

**DECISION OF THE COMPETITION COUNCIL**  
**no. 16 of 03.02.2006**  
**concerning the state aid notified by**  
**the Authority for the Recovery of State Assets**  
**to be granted to SC LUGOMET SA Lugoj**

**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 no. 742, Part I, of 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 of 16.08.2005;

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

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members,

**Based on the following,**

**1. PROCEDURE**

(1) By address no. VP/3294/27.09.2005, filed with the Competition Council no. RS-AS 90/27.09.2005, the Authority for the Recovery of State Assets (hereafter AVAS) has notified based on art. 15 from Law no. 143/1999 on state aid, republished, the individual state aid for the restructuring of SC LUGOMET SA Lugoj (hereinafter called LUGOMET) within the privatization process<sup>1</sup>. The notification became effective on 13.12.2005.

**2. LEGAL BASIS FOR GRANTING THE AID**

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<sup>1</sup> The Competition Council requested from AVAS supplementary information by address no. CC-244 03.10.2005 to which AVAS replied by address no. RG 7878/14.10.2005. AVAS submitted the answers to supplementary information by address no. VP4/3596/13.10.2005 registered at the Competition Council with no. RG 7910/17.10.2005. (Supplementary information requested from AVAS is available to all interested parties);

- Law no. 137/2002 regarding some measures for speeding up privatization<sup>2</sup>;

### 3. DESCRIPTION OF THE MEASURES

(2) The company is to benefit from facilities relating to the payment of overdue obligations amounting to RON 3,609,115 consisting of the following:

- exemption from the payment of interest and penalties of any kind related to overdue budgetary obligations as of 31.12.2001, calculated until the date of the share ownership transfer (on 24.07.2002) in amount of RON 2,395,964;
- exemption from the payment of 87% of overdue obligations to the consolidated state budget as of 31.12.2001, in amount of RON 832,491;
- exemption from the payment of interest and penalties related to the overdue obligations to the social health insurance budget as of 31.12.2001, calculated until the date of the share ownership transfer, in total amount of RON 226,831;
- exemption from the payment of interest and penalties related to overdue obligations representing amounts retained at the source (in accordance with Law no. 191/2003) as of 31.12.2001, updated and still unpaid, in amount of RON 58,495;
- exemption from the payment of overdue obligations to the local budget, representing increases and penalties in amount of RON 95,334.

### 4. BENEFICIARY OF THE MEASURES – LUGOMET

(3) The company was set up in 1977 under the name of The Enterprise for Lifting and Transportation Equipments (IURT) and changed to its present name in 1991.<sup>3</sup>

(4) LUGOMET was privatized in 2002, by signing the share sale-purchase agreement no. 18/13.07.2002, concluded between AVAS and Mr. Titu Bojin, the shareholders structure after privatization is presented in table no. 1. The share ownership transfer took place on 24.07.2002.

**Table no. 1                      Ownership structure at LUGOMET after privatization**

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares held	Shareholdings (%)
Titu Bojin	1,520,244	98.3222
Persoane fizice	25,943	1.6778
<b>Total</b>	<b>1,546,187</b>	<b>100.00</b>

*Source: AVAS Notification*

<sup>2</sup> GD no. 577/2002 regarding the approval of methodological norms for the application of GEO no. 88/1997 regarding the privatization of commercial companies, with subsequent modifications and completions and Law no.137/2002 regarding some measures for speeding up privatization; Law no. 191/2004 regarding the approval of GO no. 36/2004 for the modification and completion of Law no. 137/2002 regarding some measures for speeding up privatization.

<sup>3</sup> According to Law no. 15/1990 and Law no. 31/1990, the company became a joint stock company and took the name of SC LUGOMET SA Lugoj, registered with the Registry of Commerce no. J/35/258/1991 and the unique registration code 1846726 and is headquartered in Lugoj, str. Timisorii nr. 139-141, jud. Timis.

(5) The main business of LUGOMET consists in the manufacturing of lifting and transportation equipments. The company also manufactures cast components and spare parts for lifting equipments, as well as metallic constructions.<sup>4</sup>

(6) Financial results of LUGOMET based on balance sheet data prior to the privatization are the following:

<b>Table no. 2</b>	<b>Financial results of Lugomet</b>		
<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
	<b>Turnover (RON)</b>		
6,107,711	6,837,080	9,292,777	12,429,366
	<b>Turnover in Romania (RON)</b>		
5,322,012	5,848,487	8,488,277	11,550,466
	<b>Profit(+)/Loss -(RON)</b>		
-2,531,493	54,405	203,381	221,425

Source: AVAS Notification

The data above shows that the company made losses before being privatized. After privatization the investor applies restructuring measures and the company starts to make profit. The company has a very small presence on the external market, most of its turnover being made on the domestic market.

(7) The company had 488 employees and a turnover of RON 6,108 thousand at privatization. After privatization LUGOMET is held by Mr. Titu Bojin with 98.3% of the shareholders equity. Given the number of employees, LUGOMET falls within the large enterprises category.

## 5. FINANCIAL POSITION OF LUGOMET PRIOR TO PRIVATIZATION

(8) Prior to privatization LUGOMET was in a difficult situation shown by:

- increase of inventories by 1.18 times in 2001, respectively 1,14 times compared to 2000;
- decrease of cash flow due to a low recovery of receivables and payment of debts which do not ensure available cash to carry out business;
- increase of company debts due to lack of liquidity; the indebtedness ratio grew from 80.7% in 2000 to 636% in 2001;
- increase of financial burdens, shown by intermediate liquidity which registered a constant decrease (0.51 in 2000, 0.24 in 2001, 0.36 in 2002) demonstrating that the company would not have been able to cover current debts from its own resources;
- decrease of net worth by RON 20,365,262 thousand in 2001 compared to 2000.

(9) Causes leading to the company being in difficulty:

- obsolete technology and reduced flexibility of technology flows;
- the lack of a constant flow of orders;
- the very long receivables collection period.

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<sup>4</sup> The main groups of products manufactured by company are the following:

- running bridges and travelling cranes with a lifting capacity of 1-200 tones;
- cast parts for lifting equipments.

(10) Taking into consideration this difficult situation, AVAS decided to privatize LUGOMET and to grant some facilities conditioned by the implementation of some restructuring measures. According to information from the notification, the privatization presentation file informed the potential investors of the facilities for the payment of overdue budgetary payments.

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

(11) AVAS decided on the privatization of the company based on final enhanced and irrevocable offers. The privatization process was initiated on 31.01.2002, by the publication, in the daily newspaper “Curentul” and on the Internet, of the sale announcement of the share package held by AVAS in LUGOMET (1,520,244 shares representing 98.322% of the shareholders equity). The sale offer was also posted at the headquarters of AVAS.

(12) The company file, compiled in view of selling the share package held by AVAS at LUGOMET, contained information on the financial, legal and environmental status of the company, as well as debts that would be exempted and rescheduled. In order to carry out the privatization process in a transparent manner, a data room was set up at the company’s headquarters, providing access for the bidders, allowing the latter to carry out their own assessment of the company put up for sale.

(13) Following the publicity, three company files were bought and, on 27.05.2002, three bids were submitted, by SC DUNAV INTERNATIONAL CONSTRUCT SA Lugoj, SC TIMCO SA Timisoara and Mr. Titu Bojin – natural person. All three bidders fulfilled the criteria required by AVAS in the company file, and were qualified for negotiations.

(14) Between 27.05.2002-01.07.2002, 10 preliminary negotiation sessions were carried out with each of the three bidders, which were required, upon each meeting, to further enhance their offer, both in terms of price and in terms of investments. The final enhanced and irrevocable offers were submitted on 10.07.2002. Subsequent to their assessment and the application of the evaluation mechanism, Mr. Titu Bojin obtained the highest score and negotiations continued with this bidder.

(15) The privatization process ended with the signing of the share sale-purchase agreement no. 18/13.07.2002, the main elements being the following:

- the transaction price of ROL 9,000/share, resulting in a purchase price of ROL 13,682,196,000 (RON 1,368,219.6);
- the buyer is committed to support the company’s current activity by a capital injection in amount of USD 257,000 until 01.09.2002 and to invest USD 1,398,000 over a 5-year period, by capital contribution in cash, for carrying out technological investments;
- in accordance with the company’s economic-financial needs, the buyer is committed to an additional investment of USD 1,605,000 over a 5-year period from the share ownership transfer date.

## **7. RELEVANT MARKETS**

(16) LUGOMET is active on the market for the manufacturing and marketing of lifting equipment and their spare parts, and on the market for cast components for lifting equipment. LUGOMET attached, to the restructuring plan, a market study drawn up by a group of specialists within the company. The market study mainly presents the following:

- an analysis of the market for lifting equipment and spare parts for lifting equipment, as well as the market for cast components, before the company's privatization;
- the analysis and quantitative assessment of the company's product markets over the period 2003-2008;
- the analysis of the competition on the domestic market;
- the presence of products made by the company on the external market.

(17) According to this market study, the size of the domestic market for LUGOMET products in 2001-2002 is presented below:

Table no. 3	Domestic markets in 2000-2002			
	M.U.	2000	2001	2002
Lifting equipment and spare parts for lifting equipment	tons	3,600	4,160	4,700
	ROL million	125,550	189,350	296,250
Cast components for lifting equipment	tons	36,000	38,500	40,000
	ROL million	504,000	693,000	800,000
Source: Market study				

(18) Product sales and market shares held by LUGOMET on the domestic market, in 2000-2002, have been the following:

Table no. 4		Domestic market shares held by LUGOMET		
	M.U.	2000	2001	2002
Lifting equipment and spare parts for lifting equipment sales	ROL million	21,700	33,852	39,950
Market share	%	17.3	17.9	13.5
Cast components for lifting equipment sales	ROL million	10,080	19,368	14,600
Market share	%	2.0	2.8	1.8
Source: Market study				

(19) According to the market study, the domestic demand for lifting equipment and cast components for lifting equipment has registered a slight increase (approximately 5%) in 2003-2004 as compared to the preceding period, and this trend is expected to continue over the following period. Thus, over the next five years, the demand for lifting equipment is expected to increase by 5%, while the demand for cast components for lifting equipment is expected to increase by approximately 10-15%.

(20) The main competitors for LUGOMET on the domestic market are:

- for lifting equipment: SC PROMPT-UMT SA Timisoara, SC UZINA DE REPARATII SA Ploiesti, SC ELMAS Brasov, SC PRODMORECO KONECRANE Timisoara, SC

UNIO SA Satu Mare, SC ACMES PROD COM Bucharest, SC INDUSTRIAL SERVICE Aiud;

- for cast components for lifting equipment: SC ASAM SA Iasi, SC REMPEL SA Deva, SC HIDROMECHANICA SA Brasov, SC ARMATURA SA Cluj, SC METALURGICA SA Reghin.

(21) On the external market, LUGOMET exports cast on components for lifting equipment to companies in Austria, Belgium and Italy. Due to the poor quality, exports are sporadic, the company holding a market share of under 0.1% of the Romanian export market for cast parts for lifting equipment.

## 8. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(22) The company has drafted a comprehensive restructuring plan for the period 2003-2007, comprising organizational, technological, environmental and financial measures. The restructuring plan has been drawn up by the company and the buyer and approved by AVAS.

(23) The restructuring of LUGOMET aims to:

- over the first stage of restructuring (years 2003-2004), take measures to enhance product quality, by implementing and certifying the ISO 9001/2000 Quality System, upgrading the IT system and improving social conditions in the production units;
- carry out investments to upgrade machinery;
- over the second stage of restructuring (years 2005-2007), carry out investments to adapt the company to European environment legislation, as well as to further cut energy costs of production;
- diversify the product range in order to attain better economic-financial results.

(24) The restructuring plan submitted by AVAS contains the causes which led to LUGOMET's difficulties, as well as measures to ensure the long term viability of the company. AVAS estimates that by implementing the plan the company will become profitable and secure the necessary financial resources to conduct business without debts to the consolidated budget of the state or the local budgets.

(25) The restructuring program entails the following measures:

**Table no. 5 Summary of the restructuring measures of LUGOMET**

- thousand RON -

No.	Measures	Assessment of implementation costs			
		Total cost	Own sources	Investor sources	State aid
1.	Organizational restructuring measures	217.6	217.6	-	-
2.	Technological restructuring measures	5,566.8	981.0	4,585.8	-
3.	Environmental restructuring measures	150.0	150.0	-	-
4.	Financial restructuring measures	4,449.8	840.7	-	3,609.1
	<b>TOTAL RESTRUCTURING COSTS</b>	<b>10,384.2</b>	<b>2,189.3</b>	<b>4,585.8</b>	<b>3,609.1</b>

Source: Restructuring plan of LUGOMET

(26) The implementation of the restructuring plan requires a financial effort of RON 10,384.2 thousand, of which RON 4,585.8 thousand are committed by the investor, while the State contributes to the company's financial restructuring with RON 3,609.1 thousand. This plan is expected to restore the viability of LUGOMET in 2007 (at the end of the restructuring period).

### 8.1. The organizational and managerial restructuring

(27) The organizational restructuring of the company includes the following measures:

Table no. 6      Organizational restructuring measures			- thousand RON -		
Measure description	Deadline	Implementation effort	Financing sources		State aid
			Company own sources	Investor sources	
Implementation and certification of the ISO 9001/2000 quality system for manufacturing lifting equipment	31.12.2004	32.0	32.0	-	-
Setting up changing rooms within the main production halls	28.02.2003	161.0	161.0	-	-
Reorganisation of the company by 3 activity units	01.03.2005	8.6	8.6	-	-
Dismantling and sale of assets (building of oxygen plant by sale; commercial sector and plant railways by rental)	31.12.2006	16.0	16.0	-	-
<b>TOTAL</b>	<b>-</b>	<b>217.6</b>	<b>217.6</b>	<b>-</b>	<b>-</b>

Source: Restructuring plan of LUGOMET

### 8.2. Technological restructuring

(28) The technological restructuring measures require an implementation effort of RON 5,566.8 thousand, and refer to:

Table no. 7      Technological restructuring measures			- thousand RON -		
Measure description	Deadline	Implementation effort	Financing sources		State aid
			Company sources	Investor sources	
Endowment of the company with metal processing machinery operated by a programme	31.12.2003	4,585.8	-	4,585.8	-
Upgrading the IT system in the financial-accounting and management sector	30.06.2004	117.7	117.7	-	-
Upgrading the welding and strip piercing and cutting process within the Lifting Machinery Department	31.12.2005	132.3	132.3	-	-
Setting up a technological line for processing cast and	30.09.2006	150.0	150.0	-	-

mechanically welded pieces Rehabilitating gas and water networks, as well as replacing compressed air production facilities	31.12.2006	150.0	150.0	-	-
Endowment with own transportation means	31.12.2005	431.0	431.0	-	-
<b>TOTAL</b>	<b>-</b>	<b>5.566.8</b>	<b>981.0</b>	<b>4.585.8</b>	<b>-</b>

Source: Restructuring plan of LUGOMET

### 8.3. Restructuring measures for environmental protection

(29) Investments in environmental protection, amounting to RON 150.0 thousand, are borne by the company from own sources and consist in the endowment of the areas for cleaning the parts with dust-absorbing panels and systems for evacuation following filtering outside the production hall. These investments are aimed at complying with the environmental obligations and the measures in the compliance programs.

### 8.4. Financial restructuring

(30) At privatization, the company needed financial restructuring for normal functioning of the manufacturing activity, besides other measures restructuring measures assumed through the restructuring plan.

(31) In the case of LUGOMET, the financial restructuring contains financial support from the State granted at privatization, consisting of exemptions and deferrals from payment of overdue obligations to the consolidated state budget and local budgets, facilities granted based on Law no. 137/2002, in total amount of RON 3,609.1 thousand. Likewise, in order to continue the manufacturing activity, the company will also approach the market for loans.

(32) The financial restructuring contains the following measures:

Table no. 8		Financial restructuring measures				- thousand RON -
Measures	Deadline	Implementation effort	Financing		State aid	
			Company own sources	Majority shareholder sources		
Reduction of the arrears to the State general consolidated budget and local budgets	16.02.2005	3,609.1	-	-	3,609.1	
Interest payment on line of credit	31.12.2007	840.7	840.7	-	-	
<b>TOTAL</b>	<b>-</b>	<b>4,449.8</b>	<b>840.7</b>	<b>-</b>	<b>3,609.1</b>	

Source: Restructuring plan of LUGOMET

The restructuring plan, through its financial component, gives the possibility to increase cash flow, to secure a stable cash-flow, which will ease the financial activity of the company.

## 9. STATE AID ASSESSMENT OF THE MEASURES

### 9.1. The State aid character of the notified measures



(33) The criteria, which allow to be established if a measure is State aid, are presented in art. 2 (1) of Law no. 143/1999 on State aid, republished. Thus, State aids granted by the State or from State resources that distort or threaten to distort competition and affect the trade with the Member States are incompatible with a normal competitive environment.

(34) The financial support granted to LUGOMET and notified by AVAS consists in the State renouncing to collect certain revenues; therefore, resources of the State are involved.

(35) The financial support measures granted on the basis of Law no. 137/2002 regarding certain measures for accelerating privatization, with subsequent modifications and completions, concern only the undertakings to be privatized, among which LUGOMET. Thus, the financial support granted to this company is selective.

(36) The argument that debt cancellation or rescheduling represents an advantage is valid only in a non-privatization context. In the present case, debt cancellation and rescheduling are part of the privatization process and, as a consequence, it should be established whether these represent State aid. If the facilities are granted in the context of privatization, the private investor/creditor test should apply. Normally, an investor/creditor will seek to obtain a positive price, i.e. a price higher than the value of the debt.

(37) Nevertheless, in this case the price is negative, i.e. smaller than the value of the facilities (the price obtained by privatization was of RON 1,368,220, while the value of the granted facilities amounts to RON 3,609,115). An investor/creditor might be predisposed to accept a negative price, should the cost of privatization be less than the cost of liquidation. In the present case, such an analysis is not possible as AVAS informed the Competition Council that no comparative analysis of the liquidation and privatization costs was conducted. Consequently, the decision to privatize the company could not have been made on the above basis. Further, considering the additional social costs and the costs of liquidating the company (such costs are not usually borne by a private investor/creditor), the State opted to privatize and grant the facilities mentioned as part of the privatization process. In this context, the private creditor/investor principle as set out above is not applicable, therefore the company has obtained an advantage relative to its competitors.

(38) Granting financial support to LUGOMET sets the premises for a possible distortion of the competition on the relevant markets, since it allows the company to stay on these markets. Moreover, there is no doubt that the financial support granted to LUGOMET may affect trade with the Member States of the European Union, since the products manufactured by the company compete, mainly on the Romanian market, with similar products manufactured by companies from the European Union and part of the company's production is exported.

(39) To conclude, the Competition Council considers that the financial facilities granted to the company at privatization are considered to represent State aids and fall under the scope of the Law no. 143/1999 on State aid, republished.

## **9.2. Compatibility with state aid legal base**

(40) The State aid objective is the restructuring of LUGOMET in order to restore its viability at the end of the restructuring period.

(41) The Competition Council evaluates the State aid granted to LUGOMET, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty. To be considered compatible with a normal competitive environment, the State aid must fulfill the criteria set in the above mentioned Regulation.

(42) 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 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. In general, the industrial restructuring must be accompanied the financial restructuring (capital injections, reduction of debts degree, etc.).

(43) The aid granted upon the privatization of LUGOMET is considered as individual state aid for restructuring and is to be granted based on a restructuring plan for 2003-2007, drafted by the company together with the buyer and AVAS with the main objective being the restoration of the company's viability until the end of the implementation period. The state aid to be granted will be reflected in the company's 2005 balance sheet.

(44) The Competition Council assesses the state aid granted to LUGOMET according to criteria provided in the Regulation on state aid for rescuing and restructuring firms in difficulty, as follows:

- eligibility of the company - company in difficulty;
- restoring the company's long term viability;
- avoid undue distortion of competition;
- aid 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;
- affiliation to a group of companies.

#### **9.2.1. Eligibility of LUGOMET – firm in difficulty**

(45) In order to benefit from State aid in accordance with the Regulation on State aid for rescuing and restructuring firms in difficulty, 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 and which, in the absence of external intervention of the State will almost certainly lead to the company's demise.

(46) In article 2 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty, a company is considered as being in difficulty when more than half of its own capital, as the accounting records of the company show, and more than a quarter of its

capital was lost during the last 12 months, and a company, irrespective of its legal status, is considered in difficulty when it fulfills the conditions to allow the application of the procedure concerning the legal reorganization and the bankruptcy.

(47) In this respect and according to the company's balance sheet, in 2001 (the year prior to privatization), LUGOMET registered a loss in amount of RON 2,531.5 thousand, representing 65.5% of the shareholders' equity (RON 3,865.5 thousand). Moreover, the shareholders' equity diminished from ROM 3,311.3 thousand in 2000 to RON 782.7 thousand in 2001, by 76.4% respectively. Besides, with a total debt of RON 50,118.7 thousand in 2002, exceeding by 1.3 times the shareholders' equity value, the company can be considered to fulfill the criteria to undergo the judicial reorganization and bankruptcy procedure.

(48) In view of the above the Competition Council finds that the criteria foreseen under Art. 2 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty are met in order for LUGOMET to qualify as a "firm in difficulty".

#### **9.2.2. Restoring the long term viability of the company**

(49) Difficulties confronting LUGOMET led to the drastic reduction in its business activities, coupled with the cumulation of debts to the state budget which attracted delay penalties higher than overdue debts.

(50) Subsequent to the privatization in 2002, a restructuring plan for 2003-2007 has been drawn up. The summary of the measures included in the company's restructuring plan has been presented in chapter 8.

(51) The assessment of the restructuring plan and of the way in which it leads to the restoration of the company's long term viability has in view the provisions of article 13 of the Regulation on State aid for rescuing and restructuring firms in difficulty.

(52) According to article 13, 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 the restructuring plan. The restructuring plan, which must be as short as possible in time, must include the abandonment of loss making activities and to offer the company long term viability, thereby allowing it to function with its own resources. The restructuring plan must to 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.

(53) The restructuring plan of LUGOMET starts from the financial and economic data that reflects the company's activities in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong and weak points of the company as well as the circumstances that led to the difficulties the company faces.

(54) The strategy of LUGOMET aims at preserving the strong points, respectively: the qualified staff and their expertise in the field of manufacturing lifting equipment. In the

meantime, the strategy of the company aims at limiting and counteracting with appropriate measures the weak points, i.e. obsolete and outdated technology, ineffective IT system, poor replacement investment rate, due to the lack of financial resources.

(55) The implementation of the measures provisioned by the restructuring plan financed by the company and the majority shareholder, as well as by the state by facilities granted to the company for the payment of budgetary obligations is foreseen to improve the financial - economic indicators in the period 2003-2007, as follows:

**Table no. 9** Estimates of the economic and financial indicators subsequent to the implementation of the restructuring measures -thousand RON-

Indicators		2003	2004	2005	2006	2007
<b>1</b>	<b>Venituri totale, din care:</b>	<b>11,947.4</b>	<b>12,495.9</b>	<b>14,500.0</b>	<b>15,950.0</b>	<b>20,000.0</b>
	- Operating revenues	11,908.1	12,460.7	14,500.0	15,950.0	20,000.0
	- Turnover	9,292.8	12,429.4	14,000.0	15,400.0	19,100.0
	- Financial revenues	39.3	35.2	-	-	-
	- Extraordinary revenues	-	-	-	-	-
<b>2</b>	<b>Total expenses, of which:</b>	<b>9,719.9</b>	<b>12,192.3</b>	<b>13,500.0</b>	<b>14,666.6</b>	<b>18,353.1</b>
	a) operating	9,640.2	12,029.4	13,370.0	14,566.6	18,325.3
	b) financial	79.7	162.9	130.0	100.0	27.8
	c) extraordinary	-	-	-	-	-
<b>3</b>	<b>Gross profit (+) / Loss (-)</b>	<b>2,033.0</b>	<b>221.5</b>	<b>840.0</b>	<b>1,078.0</b>	<b>1,383.4</b>

Source: Restructuring plan of LUGOMET

(56) 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. 10** Target financial-economic indicators

1. Net profit	Thousand RON	1,383.4
2. Turnover	Thousand RON	19,100.0
3. Employees	Persons	365
4. Equity	Thousand RON	14,007.2
5. Receivables collection period	days	31
6. Debt payment period	days	27
7. Indebtedness ratio	%	10
8. Return on assets	%	9
9. Return on equity	%	10
10. Cashflow	Thousand RON	169.9

Source: Restructuring plan of LUGOMET

(57) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the restoration of the long term viability of LUGOMET.

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

(58) According to the provisions of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granted have on the competition on the relevant markets, compensatory measures are needed. These measures will be proportional with the distorting effects caused by the aids and especially with the size and relative importance of the company on the relevant markets. 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.

(59) At the beginning of the restructuring process, LUGOMET held a small share of the market for cast components for lifting equipment, i.e. 1.8%. On the market for lifting equipment, the company had a 13.5% share. As a consequence and having in regard the provisions of art. 14 of the Regulation on State aid for rescue and restructuring firms in difficulty that stipulates that the compensating 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 effected markets, Competition Council considers the reduction of production capacities proposed by the company through the restructuring plan as sufficient.

(60) The measures to be taken by the company until the end of the restructuring period, in order to avoid the distortion of competition consist in an irreversible capacity reduction, namely the selling of fixed assets and goods reduction. Thus, following the production decrease, assets such as the oxygen plant and a significant number of fixed assets will be dismantled.

(61) The irreversible reduction of viable capacities is an integral part of the restructuring plan and consists in the reduction by 20% of the capacity for the lifting equipment and spare parts for lifting equipment, and by 30% of the capacity for cast components for lifting equipment.

(62) By the restructuring plan, LUGOMET does not increase its market shares, but intends to preserve the market segments on which it currently operates. There are significant differences between LUGOMET's designed production capacity and its current operational capacity. The company does not intend to increase its production capacities, but to achieve a higher capacity utilization ratio.

(63) The functioning production capacities and their capacity utilisation between 2000-2002 are presented below:

Table no. 11 Product	Capacity utilization ratio between 2000 - 2002						
	Projected capacity (tons)	2000 Capacity in function	Capacity utilization (%)	2001 Capacity in function	Capacity utilization (%)	2002 Capacity in function	Capacity utilization (%)
Lifting equipment and spare parts for lifting equipment	13,000	2,200	31.6	2,100	32.3	2,000	33.6
Cast components for lifting equipment	20,000	4,000	20.5	3,800	28.1	2,000	36.5

Source: Notification of AVAS

(64) After the enforcement of the measures provided in the restructuring plan, capacities production and their capacity utilisation are presented below:

**Table no. 12**                      **Capacity utilization ratio between 2003 – 2007**

Product	2003		2004		2005		2006		2007	
	Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)	Capacity in function	Capacity utilization (%)
Lifting equipment and spare parts for lifting equipment	1,950	37.4	1,900	39.9	1,800	43.3	1,700	46.5	1,600	50.0
Cast components for lifting equipment	1,800	44.4	1,700	51.7	1,500	60.0	1,500	60.0	1,400	65.0

*Source: Notification of AVAS*

(65) From data presented in tables no. 11 and 12 results that reductions of capacities are applied to capacities in function and are not related to assets which would have been abandoned anyway by the company. In this respect, giving up by the company of production capacities representing the difference between the projected capacities and capacities in function does not constitute a compensatory measure, according to the provisions of the Regulation on the rescue and restructuring of firms in difficulty. Having in view the above mentioned, the Competition Council acknowledges that the State aid is to be used only for restoration of the the company's viability. The Council does not allow the beneficiary to increase its production capacities during the enforcement of the restructuring program.

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

(66) 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 for implementing the restructuring plan. The State aid benefiting company must significantly contribute to the restructuring programme, 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 large undertakings a contribution of at least 50% is considered adequate.

(67) The total restructuring cost of LUGOMET is RON 10,384.2 thousand and is composed of:

- Organisational restructuring cost                      RON 217.6 thousand
- Technological restructuring cost                      RON 5,566.8 thousand
- Environmental restructuring cost                      RON 150.0 thousand
- Financial restructuring cost                      RON 4,449.8 thousand

(68) The total restructuring cost of LUGOMET, in amount of RON 10,384.2 thousand, is supported from the following sources:

- own sources of LUGOMET                      RON 2,189.3 thousand
- capital injection of the majority shareholder                      RON 4,585.8 thousand
- state aid                      RON 3,609.1 thousand.

(69) The company's own contribution of RON 6,775.1 thousand represents 65.2% of the restructuring cost, and it is ensured by:

- capital injection of the majority shareholder Titu BOJIN, in amount of RON 4,585.8 thousand;
- revenues from sale and rent of assets (sale-purchase contract of the "Oxygen plant" building and rental contract no. 309/20.01.2003, respectively no. 7167/2003);
- credit in amount of ROL 6,000,000,000, with an interest of 22% per year (market interest), from BRD - Groupe Societe Generale SA Bucharest – Credit contract no. 81/14.02.2005.

The Competition Council notes that the own financing sources are certain, since the company has submitted documents certifying this fact.

(70) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 34.8%.

(71) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 65.2% to the restructuring costs, this showing the trust in the practical value of the restructuring and the fact that the amount and intensity of the state aid were strictly limited to allow the restructuring according to the existing financial resources of the company and the majority shareholder. As a consequence, the ability of the company to apply any liquidity surplus for aggressive activities, with the possible distortion of the market, is reduced.

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

(72) LUGOMET never received restructuring aid in the past. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

#### **9.2.6. Affiliation to a group of companies**

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

(74) The fiscal facilities intended to be granted to LUGOMET refer to historical debts arisen prior to the company's privatization. These debts did not arise from any arbitrary allocation.

(75) As a result of the privatization and the conclusion of the shares purchase-sale contract, the new owner of LUGOMET is the natural person Titu Bojin, who does not hold shares in any other company. Consequently, affiliation to a group of companies is not an issue.

(76) Although the Buyer of the majority share package in LUGOMET has demonstrated to possess financial resources (Certificate no. 8731/11.10.2005 on the fulfillment of the investment obligations assumed under the privatization contract certifies that the majority shareholder has fulfilled his investment commitments), the Competition Council notes that the majority shareholder could not cope with the financial difficulties of LUGOMET as well as with the restructuring of the company without a consistent intervention of the State, the company's debts to the consolidated State budget and the local budgets being in total amount of RON 3,609.1 thousand. Considering the financial difficulty of the company, this would only cover 21.0% of restructuring costs. Therefore, the majority shareholder has committed to contribute to 44.2% of the total cost of the restructuring programme, a significant contribution as compared with his own financial resources. Moreover, by the privatization contract, the majority shareholder has committed to carry out a capital injection in amount of RON 8.49 billion (RON 849,000), until 1.09.2004, prior to the beginning of the restructuring process.

#### **9.2.7. Monitoring and annual reporting**

(77) In accordance with article 18 the Regulation on State aid for rescue and restructuring firms in difficulty, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.

(78) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities are not registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of complementary liquidities to be used for other activities contained in the restructuring program.

### **10. CONCLUSIONS**

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

**DECIDES**



**Art. 1.** The financial support measure notified by the Authority for the Recovery of State Assets for LUGOMET represents a 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 alin.(2) lit. c) corroborated with art. 23 (1) e) of the Law no. 143/1999 on state aid, republished, the restructuring aid that is going to be granted to LUGOMET 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 2007, 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 amount of the State aid that is going to be granted is of RON 3,609,115.

**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 Authority for State Assets Recovery shall submit to the Competition Council information on the State aid granted in order to inventory and monitor. In addition, the Authority for State Assets Recovery 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. At the same time, information on the enforcement of compensatory measures related to the capacity reductions imposed by the present decision will be submitted.

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

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

- The Authority for the Recovery of State Assets, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- SC SC LUGOMET SA, 139-141 Timisorii Str., Lugoj, Judetul Timis, zip code 350325.

**PRESIDENT**

**MIHAI BERINDE**

