

**DECISION OF THE COMPETITION COUNCIL**  
**No. 4 of 18.01.2006**  
**on state aid notified by AVAS for S.C. Intreprinderea de Constructii Siderurgice**  
**Hunedoara (ICSH) S.A. Hunedoara**

**THE COMPETITION COUNCIL,**

Having before us the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members;

Having before us the provisions of the Competition Law no. 21/1996, republished in Official Gazette, Part. I, no. 742, 16 August 2005;

Having before us the provisions of the State aid Law no. 143/1999, republished in the Official Gazette of Romania, Part. I, no. 744 on 26 August 2005;

Having before us 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;

Having before us the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 17.12.2004;

**Based on the following reasons,**

**1. THE NOTIFICATION PROCEDURE**

(1) Through the address no. VP4/3207/19.09.2005, registered by the Competition Council under no. RS-AS 86/21.09.2005, the Authority for State Asset Recovery (hereinafter named AVAS) notified in the name of the state aid grantors, the individual state aid for the restructuring of S.C. I.C.S.H. Hunedoara (hereinafter referred to as ICSH) in the privatization procedure, in accordance with Article 15 of Law no. 143/1999 on state aid, republished. In this case, the state aid grantors are AVAS, the Ministry for Public Finances and the Local Council of Hunedoara City. The notification became effective on the date when all the information was complete, namely 09.11.2005.

(2) The Competition Council requested additional information from AVAS through letter no. DAAS/1143/04.10.2005 concerning the market share of the state aid beneficiary and its competitors, the proof of the way in which the measures in the restructuring plan will contribute to the elimination of the negative causes which led to the company's difficulties, the detailed description of the own certain sources of the beneficiary, as well as other information concerning the restructuring plan of ICSH. As the answer received did not fully clarify all aspects envisaged, another note was drawn up for the request of the supplementary information by document no. DAAS/1249/27.10.2005.

## 2. DESCRIPTION OF THE STATE AID MEASURES

### 2.1. Legal basis for granting the state aid

- GEO no. 26/2004 on measures to finalize the privatisation of companies in the portfolio of the Authority for Privatisation and Management of State Ownership and the consolidation of some privatisations, approved with modifications and completions by Law no. 442/2004;
- GEO no. 26/2005 on the abrogation of legal provisions concerning the grant of facilities to the payment of outstanding the budgetary obligations, approved with modifications and completions by Law no. 244/2005.

### 2.2. Measures of financial support granted by the state on ICSH privatisation

(3) The measures of financial support notified by AVAS are granted in the context of ICSH privatisation, as the company will benefit from the facilities provided for under GEO no. 26/2004 and mentioned in the presentation file and in the share selling-purchase contract, namely facilities to the payment of outstanding obligations to the state budget, AVAS and Local Council of Hunedoara City.

(4) Thus, ICSH will benefit from measures of financial support in total amount of 37,019,631 RON, consisting of:

**Table no. 1** Measures of financial support granted at the privatisation of ICSH

| <b>Crt. no.</b>                           | <b>Measure</b>  | <b>Amount of the financial support (RON)</b> |
|---|---|--|
| <b>1.</b>                                 | Partial payment exemption (77%) of :  | <b>31,394,113</b>                            |
|   | - obligations to the state budget due and not paid on 31.12.2003  | 5,641,853                                    |
|   | - interests (late payment fees) and any penalties corresponding to obligations due and not paid on 31.12.2003, calculated until the date of transfer of ownership over the shares (13.10.2004)  | 25,185,134                                   |
|   | - interests (late payment fees) and any penalties corresponding to obligations rescheduled, calculated until the date of transfer of ownership over the shares (13.10.2004)   | 125,889                                      |
|   | - interests (late payment fees) and any penalties corresponding to company's obligations to the unique national health fund   | 375,834                                      |
|   | - obligations to the Local Council of Hunedoara City due on 31.12.2003, and of the corresponding penalties  | 65,403                                       |
| <b>2.</b>                                 | Payment rescheduling until 31.12.2009 of:   | <b>5,625,518</b>                             |
|   | - obligations of the company to the national unique health fund   | 668,712                                      |
|   | - budgetary obligations owed and not paid after 31.12.2003, until the issuance of the common order  | 2,851,331                                    |
|   | - difference of obligations not exempted (23%), consisting of budgetary obligations due and not paid on 31.12.2003  | 1,685,229                                    |
|   | - budgetary obligations consisting of withholding taxes and fees retained at the source, company's contribution to the national unique fund for social insurance and employees' contribution to the health social insurance contribution of the employees, due and not paid on 31.12.2003 | 420,246                                      |
| <b>TOTAL FINANCIAL SUPPORT GRANTED AT</b> |   | <b>37,019,631</b>                            |

### 3. BENEFICIARY OF THE MEASURES - ICSH

(5) ICSH was set up in 1950. The company has its premises in Hunedoara and is registered with the Trade Registrar under no. J20/34/1991, with unique registration code no. R2126260.

(6) On the date when the share selling-purchase contract was signed, the company had a share capital of RON 1,708,537.5, divided in 683,415 shares with a nominal value of RON 2.5, divided as follows:

|                     |           |
|---------------------|-----------|
| - AVAS              | - 70.00%; |
| - SIF BANAT CRISANA | - 12.71%; |
| - P.P.M             | - 17.29%. |

(7) ICSH was privatized by the signing of the share selling-purchase contract no. 68 of 30.09.2004. The transfer of the ownership right over the shares was made on 13.10.2004 and the new majority shareholder of ICSH became S.C. SIRD S.A. Timisoara with 70% of the shares.

(8) Following the transfer of ownership right over the shares, the shareholding structure of ICSH is the following:

|                            |           |
|----------------------------|-----------|
| - S.C. SIRD S.A. TIMISOARA | - 70.00%; |
| - SIF BANAT CRISANA        | - 12.71%; |
| - P.P.M                    | - 17.29%; |

(9) The main field of activity of ICSH is the manufacturing of construction-assembly and intermediary products used in the construction activity (metal manufacturing, concrete and mortar). Besides the main field of activity, the company develops secondary activities, such as rental of assets, repairs of transportation means and construction devices.

(10) ICSH was conceived as a company specializing in industrial constructions for over 40 years. The decrease in investments after 1989, following the economic reform on national level, had an impact also on ICSH, lead to the dramatic decrease in production, reduction in the workforce and the increase in non-productive fix assets. These difficulties were made by the lack of investments in upgrading existing machinery and equipments after 1989. ICSH did not have the financial means to make such improvements (compared with its competitors).

(11) Thus, the economic difficulties at national level, but also some internal causes (see sub-chapter 7.1. „Eligibility of ICSH – company in difficulty”) led to the company being in difficulty, as the debts towards the state remained unpaid. These debts accrued interests and penalties for failure to pay in due time. Thus, the company registered, at the level of 2004, losses of 2,876,823.2 RON, total debts (within balance sheet and outside the balance sheet) of 38,416,591.2 RON at a value of the social capital of 1,708,537.5 RON.

(12) In the end of 2003, the company had 673 employees and a turnover of RON 20,508,199.3, namely Euro 4,987,766.4, thus qualifying as a big enterprise.

### 3.2. Relevant markets

(13) ICSH is active on the markets for construction-assembly equipment, production of metal manufacturing, mortar and concretes.

(14) The geographical area in which the company carries out its activity is mainly the local market of Hunedoara County. Nether the less, the company has as customers undertakings from all other the country (from Cluj-Napoca, Petrosani, Hateg, Campia Turzii, Timisoara etc). In order to deliver to those customers metallic manufacturings, mortars and concretes, ICSH competes with the specialist firms from all over the country. According to the market study annexed to the restructuring plan of ICSH, the shares of the company on the national market are the following:

**Table no. 2** Market shares of ICSH and its main competitors:

| Relevant market                             | Competitor                                 | Market share (%) |
|---|--|------------------|
| 1. Market of construction-assembly works    | SC HIDROCONSTRUCTIA SA                     | 2.076            |
|   | SC ENERGOMONTAJ SA                         | 1.356            |
|   | SC SPEDITION UMB SRL                       | 1.219            |
|   | SC SOCIETATEA DE CONSTRUCTII CCCF SA       | 1.071            |
|   | SC ADMINISTRATIA NATIONALA A DRUMURILOR SA | 0.736            |
|   | <b>ICSH</b>                                | <b>&lt;0.1</b>   |
|   | Others (market shares <1%)                 | 94.278           |
| 2. Market of metal manufacturing            | SC BEYLER SA                               | 3.422            |
|   | SC DUAL MAN SRL                            | 1.982            |
|   | SC BEGA TEHNOMET SA                        | 1.392            |
|   | SC AXE SI PUNTI SA                         | 1.203            |
|   | SC RUPS SA                                 | 1.174            |
|   | <b>ICSH</b>                                | <b>&lt;0.1</b>   |
|   | Others (market shares <1%)                 | 90.827           |
| 3. Market of mortar and concrete production | SC LAFARGE ROMCIM SA                       | 9.718            |
|   | SC HOLCIM SA                               | 8.148            |
|   | SC ROMCIF SA                               | 3.244            |
|   | S.C MOLDOCIM SA                            | 2.487            |
|   | <b>ICSH</b>                                | <b>&lt;0.1</b>   |
|   | Others (market shares <2%)                 | 76.403           |

Source : Notification form

(15) At national level, the market study shows the fact that the presence on the relevant markets of ICSH is not significant, with a level of approximately 0.097%. Competition on these markets is very strong, as the number of active undertakings is large<sup>1</sup>.

(16) The market-study indicates that the market for industrial and civil construction is highly competitive. The demand for industrial and civil constructions and the requests for construction materials are rising constantly. Thus, according to the forecast in the market study, the construction market will double in 2010 compared to 2003.

<sup>1</sup> Thus, at the end of 2003, 20,629 undertakings were active on this market of works of construction-assembly, 2,721 companies were active on the market of metal constructions and 2,047 producers were active on the market of mortar and concrete.

(17) The main beneficiaries of ICSH products on the Romanian market are undertakings, entrepreneurs in industrial fields, as well as public institutions: Uzinsider Bucuresti, Amidip Calan, S.C. Novello SRL, Spitalul Municipal Hunedoara, Remat Salaj, Inspectoratul de Politie Hunedoara etc.

(18) [...]<sup>2</sup>.

(19) The market study shows that, given the existing opportunities, ICSH will not be viable on the market without implementing a comprehensive Restructuring Plan targeting different aspects (technical investment, organizational and financial restructuring) aiming at reducing its costs and improving efficiency and quality.

### **3.3. Description of the privatization process**

(20) In 2004, AVAS decided to privatize the company through negotiation based on final improved and irrevocable offers and to grant facilities conditional to the implementation of restructuring measures.

(21) The privatization process started through the publication of the public announcement concerning the sale of the majority block of shares representing 70.00% of the company's share capital on 30.03.2004 in the central press ("Bursa") and local press ("Hunedoreanul" newspaper), as well as on the internet and at AVAS premises.

(22) In the presentation file made for the sale of the company was information concerning the economic-financial, legal and environment situation of the company, as well as the facilities from which this may benefit if the contract is finalized.

(23) The presentation file was bought by 16 potential bidders. At the deadline, namely 30.04.2004, four purchase offers were submitted, of which two were withdrawn afterwards. During 07.07.2004 - 12.07.2004 negotiations took place with each of the bidders left (S.C. Grup Feroviar Roman S.A. Bucuresti and S.C. Societatea de Intretinere si Reparatii Drumuri S.A. Timisoara), whom were requested to improve their technical and financial offer.

(24) After the negotiations, S.C. Societatea de Intretinere si Reparatii Drumuri (S.I.R.D.) S.A. Timisoara, which submitted the best bid, was declared the winner and the Share selling-purchase contract no. 68/30.09.2004 was concluded.

(25) [...]<sup>3</sup>.

(26) The economic concentration resulting from the acquisition of control over ISCH by S.C. S.I.R.D. S.A. Timisoara was notified to the Competition Council and authorized by Decision no. 27/21.02.2005.

(27) Through the share selling-purchase contract, the buyer undertook the following obligations:

- achievement of technological investments in amount of 4.000.000 Euro within 2 years starting with the transfer of the ownership right;

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<sup>2</sup> Confidential data

<sup>3</sup> Confidential data

- achievement of environment investments in amount of 32.500 Euro, within 1 year since the date of transfer of the ownership right;
- taking over the rights and obligations resulting from the collective work contract and maintaining, for 5 years, the number of employees existing at the time the contract was signed.

(28) [...] <sup>4</sup>.

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

#### 4. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(30) Starting from the difficult situation in which the company was at the time of privatization and in order to remove the causes that lead to the difficulties, the buyer of the majority block of shares, together with the company and AVAS drew up a restructuring plan for 2005-2009. This includes organizational, technological, environment and financial measures, based on a market study, taking into consideration the present demand and offer on the relevant markets and their future evolution, as well as analysis focusing on the company's strengths and weaknesses.

(31) The company's future development strategy is to reorientate its activities towards civil construction. Consequently, the organizational and technological measures comprised in the restructuring program are based on ICSH reorientation towards this market segment.

(32) ICSH restructuring plan focuses on the following major arrears :

- improving the company's efficiency through the internal reorganization;
- modernizing the products existing in the fabrication profile, by raising quality following the investments achieved;
- purchase of new construction equipments and new transportation means, with low fuel consumption and increased return, to raise profitability and quality of products achieved ;
- reducing the pollution level and eliminating the dangerous waste through environmental investments.

(33) The restructuring plan analyses those factors that caused the company to be in difficulties, as well as those measures to ensure the long term viability of the enterprise. By enforcing the measures in the restructuring plan, it is forecasted that the company will attain viability, there by relying on its own financial resources to conduct its activities, in the absence of debts to the state local budget.

(34) The restructuring plan, elaborated by the company together with the buyer and AVAS covers the period 2005 - 2009. Briefly, the measures comprising the restructuring plan are the following:

**Table no. 3** Synthesis of the measures comprised by the restructuring plan of ICSH

- RON -

| Crt. | Measures | Implementing | Financing |
|------|----------|--------------|-----------|
|------|----------|--------------|-----------|

<sup>4</sup> Confidential data

<sup>5</sup> Confidential data

| No. |                                      | costs             | Own sources       | Investor's sources | State aid         |
|-----|--------------------------------------|-------------------|-------------------|--------------------|-------------------|
| 1.  | Organisational measures              | 2,525,772         | 2,525,772         | -                  | -                 |
| 2.  | Technical and technological measures | 28,407,228        | 13,907,228        | 14,500,000         | -                 |
| 3.  | Environment measures                 | 117,000           | -                 | 117,000            | -                 |
| 4.  | Financial restructuring measures     | 43,069,631        | 6,050,000         | -                  | 37,019,631        |
|     | <b>TOTAL RESTRUCTURING COST</b>      | <b>74,119,631</b> | <b>22,483,000</b> | <b>14,617,000</b>  | <b>37,019,631</b> |

Source: ICSH Restructuring Program

(35) [...] <sup>6</sup>.

#### 4.1. Organizational restructuring

(36) The organizational restructuring measures were drafted taking into account the difficulties faced by the company at the moment of privatization and are as follows:

**Table no. 4** Measures of organizational restructuring - RON -

| Crt. no. | Measure   | Implementation Costs | Financing        |                 |           |
|----------|---|----------------------|------------------|-----------------|-----------|
|          |   |                      | Own sources ICSH | Buyer's sources | State aid |
| 1.       | Redefining the importance and reorganization of the Quality Control Department, to comply with European ISO standards and implement the quality management system. Licenses will be obtained, which will attest the quality of the services provided and works executed by the company.   | 30,000               | 30,000           | -               | -         |
| 2.       | Repositioning the four yards which make construction-assembly works and achieving two more yards. This measure envisages the concentration of technical and human resources to increase productivity and efficient organization of the technical, economic, administrative and production-related staff. The measure will have the effect of reducing the security and administrative expenses and obtaining cash-flow by leasing the available premises. | 665,403              | 665,403          | -               | -         |
| 3.       | Lease of the spaces, evaluation and valuation of available assets – following the reorganization, constructions, yards, production halls will be available, which need repairs and endowments with utilities for a superior valuation.  | 880,369              | 880,369          | -               | -         |
| 4.       | Reorganization of the main storage space for raw materials and other materials through directing the raw materials and other materials to the storage spaces of the two newly set up yards  | 300,000              | 300,000          | -               | -         |
| 5.       | Externalization of kindergarten maintenance costs to the Town Hall of Hunedoara, thus eliminating all related costs   | 100,000              | 100,000          | -               | -         |
| 6.       | Reorganization of the recovery of outstanding claims, through suing the   | 550,000              | 550,000          | -               | -         |

<sup>6</sup> Confidential data

|  |  |                  |                  |          |          |
|--|--|------------------|------------------|----------|----------|
|  | clients which do not pay. The costs of the measure include: wage costs, related contributions, travelling expenses, stamp levies, executorial fees, lawyer's fees. |                  |                  |          |          |
|  | <b>TOTAL</b>   | <b>2,525,772</b> | <b>2,525,772</b> | <b>-</b> | <b>-</b> |

Source: ICSH Restructuring Program

(37) As mentioned above, by the share selling-purchase contract, the buyer committed himself to maintain for 5 years the number of employees existing on the date contract was signed (673 employees). However, at the end of 2009, the company will be left with 620 employees. This drop in the number of staff is not accompanied by supplementary costs, as the reduction will take place by retirements.

(38) [...] <sup>7</sup>.

#### 4.2. Technical and technological restructuring

(39) The technical investments included in the restructuring program amount at RON 28,407,228, of which RON 14,500,000 stands for the investments assumed incurred by the buyer through the share selling-purchase contract.

(40) Technical restructuring aimed at counterbalancing some of the main causes which triggered the company's difficulties, especially those linked to the wear-and-tear of the equipment, machines and technological equipments of the company's patrimony.

(41) The investments that the company will make in the purchase of construction equipments and transportation means are a priority and are necessary to its main activity (a part of the existing equipment is uneconomical and requires the constant replacement of parts) <sup>8</sup>.

**Table no. 5** Measure on technical and technological restructuring - RON -

| Crt No. | Measure   | Implementa<br>tion costs | Financing         |                   |           |
|---------|---|--------------------------|-------------------|-------------------|-----------|
|         |   |                          | Own sources       | Buyer's sources   | State aid |
| 1.      | Purchase of equipments and transportation means (concrete and sorting stations, cranes and auto cranes, excavators, iron-plate selling equipments, bulldozers, etc) | 17,951,724               | 4,951,724         | 13,000,000        | -         |
| 2.      | Major repairs works at the workshops repairing equipments, metal blasting and dye works manufacturing, fuel storage house, concrete and sorting aggregated stations | 10,455,504               | 8,955,504         | 1,500,000         | -         |
|         | <b>TOTAL</b>  | <b>28,407,228</b>        | <b>13,907,228</b> | <b>14,500,000</b> | <b>-</b>  |

Source: ICSH restructuring Program

#### 4.3. Restructuring measures for environment protection

(42) The restructuring measures for environment protection amount at RON 117,000 and are entirely incurred by the buyer through the share selling-purchase contract and are meant to comply with the environment obligations of the standardization programs for

<sup>7</sup> Confidential data

<sup>8</sup> Thus, the necessity to achieve these investments was based on an analysis of the existing equipments



environment certification. The implementation of the environment protection measures aim at reducing the pollution, eliminating the dangerous waste, preventing the migration of polluters in the air, of spilled oil and diesel oil on the ground, from cars and equipments to be repaired or which transport various materials etc.

#### 4.4. Financial restructuring

(43) Financial restructuring includes the following measures:

**Table no. 6** Financial restructuring measures - RON –

| Measure   | Implementation cost | Financing        |                 |                   |
|---|---------------------|------------------|-----------------|-------------------|
|   |                     | Own sources      | Buyer's sources | State aid         |
| Exemptions and rescheduling for outstanding obligations | 37,019,631          | -                | -               | 37,019,631        |
| Supplementing the working capital through bank loans    | 4,800,000           | 4,800,000        | -               | -                 |
| Payment of interests rates related to the bank loans    | 1,250,000           | 1,250,000        | -               | -                 |
| <b>TOTAL</b>  | <b>43,069,631</b>   | <b>6,050,000</b> | <b>-</b>        | <b>37,019,631</b> |

Source: ICSH restructuring program

(44) The restructuring plan, through the financial restructuring component, will give the possibility to increase the cash-flow, ensure a stable cash-flow, which will make the financial activity of the company easier. Thus, the company will be able to pay its current debts towards the state and to allocate its necessary liquidities for the execution of the scheduled and necessary investments, with a view to develop and support the production in the future.

(45) Through the restructuring plan, the company settled the restructuring financing sources for the following period, on one hand on the basis of own sources, on the other hand on the basis of the buyer's funds which ensures technology and environment investments absolutely necessary for the company's activity.

(46) By implementing the above mentioned sources, it is forecasted that the company will become viable by the end of 2009.

#### 5. ASSESSMENT OF THE STATE AID MEASURES - CHARACTER OF STATE AID OF NOTIFIED MEASURES

(47) The state aid criteria set up in Art. 2 (1) of Law 143/1999. Under the law, any measure of support taken by the state or by the local administrative authorities, or from state resources or from local administration resources, regardless of its form, which distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the supply of certain services or which affect trade between Romania and the EU Member States, and it is considered incompatible with a normal competition environment.

(48) [...]<sup>9</sup>.

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<sup>9</sup> Confidential data

(49) The financial measures of support are granted to a certain undertaking, namely ICSH, thus having selective nature.

(50) Through the financial measures of support, an economic advantage is granted to ICSH, whereby certain debts to the State budget and the payment of penalties and interests for late payment have been written off. The granting of these penalties has the favorable effects on the company's economic and financial position, especially its cash flow, there for the company had advantage in comparison with its competitors.

(51) The assumption that a debt write-off or debt rescheduling represents an advantage is valid in a non-privatization context. Where such debt write-offs and rescheduling are part of the privatization package such facilities should be analyzed in terms of whether or not they constitute state aid. If the facilities, as in this case, are granted in the privatization context, one should apply the private investor/creditor test. Ordinarily, an investor/creditor will seek to achieve a positive price, i.e. the price obtained is greater than the value of the debts. However, in this case the price is negative, i.e. less than the value of the facilities. An investor/creditor may be willing to accept a negative price if the cost of the privatization is less than the cost of liquidation. In this case, such analysis is not possible as AVAS informed the Competition Council that prior to the privatization no comparative analysis was made between the company's liquidation cost and the cost of the privatization. In any event the existence of conditions attach to the privatization package is, by itself, sufficient to dislodge the application of a private investor creditor principle.

(52) [...] <sup>10</sup>.

(53) Given that the incentives are to be granted in the context of privatization, one must compare the state's behaviour with that of a private investor/seller under the similar circumstances (the prudent private investor test). One may find that upon privatization the state acts like a prudent private investor/seller, provided that it obtains the best price from selling its shares. The Competition Council analyzed whether the state does act like a prudent private investor in the case of ICSH.

(54) As shown under Chap. 3.3. of this decision, ICSH's privatization took place through negotiation on the basis of final improved and irrevocable offers. Competition Council finds that the privatization process was accompanied by negotiations on price and on the amount of investment.

(55) Also, Competition Council holds that ICSH's sale was made conditional by the implementation of certain measures to update technology and performing some investments to meet the environment protections norms, to meet all the liabilities in the collective labour contract, to maintain the number of staff, etc.

(56) [...] <sup>11</sup>.

(57) Also, AVAS, informed the Competition Council that prior to privatization there was no comparative analysis made between the liquidation costs and the privatization costs. Considering the social effects triggered by staff lay-offs in the case of the liquidation, the state took direct action for privatization, while committing to grant incentives when the privatization is over.

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<sup>10</sup> Confidential data

<sup>11</sup> Confidential data

(58) To conclude, Competition Council ascertains that in the context of ICSH's privatization, the Romanian state did not act according to the prudent private investor principle, and, consequently, the financial measures granted upon privatization to ICSH stand for state aids and are subject to Law 143/1999 on state aid, as republished.

## **6. COMPATIBILITY OF THE AID WITH THE LINE LEGISLATION**

(59) The objective of the state aid is ICSH's restructuring in view of restoring the company's viability by the end of the restructuring period. Provided that the conditions of the Regulation regarding the state aid for rescue and restructuring of firms in difficulty are met, the state aid may be deemed compatible.

(60) The restructuring aid is made conditional on the implementation of a feasible and coherent restructuring plan, able to demonstrate the enterprise's long-term viability. To this purpose, the regulation provides that restructuring should normally include one or several of the following elements: reorganization and rationalization of the company's business on efficient grounds, which regularly implies withdrawal from loss-generating activities, restructuring of existing business which may become competitive again and sometimes their diversification toward new and profitable businesses. Industrial restructuring must usually be accompanied by financial restructuring (capital injections, decreasing the degree of indebtedness, etc.).

(61) Competition Council assesses the state aid for ICSH according to the criteria in the Regulation regarding the state aid for rescue and restructuring of firms in difficulty, published in the Official Gazette no. 1215/17.12.2004, issued for the enforcement of *Law 143/1999 on state aid, as republished*. In order to be deemed compatible with competition, state aid must meet all the criteria in the above-mentioned regulation.

## **7. CRITERIA THAT MUST BE MET TO GRANT RESTRUCTURING AID**

(62) State aid for ICSH is deemed an individual aid for restructuring and is granted under a restructuring Program having as a main objective to restore the company's viability by the end of the implementation period.

(63) Competition Council assesses the aid to ICSH under the criteria in the Regulation regarding the state aid for rescue and restructuring of firms in difficulty (hereinafter called the Regulation), seeking:

- company eligibility: company in difficulty;
- long-term restoration of viability;
- prevention of excessive distortion of competition;
- aid limited to the minimum necessary; proportionality of the aid;
- 'one time, last time' principle;
- objectives in the Restructuring Plan fully met and permanent monitoring of its implementation;
- group membership.

## **7.1. ICSH Eligibility – company in difficulty**

(64) [...] <sup>12</sup>.

(65) As set out in the notification submitted by AVAS, a range of internal and external factors generated difficulties for a normal business operation of the company, namely:

- high degree of wear-and-tear of technological tools, machines and equipment and of transport tools from the company's patrimony assets, which generated a low output of utilization and high operation costs;
- accumulation of a high amount of claims uncollected because of the economic blockage and of clients' insolvency, which triggered the cumulation of debts to the state budget and the social contribution budget;
- unpredictable price increase for raw materials, materials and fuel, and for utilities;
- insufficient cash flow to ensure consistent supply of raw material and materials for the proper performance of the production process, and for modernization and acquisition of new tools;
- national economic situation in general: financial blockage, high inflation rate.

(66) For the purposes of Art. 2 par. 2 sections (b) and (c) of the Regulation, a stock company is deemed to be in difficulty when it lost more than half of its own capital, as proved by the company's accounting sheets, and more than a quarter of this capital was lost during the previous 12 months. Regardless of its legal status, a company is considered to be in difficulty, when it meets the conditions for the procedure for judicial reorganization and bankruptcy.

(67) In this regard, the Competition Council holds that in 2004, for a registered capital of RON 1,708,537.5, recorded a loss of RON 2,876,823.2 that is 1.7 higher than the registered capital. Other financial and economic indexes, such as loss increase, decrease of turnover in comparable prices, increase of stock volume, increase of debts, increase of financial burdens etc. indicate the company's difficult situation upon privatization <sup>13</sup>.

(68) Given the above facts, Competition Council finds that ICSH is a company in difficulty for the purposes of the *Regulation regarding state aid for rescue and restructuring firms in difficulty*.

## **7.2. Restoration of the company's long-term viability**

(69) ICSH's difficulties triggered a dramatic reduction in the company's business activities and simultaneously cause an accumulation of debts to the state budget. In time, these debts, together with interests and penalties payments exceeded the value of outstanding debts.

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<sup>12</sup> Confidential data

<sup>13</sup> Also, the state aid grantor underlines in the notification form the fact that in 2003, the company was already under judicial reorganization. This procedure was suspended in 2004 in view of the privatization. The interest rates and penalties during the judicial reorganization were included in the state aid amount as analyzed in this decision.

(70) The analysis of the restructuring plan and of the way it will restore ICSH' long-term viability is based on Art. 13 of the *Regulation*.

(71) [...] <sup>14</sup>.

(72) ICSH' restructuring plan starts from the technical and economical data reflecting the company's business before privatization. This plan was created on the basis of a diagnosis-analysis pointing out the strengths and the weak points of the company, the circumstances triggering difficulties and considering the opportunities or threats the company faces.

(73) The company aims to attain viability through the implementation of the restructuring plan, namely:

- reaching an operational balance, in order to obtain profit;
- updating existing technology according to the incurred investment program;
- more efficient operations through cost reduction;
- reorganizing the company and making its business more profitable;
- observing the international standards on environment protection and total elimination of the company's own pollution factors.

(74) ICSH' strategy seeks to maintain the strong points, namely: experience in the field, staff trained in all the specific construction skills; possibility of executing the whole range of construction workings – fitting, civil and industrial constriction of international certification; wide range of customers.

(75) [...] <sup>15</sup>.

(76) [...] <sup>16</sup>.

(77) By the application of the measures in the restructuring plan – to which both the company and the Buyer, through the own contribution, and the State, through the fiscal measures, will contribute – an enhancement of the economical and financial indexes is foreseen during 2005-2009, as shown below:

**Table no. 7** Forecast of economic and financial indexes -RON-

| No. | Name of index             | 2005                     | 2006              | 2007              | 2008              | 2009              |
|-----|---------------------------|--------------------------|-------------------|-------------------|-------------------|-------------------|
| 1.  | Net turnover              | 22,558,900               | 25,015,000        | 28,800,000        | 30,700,000        | 33,600,000        |
| 2.  | Total incomes of which :  | <b>23,068,500</b>        | <b>27,111,200</b> | <b>30,638,633</b> | <b>33,424,100</b> | <b>35,336,974</b> |
|     | a) operation incomes      | 22,931,000 <sup>17</sup> | 26,980,000        | 30,500,833        | 33,279,500        | 35,185,074        |
|     | b) financial incomes      | 137,500                  | 131,200           | 137,800           | 144,600           | 151,900           |
|     | c) extraordinary incomes  | 0                        | 0                 | 0                 | 0                 | 0                 |
| 3.  | Total expenses :          | <b>22,910,000</b>        | <b>26,227,333</b> | <b>28,532,397</b> | <b>30,637,397</b> | <b>32,384,397</b> |
|     | a) operation              | 22,680,000               | 25,314,833        | 27,212,397        | 28,945,397        | 30,434,397        |
|     | b) financial              | 230,000                  | 912,500           | 1,320,000         | 1,692,000         | 1,950,000         |
|     | c) extraordinary          | 0                        | 0                 | 0                 | 0                 | 0                 |
| 4.  | Gross profit (+)/Loss (-) | <b>158,500</b>           | <b>883,867</b>    | <b>2,106,236</b>  | <b>2,786,703</b>  | <b>2,952,577</b>  |

<sup>14</sup> Confidential data

<sup>15</sup> Confidential data

<sup>16</sup> Confidential data

<sup>17</sup> The total amount of RON 22,931,000 is made of operating revenues estimated for 2005 (RON 17,223,744) and part of the revenues obtained from fiscal facilities to be granted at privatization (RON 5,707,256).

|    |                         |         |         |           |           |           |
|----|-------------------------|---------|---------|-----------|-----------|-----------|
| 5. | Net profit (+)/Loss (-) | 133,140 | 742,448 | 1,769,238 | 2,340,831 | 2,480,165 |
|----|-------------------------|---------|---------|-----------|-----------|-----------|

Source: ICSH restructuring program

(78) The economic and financial results after the implementation of the restructuring plan aim mainly at rendering the production process more efficient, by improving the technological yield after modernization of tools and acquisition of new equipment. Thus, compared to 2004, the economic and financial indexes will follow the following trend:

- total incomes and turnover will have a permanent increase trend;
- the operation expenses provided in the restructuring plan will have an upward trend, related to the company's general development, to the increase in work productivity and in modernization of technology;
- operation expenses record an upward trend, of 53.44% increase.

The analysis of these indexes proves the correlation between the indexes and the evolution of the company, adequate and realistic planning of the manufacturing program, to ensure the revival of the company.

(79) [...] <sup>18</sup>.

(80) [...] <sup>19</sup>.

(81) [...] <sup>20</sup>.

### 7.3. Prevention of any excessive distortion of competition (compensatory measures)

(82) [...] <sup>21</sup>.

(83) As shown under subchapter. 3.2., 'Relevant markets', ICSH holds market shares smaller than 0.1% on each of the relevant markets, namely construction-assembly, metal constructions, mortar and concrete production.

(84) Consequently, given the provisions of Art. 14 of the Regulation, which stipulates that compensatory measures shall be proportional to the aid's distorting effect over competition and to the size and relative importance of the company on the affected markets, Competition Council finds that, in the ICSH case, no significant reductions of production capacity are necessary.

(85) The measures to be taken by the company by the end of the restructuring period with the aim of avoiding competition distortion consist in irreversible reductions of production capacity, namely reduction of fixed assets.

(86) [...] <sup>22</sup>.

(87) [...] <sup>23</sup>.

(88) [...] <sup>24</sup>.

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<sup>18</sup> Confidential data

<sup>19</sup> Confidential data

<sup>20</sup> Confidential data

<sup>21</sup> Confidential data

<sup>22</sup> Confidential data

<sup>23</sup> Confidential data

(89) [...] <sup>25</sup>.

(90) Through the restructuring program, ICSH seeks to enhance the degree of utilization of production capacities. Thus, it will rise compared to the beginning of the restructuring program in 2005, since the company committed to reduce its working production capacities by 20%. Also, ICSH does not increase its market shares but intends to maintain the current market segment.

(91) Given the above, Competition Council finds that the state aid will be used only for viability restoration and will not allow the beneficiary, while applying the restructuring plan, to expand its production capacity.

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

(92) The analysis of the difficult financial and economic situation faced by the company before privatization showed that, in order to remain on the market and become viable, it was necessary both to privatize the company and to grant it restructuring aid in the form of fiscal incentives.

(93) Pursuant to Art. 15 of the Regulation, the aid amount and intensity must be limited to the strictly minimum necessary in order to allow the restructuring from the existing financial resources of the company and the shareholders. The state aid beneficiary must bring a significant contribution to the restructuring plan from own resources, including from the sale of non-essential assets for the company's survival, or of external financing under market conditions. Pursuant to Art. 15 par. 2 of the Regulation, for large enterprises, a contribution of at least 50% is deemed adequate.

(94) ICSH's total restructuring cost is RON 74,119,631 and is made up of:

|                                     |                 |
|-------------------------------------|-----------------|
| - organizational restructuring cost | RON 2,525,772;  |
| - technology restructuring cost     | RON 28,407,228; |
| - environment restructuring cost    | RON 117,000;    |
| - financial restructuring cost      | RON 43,069,631. |

(95) From the restructuring cost in amount of RON 74,119,631, 30.33% will be financed from the company's own resources, 19.72% from the controlling interest buyer's own resources and 49.95% from the state financial support.

(96) [...] <sup>26</sup>.

(97) [...] <sup>27</sup>.

(98) [...] <sup>28</sup>..

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<sup>24</sup> Confidential data

<sup>25</sup> Confidential data

<sup>26</sup> Confidential data

<sup>27</sup> Confidential data

<sup>28</sup> Confidential data

## **7.5. ‘One time, last time’ principle**

(99) As shown by the notification form, ICSH did not receive other restructuring aid; thus Article 24 of the Regulation is observed which stipulates that the restructuring aid must be granted once single time.

## **7.6. Group membership**

(100) [...] <sup>29</sup>.

(101) AVAS underlined that investors agreed to acquire the controlling interest and to incur an important part of ICSH’s restructuring costs provided that the fiscal measures mentioned in the terms of reference were granted.

(102) The fiscal measures granted to ICSH on privatization relate to old debts – as an effect to the economic results in the years prior to the sale of the block of shares – therefore they belong to the company itself.

(103) [...] <sup>30</sup>.

(104) [...] <sup>31</sup>.

(105) [...] <sup>32</sup>.

## **7.6. Annual monitoring and reporting**

(106) Under Art. 18 of the Regulation, Competition Council shall permanently monitor the implementation of the restructuring plan so that the objectives are met consistently.

(107) Competition Council shall monitor the implementation of the restructuring plan until the end of the period so that to avoid any increase in production, major deviances from achieving the restructuring measures and to make sure that the state aid will not create additional cash flow likely to be used in other business than the ones in the restructuring program.

## **8. CONCLUSION**

(107) Given the above arguments, Competition Council finds that the individual state aid to be granted to ICSH is compatible with a normal competition environment and does not significantly affect trade with the EU Member States.

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<sup>29</sup> Confidential data

<sup>30</sup> Confidential data

<sup>31</sup> Confidential data

<sup>32</sup> Confidential data



## DECIDES

**Art. 1.** The measure notified by the Authority for State Asset Resolution for S.C. I.C.S.H. S.A. Hunedoara constitutes state aid for the purposes of Art. 2 of Law 143/1999, as republished.

**Art. 2.** Pursuant to Art. 21 par. 2 section c) read in conjunction with Art. 23 par 1 section e of Law 143/1999, as republished, we authorize the state aid for restructuring to S.C. I.C.S.H. S.A. Hunedoara upon its privatisation on the condition that Arts. 3 and 4 of this Decision are observed.

**Art. 3.** The company is compelled to fully implement the restructuring plan it incurred.

**Art. 4.** The company shall reduce its production capacities until 2009, according to the restructuring plan as incurred.

**Art. 5.** In case the conditions imposed in this decision are violated, the provisions of Art. 22 in Law 143/1999 as republished shall be applied.

**Art. 6.** The value of the state aid to be granted is RON 37,019,631.

**Art. 7.** This decision becomes applicable as of its communication.

**Art. 8.** In accordance with the provisions of Article 32 of Law no. 143/1999 on State aid, as republished, the Authority for Authority for State Asset Resolution shall submit to the Competition Council information on the State aid granted to the company, for the inventorying and the monitoring. In addition, the Authority for State Asset Resolution 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 this decision. The following periodical reports shall include the data on the (physical and worth) of implementation of the restructuring plan. Also, information shall be submitted on the way observed compensatory measures related to the reduction of production capacity as imposed through this decision are applied.

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

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

- The Authority for State Asset Resolution Authority for State Asset Resolution, 50, Cpt. Av. Alexandru Serbanescu street, sector 1, Bucharest;
- Ministry of Public Finances, str. Apolodor, nr. 17, sector 5, Bucuresti;
- Local City Council of Hunedoara, str. Libertatii, nr. 17, Hunedoara, jud. Hunedoara;
- S.C. I.C.S.H. S.A., str. Constantin Bursan, nr. 8, Hunedoara, jud. Hunedoara.

**Art. 11.** The Secretary General and the Department for State Aid Authorization of the Competition Council shall see that this decision is enforced.