

DECISION OF THE COMPETITION COUNCIL
no. 24 of 09.02.2006
concerning the State aid to be granted to S.C. FRIMUT S.A. Brasov

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 the rescue and restructuring of firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 17.12.2004;

With regard to the provisions of Guidelines regarding the qualification of an enterprise as an SME, published in the Official Gazette, Part I, no. 314, of 14.05.2005;

With regard to the provisions of Regulation on the form, content and other details regarding the state aid notification, published in the Official Gazette, Part I, no. 82 of 05.01.2005;

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

Based on the following,

I. PROCEDURE

- (1) By address no. DCS/5458/24.11.2005, filed with the Competition Council no. RS-AS 114/24.11.2005, the Authority for the Recovery of State Assets (hereinafter AVAS) has notified based on art. 15 from Law no.143/1999 on state aid, republished, the individual state aid for the restructuring of FRIMUT (hereinafter FRIMUT) within its privatization process.

- (2) The Competition Council requested AVAS to provide additional information, by address no. RS-AS/114/06/12/2005, regarding the certainty of the company's own sources, the restructuring measures and the compensatory measures. AVAS replied by the address no. VP4/5838/27.12.2005, filed with the Competition Council no. RG 10023/28.12.2005 and the address DCS/74/11.01.2006, filed with no. DAAS/17/12.01.2006. The notification became effective as of the date the information was exact and complete, namely on 12.01.2006.

II. DESCRIPTION OF THE FACTS

1. Description of the support measures granted to FRIMUT

1.1. Legal basis for granting the financial support

- (3) The aid measures granted to FRIMUT UTB S.A. Brasov are set up by the following acts:
- EGO no. 88/1997 regarding the privatisation of companies, with the subsequent amendments and completions;
 - Law no. 137/2002 regarding certain measures for accelerating privatisation, with the subsequent amendments and completions;
 - GD no. 577/2002 for approving the Methodological Norms for enforcing EGO no. 88/1997;
 - EGO no. 26/2004 regarding certain measures for completing the privatisation of the companies in APAPS' portfolio and consolidating some privatisations, approved with amendments and completions by the Law no. 442/2004;
 - EGO no. 26/2005 for annulling the legal provisions on granting facilities at the payment of overdue budgetary obligations, as amended and completed by Law no. 244/2005.

1.2. Financial support measures

- (4) The financial support measures notified by AVAS have been granted within the privatisation of FRIMUT and consist of the facilities regarding the payment of overdue budgetary obligations to the State consolidated budget.
- (5) The financial support in amount of RON 3,834,256 was granted in the form of exemptions, (in amount of RON 3,163,359) and rescheduling (in amount of RON 670,897) from the payment of budgetary obligations, as follows:

Table no. 1 – Facilities granted to FRIMUT

No. crt	FACILITY	GRANTED AMOUNT -RON-	LEGAL BASIS
1.	Payment deferral in view of the exemption of 95% of obligations to the State budget, overdue on 31.12.2001;	139,902	Law no. 137/2002
2.	Payment deferral in view of the	122,661	Law no. 137/2002

	exemption from the payment of interest and penalties corresponding to the obligations due and not paid by 31.12.2001, calculated until the date of the share ownership transfer		
3.	Payment deferral in view of the exemption of 95% of obligations to the State social insurance budget and the unemployment insurance budget overdue on 31.12.2001	492,875	Law no. 137/2002
4.	Payment deferral in view of the exemption from the payment of interest and penalties related to the obligations due to the State social insurance budget and the unemployment insurance budget and not paid on 31.12.2001, calculated until the date of the share ownership transfer	1,528,744	Law no. 137/2002
5.	Payment deferral in view of the exemption from the payment of interest and penalties of the employer, related to the obligations due to the Unique National Social Health Insurance Fund, due on 31.12.2001, brought to day, and not paid until the date of the share ownership transfer	88,947	Law no. 137/2002
6.	Payment deferral in view of the exemption from the payment of interest and penalties of any kind, calculated until the date of the share ownership transfer	790,230	EGO no. 26/2004
	TOTAL EXEMPTIONS	3,163,359	
7.	Rescheduling for the payment over a 5-year period, with a 6-month grace period, included in the rescheduling period, of the obligations to the Unique National Social Health Insurance Fund, due on 31.12.2001	173,262	Law no. 137/2002
8.	Rescheduling over a 5-year period, with a 6-month grace period, included in the rescheduling period, of the interest and penalties from point 7 of the table, brought to day, until the date of the share ownership transfer	95.423	Legea nr. 137/2002
9.	Rescheduling of the overdue	402.212	EGO. 26/2004

	amounts for the period starting with 01.01.2002 until the date of the share ownership transfer		
	TOTAL RESCHEDULING	670.897	
	TOTAL AID	3.834.256	

Source: AVAS' notification

2. Beneficiary

- (6) FRIMUT is a public company, headquartered in Brasov, no. 5 Turnului Str., registered at the Trade Register with number J08/1004/1999 and with CUI R 12430885. The company separated from S.C. Tractorul UTB S.A. Brasov in 1999. It functioned within the latter as repairing unit for hot working sector machinery.
- (7) The company was privatized in 2002, by signing the share sale-purchase agreement no. CBV/22/20.09.2002. At the date the share sale-purchase agreement was signed, it had a an equity of RON 1,549,059.2, divided into 15,490,592 shares, with a nominal value of RON 0.1, according to the note registration request no. 412/10.06.2002.
- (8) The ownership structure after privatisation is presented in Table no. 2.

Table no. 2 - Ownership structure at FRIMUT UTB. after privatisation

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares held	Percentage of the equity (%)
S.C. MARIDAN S.R.L.	7,768,532	50.15
S.C. TRACTORUL UTB S.A.	4,791,592	30.93
S.I.F. TRANSILVANIA	2,930,468	18.91
Total	15,490,592	100

Source: notification form

- (9) In 2002, FRIMUT. had 94 employees and a turnover of RON 875,760.7. According to the *SME Guidelines*, FRIMUT is a linked company i.e. to its majority shareholder, namely S.C. MARIDAN S.R.L. and a partner of S.C. Tractorul UTB S.A. Brasov.
- (10) S.C. MARIDAN S.R.L. had 6 employees and was also partner with another company, S.C. Padanex Prod S.R.L Brasov (the latter holds 30% of S.C. Maridan S.R.L.'s shares), with 7 employees; S.C. Tractorul UTB S.A. Brasov had, at the and of 2002, a number of 7,035 employees.
- (11) Thus, according to the *SME Guidelines*, FRIMUT qualifies as a large enterprise, since the number of its own employees, cumulated to that of the linked enterprise (total) and that of the partner enterprise (added up proportionally, namely 30% * 7,035 =2,110 employees) exceeds the threshold in the Guidelines i.e. 250 employees.

- (12) The company's core activity is the repairing of tool -machinery and technological installations and the manufacture of spare parts and new parts obtained by cutting.
- (13) The company also engages in the reconditioning of machinery as well as gear boxes, forward flow boxes, clutches, hydraulically pumps, manufacturing electrical panel, repairing casting- forming automatic lines etc.

3. FRIMUT's financial situation prior to privatization

- (14) The economic-financial results obtained by FRIMUT, based on the data in the financial and accounting documents during 2000-2002, are the following:

Table no. 3 – Dynamics of the turnover and financial results of FRIMUT during 2000-2002

Turnover (RON)		
2000	2001	2002
342,756.7	470,904.9	875,260.7
Net result (RON)		
- 798,286.7	- 682,305.6	- 1,719,274.8

Source: notification form

As shown by the data presented above, the company made significant losses every year, prior to privatizations.

- (15) Based on the balance sheet data for the last two years, the dynamics of the company's capital during 2000-2002 was the following:

Table no. 4 – Dynamics of FRIMUT's capital during 2000-2002

Capital (RON)		
2000	2001	2002
-1,021,557	-1,692,396	-3,053,326

Source: notification form

It results that over the analyzed period, the own capital registered a negative value, which increased from year to year.

- (16) Furthermore, over the analyzed period, the company registered an increase in debts, a decrease in debt payment on time, an increase in stocks, a decrease of the net asset value, negative cash flows, all of which demonstrate a decline of the company's economic-financial status.
- (17) Main causes leading to the company being in difficulty:
- Severe lack of liquidities;
 - Exploitation of obsolete technology, leading to high energy consumption and the lack of financial resources for investments for renewing the technology, that would have allowed the increase of the added value of the company's products/services;

- Bad management;
- Dependency on the heating energy supplied by S.C. Tractorul UTB Brasov, which leads to extremely high costs;
- Increase in bad debts from the company's main customer, S.C. Tractorul UTB Brasov;
- Insufficient promotion of the products manufactured on the market and lack of an adequate marketing policy;
- Keeping unused assets in the company's patrimony (surplus space and production means), which are costly to maintain.

(18) Taking into consideration this difficult situation, AVAS decided to privatize the company, accompanied by granting facilities at the payment of budgetary obligations.

4. The relevant market

(19) According to the market study attached to the notification form, the relevant market on which FRIMUT operates is the market for the repairing and manufacture of tool-machinery and that of general use. The geographic area in which the company sells its services/products is the whole Romanian territory (regions of Ardeal, Oltenia and Muntenia). The company does not export.

(20) The beneficiaries of the services and products supplied by the company are [...] ¹

(21) The market on which the company is active is characterized, on domestic level, by the presence of numerous undertakings, since the activity is specific to all undertakings in the machine building industry, many of these having their own specialized repairing unit. Based on the information presented in the notification, S.C. FRIMUT UTB S.A has a 0.03% market share.

(22) FRIMUT's main competitors are: S.C. Reutcom Utb S.A. Brasov, S.C. Umirom S.A. Petrosani, S.C. Foton 2000 Self S.R.L., SMC Manager S.A. Galati, S.C. Licoterm S.A. Roman, S.C. Midal Prod S.A. Jibou, S.C. Ruby-Tech S.A. Bucuresti, S.C. Gamautil S.R.L. Aiud, S.C. Euprag S.A. Oradea, S.C. Nukleon Prod S.R.L. Oradea, these undertakings having market shares of less than 1%.

(23) According to the information in the market study, the demand on this market has shown a growth tendency from 2001. The assessments of the domestic market trends until 2008 show an increase both in demand and in supply on this market, with demand increasing faster than supply. This increase is due to the fact that most domestic companies cannot afford to fully replace their machinery parts by new investments, thus having to resort to repairing the machinery in their endowment rather than upgrade them.

¹ Confidential data

5. The privatization process

- (24) A.V.A.S. placed the company up for sale by call public auction, the majority share package held by the State at FRIMUT. The announcement for the sale of the share package held at FRIMUT was published in the domestic press in August 2002 („Romania Libera” daily newspaper), on the Internet, as well as by advertisement posted at the company’s and AVAS’ headquarters. The privatization file included information on the economic-financial and environmental status of the company and facilities to be granted to the company in the event of privatization, the investments necessary for restructuring etc. Any potential interested investor was able to perform its own audit at the company, in order to check the information provided in the presentation file, as well as other additional data needed to draw up the purchasing bid.
- (25) Three company files were bought by: S.C. Grup Oligopol S.R.L. Brasov, S.C. Maridan Grup S.R.L. Brasov, S.C. Rom Terra Impex S.R. L. Brasov. None of the bidders required additional information or an audit of the company.
- (26) The auction procedure went on as follows:
- At the first term foreseen in the tender announcement, no interested investors turned up;
 - A new call public auction announcement was issued, at a starting price of 50% of the initial price, but this announcement did not draw any investors, either;
 - Eventually, on 12.09.2002, a third announcement was issued, at a starting price of 20% of AVAS’ offered price.
- (27) The actual tender was attended by the following investors: S.C. Maridan Grup S.R.L. Brasov, S.C. Rom Terra Impex S.R. L. Brasov. The first one made the winning bid, and the contract² was signed on 20.09.2002.

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, describes the measures concerning the restructuring of the company in terms of organization, technology, environment and finance.
- (29) The restructuring program of FRIMUT entails the following measures:
- Improving the orders received/production capacity ratio;
 - Improving labour productivity by better organization and training of personnel;
 - Improving the quality of products/services supplied;
 - Diversifying the production range;
 - Observing the measures required by environmental protection and pollution reduction;

² The main elements of the contract are [...] (confidential data).

- Endowment with new machinery and/or upgrading existing ones;
- Increasing profitability of the company's core activities;
- Relief from the historical debts by obtaining State facilities;
- Promoting a marketing policy adapted to the market economy;
- Improving the company's efficiency by reducing slow stocks, merging the core activities and adequately managing the existing resources.

(30) The restructuring plan drawn up with the buyer and AVAS covers the period 2003-2008. In brief, the measures included in the plan are as follows:

Table no. 5 - Summary of the restructuring measures of FRIMUT

No.	Measures	Implementation costs			
		Company's sources	Investor's sources	State aid	Total
1.	Organizational and managerial restructuring measures	211,900	3,500	-	215,400
2.	Technological restructuring measures	1,629,600	-	-	1,629,600
3.	Environmental restructuring measures	5,000	20,200	-	25,200
4.	Financial restructuring measures	1,912,000	101,800	3,834,300	5,848,100
5.	TOTAL	3,758,500	125,500	3,834,300	7,718,300

Source: restructuring program of Frimut

6.1. The organizational and managerial restructuring

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

Table no. 6 - Organizational restructuring measures of FRIMUT

Measure	Deadline	Implementation effort	Financing sources		
			Own sources	Buyer sources	State aid
Development of the marketing sector and endowment with the necessary means for carrying out activity	30.12.2007	8,500	8,500	-	-
Development of software and endowment with IT	30.12.2006	14,100	14,100	-	-
Implementation of the quality management system and certification of the company according to the ISO 9001/2000 norm	30.12.2006	33,500	33,500	-	-

Reorganizing the company by directorates, departments and activities, rearranging production areas, merging the core activity into one unit and developing a new, simplified organization chart	30.12.2006	153,800	153,800	-	-
Sale of assets resulting from the company's reorganizing and activity cut	30.12.2006	2,000	2,000	-	-
Technical and financial assessment of the unused fixed assets in view of conservation	30.12.2006	3,500	-	3,500	-
TOTAL		215,400	211,900	3,500	-

Source: restructuring program of FRIMUT

The organizational measures aim to merge and redistribute the tasks within the processes, in order to eliminate dead time between production units and delays in taking management decisions, increasing productivity in the technical-administrative and supply sectors, cutting costs by eliminating unnecessary administrative expenses arising from the merged units. Having in mind the need to promptly address problems with minimum personnel, as well as to improve service quality, the need for IT and software endowment has come up, as well as the need to implement the quality management system. Furthermore, by an intensive marketing and sales policy, supported by participation to fairs, exhibitions, training of the personnel in the Supply and Sales departments, the intensification of advertising in specialized magazines, the setting up of a Web page, it is intended to develop the company's contract portfolio. In order to obtain financing sources and cut maintenance costs, the company has initiated the assessment and recovery of assets resulting from reorganizing and reducing the activity.

6.2. Technological restructuring

- (32) The technological investment committed by the company and the Buyer amount RON 1,629,600 and refer to:

Table no. 7 - FRIMUT's technological restructuring measures

Measure	Deadline	Implementation effort	RON Financing sources		
			Own sources	Buyer sources	State aid
Carrying out annual investment program consisting in the purchase of the following machinery: CNC coordinate and universal (boring and milling) processing tool - machinery, oxidation-cutting machine, welding tool, metal	30.12.2008	1,497,000	1,497,000	-	-

cutting band saw, bending roll machines, compressor, compressed air paint, crane electronic scales etc.					
Upgrading some existing obsolete machinery	30.12.2008	38,000	38,000	-	-
Purchasing an own source for heating and preparing hot household water, eliminating general lighting by introducing sector and local lighting	30.12.2006	82,600	82,600	-	-
Purchasing modern TDCs and MCDs ³	30.12.2006	12,000	12,000	-	-
TOTAL		1,629,600	1,629,6000	-	-

Source: restructuring program of FRIMUT

As shown by the table above, the technological investments consist mainly in purchasing new machinery, equipment, and in upgrading and re-locating the existing ones. These measures will lead to a quality improvement of the company's services and products, the reduction of production costs and implicitly the improvement of the company's efficiency and profitability.

6.3. Restructuring measures for environmental protection

(33) Investments in environmental protection are aimed at complying with the standards imposed by the legislation in force regarding environmental pollution (water, soil, air) and consist in:

- Placing used oil reserves under a cover and implementing a collecting system for oil leaks, by creating collecting reservoirs;
- Setting up a capture and evacuation installation for harmful emissions resulting from welding operations;
- Removing oil leaks at the hydraulic installation AFP 180 in the production workshop located in the technical basement.

(34) The investments in environmental protection, amounting RON 25,200, are borne by the buyer of the majority share package and by the company. The implementation deadline is 30.12.2005. According to the information submitted, these have been completed to date.

6.4. The financial restructuring

(35) The financial restructuring encloses the following measures:

Table no. 8 - Financial restructuring measures

RON			
Measure	Deadline	Implementa	Financing sources

³ TDC = Tools, Devices, Verifiers

MCD = Measure and Control Devices

		tion effort	Own sources	Buyer sources	State aid
Assuming the hystorical debt	30.11.2008	1,910,500	1,910,500	-	-
Inventory and capitalization of stocks in order to create new financial resources	30.12.2005	1,500	1,500	-	-
Floating capital injection	30.12.2004	101,800	-	101,800	-
Granting of facilities to the payment of budgetary obligations	30.11.2008	3,834,300	-	-	3,834,300
TOTAL		5,848,100	1,912,000	101,800	3,834,300

Source: restructuring programme of FRIMUT

The financial restructuring component aims at relieving the company's financial activity. The company will thus be able to pay its current debt to the State and allocate the necessary liquidities to carry out the planned and necessary investments, in order to develop and support the production program in the future.

III. THE ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES FOR FRIMUT

1. The State aid character of the financial support measures granted to FRIMUT

- (36) The criteria, which allow establishing if a measure is State aid, are provisioned at 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 of the European Union, represents State aid and is considered incompatible with a normal competitive environment.
- (37) The financial support granted to FRIMUT and notified by AVAS consists in the State giving up at collecting certain revenues; therefore, resources of the State are involved.
- (38) The financial support measures are granted to a certain undertaking, namely FRIMUT. Therefore, they have a selective character.

- (39) Taking into account that the facilities are granted within the privatization process, in order to determine whether these confer an economic advantage to FRIMUT, the behaviour of the State should be compared to that of a private investor/seller acting under similar conditions, i.e. the private investor test should apply. The State can be considered to act at privatisation as a prudent seller/investor when it is proved that it obtains the best price from the sale of its shares (the price obtained is higher than the granted facilities). Has the State acted as a prudent private investor in the case of S.C. FRIMUT UTB S.A.?
- (40) As shown at point 5 in Chapter II of the present decision, the privatisation of FRIMUT was carried out by call public auction. According to the information provided in the notification, AVAS considered the company's sale procedure to be a transparent process, open to everyone interested, free from any pre-qualification criteria or other restrictions.
- (41) The price paid by the buyer for acquiring the majority share package is [...] ⁴ The Competition Council notes that this value is significantly smaller than the facilities granted at the privatisation of S.C. FRIMUT UTB S.A., namely RON 3,834,256. A private investor shall seek to obtain a positive price for the shares, whereas, in the present case, taking into consideration all the commitments assumed by the Romanian State, the final price is negative.
- (42) An investor/creditor might have accepted 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 before the privatization. Consequently, the Competition Council considers that the private investor principle does not apply to the privatisation of FRIMUT. Therefore, by granting the financial support to the company it is created an advantage for the latter on the relevant market ⁵.
- (43) Granting financial support to FRIMUT sets the premises for a possible distortion of the competition on the relevant market, since it allows the company to maintain its position on this market. Moreover, there is no doubt that the financial support measures may affect the trade with the Member States of the European Union, since the products/services manufactured/performed by FRIMUT may compete with similar products/services manufactured/performed in the European Union.
- (44) To conclude, the Competition Council considers that the financial facilities granted to FRIMUT are considered to represent State aids and fall under the scope of the Law no. 143/1999 on State aid, republished.

⁴ Confidential data

⁵ It should be said that the existence of conditions attached to the privatization package i.e. see para.27 above, is normally sufficient to dislodge the application of the market economy investor principle.

2. Assessment of the State aid's compatibility with the legal framework in the field

- (45) The State aid objective is the restructuring of FRIMUT, in order to restore its viability at the end of the restructuring period.
- (46) The restructuring aid is conditioned by the implementing of a viable and coherent restructuring plan, proving the long term viability of the company. To this effect, the Regulation on the state aid for rescue and restructuring firms in difficulty, published in the Official Gazette no. 1215/17.12.2004, issued in application of the Law no. 143/1999 on State aid, republished (hereinafter Regulation) provisions that the restructuring usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient basis, generally implying the withdrawal from actions that are generating losses, the restructuring of the existing activities that may become again competitive and sometimes their diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied by the financial restructuring (capital injections, reduction of the indebtedness degree, etc.).
- (47) The Competition Council assesses the state aid granted to FRIMUT according to criteria provided in the Regulation. In order to be compatible with a normal competitive environment, the Stat aid must fulfil all the criteria.

3. Criteria to be fulfilled in order to grant the restructuring aid

- (48) The aid measures mentioned at point 1.2. must be granted considering the following:
- Eligibility of the company: firm in difficulty, affiliation to a group of companies;
 - Restructuring plan. Restoring FRIMUT's long term viability;
 - Preventing any undue distortion of competition;
 - Aid limited to the minimum necessary;
 - Observing the "first time, last time" principle;
 - Annual monitoring and reporting of the fulfilment of the restructuring plan.

4. Eligibility of the company

4.1. Firm in difficulty

- (49) In order to benefit from State aid in accordance with the Regulation, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not able to cover its losses either from its own financial resources or from other sources that it may obtain from owners/shareholders or creditors, and which, in the absence of external intervention of the public authorities, will almost certainly lead, on short or medium term, to the company's exit from the economic market.

(50) According to art.2(2) (b) in the Regulation, a stock company is considered as in difficulty when it has lost more than half of its capital, as proved by its accountable registers and more than a quarter of its capital was lost within the last 12 months.

(51) In this respect, the Competition Council notes that, according to par. 15, the company registered a loss of its own capital in amount of RON 1,360,930 over the 12 months prior to restructuring, which represents „more than half of the own capital”, thus fulfilling the condition foreseen at Art. 2 (2) (b) of the Regulation, necessary in order for FRIMUT to be considered „a company in difficulty”. Thus, the cumulated losses significantly exceed the equity and reserves, which means that the company was actually insolvent.

4.2. Affiliation to a group of companies

(52) According to the provisions of art. 2 (5) in the Regulation, a firm belonging to a group is not normally eligible for receiving rescue and restructuring state aid, excepting from the case in which it proves that the company’s difficulties are its own and not due to the random allocation of the costs within the group and that the difficulties are too serious to be resolved by the group itself.

(53) FRIMUT’s difficulties are its own, and do not result from an arbitrary allocation of costs within the group, and are due to the lack of liquidities confronting the company prior to privatisation. The tax facilities granted to this company concern historical debts – an effect of the economic results during the years prior to the sale of the majority share package.

(54) [...] ⁶

(55) [...] ⁷

(56) As shown at paragraph (8) of the present decision, 30% of FRIMUT is held by S.C. Tractorul UTB S.A Brasov. Considering that the latter is confronted with great economic-financial difficulties (registering a RON 101,311,969 loss at the end of 2002), it is obvious that it does not have the necessary resources to help FRIMUT to recover.

(57) In view of the above, the Competition Council considers that FRIMUT is eligible to receive restructuring State aid, within the meaning of the Regulation.

5. The restructuring plan. Return to long term viability of FRIMUT

(58) According to art. 13 in the Regulation, the restructuring state aid’s granting is conditioned by the implementing of the restructuring plan base for the assessment of the Competition Council on the state aid. The restructuring plan, who’s duration must be as short as possible, must enclose the giving up to loss producing activities and

⁶ Confidential data

⁷ Confidential data

offer the company long term viability, allowing it to function with own resources. The restructuring plan must be based on a realistic assessment of the market conditions, the return to viability must be a result, mainly, of the internal measures it contains, as well as of the external factors, such as prices and demand fluctuation, factors on which the company has no important influence whatsoever.

- (59)** In 2002, FRIMUT was privatised. In order to recover from the difficult situation, the company elaborated, with the Buyer and AVAS, a restructuring plan for 2003-2008. The summary of the measures included in the company's restructuring plan has been presented in sub-chapter II.6.
- (60)** The analysis of the restructuring plan and the way in which this will lead to the long-term return to viability of FRIMUT, takes into consideration the provisions of Art. 13 of the Regulation.
- (61)** The restructuring plan of FRIMUT starts from the financial and economic data that reflects the company's activities in the period prior to privatization. This includes the causes leading to S.C. FRIMUT UTB S.A.'s financial difficulties, as well as measures ensuring the company's long-term viability. The Competition Council notes that the measures included in the restructuring plan counteract the causes of the company's difficulties, aiming to diversify the activities, capitalizing the assets, re-organizing the production activities, reducing exploitation costs, generating profits and increasing financial resources.
- (62)** Thus, the financial restructuring measures counteract the major causes of the company's difficult situation, such as the lack of liquidities and the high indebtedness degree. Another main cause – the obsolete and outdated assets – is eliminated by the technical investments to be made. Furthermore, by purchasing its own source for heating and preparing hot water will allow to break from the dependency on heating energy supplied by S.C. Tractorul UTB Brasov. The organizational and managerial restructuring measures eliminate causes such as bad management, the lack of adequate marketing policies, a reduced customer portfolio, keeping unused assets in the portfolio. The restructuring plan reflects a better concentration of human and financial resources in order to promote and commercializing FRIMUT's products. The Competition Council considers that by implementing the proposed marketing measures, the company shall draw more orders and will be able to sustain the turnover level, as indicated in the restructuring plan.
- (63)** The restructuring plan was elaborated as a result of a diagnosis analysis that shows the strong and weak points of the company. The strategy of S.C. FRIMUT UTB S.A. Brasov aims at preserving the strong points, respectively: personnel consisting of multi-qualified specialists, experience in the field, endowment for a wide range of processing by cutting and one-of-a-kind tools. Moreover, the company's strategy aims at limiting and counteracting with adequate measures the weak points, i.e. the reduced productivity due to the endowment with obsolete installations, deficiencies in the marketing-sales policy of the company, the high indebtedness degree, high production costs and high energy consumption, high TDC stocks.

(64) As part of the restructuring program, the company shall renounce the loss-making production capacities and non-profitable assets by sale them (reducing the activity into one hall and decommissioning the building, the land, the machinery and equipment remaining left unused). Furthermore, it is noted that the company's strategy shall focus on diversifying the activity and drawing new markets for selling the company's products/services. Thus, starting with 2003, the company has certified products and services for new industrial branches such as the chemical, oil, and mining industry. Moreover, the company has extended the area in which it sells its products/services to include the Oltenia and Muntenia regions, thus increasing its customer's portfolio. If at the date of privatisation, the main customer was S.C. Tractorul UTB S.A. Brasov, the percentage of sales to this company amounting to 80%, at present, following the diversification of services and the area of beneficiaries, the percentage has dropped below 40%, and is estimated to decrease under 20% by the end of the restructuring period. At the end of last year, the company concluded contracts with several clients from various regions of Romania: S.C. Comprest S.A. Brasov, S.C. Romcif Fieni, S.C. Mecanica De Precizie S.A. Ploiesti, S.C. Lafarge Romcim S.A. Hoghiz, S.C. PREMS S.A. Brasov, S.C. ULTIM S.R.L. Miercurea Ciuc. At present, the company is finalizing new contracts so it is likely that by 2008 the company's turnover resulted from business orders received from TRACTORUL to be much lower than the estimates.

(65) The Competition Council notes that by applying the measures enclosed in the restructuring plan, over 2003 – 2008, the economic- financial indicators are foreseen to improve as follows:

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

-RON-

	Indicators	2003	2004	2005	2006	2007	2008
1.	Net turnover	1,102,800	1,122,500	1,103,700	1,168,500	1,247,000	1,290,000
2.	Total income, of which:	1,333,400	2,127,800	1,570,800	1,478,500	1,490,000	1,500,000
	- Operating revenues	1,332,500	2,127,000	1,570,000	1,477,000	1,489,200	1,499,100
	- Financial revenues	500	800	800	800	800	900
	- Extraordinary revenues	400	-	-	-	-	-
3.	Total expenses, of which:	2,024,300	2,532,500	1,494,200	1,386,900	1,391,000	1,399,000
	- operating	2,017,000	2,464,000	1,357,900	1,318,800	1,358,000	1,306,700
	- financial	6,800	68,500	136,300	68,100	33,000	92,300
	- extraordinary	500	-	-	-	-	-
4.	Gross profit (+) / Loss (-)	-690,900	-40,480	76,600	91,600	99,000	101,000
5.	Mobile assets, of which:	736,500	1,023,800	464,900	385,000	390,000	410,000
	- stocks	410,800	236,100	221,900	190,000	196,000	198,000
	- liabilities	300,800	725,400	185,000	160,000	166,000	150,000
	- cash and placements	24,900	62,400	58,000	35,000	28,000	62,000
6.	Total debt	5,405,600	5,702,300	2,041,200	1,112,400	1,330,800	871,300

Source: restructuring programme of FRIMUT

The analysis of the main economic-financial indicators reveals that the company estimated, in its restructuring plan, a moderate ascending trend of the turnover and profit (starting with 2005) and a strong descending trend of debt.

- (66) From the analysis of the data in the balance sheets for 2003 and 2004, as well as those provisioned for 2005, it results that the company has actually registered a positive trend, as follows: in 2003 and 2004 (the first years of restructuring), the company cut losses from RON 1,718 thousand to approx. RON 690 thousand and RON 405 thousand respectively; in 2005, the company tried to recover the lagging behind in the previous years, obtaining a profit of RON approx. 82.6 thousand; this is due to the implementation of a part of the measures in the restructuring plan, which led to an improvement in efficiency and allowed to drop loss-making activities. Given the positive results obtained by the company up to now, Competition Council consider that the company has real possibilities to become viable at the end of the restructuring period.
- (67) 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	RON	101,000
2. Turnover	RON	1,290,000
3. Equity	RON	457,700
4. Receivables collection period	days	41.8
5. Indebtedness degree	%	1.90
6. Economic profitability	%	4.41
7. Financial profitability	%	22.1
8. Cash flow	RON	171,400

Source: restructuring programme of FRIMUT

- (68) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the return to long term viability of FRIMUT, which results mainly from the internal measures included in the restructuring plan and is not based on external factors such as the fluctuation in prices and demand. The restructuring plan implemented by the company will allow the company, following the restructuring, to fully cover costs by own forces, on the free market.

7. Preventing any undue distortion of the competition

- (69) According to the provisions of the Regulation, 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. The reduction of the company's presence on the market will be set based on the market study attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.
- (70) FRIMUT holds insignificant market shares on the markets on which it operates; the attached market study shows that at the end of the restructuring period, the company's market share shall also be extremely low, approx. 0.03%. Consequently,

considering the provisions of art. 14 of the Regulation that stipulates that the compensating measures shall be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the affected markets, the Competition Council considers that no substantially reduction of production capacities is necessary in the case of FRIMUT.

(71) In accordance with the provisions of Art. 14 (3) of the Regulation, the Competition Council notes that the reduction of the loss-making production capacities does not represent a compensatory measure, since it is absolutely necessary for the company to return to viability.

(72) Given that FRIMUT qualifies as a large enterprise, the State aid grantor has imposed as a compensatory measure the reduction with 10% of FRIMUT's viable production capacities, compared to the level of 2002, by disaffecting and selling a 4,038 sq.m. surface of the main production hall, together with the corresponding fixed assets (single girder mono-beam cranes - 5 pieces, conductors' grinding machine).

(73) The production capacities in use and their utilisation degree in 2001 – 2002 are the following :

Table no. 11- Utilization degree of the production capacities during 2001 - 2002

Relevant market	MU	2001			2002		
		Cap. in use	Accomplished production	Utilisation degree	Cap. in use	Accomplished production	Utilisation degree
Maintenance and repairing of machinery and tools	Thous and RON	2,705	468	17.3%	2,705	883	32.64%

Source: notification form

(74) During the implementation of the measures in the restructuring plan, the production capacities and their utilisation degree is the following:

Table no. 12 – Utilization (efficiency) degree of the production capacities during 2003 – 2008

Relevant market		Maintenance and repairing of machinery and tools
2003	Capacity in use	175.5
	Utilisation degree	62.8%
2004	Capacity in use	164.4
	Utilisation degree	68.3%
2005	Capacity in use	154.0
	Utilisation degree	88.9%
2006	Capacity in use	139
	Utilisation degree	95.7
2007	Capacity in use	139
	Utilisation degree	96
2008	Capacity in use	133
	Utilisation degree	99.6

Source: supplementary information

- (75) In light of the above, the Competition Council notes that the State aid shall be used exclusively for restoring the company's viability, not allowing the beneficiary, while implementing the restructuring plan, to extend its production capacity.

8. Aid limited to the minimum necessary

- (76) In accordance with the provisions of art. 15 of the Regulation, the state aid's amount and intensity must be limited at the minimum necessary, to allow the restructuring according to the company and shareholders' existing financial resources. The state aid's beneficiary must bring a significant contribution to the restructuring plan from its own resources, including from the sale of assets unessential for the company's survival, or from external financing under market conditions.

- (77) The total restructuring cost of FRIMUT is RON 7,718,300 and is composed of:

a. Organisational restructuring cost	RON 215,400;
b. Technological restructuring cost	RON 1,629,600;
c. Environmental restructuring cost	RON 25,200;
d. Financial restructuring cost	RON 5,848,100.

- (78) The total restructuring cost of the aid beneficiary is supported from the following sources:

- FRIMUT.'s own sources	RON 3,758,500;
- Buyer's own sources	RON 125,500;
- State aid	RON 3,834,300.

- (79) Out of the total restructuring cost, in amount of RON 7,718,300, 50.3% shall be financed from FRIMUT.'s own sources and 49.7% from State aid.

- (80) The FRIMUT.'s own contribution to covering the restructuring costs is ensured by:

- capital injection of the majority shareholder -	RON 125,500
- Income from assets recovery ⁸ - (sales and rentals)	RON 2,511,000
- Bank loans at market interest -	RON 989,000
- Sale of still stocks -	RON 93,300
- Income from the sale of waste ⁹	RON 165,200

- (81) In accordance with art. 15 of the Regulation, the State aid intensity and quantum must be limited to the minimum necessary for implementing the restructuring plan, in order to allow the restructuring to take place, in accordance with the financial

⁸ Assets to be sold have been assessed by independent experts and contracts have already been concluded for the rented ones.

⁹ Waste is sold as scrap iron, considering an average price of RON 440 per ton. A quantity of 375.5 tons of waste has been considered, based on production resulting from contracts already concluded.

resources of the company, its shareholders or of its group. In the case of FRIMUT, the State aid intensity, calculated as the ratio between State aid and the total cost of restructuring, is 49.7%.

- (82) Having in view the above mentioned aspects, the Competition Council considers as significant the of FRIMUT's own contribution to the restructuring costs and considers that the aid is strictly limited to the minimum necessary, in order to allow the company to return to viability.

9. Observing the „first time, last time” principle

- (83) According to the information provided by AVAS, the company has not benefited from State aid in the years prior to restructuring, thus observing the provisions of art. 24 of the Regulation.

10. Monitoring and annual reporting

- (84) In accordance with article 18 the Regulation, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.
- (85) The Competition Council will monitor the implementation of the restructuring plan until the end of the period, in order to make sure that no increases of the production capacities are to be registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of supplementary liquidities to be used for other activities besides those enclosed in the restructuring program.

IV. CONCLUSIONS

- (86) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to FRIMUT 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 measures notified by the Authority for the Recovery of State Assets for FRIMUT represent 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 (2) (c) corroborated with art. 23 (1) (e) of the Law no. 143/1999 on state aid, republished, the restructuring aid that is granted to FRIMUT. 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 2008, 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 granted State aid is of RON 3,834,300.

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

Art. 8. In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished, the aid granting authorities shall submit to the Competition Council information on the State aid granted in order to inventory and monitor it. In addition, 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 to the Competition Council within 6 months from the issuance of the decision.

Art. 9. Pursuant to Art. 46 of *Law 143/1999 on state aid with subsequent modifications and completions*, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative 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 the Recovery of State Assets, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- S.C. FRIMUT UTB S.A., 5 Turnului Str., Brasov, Brasov county.

Art. 11. The General Secretariat and the Directorate for State Aid Authorisation within the Competition Council shall follow the observance of the present Decision.

PRESIDENT

MIHAI BERINDE