

DECISION OF THE COMPETITION COUNCIL

no. 46 of 01.03.2006

regarding the state aid to be granted to

S.C. UNIREA S.A. Cluj-Napoca

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, Part I, no. 742 from 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 from 16.08.2005,

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

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

Based on the following reasons,

1. THE PROCEDURE

(1) By address no. VP4/4569/17.11.2005, registered at the Competition Council with no. RS-AS 111/18.11.2005, the the Authority for State Assets Recovery notified based on art. 15 of the State Aid Law no. 143/1999, republished, the individual State aid for the restructuring of SC UNIREA SA Cluj-Napoca, within the privatization process.

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

(3) The notification became effective when information was accurate and complete, respectively on 10.02.2006.

2. DESCRIPTION OF THE AID MEASURE

2.1. Legal base for granting financial support

(4) The state aid measures to be granted to SC UNIREA SA Cluj-Napoca are based on Government Ordinance no.26/2004 on certain measures for the completion of APAPS portfolio companies' ulfillment n and the consolidation of certain ulfillment ns, approved with subsequent amendmends and completions by Law no.442/2004 on certain measures for the completion of AVAS portfolio companies' privatization.

2.2. Financial incentives to be granted to SC UNIREA SA Cluj-Napoca

(5) ¹

(6) ²

3. BENEFICIARY OF THE AID MEASURES (SC UNIREA SA Cluj-Napoca)

(7) ³

(8) ⁴

(9) ⁵

(10) ⁶

(11) The core business of SC UNIREA SA Cluj-Napoca consists of manufacturing of metal processing equipments, CAEN 2942 code:

¹ Confidential data

² Confidential data

³ Confidential data

⁴ Confidential data

⁵ Confidential data

⁶ Confidential data

(12) SC UNIREA SA Cluj-Napoca is an integrated industrial unit, comprising the whole range of activities specific to the machines building sector. The undertaking manufactures the following groups of products:

- machine tools for metal processing – drilling machines, cutting machines, grinding machines, bending machines, lathes;
- machines for the construction sector – equipment for concrete flatenning, plate grinding machines, carpet removing machines, compactor plates, marble cutting machines, floor grinding machines, iron plates processing equipments.

(13) Within SC UNIREA SA, the activity is structured on the following different flows:

- obtaining half- finished products;
- half-finished products mechanical processing;
- thermal treatment of components;
- protection covering by means of chemical processes and varneshing;
- sub-components assembling and general assembling.

(14) The productive activity is organized in the following sectors:

- semifinished workshop;
- mechanical processing section;
- proto-types and tool section;
- mechanic –weld section;
- Thermo treatments workshop;
- Workshops for metallic coverage and dyeing;
- General montage section.

3.1. The financial situation of SC UNIREA SA Cluj-Napoca before privatization

(15)⁷

(16)⁸

(17)⁹

(18)¹⁰

4. RELEVANT MARKETS

(19) SC UNIREA SA activates on the following relevant markets:

- The market for production and commercialization of tools for metals processing;
- The market for production and commercialization of machines for building industry;

The machine-tools for metal and wood processing represent approximately 70% of the company's turnover and are destined mainly to the external market.

⁷ Confidential data

⁸ Confidential data

⁹ Confidential data

¹⁰ Confidential data

(20)¹¹
(21)¹²
(22)¹³
(23)¹⁴
(24)¹⁵

(25) The main export outlet markets are: Netherlands (54%), Germany (29.2%), Great Britain (9.8%), France (3.3%) and Italy (3.3%).

(26)¹⁶

5. DESCRIPTION OF THE PRIVATIZATION PROCESS

(28)¹⁷
(29)¹⁸
(30)¹⁹
(31)²⁰
(32)²¹
(33)²²

6. DESCRIPTION OF THE RESTRUCTURING PROGRAMME

(34) The restructuring plan elaborated by the company and buyer, approved by AVAS, presented to the Competition Council, describes measures regarding structural reorganization, technical restructuring, investments in environmental protection and financial restructuring of the company.

(35) The restructuring of SC UNIREA SA aims at:

- product diversification by putting new products into production;
- making the company profitable;
- improving the economic-financial and efficiency indicators;
- revamping/modernization of the equipments produced, as to cover the need of the domestic and external market.

¹¹ Confidential data
¹² Confidential data
¹³ Confidential data
¹⁴ Confidential data
¹⁵ Confidential data
¹⁶ Confidential data
¹⁷ Confidential data
¹⁸ Confidential data
¹⁹ Confidential data
²⁰ Confidential data
²¹ Confidential data
²² Confidential data

(36) By implementing the restructuring plan, the company aims at achieving the following objectives:

- reduction of costs generated by non-quality;
- fulfilling production and delivery time-limits;
- observance of environmental protection requirements;
- restoration of the long-term viability.

(37)²³

(38)²⁴

(39)²⁵

6.1. Organizational and managerial restructuring

(40)²⁶

6.2. Technical and technological restructuring

(41)²⁷

6.3. Measures on the environmental restructuring

(42)²⁸

6.4. Financial restructuring

(43)²⁹

7. EVALUATION OF FINANCIAL SUPPORT MEASURES – STATE AID CHARACTER OF NOTIFIED MEASURES

(44) The criteria based on which it is established that a measure represents State aid are provided by art 2 par. (1) of the Law no. 143/1999 on State aid, republished. Thus, the State aid represents any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain

²³ Confidential data

²⁴ Confidential data

²⁵ Confidential data

²⁶ Confidential data

²⁷ Confidential data

²⁸ Confidential data

²⁹ Confidential data

services or affects the trade between Romania and the Member States of the European Union, being considered incompatible with a normal competitive environment.

(45) The financial support granted to SC UNIREA SA and notified by AVAS consists of revenue renouncement by the State, thus being involved State resources.

(46)³⁰

(47) Having in view that the facilities are granted during the privatization process, in order to determine if these are conferring SC UNIREA SA with an economic advantage, the State's behavior must be compared with that of a private investor/seller in the same situation (test "prudent private investor"). It can be considered that the State acts at privatization as a prudent private investor/seller if it can be proved that by selling its shares it obtains the best price (the price obtained is higher than the facilities granted). Competition Council analyzed if the State acts as a prudent private investor in case of SC UNIREA SA.

(48) As described in Chapter 5 of the present decision, the privatization of SC UNIREA SA took place by negotiation based of final offers, improved and irrevocable. The Competition Council learns that this depended on the implementation of certain re-technology measures, investments for complying with environmental standards, committing of all obligations stipulated in the collective labor contract and achieving 70% of the company's turnover from its core activity.

(49)³¹

(50) A private investor would have accepted a negative price only if winding-up costs had been exceeded the privatization costs. AVAS informed the Competition Council about the fact that prior to privatization, no comparative analysis between the two costs has been done. Consequently, the Competition Council considers that the principle of prudent private investor does not apply in case of SC UNIREA SA privatization. Thus, by granting facilities to the company, an advantage is created on the relevant market.

(51) Granting financial support to SC UNIREA SA creates grounds for a possible competition distortion on the relevant markets since the company is allowed to maintain or even consolidate its position on these markets. Also, there is no doubt that the financial measures affect the trade with the EU Member States since the products made by the company compete with similar products of some companies from EU on markets on which SC UNIREA SA operates.

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

³⁰ Confidential data

³¹ Confidential data

8. THE STATE AID COMPATIBILITY WITH THE LEGISLATION IN FORCE

(53) The State aid objective is the restructuring of SC UNIREA SA with a view to the company's return to viability at the end of the restructuring period. The restructuring State aid is conditioned upon the accomplishment of a feasible, coherent restructuring plan to prove the company's long term viability. To this end, the Regulation on state aid for rescuing and restructuring firms in difficulty, hereafter the Regulation, provides that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on an efficient basis, usually meaning ceasing generating losses activities, restructuring the existing activities which can become competitive again and sometimes their diversification towards new, profitable activities. The industrial restructuring must be usually followed by the financial restructuring (capital injections, reducing the debts degree, etc.).

(54) The Competition Council assesses the State aid granted to SC UNIREA SA, according to the criteria provisioned in the above mentioned Regulation. In order to consider it compatible with the normal competitive environment, the State aid must fully fulfil the criteria therein.

9. CRITERIA TO BE FULFILLED IN VIEW OF GRANTING RESTRUCTURING AID

(55) Financial support measures stipulated by par. 2.2. have to be granted based on the following:

- Firm in difficulty status;
- SC UNIREA SA long-term viability restoration;
- Preventing any excessive distortion to competition;
- Restructuring costs and benefits proportionality (aid limited to minimum necessary);
- Fulfilling the "one time- last time" principle;
- Assurance of the fulfillment of the measures included in the restructuring plan and monitoring, by the Competition Council, its implementation (annual monitoring and reporting).

9.1. FIRM IN DIFFICULTY

(56)³²

(57)³³

(58) Considering the above mentioned facts, the Competition Council considers that the company is in difficulty, with the meaning of the Regulation, being therefore eligible to receive restructuring aid.

³² Confidential data

³³ Confidential data

9.2. LONG TERM VIABILITY RESTORATION

(59)³⁴

(60)³⁵

(61)³⁶

(62)³⁷

(63)³⁸

(64)³⁹

(65)⁴⁰

9.3. PREVENTING ANY EXCESSIVE DISTORTION OF COMPETITION (COMPENSATORY MEASURES)

(66)⁴¹

(67)⁴²

(68)⁴³

(69)⁴⁴

(70)⁴⁵

9.4. AID LIMITED TO MINIMUM NECESSARY (PROPORTIONALITY OF AID)

(71)⁴⁶

(72)⁴⁷

(73)⁴⁸

(74)⁴⁹

(75)⁵⁰

(76)⁵¹

(77)⁵²

³⁴ Confidential data

³⁵ Confidential data

³⁶ Confidential data

³⁷ Confidential data

³⁸ Confidential data

³⁹ Confidential data

⁴⁰ Confidential data

⁴¹ Confidential data

⁴² Confidential data

⁴³ Confidential data

⁴⁴ Confidential data

⁴⁵ Confidential data

⁴⁶ Confidential data

⁴⁷ Confidential data

⁴⁸ Confidential data

⁴⁹ Confidential data

⁵⁰ Confidential data

⁵¹ Confidential data

⁵² Confidential data

9.5. OBSERVANCE OF “ONE TIME, LAST TIME” PRINCIPLE

(78) SC UNIREA SA did not ever receive any restructuring aid. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

9.6. MEMBERSHIP TO A GROUP OF COMPANIES

(79)⁵³

(80)⁵⁴

(81)⁵⁵

(82)⁵⁶

(83)⁵⁷

10. ANNUAL MONITORING AND REPORTING

(84)⁵⁸

(85)⁵⁹

11. CONCLUSIONS

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

DECIDES

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

Art. 2. Under the provisions of article 21(2) letter c) corroborated with article 23 (1) letter e) of the Law no. 143/1999, republished, the restructuring aid intended to be granted to SC UNIREA SA Cluj-Napoca at its privatization is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

⁵³ Confidential data

⁵⁴ Confidential data

⁵⁵ Confidential data

⁵⁶ Confidential data

⁵⁷ Confidential data

⁵⁸ Confidential data

⁵⁹ Confidential data

Art. 3. The company is obliged to fully implement the assumed restructuring plan.

Art. 4. The company shall reduce the production capacities until 2009 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 value of the State aid that is going to be granted is of RON 16,975,779.

Art. 7. The present decision becomes applicable since its communication.

Art. 8. In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished, AVAS shall submit to the Competition Council information on the State aid granted in order to be inventorised and monitored. In addition, AVAS shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must demonstrate that the company observed the compensatory measures concerning the reduction of the production capacities imposed by the present decision.

Art. 9. In accordance with article 46 of the Law no. 143/1999 on State aid, republished, the present decision can be appealed by the interested parties in the Appeal Court, Administrative Contentious Department, within 30 days from the communication.

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

- AVAS, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- SC UNIREA SA Cluj-Napoca, Str. Piata 1 Mai nr.1-2, Cluj-Napoca, Cluj County.

PRESIDENT

MIHAI BERINDE