with the assumed Restructuring plan.

Art. 5. If the conditions imposed by the present decision are not fulfilled, the provisions of Article 22 and 25 (3) of Law no. 143/1999 on State aid, republished, and Article 194¹ and 192² from the Fiscal Procedure Code, completed by E.G.O. no 129/2005, shall be applied.

Art. 6. The value of the State aid granted is RON 7,011,172.

Art. 7. This decision is applicable as of its date of communication.

Art. 8. According to the provisions of Article 32 of *Law no.143/1999*, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the granted State aid, for its inventorying and monitoring. At the same time, the Authority for State Assets Recovery shall submit to the Competition Council annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the date of issuance of the present decision. The following reports should prove that the company fulfilled the compensatory measures on production capacities' reduction enforced by the present decision.

Art. 9. According to Article 46 of *Law 143/1999 on State aid, republished*, this decision may be appealed by the interested persons at the Bucharest Court of Appeal, the Administrative litigation section, within 30 days from its communication.

Art. 10. The present Decision shall be communicated by the General Secretariat of the Competition Council to:

- The Authority for State Assets Recovery, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- S.C. GIRUETA S.A., Soseaua Giurgiului, nr.3-5, Jilava, Ilfov county, postal code 077120.