

## **DECISION of the Competition Council**

**No. 30 of 16.02.2006**

**regarding the State aid to be granted to SC REMAR SA Pascani**

### **The Competition Council**

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

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

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

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

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

Taking into consideration the provisions of the Guidelines regarding the qualification of an enterprise as an SME, published in the Official Gazette Part I, no. 314 of 14.04.2005;

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

**Based on the following,**

### **1. PROCEDURE**

- (1) By the note no. VP4/4746/24.11.2005, registered at the Competition Council no. RS-AS 112/24.11.2005, the Authority for the State Assets Recovery (hereinafter named AVAS) notified, based on art. 15 of *Law no. 143/1999 regarding state aid*,

*republished*, the State aid measures intended to be S.C. REMAR S.A. Pascani (hereinafter REMAR) in the privatization context, as a restructuring aid.

- (2) As the submitted information were not complete and exact, the Competition Council requested AVAS additional information by addresses no. DAAS/1399/02.12.2005, DAAS/1470/29.12.2005 and DAAS/55/20.01.2006. AVAS transmitted the required reply by addresses no. VP4/5343/19.12.2005, DCS/71/11.01.2006 and DCS/180/24.01.2006.
- (3) The notification became effective at the date when the information was accurate and complete, respectively on the 24th of January 2006.

## 2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

- (4) The financial support measures for REMAR will be granted under *E.G.O. no. 26/2004 regarding several measures for the achievement of the privatization of the undertakings within the portofolio of AVAS and the consolidation of several privatization approved by Law no. 442/2004* and under *E.G.O. no. 37/2004 on measures to reduce arrears in the economy*.
- (5) The support measures consist of facilities for the payment of overdue obligations, in amount of RON 27,424,742.68, namely exemptions in amount of RON 14,900,123.28 and rescheduling of the payment of the debts towards the consolidated State budget and of the commercial debts towards Distrigaz Nord, in amount of RON 12,524,619.40, as follows:

**Table no. 1 – Facilities to be granted to REMAR**

No.	FACILITIES	AMOUNT -RON-	GRANTOR
1.	Exemption from the payment of the debts towards AVAS representing overdue dividends at 31.12.2003 and their accessories	1,594,523.30	AVAS
2.	Exemption from the payment of the obligations to the consolidated State budget	13,305,599.98	MFP <sup>1</sup>
	<b>TOTAL EXEMPTIONS</b>	<b>14,900,123.28</b>	
3.	Rescheduling of the payment of the obligations due to the health insurance budget took over by AVAS representing debits and accessories	1,825,870.56	AVAS
4.	Rescheduling of the payment of the commercial debts towards Distrigaz Nord, took over by AVAS	943,484.00	AVAS
5.	Rescheduling of the payment of the	9,755,264.84	MFP

<sup>1</sup> Ministry of Public Finances

	debts towards the consolidated State budget		
	<b>TOTAL RESCHEDULING</b>	<b>12,524,619.40</b>	
	<b>TOTAL FACILITIES</b>	<b>27,424,742.68</b>	

Source: Supplementary information

### 3. THE BENEFICIARY - REMAR

- (6) REMAR is a joint stock company with the headquarter in Pascani, Iasi county, having the registration number at the Trade Register J 22/532/1992 and CUI 1996928, fiscal attribute R. The beneficiary is located in the North East Development Region, which is considered an assisted area, in accordance with the provisions of Art. 87(3)(a) of the EC Treaty.
- (7) REMAR was privatized in 2004, by signing the shares sale-purchase contract no. 57/31.07.2004. The shareholders' structure after the privatization is presented in the Table no. 2.

*Table no. 2 –REMAR's shareholders structure*

SHAREHOLDERS	CAPITAL OWNING	
	Number of shares	Percent in the equity (%)
SC GFR SA Bucuresti	1,326,676	51.37
Employees Association „Privatizarea Ateliereilor CFR Pascani”	69,825	2.71
SIF Moldova	665,209	25.76
Other shareholders	520,485	20.16
<b>TOTAL</b>	<b>2,582,195</b>	<b>100.00</b>

Source: The notification form

- (8) The company had, at the end of 2004, a number of 1,356 employees and a turnover of RON 37,374,600, being therefore a large company.
- (9) The main activity of REMAR's is the construction and repair of rolling stock<sup>2</sup> (NACE code 3520). The main products/services manufactured/provided by REMAR are:
- reconstruction, repair and modernization of the passenger coaches;
  - reconstruction, repair and modernization of the freight cars;
  - spare parts production for rolling stock: binding devices CFR, binding devices UIC, traction hooks, traction bars, buffers for freight cars, brake heads S2, coil springs, bushed bearings, CIF bolts.
- (10) The undertaking has the following secondary activities: production of technical oxygen, designing activities, utility railway transport, testing and technical activities

<sup>2</sup> “Rolling stock” means goods wagons and passenger coaches.

analysis, urban planning, engineering and other technical services, metallic constructions etc.

#### **4. Relevant markets**

(11) REMAR participates on the following relevant markets: repairs and modernizations of passenger coaches, repairs and modernizations of freight cars, spare parts production for rolling stock and production of technical oxygen. The products of the undertaking are commercialized mainly on the domestic market.

(12) According to a market study, annexed to the restructuring plan of REMAR, the market share of the company on the domestic markets are as follows:

- for repairs and modernizations of passenger coaches: 17%;
- for repairs and modernizations of freight cars: 7%;
- for spare parts production for rolling stock: 28%;
- for technical oxygen: 1.6 %.

Note should be made that neither of these products provide REMAR with a dominant position on the relevant domestic markets.

(13) The domestic market relating to the repairs and modernizations of passenger coaches and freight cars is characterized by the presence of 103 companies, out of which 5 hold approx. 50% of the sector's total turnover. These companies are: Astra Vagoane Arad, Umerva Turnu Severin, Reloc Craiova, Romvag Caracal and SMR Bals.

(14) The beneficiaries of the products/services of REMAR are:

- for the repairs and modernizations service of passenger coaches: SNTFC CFR Calatori Bucuresti;
- for the repairs and modernizations service of freight cars: SNTFM CFR Marfa Bucuresti and undertakings that set up their own freight cars park, like Ispat Sidex Galati, Cerealcom Galati, SAAF Bucuresti, Servtrans Bucuresti and Chimcomplex Borzesti;
- for the spare parts productions for rolling stock: Meva, Romvag, Umerva, Atelierele Grivita, SNTFM CFR BAD Chitila and SNTFC CFR SCAD Brasov.

(15) According to the market study, the demand on the domestic market of repairs and modernization of passenger coaches and freight cars is increasing as a consequence of the national development strategy<sup>3</sup> of SNTFC CFR Calatori SA Bucuresti and SNTFM CFR Marfa SA Bucuresti; this strategy envisages the replacement and the modernization of the existent rolling stock park. The evolution of the above

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<sup>3</sup> The Strategy is approved by G.D. no. 817/2005 approving the Plan on the long term strategy of the railway field for the rehabilitation of the financial balance of the infrastructure administrator and for the modernization and renewal of the infrastructure.

mentioned markets determines the increasing tendency of the spare parts for rolling stock market, where an increase both of the demand and supply is anticipated.

## 5. FINANCIAL STATUS OF THE UNDERTAKING PRIOR TO PRIVATIZATION

(16) The evolution of the main economic and financial indicators registered by REMAR during 2001 - 2003 is as follows:

**Table no. 3 – The evolution of the main economic and financial indicators for 2001-2003**

INDICATORS	2001	2002	2003
Turnover	39,722,888	43,175,784	42,455,654
Gross profit	603,838	-4,838,140	-6,480,761
Operating profit	1,166,895	-3,874,410	-5,077,167
Stock inventories (RON)	7,660,716	8,483,782	8,503,443
Stocking time (days)	66	66	67
Equity (RON)	10,149,807	13,137,063	2,027,879
Total debts (RON)	18,076,307	19,421,918	28,841,382
Receivables (RON)	13,045,010	13,175,229	12,031,982
Timing of accounts receivables collection	120	111	103
Indebtness degree (%)	178	147	1,422
Intermediate liquidity (%)	0.8	1.06	0.55

Source: Notification form

(17) The analysis of the above-presented economic and financial indicators, registered by REMAR prior to privatization, shows that:

- the turnover slightly decreased during the analyzed period, due mainly to the decreasing of CFR 's orders for repairs of freight cars;
- the undertaking registered negative results, mainly determined by the large amount of exploitation expenditures;
- an increase of stocks is registered as a consequence of a poor commercial policy, which determined the increase of the indebtedness ratio and the immobilization of the working capital;
- the debts and receivables increase more rapidly than the turnover, which has a negative influence over the cash flow;
- Timing of accounts receivables collection exceeds 100 days, mainly because of significant delays in collecting CFR's payments, which had a negative influence over the activity of the company: it was necessary to contract high interest loans, the budgetary obligations could not be paid on time,

which determined interests and delay penalties, lack of cash for supplying in time, shutting down of utilities' supply.

(18) Other causes which placed REMAR in a difficult situation are:

- non-correlation of employees' number with the decreasing activity;
- the conclusion of disadvantageous contracts with external firms;
- the non-observance of the delivering terms and of contractual clauses, which determined loss of several clients.

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

(19) In 2004, AVAS offered for sale the main shares package owned in REMAR, representing 54.08% of its registered capital, namely 1,396,501 shares, by negotiation based on final, improved and irrevocable offers.

(20) The privatization process started on 30.04.2004 by advertising in newspapers "Curentul" and "Ziua de Iasi", at the undertaking's headquarter and the headquarter of AVAS.

(21) Through the shares sale offer, potential buyers were informed on the possibility to request, in written form, according to the legislation in force, direct access to the technical, economic, financial and legal data concerning the company. Moreover, the presentation dossier stipulated that the REMAR would benefit from facilities for the payment of debts due to the budgetary creditors, on the basis of article 18 of Law no. 137/2002.

(22) Xedos Exim Arad, Iasitex Iasi and Grup Feroviar Roman (GFR) in association with the Employees Association „Privatizarea Atelierelor CFR Pascani” bought presentation dossiers and submitted bidding offers. The offer submitted by the mentioned association obtained the best score and was selected for further negotiations.

(23) The privatization was finalised by signing the privatization contract no. 57/31.07.2004, between AVAS and the association between GFR and the Employees Association „Privatizarea Atelierelor CFR Pascani”. Through this contract, the buyer assumed the following obligations:

- during the investment period, the company should ensure a minimum of 70% of the turnover coming from the company's existing activities;
- to observe all rights and obligations resulted from the collective employment contract and to maintain during the investment period the number of employees existing at the time when the contract was signed;
- to ensure the fulfilment of all environment obligations and to comply with environmental requirements;
- to invest in the company, for a 3-year period, an amount of EURO 1,450,000 with a view to accomplish certain technological investments;
- to ensure a working capital of EURO 900,000;

- to make environmental investments of EURO 50,000.

## 7. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(24) The restructuring plan for 2005 – 2009 submitted to the Competition Council was drawn up by the company in cooperation with the buyer and approved by AVAS. This plan includes the measures required to carry out the company's re-organization, technical and financial restructuring aiming to intervene on the causes which determined the difficult situation of REMAR .

(25) REMAR's restructuring is focused on the following main directions:

- giving up the loss making activity, i.e. the production of technical oxygen;
- maintaining of the company's traditional activities, i.e. repair and modernization of passenger coaches and freight cars;
- diversifying the range of spare parts for rolling stock, in order to comply to the market demand.

(26) By implementing the restructuring plan, the company aims to accomplish the following objectives:

- to improve the performance of the company's main activity;
- to ensure financial balance and improve cash-flow;
- to increase the undertaking's credibility in relationships with its clients and suppliers;
- to improve the clients portfolio;
- to comply to the environment requirements.

(27) Synthetically, the measures included in the restructuring plan are as follows:

**Table no. 4 – Summary of the measures enclosed in REMAR's restructuring plan**  
- RON -

	Measures	Assessment of implementing costs			
		Total cost	Own sources	Investor's sources	State aid
1.	Organizational measures	2,058,500	11,000	2,047,500	-
2.	Technological measures	18,464,500	8,696,016	9,768,484	-
3.	Environmental protection measures	671,000	496,000	175,000	-
4.	Financial restructuring measures	33,814,442.68	6,389,700	-	27,424,742.68
<b>TOTAL RESTRUCTURING COST</b>		<b>55,008,442.68</b>	<b>15,592,716</b>	<b>11,990,984</b>	<b>27,424,742.68</b>

Source: REMAR's restructuring program

(28) Implementing the restructuring program requires a total financial effort amounting RON 55,008,442.68; this plan seeks to return REMAR to viability.

## 7.1. Organizational restructuring

(29) The organizational restructuring encloses the following measures:

**Table no. 5 – Measures on the organizational restructuring - RON-**

Measure	Deadline	Cost	Financing		
			Own sources	Buyer's sources	State aid
Externalization of additional activities (utility railway transport and households)	H1 2006	1,000	1,000	-	-
Laying off the staff	Q3 2006	2,047,500	-	2,047,500	-
Reorganization of the administrative activities and of the storehouse	H2 2005	10,000	10,000	-	-
<b>TOTAL</b>		<b>2,058,500</b>	<b>11,000</b>	<b>2,047,500</b>	<b>-</b>

Source: REMAR's restructuring program

(30) In order to reduce the expenditures and losses related to the additional activities i.e. utility railway transport and households, it is necessary to externalize these activities as a restructuring measure. Also, the administrative activities and the storehouse will be reorganized in order to reduce the supplying times by shortening the distances between the storehouses, deposits and production sections which use materials, equipments and spare parts stocked there.

(31) Concentrating the activities within inter-operative technical and economical structures and the reassessment of the staff capacity led to laying off 300 employees, who will receive compensatory payments. By doing this, REMAR intends to increase the labour productivity and the profitability of the production activity.

## 7.2 Technical restructuring

(32) The technological restructuring of REMAR envisages mainly the progressive change of the production structure, which implies:

- the extension of the products portfolio by promoting repair services of superior rank and wagons modernization;
- the extension of the outlet for spare parts for rolling stocks by making market studies, promotion campaigns for products, participation to fairs and exhibitions;
- second-hand wagons procurement, their reconstruction, modernization and rental.

(33) In order to reduce the raw material and utilities consumption and consequently the production expenditures, REMAR intends to reorganize the technological flux, to count



the utilities consumption, to buy heating units and to revise the norms regarding material consumption and time norms both for the wagon repair services and for production of spare parts for rolling stock.

(34) The technological restructuring measures amount to RON 17,521,016 and are financed equally by the undertaking and the buyer, and cover the following:

**Table no. 6 Measures on the technical restructuring**

**- RON -**

	Measure	Deadline	Cost	Financing		
				Own sources	Buyer's sources	State aid
1	Reorganization of the technological flux	H2 2006	160,000	160,000	-	-
2	Reorganization of the design and norms departments	H2 2006	685,000	685,000	-	-
3	Utilities consumption counting per cost center	H2 2006	150,000	150,000	-	-
4	Modernization of the production system of heating energy	H2 2006	700,000	700,000	-	-
5	Progressive change of the production structure (per sorts-type-dimensions and clients)	H2 2009	15,386,016	6,561,016	8,825,000	-
6	Finalizing the computer network	H2 2006	440,000	440,000	-	-
	<b>TOTAL</b>		<b>17,521,016</b>	<b>8,696,016</b>	<b>8,825,000</b>	

Source: REMAR restructuring program

### 7.3. Environmental protection restructuring measures

(35) In the restructuring context, REMAR will implement the compliance program for the environment protection, in order to ensure the observance of the norms on the protection of soil, underground and underground waters, waste administration, discharging of waste water and the control of air emissions. The environment restructuring cost is of RON 671,000, out of which RON 496,000 is financed by the undertaking's sources and RON 175,000 of the investor's sources.

**Table no. 7 - Environmental protection restructuring measures**

**- RON -**

Measure	Deadline	Cost	Financing	
			Own sources	State aid
Verifying of the sewerage networks, replacing of the highly used sections	2006	54,780	54,780	-
Dismantling the fuels/solvents/oils tanks and decontamination of the lands contaminated by oil products	2006	59,810	59,810	-
Modernization of the pre-treatment	2006	50,152	50,152	-

station of waste water, construction of pre-treatment installations and of an alkaline cleaning technology with an oil separator				
Construction of new treatment installations and modernization of the existing treatment installations	2007	234,989	234,989	-
Total reconstruction of the exhaust systems and endowment with treatment equipments	2006	5,000	5,000	-
Reduction of the volatile organic compounds emissions	2007	147,000	147,000	-
Waste administration	2009	102,269	102,269	-
Endowment of the chemistry laboratory with devices for the control of environment polluting factors emissions	2006	7,000	7,000	-
Administration of the scrap-iron resulted of the production process	2005	10,000	10,000	-
<b>TOTAL</b>		<b>671,000</b>	<b>671,000</b>	<b>-</b>

Source: REMAR's restructuring program

#### 7.4. Financing restructuring

(36) The financial restructuring encloses the following measures:

**Table no. 8 – Financial restructuring measures**

- RON-

Measure	Deadline	Cost	Financing		
			Own sources	Buyer's sources	State aid
Contracting a loan of RON 5,000,000 under market conditions	H2 2006	6,387,500.00	6,387,500	-	-
Exemptions for the payment of financial obligations under Law no. 442/2004	H2 2006	14,900,123.28	-	-	14,900,123.28
Rescheduling for the payment of financial obligations under Law no. 442/2004	H2 2006	11,581,135.40	-	-	11,581,135.40
Recovery of receivables	Q4 2009	2,200.00	2,200	-	-
Rescheduling for the commercial debts taken over by AVAS	Q4 2008	943,484	-	-	943,484
<b>TOTAL</b>		<b>33,814,442.68</b>	<b>6,389,700</b>	<b>-</b>	<b>27,424,742.68</b>

Source: REMAR's restructuring program

The restructuring plan, by its financial restructuring component, gives the possibility to ensure a stable cash flow, which will ease and relieve the company's financial and production activity. This way, the company will be able to pay its current debts to the State and to allocate the necessary liquidities in order to

implement the programmed investments and necessary for the development and support of the production program for the future.

## **8. ASSESSMENT OF THE SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES**

(37) The criteria used to establish whether or not a measure represents State aid is presented at art. 2 par. (1) of *Law no. 143/1999 on the State aid*, republished. According to the law, the State aid represents any support measure taken by the State or by the local administration authorities, or from State resources or from those of the local administration, regardless of the form, which distort or threaten to distort the competition, by giving an advantage to certain undertakings, to the production of certain services or that affects the trade between Romania and the Member States of the European Union, being considered as incompatible with the normal competitive environment.

(38) The financial support intended to be granted to REMAR in the context of its privatization consists in the State decision to renounce to certain incomes, therefore implies State resources.

(39) The financial support is granted to a certain undertaking, namely REMAR having, therefore, a selective character.

(40) By the financial support measures<sup>4</sup> which are to be granted, an economic advantage is given to REMAR. Granting these facilities will have a favourable effect on the company's economic and financial indicators, particularly on cash-flow. Therefore the company has an advantage, being favoured in comparison to its competitors.

(41) [...] <sup>5</sup>.

(42) Taking into account all the above, including any social costs assumed by the buyer, the Competition Council concludes that in this case the prudent private investor principle cannot be applied to the privatization of REMAR. Therefore, granting of these facilities constitutes an advantage to the company as indicated at para (40).

(43) There is no doubt that the financial measures affect the trade with the Member States of the European Union, because REMAR's products/services compete on the market with other similar products manufactured by firms from the Member States.

(44) Therefore, the financial support measures that are to be granted to REMAR are considered as State aid and fall under the provisions of the Law no.143/1999, republished.

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<sup>4</sup> See para (5) of the draft decision.

<sup>5</sup> Confidential data.

## **9. THE STATE AID'S COMPATIBILITY**

**(45)** The State aid's objective is REMAR restructuring in order to make the company viable again at the end of the restructuring period.

**(46)** The restructuring State aid must be conditioned by the implementation of a viable, coherent restructuring plan, to prove the company's long term viability. For this, the Regulation on the State aid for rescuing and restructuring firms in difficulty, published in OJ no. 1215/17.12.2004 (hereinafter named Regulation), issued in the implementation of Law no 143/1999, republished, stipulates that the restructuring usually implies one or more of the following elements: re-organization and rationalization of the company's activities on an efficient base, usually implying the closure of the activities generating losses, restructuring the existing activities which can become competitive again and, sometimes, their diversification towards new, profitable activities. The industrial restructuring must in principle go together with the financial restructuring (capital injections, reduction of the indebtedness ratio etc.)

**(47)** The Competition Council assesses the State aid to be granted to REMAR according to the criteria provisioned in the Regulation, envisaging:

- the firm's eligibility – firm in difficulty and participation to a group;
- restoration of the viability on a long term;
- prevention of excessive distortion of competition;
- correct dimensioning of the State aid measure, which shall be limited at the minimum necessary (proportionality of the State aid);
- observing the “first time, last time” principle;
- ensuring the fulfilment of the restructuring plan's objectives and permanently monitoring its implementation.

### **9.1. Firm in difficulty**

**(48)** In order to benefit from State aid, according to the Regulation, the company must be in difficulty. Within the meaning of the Regulation, the Competition Council considers that “a firm is in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term”.

**(49)** According to art.2 para.(2) letter b) and c) in the Regulation, “a joint stock company is considered in difficulty when it has lost more than half of its equity and more than a quarter of this equity was lost within the last 12 months and a company irrespective of its legal status is considered in difficulty when it complies the conditions to be submitted to the procedure provided by the legislation on the judicial reorganization and bankruptcy”.

**(50)** According to art.2 para.(3) in the Regulation, if none of the conditions provided in para.(2) is not respected, a company can be considered in difficulty when the usual characteristics of a company in difficulty are observed, such as increasing losses,

diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

(51) The data presented in sub-chapter 3.2 shows that REMAR has the characteristics of a firm in difficulty, as defined at art. 2 para.(3) of the Regulation.

## **9.2. Affiliation to a group**

(52) According to the provisions of art. 2 (5) of the Regulation, a firm belonging to a group is not normally eligible for receiving rescue and restructuring State aid, except the case it can be proved that the company's difficulties are its own and are not caused by the random allocation of the costs within the group and that the difficulties are too serious to be solved by the group itself.

(53) The difficulties of REMAR are of its own and do not result from arbitrary allocation of costs within the group; they are due to the high amount of overdue payments related to debts accrued prior to privatization.

(54) After privatization, the majority shareholder of REMAR is GFR Bucuresti, which controls also Transbordare Vagoane Marfa GFR-TVM Bucuresti. From supplementary information received it resulted that the group of which REMAR is a part of after privatization had in 2004 a total turnover of RON 152,740,000 and debts of RON 40,232,396.5. The profit made by the companies within the group, in amount of RON 4,533,896 is insufficient to cover debts accrued by REMAR prior to privatization. In addition, through the privatization agreement GFR committed to invest in the company an amount of EURO 2,400,000.

(55) Based on the above analysis, the Competition Council concludes that the group of which REMAR is part of after privatization does not have the financial capacity to deal with the REMAR's difficulties, respectively to cover its overdue debts to the state, in amount of RON 27,424,742.68.

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

(56) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan (subject to an assessment by the Competition Council). The restructuring plan, duration of which must be as short as possible, should set out those loss-making activities the company intends to stop, and 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 result from the implementation of internal measures that, also takes into consideration external factors, such as prices and demand fluctuation, over which the company has very little influence.

(57) Given the difficult situation of REMAR at privatization, the restructuring of the company was decided and a restructuring program was drafted for 2005-2009. The summary of the restructuring measures of REMAR was presented at chapter 7.

(58) The analysis of the restructuring plan and the assessment of the ways to achieve the long term viability of REMAR take into account the provisions of art. 13 of the Regulation.

(59) The restructuring plan of REMAR starts with an assessment of technical and economic data reflecting the company's activity during the period prior to the privatization. This plan was elaborated after a diagnostic analysis showing the company's strong and weak points and the circumstances leading to the difficulties the company is confronted with.

(60) The restructuring strategy aims to preserve the company's strong points, namely: the technical capability to sustain and promote complex projects to modernise and rebuild passenger wagons and freight cars, the experience and tradition in the field of manufacturing and repairing of rolling stock, qualified work force in the field, the potential to assimilate new railway services and products requested on the market. In the same time it is aimed to limit and eliminate the weak points with specific measures such as: oversized working force, high worn out ratio and high consumption of fuel and energy for a part of the specialized equipments.

(61) In order to eradicate the main causes leading the company being in difficulty, the company will take restructuring measures such as:

- staff reduction by redundancy;
- the product/services range will be extended by promoting higher quality repair services and modernizing railcars and by manufacturing new products from the spare parts range;
- Acquisition of second hand wagons will be launched to be rebuilt and modernized in order to be leased;
- New markets will be sought for spare parts for rolling stock;
- Reorganization of the technological flows of the production activity and of the administrative activities, counting of the utilities consumption; modernization of the production technology for heating energy which will aim to reduce material consumption and operating expenses;
- Contracts with penalty clauses will be used to address delayed payments.

(62) By applying the measures contained in the restructuring plan are estimated to improve the economic and financial indicators, as follows:

***Tabel no.11 Estimated evolution of the economic and financial indicators - RON -***

Description of indicators		2005	2006	2007	2008	2009
<b>1</b>	<b>Total revenues, of which:</b>	<b>47,615,500</b>	<b>46,309,600</b>	<b>48,312,700</b>	<b>47,767,800</b>	<b>43,196,100</b>
	- Operating revenues	47,587,500	46,279,500	48,280,400	47,733,200	43,159,800
	- Turnover	35,514,000	44,392,500	45,280,400	45,733,200	41,159,800

	- Financial revenues	28,000	30,100	32,300	34,600	36,300
	- Extraordinary revenues	-	-	-	-	-
<b>2</b>	<b>Total expenses, of which:</b>	<b>46,608,600</b>	<b>42,306,200</b>	<b>44,017,100</b>	<b>43,190,700</b>	<b>38,701,900</b>
	a) operating	46,267,300	41,776,200	43,687,100	43,060,700	38,701,900
	b) financial	341,300	530,000	330,000	130,000	-
	c) extraordinary	-	-	-	-	-
<b>6</b>	<b>Gross profit(+) / Loss(-)</b>	<b>1,348,200</b>	<b>4,533,400</b>	<b>4,625,600</b>	<b>4,707,100</b>	<b>4,494,200</b>
	Profit tax	0	0	497,400	753,200	719,100
<b>7</b>	<b>Net profit (+) / Loss (-)</b>	<b>1,348,200</b>	<b>4,533,400</b>	<b>4,128,200</b>	<b>3,953,900</b>	<b>3,775,100</b>
<b>8</b>	<b>Current assets - total, of which:</b>	<b>18,621,700</b>	<b>15,125,900</b>	<b>14,922,000</b>	<b>12,952,500</b>	<b>12,783,900</b>
	a) Inventories	5,702,600	5,412,600	5,163,700	4,342,900	4,427,100
	b) Receivables	12,700,700	9,198,300	8,973,400	8,011,100	7,786,800
	c) Cash	218,400	515,000	785,000	598,500	570,000
<b>9</b>	<b>Debts - total, of which:</b>	<b>27,168,500</b>	<b>20,109,000</b>	<b>16,120,300</b>	<b>10,784,000</b>	<b>5,520,200</b>
	a) loans and assimilated debts	5,000,000	3,333,300	1,666,600	-	-
	b) commercial debts	2,434,800	2,389,000	2,441,300	2,638,400	1,223,000
	c) fiscal debts and health and social insurance debts	17,364,500	14,080,100	11,700,900	7,818,500	3,953,800
	d) other debts	2,369,200	306,600	311,500	327,100	343,400

The analysis of the main economic-financial indicators reveals that the company estimates a moderate ascending trend of the turnover (by 15% in 2009 compared to 2005), profit and a strong descending trend of debt.

Actually, according to the preliminary financial statements, in 2005 the company registered economical-financial indicators in line with the ones forecasted in the restructuring plan. Thus, it was obtained a profit of RON 1,717,569, mainly due to the implementation of a part of the restructuring measures (especially those regarding technological restructuring, the externalization of the activity of utility railway transport, etc.) which led to an improvement in efficiency.

(63) After implementing the restructuring measures, the company forecasts to reach by 2009 the following target indicators:

***Tabel no. 12 Target economic and financial indicators***

Gross profit	RON	4,494,200
Net profit	RON	3,775,100
Turnover	RON	41,159,800
Employees	Persons	750
Equity	RON	33,394,100
Timing of accounts receivables collection	Days	68
Debts payment duration	Days	29
Indebtness ratio	%	10.10
Return on assets	%	10.27
Return on equity	%	11.30
Cash-flow	RON	-28,500

*Soucea: Restructuring program of REMAR*

Given the above, the Competition Council considers that the proposed plan restructuring plan will lead to the restoration of REMAR long term viability, resulting mainly from internal measures contained in the restructuring plan and does not rely on external factors such the fluctuation of prices and demand. The restructuring plan implemented by the company will insure a change allowing it, at the end of the restructuring, to fully cover its costs and to compete on the market by itself.

#### **9.4. Preventing excessive distortion of competition (compensatory measures)**

(64) 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. Giving up of loss making activities, absolutely necessary to restore viability, will not be considered as reductions of capacity or of the market presence when compensatory measures are analyzed.

(65) According to information received, when drafting the restructuring plan, the giving up of the manufacture of technical oxygen was considered. However because this activity was loss making, the reduction of production capacities related to it are not considered as compensatory measures according to the Regulation.

(66) By implementing the restructuring plan, the company will maintain its market shares of 17% on repairs and modernizations of passenger coaches market and of 7% for repairs and modernizations of freight cars market and it will reduce the market share for spare parts production for rolling stock (from 28% to 15%). Taking these into account and that REMAR is a large company, compensatory measures must be taken on each relevant market, in order to prevent the distortion of competition. The compensatory measures consist of irreversible reductions of production capacities, namely equipments and installations. Thus, 149 assets used in production process will be dismantled, as follows: trolleys, milling machines, boring machines, cranes, rolling bridges, welding installations, sandblasting machines, grinding machines, etc.

(67) Irreversible reductions of production capacities are integral part of the restructuring plan and are as follows:

- Reduction of capacities in function for repairs and modernization of passenger wagon with 600 pieces, from 1,100 in 2004 to 500, in 2009;
- Reduction of capacities in function for repairs of freight cars with 1,500 pieces, from 2,000 in 2004 to 500, in 2009;
- Reduction of capacities in function for spare parts of rolling stock with RON 33 million, from RON 41 million in 2004 to RON 8 million in 2009.



(68) 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.

#### **9.5. State aid limited to the minimum necessary (proportionality)**

(69) In accordance with the provisions of art. 15 of the Regulation, the State aid amount and intensity must be limited to the minimum necessary, to allow the restructuring according to the company and shareholders' existing financial resources. The State aid beneficiary must bring a significant contribution to the restructuring plan by its own resources, inclusively through the sale of assets which do not essentially contribute to the company's survival, or through external financing under market conditions.

(70) REMAR total restructuring costs of RON 55,008,442,68 is made of:

- organizational restructuring cost	RON 2,058,500;
- technological restructuring cost	RON 18,464,500;
- environmental restructuring cost	RON 671,000;
- financial restructuring cost	RON 33,814,442.68.

(71) REMAR restructuring cost is financed from the following sources:

- own sources	RON 15,592,716;
- investor's capital injection	RON 11,990,984;
- State aid	RON 27,424,742.68.

(72) The own contribution amounting RON 27,583,700, represents 50.15% of the restructuring costs, and is ensured by:

- capital injection by the main shareholder:	RON 11,990,984;
- sale of scrap iron (from dismantling of fixed assets and from the technological process):	RON 4,360,295;
- bank loan at market terms <sup>6</sup> :	RON 5,000,000;
- revenues from rental of 100 wagons Fabls <sup>7</sup> :	RON 6,232,421.

(73) In case of REMAR the State aid intensity, calculated as a ratio between the value of the State aid and the total restructuring cost, is 49.85%.

(74) The Competition Council considers as adequate the company's contribution of 50.15% to the implementation of the restructuring plan. This demonstrates the reliability in the practical value of the restructuring, as well as the fact that the value and intensity of State aid are strictly limited to allow a restructuring based on the existing financial resources of the firm and the majority shareholder. This avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.

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<sup>6</sup> By an address Romanian Commercial Bank confirmed that REMAR has acquired a facility in the amount of RON 5,000,000.

<sup>7</sup> The company has already concluded a lease agreement for 100 Fbals railcars for a 5 year period.

## **9.6. Fulfilling the first time, last time principle**

(75) REMAR 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.

## **9.7. 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 so that the established objectives are fulfilled.

(77) The Competition Council shall monitor the restructuring plan's implementation until the end of the period, in order to ensure that there will be no increases in the production capacities, serious diversions from the restructuring measures and that the State aid shall not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program.

## **10. CONCLUSIONS**

(78) Taking into account the above-presented reasons, the Competition Council finds that the individual State aid intended to be granted to REMAR is compatible with the normal competitive environment and does not significantly affect trade with the Member States of the European Union.

### **DECIDES**

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

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

**Art. 3.** The company must implement in whole the assumed restructuring plan. The modification of the restructuring plan shall be done only if fulfilling the provisions of art. 19 of 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 Official Gazette no.1215/17.12.2004.

**Art. 4.** The company shall reduce its production capacities by 2009, 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 27,424,742.68.

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

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

**Art. 9.** Pursuant 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 Appeals, the Administrative litigation section, within 30 days from its communication.

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

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- REMAR, strada Garii nr. 18, Pascani, Judetul Iasi, cod postal 705200.

**MIHAI BERINDE**

**PRESIDENT**