

DECISION OF THE COMPETITION COUNCIL

no. 199 of 22.08.2006

**regarding the State aid to be granted to
SC HIPERION SA Stei**

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, Part I, no 742 of 16.08.2005,

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

With regard to the provisions of the Regulation on the form, content and other details regarding the state aid notification, published in the Official Gazette, 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, Part I, no. 1215, of 17.12.2004,

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

Based on the following,

1. PROCEDURE

(1) By letter no. VP4/2782/09.05.2006, registered at the Competition Council with no. RS-AS 82/10.05.2006, the Authority for State Assets Recovery (AVAS) notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the individual State aid intended to be granted for the restructuring of SC HIPERION SA Stei, in the privatization context.

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

(3) The notification became effective at the date when the information was accurate and complete, respectively on 06.06.2006.

2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

2.1. Legal basis for granting the financial support

(4) The financial support measures granted to SC HIPERION SA Stei are based on the following:

- Law no. 137/2002, on certain measures for accelerating the privatization;
- Government Decision no. 577/2002, on the approval of the Methodology for applying the Emergency Government Ordinance no. 88/1997 on the privatization of undertakings, with the subsequent amendments and completions, and of Law no.137/2002 on measures to accelerate privatization;
- Emergency Government Ordinance no.26/2004 on certain measures for the completion of APAPS portfolio companies' privatisation and the consolidation of certain privatisations, approved by Law no.442/2004;
- Government Ordinance no. 94/2004 on the regulation of certain financial measures;
- Emergency Government Ordinance no. 26/2005 on the abolishment of the legal provisions related to the allocation of the facilities for the payment of the overdue budgetary obligations;
- Law no. 244/2005 for the approval of EGO no. 26/2005 on the abolishment of the legal provisions related to the allocation of the facilities for the payment of the overdue budgetary obligations;

2.2. The financial support measures granted to SC HIPERION SA Stei

(5) The financial support measures, notified by the Authority for State Assets Recovery, are granted in the context of privatization of SC HIPERION SA Stei; the company is to benefit from facilities in the form of cancellation and payment rescheduling to the state budget, local budgets and AVAS.

(6) [...] ¹

3. BENEFICIARY OF THE FINANCIAL SUPPORT MEASURES (SC HIPERION SA Stei)

(7) SC HIPERION SA Stei is a joint stock company with headquarters in Stei, Bihor county, with the registration number at the Trade Register J 05/517/1991 and CUI 95990. In 2003, prior to privatization, the company had a registered capital of RON 3,742,500, divided in 1,497,000 shares, with a face value of RON 2.5. The beneficiary is situated in the North-West Development Region, considered to be assisted area according to the provisions of art.87 (3) (a) of the EC Treaty.

(8) The undertaking SC HIPERION SA Stei was set up as a joint-stock company in 1990 on the basis of G.D. no.1213/1990 and of the Law 15/1990. SC HIPERION SA Stei has its origins in the Mechanical Enterprise Stei, set up in 1960.

(9) SC HIPERION SA Stei was privatized at the end of 2003 by signing the share sale purchase agreement no. 41/26.09.2003. The shareholders structure following the privatisation is presented in Table no.1.

Table no. 1 - Shareholders structure after privatisation of SC HIPERION SA Stei

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares	Percentage of registered capital (%)
S.C. EUROPEAN FOOD SA	1,164,629	77.8
SIF BANAT CRISANA	137,421	9.18
OTHER SHAREHOLDERS	194,950	13.02
Total	1,497,000	100.0000

Source: Notification form

(10) At the date of the privatization, the undertaking had 397 employees and a turnover of RON 6,119,450, being therefore a large undertaking.

(11) The main activity of SC HIPERION SA Stei is structured on the production of machines and apparatus for elevating and transportation, including the spare parts corresponding to ground transportation, continuous transportation; elements of fine mechanics - hydraulic and pneumatic cylinders - metallurgic equipments, apparatus for mining - metallic structure components and spare parts: pumps and steam rollers.

(12) The essential technological lines used in the main activity are made of specific equipments, as it follows:

¹ Confidential data

- Department I - machines for elevating and ground transportation;
- Department II – hydraulic and pneumatic cylinders, machines and technological equipment for the mining industry and the industry of refractory and building materials.

3.1. The financial situation of SC HIPERION SA Stei prior to privatization

(13) The economic – financial results recorded by SC HIPERION SA Stei prior to privatization, according to the balance sheets, are the followings:

Table no. 2 - The financial results recorded by the company during 2001-2003

RON		
2001	2002	2003
-4,511,863	-6, 268,188	-11, 435,158

Source: Notification form

As it results from the assessed indicator, during the analyzed period, the company records a descending trend, registering in 2003 a loss in amount of RON 11,435,158. It is specified that the situation of the profit/loss account was retreated according to all the delay penalties and interests registered by that date in the off balance sheet items.

(14) As it results from the above data, prior to privatization , the company records a decrease in the economic – financial situation, being influenced by the equity diminishing, the increase of the operating degree together with the accumulation of high debts towards the state budget and the suppliers.

Table no. 3 - The retreated situation, after including the debts towards the state budget

RON			
	2001	2002	2003
Equity	5,590,089	4,654,046	3,757,093
Gross result	-4,511,863	-6,268,188	-11,435,158
Gross result /Equity (%)	IRRELEVANT AS A RESULT OF REGISTRATION OF LOSSES		

Source: Notification form

The company's equity decreased yearly, registering in 2003 only 67% from the level registered in 2001. It can be seen that the company's losses in 2003 exceeded 3 times its equity.

Table no. 4 - Indebtedness degree

RON			
	2001	2002	2003

Debts	5,414,604	6,973,592	5,769,885
Debts in off balance sheet items	4,639,573	6,284,392	7,273,778
Total debts	10,054,177	13,257,984	13,043,663
Equity	5,590,089	4,654,046	3,757,093
Indebtedness degree (total debts/equity) %	1.7985	2.8487	3.4716

Source: Notification form

From the analyzed indicators it results that the company's debts at the end of 2003 exceeded 4 times the equity.

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

- the obsolete and outdated production equipments, thus implying high maintenance costs;
- lack of liquidities for the payment of debts;
- work conditions inadecvate to a proper activity in the company.

4. RELEVANT MARKETS

(16) SC HIPERION SA Stei is active on the following markets:

- the market for machines and equipment for elevating and transportation;
- the market of elements of fine mechanics;
- the market for mining equipment.

(17) According to the market study annexed to SC HIPERION SA's restructuring plan, the company's market shares on the internal markets are the following:

Table no.5 – The company's market shares on the domestic market

No	Relevant market	market shares (%)		
		2001	2002	2003
1	Machines and equipment for elevating and transportation	0.04	0.0007	0.0022
2	Elements of fine mechanics	0.002	0.002	0.0008
3	Mining equipment	0.0004	0.0013	0.0074

Source: Notification form

It must be noticed that for none of the manufactured products SC HIPERION SA held a dominant position on the relevant domestic markets.

(18) According to the market study annexed to the restructuring plan of SC HIPERION SA Stei, the market shares held by the company on the external market are insignificants, (under 1%).

(19) The main competitors of SC HIPERION SA, on the domestic market, are the following:

- on the elevating and transportation equipment marchet: INTERLIFT PROD SRL ORADEA, PRODMEC SA CARAS SEVERIN, MENAROM SA GALATI,

TEHNOFRIG SA CLUJ, UPSROM SA PETROSANI, TEHNOPAM SA BUCHAREST ;

- on the elements of fine mechanics marchet:: HERVIL SA RAMNICU VALCEA, MEBIS SA SILVER, HYDRAMOLD SRL IASI;
- on the apparatus and mining equipments marchet:: UTEPS SA ALBA IULIA, PROMEX SA BRAILA, UNIMET CUG SA CLUJ, FORTPRES CUG SA CLUJ, POPECI UTILAJ GREU SA CRAIOVA, AGMUS SA IASI, FORTUS SA IASI, UPETROM 1 MAI SA PLOIESTI, UTCHIM SA GAIESTI, MIRFO INDUSTRIES TARGU JIU, GRIMEX SA TG. JIU, ANGRED SA BAIA MARE, INDEPENDENTA SA SIBIU, TRUM SA CAREI

(20) The main clients for the company's products are: IND. MARK. TRANS. CLUJ, IND. MARK. TRANS. CLUJ, EXPUR URZICENI, ETA SISTEMI ITALIA, ACHA ITALIA.

(21) According to the marchet study annexed to the restructuring plan of SC HIPERION SA Stei, the tendency, on the domestic market, is to increse on two relevant markets:

- for elevating and transportation equipment,
- for elements of fine mechanics,

an of stagnation on the mining equipment market.

Although, following the company's restructuring, the company's market shares will remain at the same level.

5. DESCRIPTION OF THE PRIVATIZATION PROCESS

(22) [...]²

(23) [...]³

(24) [...]⁴

(25) [...]⁵

(26).[...]⁶

(27) [...]⁷

6. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(28) The restructuring plan elaborated by the company and the Buyer, approved by AVAS, submitted to the Competition Council, includes the measures required to carry out the company's re-organization, technical and financial restructuring and environment investments.

(29) The restructuring of SC HIPERION SA is focused on the following main directions:

- diversification of products through the production of new products;

² Confidential data

³ Confidential data

⁴ Confidential data

⁵ Confidential data

⁶ Confidential data

⁷ Confidential data

- efficaciousness of the company's activities, mainly through externalization of loss generating activities;
- improvement of economic-financial and efficiency indicators;
- retechnologization/modernization of the manufactured equipment in order to cover the needs of the domestic and external markets.

(30) Through the implementation of the restructuring plan, the company aims to achieve the following objectives:

- reduction of costs generated by non-quality;
- solving environment problems;
- improving the quality of products;
- restauration of long-term viability.

(31) The restructuring plan annexed to the notification comprises both the causes that led to the difficult financial situation of SC HIPERION SA, as well as the measures to be implemented by the company in order to ensure its viability on the long term. Through the application of the measures comprised in the restructuring program, AVAS foresees that the company will register a profitable activity and that it will ensure its own financial resources in order to adequately carry on its activity, without debts to the consolidated State budget or to local budgets.

(32) The restructuring program elaborated by the company together with the Buyer and AVAS covers the period 2004-2008. In summary, the measures comprised in the restructuring plan are presented as follows:

Table no. 6 - Synthesis of measures contained in the restructuring plan

- RON -

No.	Measures	Evaluation implementation costs		
		The company's own sources	Buyer's sources	State aid
1.	Organizational and managerial measures	133,000	4,137,597	-
2.	Technical and technological measures	-	4,255,763	-
3.	Measures for environment protection	-	491,920	-
4.	Financial restructuring measures	133,960	611,800	10,891,179
	TOTAL	1,467,960	9,497,080	10, 891,179
TOTAL RESTRUCTURING COST		21,856,219		

Source: SC HIPERION SA's restructuring program.

(33) The achievement of the restructuring program implies a financial effort of RON 21,856,219 and aims to restore SC HIPERION SA's viability in 2008 (at the end of the restructuring period).

6.1. Organizational and managerial restructuring

(34) The organizational and managerial restructuring comprises the following measures:

Table no. 7 - Measures on the organizational and managerial restructuring

- RON -

Measure	Deadline	Implementation effort	Financing	
			The company's own sources	Buyer's sources
Implementation and certification of the integrated management system of quality	2008	171,000		171,000
The organization and endowment of a marketing department, the elaboration and implementation of the marketing strategy	2008	3,800		3,800
Modernization of the iT system and endowment with data processing equipment	2007	100,896	95,000	5,896
Fitting out, rehabilitation and modernization of certain assets (buildings, units)	2007	3,955,072		3,955,072
Infrastructure rehabilitation, grass plots	2008	39,829	38,000	1,829
TOTAL		4,270,597	133,000	4,137,597

Source: SC HIPERION SA's restructuring program.

6.2. Technical and technological restructuring

(35) The technological investments assumed by the Buyer⁸ amount to RON 4,255,763 and are presented, in summary, in the next table:

Table no. 8- Measures on technical and technological restructuring

- RON -

Measure	Deadline	Implementation effort	Financing	
			The company's own sources	Buyer's sources
Modernization of the fabrication technologies through the rehabilitation and modernisation of already existing machine tools.	2008	972,939	-	972,939
Modernization of the fabrication technologies through the acquisition of new equipments regarding the activities: - repair workshop for pilers; - welding; - cutting; - sand-blasting – dying;	2008	3,282,824	-	3,282,824
TOTAL		4,255,763		4,255,763

⁸ Through both the privatization contract (RON 3,214,763) and the notary's statement (RON 922,834), submitted by additional information.

Source: SC HIPERION SA's restructuring program.

The technical restructuring measures imply investments for the acquisition of equipments, modernization of certain equipments, as well as the elimination of the problems registered during the technological flow.

6.3. Measures on the environmental restructuring

(36) According to the sale-purchase agreement, the environmental investments are completely assumed by the Buyer⁹. These are in amount of RON 491.920 and are meant to comply with the criteria of environmental permits and with the measures that are included in the complying programs.

Table no. 9 - Measures on the environmental restructuring

- RON -

Measure	Deadline	Implementation effort	Financing	
			SC HIPERION SA's own sources	Buyer's sources
Equipments, endowments, antipollution consumables, waste management	2008	184.284	-	184.284
Construction and reconstruction works, investments	-	20.783	-	20.783
Other environmental expenses (water, air, soil, subsoil etc)	-	4.209	-	4.209
Dismembering and the capitalization of obsolete and outdated equipments and apparatus Deallocating the reservoirs for the storage of oil products	2004	2.711	-	2.711
The rehabilitation of the company's water- sewerage system and the modernization of the water treatment plant, including waste water	2007	160,360	-	160,360
The modernization of the steam-rollers plant and the installations for the compressed air distribution	2004	119,573	-	119,573
TOTAL		491,920	-	491,920

Source: Restructuring plan of SC HIPERION SA

6.4. Financial restructuring

The financial restructuring includes the following measures:

Table no. 10 Financial restructuring measures

⁹ Environment investments are entirely assumed by the Buyer according to the privatization contract.

Measure	Deadline	Implementation effort	Financing		State aid
			SC HIPERION SA's own sources	Buyer's sources	
Working capital used for the payment of materials, raw materials, fuel, utilities	2004	1,424,800	813,000	611,800	-
Exemptions and payment scheduling for debts towards the state budget: 1.776.641 scheduling 9.114.538 exemptions	2006	10,891,179	-	-	10,891,179
The costs corresponding to the 2 credits contracted by the company (interests and the corresponding fees)	2004	200,000	200,000		
	2008	300,000	300,000		
The payment corresponding to the market and restructuring studies	2006	21,960	21,960		
TOTAL		12,837,939	1,334,960	611,800	10,891,179

Source: Restructuring plan of SC HIPERION SA

The restructuring plan, by its financial restructuring component, gives the possibility to increase the cash flow, easing the financial activity of the company by ensuring a stable cash-flow. In this way, the company will be able to payback all its current debts to the State and to allocate the necessary liquidities for the planned needed investments, in order to develop and sustain the production program.

7. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(37) The criteria which allow to establish whether a measure constitutes State aid, are presented in art. 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.

(38) The financial support granted to SC HIPERION SA and notified by AVAS consists in the fact that the State renounces to collect certain revenues, therefore state resources are involved.

(39) The financial support measures are granted to a certain undertaking, namely SC HIPERION SA, thus having a selective character.

(40) Taking into consideration the fact that the facilities are granted in the privatization context, in order to assess whether an economic advantage is granted to SC HIPERION SA, the behaviour of the State should be compared to that of a prudent private investor/seller acting in similar conditions (the prudent private investor test). It can be considered that the State is acting like a prudent private investor/seller at privatization, if it can be proved that it obtains the best price for the selling of its shares, (the price obtained is higher than the amount of the facilities to be granted). The Competition Council assessed whether the State is acting like a prudent private investor in the case of SC HIPERION SA.

(41) [...] ¹⁰

(42) [...] ¹¹

(43) [...] ¹²

(44) Granting financial facilities to SC HIPERION SA is creating the premises for a possible distortion of the competition on the relevant markets since it allows the company to maintain and even to consolidate its position on these markets. At the same time, there is no doubt that the financial support affects the trade with the Member States, since the company's products compete with similar products manufactured by companies from the European Union on the markets where SC HIPERION SA is active .

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

8. STATE AID COMPATIBILITY WITH THE LEGISLATION IN THE FIELD

(46) The State aid objective is the restructuring of SC HIPERION SA in view of company's return to viability at the end of the restructuring period.

(47) The restructuring State aid must be conditioned by the implementation of a feasible, coherent restructuring plan to prove the company's long term viability. In this respect, the *Regulation on state aid for rescuing and restructuring firms in difficulty*, (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 withdraw from those activities that are generating losses, restructuring the existing activities which can become competitive and sometimes

¹⁰ Confidential data

¹¹ Confidential data

¹² Confidential data

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.).

(48) The Competition Council assesses the State aid granted to SC HIPERION SA according to the criteria foreseen in the Regulation. In order to be considered compatible with the normal competition environment, the state aid must fulfill all criteria foreseen in the Regulation.

9. CRITERIA THAT MUST BE FULFILLED IN ORDER TO GRANT STATE AID FOR RESTRUCTURING

(49) The financial support measures mentioned at paragraph 2.2. must be granted by taking into account the following:

- Firm in difficulty;
- The restoration of the long-term viability of SC HIPERION SA;
- Preventing any excessive distortion of competition;
- The correct dimensioning of aid which must be limited to the minimum necessary (proportionality of aid);
- Fulfilling the “first time- last time” principle;
- Ensuring the fulfilment of the restructuring plan and monitoring its implementation by the Competition Council (monitoring and annual reporting).

10. FIRM IN DIFFICULTY

(50) In order to benefit of State aid in accordance with the Regulation, a company must be in difficulty. It is considered that “a company is in difficulty when it is not able to cover its losses either from its own financial resources or from resources that it may obtain from the owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost lead on short or medium term to its economic market failure¹³.”

(51) In this respect, on the basis of the facts mentioned at point 3.1., the Competition Council considers that, in the year of the privatization, the company had losses, diminished its equity and had increased debts. The losses of the company in 2003 exceeded 3 times equity and the debts of the company at the end of 2003 exceeded 4 times equity. In addition, as it was presented at point 3.1, according to the data from the balance sheets, the company registered losses before privatization.

¹³ Art.2 par.(1) of the Regulation

(52) In the light of the above, the Competition Council considers that the company is in difficulty, in the sense of the Regulation, thus being eligible, from this point of view, to be granted state aid for restructuring.

11. RESTORING THE COMPANY'S LONG TERM VIABILITY

(53) According to art. 13 of the Regulation, restructuring state aid is granted subject to the implementation of the restructuring plan (subject to an assessment made by the Competition Council). The restructuring plan, which must be as short as possible, must include the abandonment of loss generating activities and it must offer the company the long term viability, thereby allowing it to function with its own resources. The restructuring plan must be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures as well as from taking into consideration external factors such as price and demand variation over which the company has no substantial influence.

(54) In order to overcome the difficult situation, the company elaborated, together with the Buyer and AVAS, a restructuring program for 2004-2008. The summary of the restructuring measures of SC HIPERION SA was presented in chapter 6.

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

(56) According to the information presented in the restructuring plan of SC HIPERION SA, annexed to the notification, this reflects the company's activity in the period prior to privatization. This plan was elaborated as a result of a diagnosis analysis which underlined the strong and the weak points of the company, the circumstances that led to the difficulties that the company is dealing with, as well as the forecast of the economic-financial indicators during the implementation of the restructuring measures.

(57) The strategy of SC HIPERION SA aims to preserve the company's strong points such as: direct distribution, specialized personnel, experience in the activity and capacity to adapt to market's demands. At the same time, the strategy of SC HIPERION SA aims to limit and to counteract, with appropriate measures, the weak points such as: obsolete and outdated production equipments, lack of liquidities, debts to budgetary creditors, the increase of competition on the markets where the society is active.

(58) The Competition Council considers that through the application of the measures contained in the restructuring plan, to which both the company and the Buyer, through their own contributions, as well as the State, through the facilities granted to the company for the payment of the budgetary obligations will contribute, for the period 2004 – 2008, an improvement of the economic-financial indicators is foreseen, as it follows:

Table no. 11 - Evolution forecast of the financial - economic indicators, after applying the restructuring measures

RON

Nr. crt.	Indicator	2004	2005	2006	2007	2008
3	Total incomes	7,360,000	7,575,000	18,994,600	12,800,000	14,500,000
4	Exploitation incomes	7,240,000	7,455,000	9,951,000	12,500,000	14,000,000
	Net turnover	6,950,000	6,970,000	7,085,000	8,650,000	10,039,850
	Financial incomes	120,000	120,000	9,043,600	300,000	500,000
5	Total expenditures, out of which:	7,400,000	7,565,000	17,141,400	12,725,000	14,350,000
	a) exploitation expenditures:	7,260,000	7,420,000	9,651,000	12,100,000	13,650,000
	b) financial expenditures	140,000	145,000	7,490,400	625,000	700,000
6	Gross result (+) / Loss(-)	-40,000	5,000	1,853,200 ¹⁴	75,000	150,000
7	Net result (+) / Loss (-)	-40,000	4,750	1,556,688	63,000	126,000
10	Total floating assets, out of which:	4,773,476	4,713,090	3,835,494	3,639,173	3,391,547
	a) Stocks	2,478,310	2,934,614	2,327,700	2,152,700	1,950,000
	b) Claims	2,120,154	1,547,340	1,200,000	1,100,000	1,000,000
	c) Liquidities and investments	168,769	231,136	307,794	386,473	441,547

Source: Notification form

By means of assessment of the data in the table presented above, the following has resulted:

- growth of the exploitation incomes which will become double in 2008;
- a decrease in losses; obtain the profit since 2005 (the profit obtained in 2006 is only an account profit – result of the influence of the state aid).

(59) 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.12 - Target financial- economic indicators

1. . Net profit	RON	126,000
2. . Turnover	RON	10,039,850
3. Employees number	pers.	300
4. Equity	RON	15,797,289

¹⁴ gross profit forecast for 2006 in amount of RON 1,853,200 is an account profit – result of the influence of state aid; contrary, the estimated profit for 2006 is RON 30,000

5. Claims recovery period	zile	36
6. Debts payment period	zile	137
7. Indebtness ratio	%	24
8. Economic profitability	%	0.64
9. Financial profitability	%	0.80

Sources : Restructuring Program of SC HIPERION SA

13. PREVENTING EXCESSIVE DISTORSION OF COMPETITION (COMPENSATORY MEASURES)

(60) 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 the 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.

(61) According to the information submitted by AVAS, in view of ensuring its viability, until the end of the restructuring period, the company will reduce its non-viable production capacities, as follows:

Table no. 13 – Reduction of SC HIPERION SA's capacities

Product	Capacity in 2004 (tones)	Capacity foreseen in 2008 (tones)	Estimated percentage for the reduction of the viable production capacities %	Estimated percentage for the reduction of the non-viable production capacities %
Equipments for elevating and transportation	1,700	350	68	11.41
Pneumatic and hydraulic equipments	300	90	60	10
Equipments and apparatus for the metallurgic and mining industry	5975	1,800	55.87	14
Various (casted, forged)	5370	1500	45.06	27

Source: Additional information

(62) The reductions of capacities made by the company are irreversible and are part of the restructuring plan. The apparatus and equipments corresponding to this capacity will be deallocated and capitalized in order to obtain liquidities.

(63) According to the market study annexed to the notification, SC HIPERION SA holds low market shares on the markets on which it activates¹⁵. Taking into consideration the provisions of article 14 of the Regulation, in which it is stipulated that compensatory measures shall be proportionate with the distorting effects caused by the State aid on competition and especially with the company's size and its relative importance on the relevant markets, the Competition Council considers that no substantial reduction of the production capacities are required in the case of SC HIPERION SA.

(64) 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.

14. STATE AID LIMITED TO THE MINIMUM NECESSARY (PROPORTIONALITY OF AID)

(65) In accordance with the provisions of article 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 fixed assets, rental of assets or by credit contracting under normal market conditions.

(66) The total restructuring cost of SC HIPERION SA is of RON 21,856,219 and consists of:

- Organizational restructuring cost	RON 4,270,597
- Technological restructuring cost	RON 4,255,763
- Environmental restructuring cost	RON 491,920
- Financial restructuring cost	RON 12,837,939

(67) The restructuring cost of SC HIPERION SA, amounting to RON 21,856,219, is supported from the following resources:

I. Company's sources	RON 1,467,960
- two bank credits	RON 1,216,051
- the value of fixed assets sold in auction	RON 78,410
- scrap-iron selling	RON 173,499
II. Buyer's sources ¹⁶	RON 9,497,080
III. State aid	RON 10,891,179

¹⁵ See paragraph 18

¹⁶ Assumed through the privatization contract (RON 7.856.080) and the notary's statement (RON 1.641.000)

(68) From the total restructuring cost, in total amount of RON 21,856,219; 6,7% will be financed from the company's own resources, 43,47% from the majority shares buyer's own resources, 49,83 % from financial support granted by the state.

(69) Regarding the above mentioned facts, the Competition Council considers as significant the beneficiary's contribution of 50,17% for sustaining the restructuring costs.

15. FULFILLING THE „FIRST TIME, LAST TIME” PRINCIPLE”

(70) SC HIPERION SA did not previously receive restructuring State aid, therefore the provisions of art. 24 of the Regulation, stipulating that the restructuring State aid must be granted only once, are observed.

16. AFFILIATION TO A GROUP OF FIRMS

(71) According to the provisions of art.2 (5) of the Regulation, a company belonging to a group is not normally eligible to receive State aid for rescue and restructuring, except for the case when it can be proven 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.

(72) The fiscal facilities intended to be granted to SC HIPERION SA consist of debts accrued prior to privatization– as an effect of economic results obtained in the years prior to the selling of the majority share package, so the debts belong to the company.

(73) [...] ¹⁷

(74) Based on the above presented facts, the Competition Council notes that the majority shareholder, SC EUROPEAN FOOD SA, and the group members to which it belongs, could not face both SC HIPERION SA's financial difficulties and those of the restructuring process without the intervention of the state.

(75) Taking into account these facts, the Competition Council considers that the condition stipulated by art. 2 (5) of the Regulation, regarding affiliation to a group of firms, is fulfilled.

17. MONITORING AND ANNUAL REPORT

(76) In accordance with the provisions of art. 18 of the Regulation, the Competition Council permanently monitors the restructuring plan's implementation, in order to establish the fulfilment of the objectives established.

¹⁷ Confidential data

(77) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities and major deviation from the achievement of restructuring measures will not be recorded, and that the State aid will not lead to the creation of supplementary liquidities, which could be used for other activities than the ones included in the restructuring program.

18. CONCLUSIONS

(78) Taking into account the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC HIPERION SA is compatible with a normal competitive environment and does not significantly affect the trade with the Member States of the European Union.

DECIDES

Art. 1. The financial support measures intended to be granted to SC HIPERION SA Stei represent State aid according to article 2(1) of the *Law no. 143/1999 on State aid, republished*.

Art. 2. On the basis of art. 21 paragraph (2)(c) corroborated with art. 23 paragraph (1) (e) of *Law no. 143/1999, republished*, the restructuring State aid to be granted to SC HIPERION SA Stei at its privatization is authorised, under the condition of fulfilling art.3 and art.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 Program.

Art. 5. If the conditions imposed by the present decision are not fulfilled, the provisions of art. 22 of *Law no. 143/1999 on State aid, republished*, shall be applied.

Art. 6. The value of the State aid to be granted is RON 10,891,179.

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 State aid granted, 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 Art. 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, Bucharest;
- SC HIPERION SA Stei, Str. 13 Septembrie nr.24, Stei, Bihor county.