

DECISION of the Competition Council

No. 5 of 18.01.2005

regarding the State aid to be granted to SC Moldoforest SA Iasi

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

The Report drafted by the rapporteur and the investigation team following the findings during the investigation opened through Order of the Competition Council's President no. 130/15.06.2005.

Based on the following,

1. PROCEDURE

- (1) After the control carried out by the Iasi Competition Inspectorate in February 2005, to SC MOLDOFOREST SA (hereinafter MOLDOFOREST) Lunca Cetățuii, Ciurea Village, Iași county, certain support measures, likely to include State aid elements, were identified. These measures were granted to the company at privatization, based on the provisions of art. 18 of Law no. 137/2002 on certain measures for accelerating the privatization.
- (2) The Competition Council requested the Authority for the State Assets Recovery (hereinafter named AVAS), by the address no. 1140/03.06.2005, to notify the

support measures granted to MOLDOFOREST within privatization, in order to assess the support measures according to the state aid legislation.

- (3) Because AVAS did not answer the request to notify within the time limit established by the Competition Council (respectively until 14.06.2005), based on the Note elaborated by the Territorial Monitoring Department and registered with no. 1204/15.06.2005, an ex officio investigation was proposed.
- (4) Based on art. 34 (a) corroborated with art. 26 (j) of the Competition Law no. 21/1996, republished and art. 14, art. 20 and art. 40 of the State aid Law no. 143/1999, republished, by the Order of the Competition Council's President no.130/15.06.2005 an investigation was opened regarding the support measures suspected to be State aid granted to MOLDOFOREST within privatization. The investigation also focused on the compatibility of the measures with the conditions imposed by the State aid Law no. 143/1999 and the relevant secondary legislation.
- (5) Order no. 130/15.06.2005 regarding the investigation and the investigation's opening note were published on the Competition Council's website, according to the provisions of the State aid Law no. 143/1999, in order to allow the interested parties to submit their points of view.
- (6) During the investigation, by address no. VP4/3266/23.09.2005, registered at the Competition Council with RS-AS nr. 89/26.09.2005, AVAS notified the State aid measures granted at the privatization of MOLDOFOREST, as individual restructuring State aid. As the information submitted was not complete and exact, the Competition Council sent to AVAS a request for additional information by address DAAS/1144/04.10.2005.
- (7) By address no. 1990/15.11.2005, the report elaborated by the investigation team was submitted to the beneficiary and to AVAS, for possible comments¹.

2. DESCRIPTION OF THE STATE AID MEASURE

2.1. The legal base for granting the State aid

- (8) The State aid measures granted to MOLDOFOREST are established by the following normative acts:
 - Law no. 137/2002 on certain measures for accelerating the privatization;
 - Government Decision no. 577/2003 on the approval of the Methodological Guidelines for the implementation of EGO no. 88/1997 on the privatization of commercial undertakings, with further modifications and completions and for the implementation of Law no. 137/2002 on certain measures for accelerating the privatization;

¹ AVAS had no comments on the submitted Investigation Report.

- EGO 26/2004 on certain measures for finalizing the privatization of the undertakings in AVAS portfolio and the consolidation of some privatizations, approved by Law no. 442/2004;
- GD no. 94/2004 on regulating some financial measures.

2.2. The financial support measures for MOLDOFOREST

(9) The following support measures, that are subject of the investigation, are granted at MOLDOFOREST privatization, namely facilities for the payment of certain obligations due towards the State budget, as well as the local budget of Iasi county.

(10) The total amount of facilities granted to MOLDOFOREST for the payment of the due obligations is RON 8,894,842, comprising exemptions amounting to RON 6,885,761 and rescheduling of debts towards the State budget and local budget in total amount of RON 2,009,081, as follows:

Table no. 1 – Facilities granted to SC MOLDOFOREST SA

No.	FACILITY	AMOUNT -RON-	LEGAL BASIS
1.	Exemption from the payment of the State budget obligations at 31.12.2001	1,763,369	Law no. 137/2002
2.	Exemption from the payment of the contributions due towards the social and unemployment insurances budget at 31.12.2001	2,680,044	Law no. 137/2002
3.	Exemption from the payment of the contribution due to the national health fund at 31.12.2001	353,124	Law no. 137/2002
4.	Exemption from the payment of the local budget obligations at 31.12.2001	127,910	Law no. 137/2002
5.	Exemption from the payment of the budgetary obligations	1,496,648	EGO no. 26/2004
6.	Exemption from the payment of any interest or penalty rescheduled through common orders and not paid at the date of issuance of Law 442/2004	464,665	Law 442/2004
7.	Rescheduling of the payment of the due budgetary obligations at 31.12.2001	1,187,443	Law no. 137/2002
8.	Rescheduling of the payment of the debits calculated in accordance with the provisions of Law 442/2004	821,638	Law no. 442/2004
	TOTAL	8,894,842	

Source: Notification form

3. THE BENEFICIARY - MOLDOFOREST

- (11) MOLDOFOREST is a joint stock company with the headquarter in Lunca Cetatuii, Ciurea village, Iasi county, having the registration number at the Trade Register J 22/950/1994 and CUI 1965840, fiscal attribute R. At the date when the shares sale-purchase contract was signed, according to the Trade Register Office, the company had equity of RON 2,171,032.5 thousands divided in 868,413 shares of RON 2.5 each. 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.
- (12) MOLDOFOREST was privatized in 2002, by signing the shares sale-purchase contract no. IS/18/31.07.2002, concluded between APAPS (subsequently named AVAS) and SC Dawn Rom SRL. The shareholders' structure following the privatization is presented in the Table no. 2.

Table no. 2 –MOLDOFOREST's shareholders structure after the privatization

SHAREHOLDERS	CAPITAL OWNING	
	Number of shares	Percent in the equity (%)
SC Dawn ROM SRL	769,235	88.60
Mass privatization program	99,178	11.40
Total	868,413	100.00

Source: The notification form

- (13) The company had, at the moment when the privatization contract was signed, 298 employees and a turnover of RON 2,126,326.6 thousands, being, therefore, a large company.
- (14) MOLDOFOREST's business is the exploitation and processing of wood products, such as logs, fire wood, timber, packaging and semi-finished items. The company has as secondary activities: forest transport for third parties and auto repairing of its equipments. Its production processes are organised as follows:
- Forest exploitation, including the following activities: mechanical timber harvest, branch cleaning, collection of wood products, sectioning and sorting the timber to obtain round wood and a part of the fire wood;
 - Forest transportation: the wood products generated in the exploitation sites are transported to the intermediary platforms or the Company's Wood Sorting and Pre-industrialisations Centres where a final sorting and transformation take place, obtaining fire wood and raw materials for the cellulose and paper plants and stratified wood plants;
 - Wood preparation – this activity enables the company to produce timber, half-finished products, packaging products and other products such as wooden floor.

3.1. Relevant markets

- (15) The beneficiaries of the commercialised goods on the internal market are the following:

- economic agents operating in the primary manufacturing of wood industry, which process logs in order to obtain half finished products;
- wood panels producers and/or half finished products highly finished, as well as furniture producers buying timber;
- different users of wood packaging;
- undertakings and natural persons using fire woods.

(16) According to a market study, annex to the restructuring plan, the market share of the company on the domestic markets is as follows:

- for logs: [...] ²;
- for fire wood: [...] ³
- for timber: [...] ⁴;
- for packaging: [...] ⁵;
- for half finished products: [...] ⁶.

Note should be made that neither of these products provide MOLDOFOREST with a significant position on the relevant internal markets.

(17) The domestic market relating to the exploitation and manufacturing of wood products is characterized by the presence of a high number of small producers, such as : [...] ⁷, some of whom compete with Moldoforest.

(18) Out of the total production realised by MOLDOFOREST, approximately 10% is exported mainly to Italy, Turkey and Egypt.

(19) The main clients for the company's products are:
[...] ⁸

(20) The market study reveals that over the next five years demand for semi-finished products, timber and fire wood will increase and stabilise for wood packaging. ⁹

3.2. Financial status of the company prior to the privatization

(21) The economic-financial outcome registered by MOLDOFOREST, on the basis of the data enclosed in the balance sheets prior to the privatization, are as follows:

Table no. 4 – Economic-financial outcome during 2000-2002

² Confidential data.

³ Confidential data.

⁴ Confidential data.

⁵ Confidential data.

⁶ Confidential data.

⁷ Confidential data.

⁸ Confidential data.

⁹ MOLDOFOREST main product groups are timber and logs, these representing almost 60% of the total sales. The market study annex to the notification form show that the raising evolution of this market, mainly due to the increasing tendency of building houses and apartments, development and evolution of the furniture industry.

2000	2001	2002
Turnover (RON)		
2,539,292	2,680,338	2,126,327
Loss (RON)		
368,501	601,709	5,385,969

Source: The profit/ loss account corresponding to 2000, 2001, 2002.

- (22) Moreover, the difficult economic-financial status of the undertaking is also shown by the evolution of the following economic-financial indicators:

Table no. 5 – Main indicators’ evolution during 2000-2002

INDICATORS	2000	2001	2002
Turnover in comparable prices 2000 (RON)	2,539,292	2,058,703	1,385,345
Stocks (RON)	941,260	1,136,684	1,410,113
Own capital (RON)	6,624,414	437,203	-4,948,763
Stocking time (days)	133	153	239
Total debts (RON)	3,726,794	5,316,239	9,074,114
Indebtness degree (%)	56.25	1211.9	-
Intermediate liquidity (%)	0.25	0.32	0.6

Source: Notification form

The above-presented data show that the undertaking is facing increased losses, decreased turnover in real terms, increase in stocks and debts, high level of indebtness and low level of liquidity compared to normal situations.

- (23) The premises of the undertaking’s difficult situation are the following:
- the impossibility to participate at auctions because of the lack of financial means, as well as the lack of a constant production activity;
 - obsolete technology;
 - lack of liquidity for: acquisition and processing the appropriate volume of wood, realisation of new products, improving the technological process, adaptation to new manufacturing conditions for the firm’s specific products;
 - inefficient use of human resources within the firm;
 - lack of surveillance regarding the observance of the specific consumptions;
 - maintenance of some assets under conservation, therefore generating additional costs;
 - poor management.

4. DESCRIPTION OF THE PRIVATIZATION PROCESS

- (24) In accordance with the legal provisions, the sale of the shares package owned by AVAS at MOLDOFOREST was realised by means of auction with undisclosed offers.
- (25) In 2002, AVAS offered for sale the main shares package owned by the State in . MOLDOFOREST, representing 88.60% of its equity, divided into 769,235 shares.
- (26) The privatization process started on 14.06.2002 by advertising in newspapers “Ziua”, (national newspaper) and “Ziua de Iasi” (local newspaper), at the undertaking’s headquarter and the headquarter of APAPS Iasi, North East Regional branch.
- (27) 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 of the undertaking. Moreover, the presentation dossier stipulated that the undertaking 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.
- (28) [...] ¹⁰
- (29) [...] ¹¹

5. DESCRIPTION OF THE RESTRUCTURING PROGRAM

- (30) The restructuring plan, elaborated by the company in cooperation with the buyer and approved by AVAS, was subsequently submitted to the Competition Council. This plan includes the measures required to carry out the company’s structural re-organization, the technical restructuring, the environmental investments and the financial restructuring.
- (31) MOLDOFOREST restructuring is focused on the following main directions:
- Making its activity efficient and profitable;
 - Diversifying and adapting the products offered depending on the market demand;
 - Reducing specific consumption of input, energy, fuel, by means of technological redesigning the envisaged products;
 - Modernizing the technologies used for wood processing according to the assumed investment program;
 - Raising the work productivity through training the personnel and introducing new technologies.

¹⁰ Confidential data.

¹¹ Confidential data.

- (32) By implementing the restructuring plan, the company aims to accomplish the following objectives:
- Ensure and surpass the minimum efficiency threshold by means of progressively increasing the usage rate of the existent production means;
 - Promote a viable management and marketing strategy for promoting the company's products;
 - Reduce production and sale costs;
 - Increase the turnover and reduce the debts reimbursement duration;
 - Meet the European environmental criteria.
- (33) The restructuring plan submitted by AVAS outlines the causes leading to the company's financial difficulties and includes the necessary measures in order to ensure the company's long term viability. By applying the restructuring measures, AVAS foresees that the company shall register a profitable activity and ensure its own financial resources for an adequate development of its activities, without debts to the State budget or local budgets.
- (34) The restructuring program elaborated together with the Buyer and AVAS covers the period 2003-2007. The measures enclosed in the restructuring plan are as follows:

Table no. 6 –The synthesis of the measures enclosed in MOLDOFOREST restructuring plan

- Thousand RON -

No.	Measures	Assessment of implementing costs			
		Total cost	Own sources	Investor's sources	State aid
1.	Organizational measures	500	500		-
2.	Technological measures	4,420	1,600	2,820	-
3.	Environmental protection measures	600	-	600	-
4.	Financial restructuring measures	11,806.2	1,366.8	1,544.6	8,894.8
TOTAL RESTRUCTURING COST		17,326.2	3,466.8	4,964.6	8,894.8

Source: MOLDOFOREST's restructuring program

- (35) Implementing the restructuring program requires a total financial effort amounting RON 17,326.2 thousand; this plan seeks to return MOLDOFOREST to viability in 2007 .

5.1. Organizational restructuring

- (36) The organizational restructuring encloses the following measures:

Table no. 7 – Measures on the organizational restructuring - thousand RON-

Measure	Deadline	Cost	Financing
---------	----------	------	-----------

			Own sources	Buyer's sources	State aid
Sale of fixed assets and other assets (CSPL Harlau and Husi, Sarca auto park, other buildings)	2006	250			-
Capacity closing (Harlau, Lespezi, Sarca, Bacesti, Husi)	2006	200			-
Organization on profit centres	2005	50			-
TOTAL		500	[...] ¹²	[...] ¹³	-

Source: MOLDOFOREST's restructuring program .

The organizational measures aim at reducing costs (raw material costs, security costs, costs generated by buildings and transport means, taxes to the budget), ceasing losses and bringing efficiency to the production cycle. Also, an organisation of the activity was required, meaning that each exploitation site and the industrialization activities (timber, half finished products, and packaging) shall function as profit centres. Therefore, there is a need to acquire a computer network and implement an integrated administration system allowing for the monitoring of the administrative activities and carry out the bookkeeping in real terms. In view of obtaining financial resources, the company started to close down loss making and unused assets and to capitalise them. The assets capitalised during the restructuring period were evaluated by independent evaluators¹⁴ as amounting RON 2,791.8 thousand.

5.2 Technical restructuring

(37) The technological investments assumed by the company and the Buyer amount to RON 4,420 thousand and refer to the following:

Table no. 8 Measures on the technical restructuring

- Thousand RON -

Measure	Deadline	Cost	Financing		
			Own sources	Buyer's sources	State aid
Investments for the modernisation and renewal of equipments and production lines	2007	1,800			-
Investments for the computer-based projecting and processing	2003	120			-
Setting up of a production section for wood stratified joinery and furniture	2007	500			-
Optimizing the flow in the industrialisation sector	2006	50			-

¹² Confidential data.

¹³ Confidential data.

¹⁴ The evaluation of actives was carried out by the independent experts Bacanu Teodoru and Ghica Margareta and by the firm Darianne Rom Suisse Cluj.

Renewal of the auto park for forest exploitation and transport of wood materials	2007	1,950			-
TOTAL		4,420	[...] ¹⁵	[...] ¹⁶	-

Source: MOLDOFOREST restructuring program

The technical restructuring measures involve the acquisition of efficient installation and equipment, modernisation of the manufacturing technologies, replacement of the obsolete saws and the auto parks. These investments aim to eliminate the technological flow malfunctions, starting with the exploitation activity up to the wood industrialization activity.

5.3. Environmental protection restructuring measures

(38) According to the sale-purchase contract, the investments in environmental protection are totally the responsibility of the Buyer. These amount to USD 140,500 (RON 600 thousand) and are designated for the fulfilment of the environmental obligations under the environmental compliance program.

Table no. 9 - Environmental protection restructuring measures

Measure	Deadline	Cost	Financing		State aid
			Own sources	Buyer's sources	
Modernizing the installation for the exhaust, transport and storage of the dust and saw resulted from the technological process	2005	100			-
Modernizing the thermal plant within the industrialization sector. Endowment with appropriate equipment for fuel combustion	2005	400			-
Modernizing the cleaning station	2005	100			-
TOTAL		600	[...] ¹⁷	[...] ¹⁸	-

Source: MOLDOFOREST's restructuring program

5.4. Financing restructuring

(39) The financial restructuring encloses the following measures:

¹⁵ Confidential data.

¹⁶ Confidential data.

¹⁷ Confidential data.

¹⁸ Confidential data.

Table no. 10 – Financial restructuring measures

- thousand RON-

Measure	Deadline	Cost	Financing		
			Own sources	Buyer's sources	State aid
Working capital infusion from the investor	2003	1,050.0			-
Facilities for the payment of due obligations granted within privatization	2007	8,894.8			8,894.8
Payment of due obligations	2007	1,126.4			-
Capitalization of fixed stocks	2004	500.0			-
Recovery of accounts receivable	2004	35.0			-
Contracting credits for financing the current activity	2006	200.0			-
TOTAL		11,806.2	[...] ¹⁹	[...] ²⁰	8,894.8

Source: MOLDOFOREST's restructuring program

The restructuring plan, by its financial restructuring component, gives the possibility to increase the cash flow, ensure a stable cash-flow, which will ease and relief the company's financial activity. This way, the company will be able to make the necessary and programmed investments, in order to develop and sustain the production program for the future.

6. ASSESSMENT OF THE SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

- (40) The criteria used to establish whether or not a measure represents State aid is presented at art 2 align. (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.
- (41) The financial support granted to MOLDOFOREST in the context of its privatization consists in the State decision to renounce to certain incomes, therefore implies State resources.
- (42) The financial support is granted to a certain undertaking, namely MOLDOFOREST having, therefore, a selective character.

¹⁹ Confidential data.

²⁰ Confidential data.

- (43) By the financial support measures²¹, i.e. exemptions and rescheduling of state debts an advantage is given to MOLDOFOREST. Granting these facilities have a favourable effect on the company's economic and financial indicators, particularly cash -flow. Therefore the company has an advantage, being favoured in competitors (see below).
- (44) The assumption that the facilities indicated above represent an advantage is valid in a non privatisation context. Where such facilities are part of a privatization package, they should be analysed 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 prudent private investor/creditor test²². A prudent investor seeks to achieve a positive price i.e. the price obtained being greater than the value of the debts. In this case, the price paid by Dawn for the acquisition of the main share package - RON 1,000 thousand - is considerably lower than the amount of the facilities granted at the privatization, namely RON 8,894 thousand. However, a prudent investor creditor may be willing to accept a negative price if the cost of the privatization is less than the costs of liquidation. Unfortunately, in this case, such a comparison is not possible, because AVAS informed the Competition Council, that they did not undertake any comparative analyses of the company's liquidation and privatization costs prior to the privatization decision.
- (45) 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 MOLDOFOREST. Therefore, the granting of these facilities constitutes an advantage to the company as indicated at para (43).
- (46) There is no doubt that the financial measures affect the trade with the Member States of the European Union, because MOLDOFOREST's products compete on the market with other similar products manufactured by firms from the Member States.
- (47) Therefore, the financial support measures that are granted to MOLDOFOREST are considered as State aid and fall under the provisions of the Law no.143/1999, republished.

7. THE STATE AID'S COMPATIBILITY WITH THE LEGISLATION IN THE FIELD

- (48) The State aid's objective is MOLDOFOREST restructuring in order to make the company viable again at the end of the restructuring period.

²¹ See para (10) of the draft decision.

²² It should be said that the existence of conditions attached to the privatization package will usually be sufficient to dislodge the application of the prudent private investor/creditor test – see para 29.

- (49) The restructuring State aid is 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.
- (50) The Competition Council assesses the State aid granted to MOLDOFOREST according to the criteria provisioned in the above Regulation, envisaging:
- the firm's eligibility – firm in difficulty;
 - 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.
 - group affiliation.

7.1. Firm in difficulty

- (51) 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”.
- (52) According to art.2 para.(2) letter b) in the Regulation, “a joint stock company is considered in difficulty when it has lost more than half of its registered capital and more than a quarter of that capital was lost within the last 12 months”.
- (53) To this end, the Competition Council notes that the company's capital was reduced from RON 437.2 thousand in 2001 to RON –4,948.7 thousand in 2002, representing “more than half of its own capital”, being therefore fulfilled the condition stipulated at art. 2 para.(2) letter b) in the Regulation, to consider MOLDOFOREST as „firm in difficulty”.
- (54) Moreover, the data presented in paragraph (22) show that MOLDOFOREST has the characteristics of a firm in difficulty, as defined at art 2 align (3) of the Regulation.

7.2. Restoration of long term viability

- (55) 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 .
- (56) In 2002, MOLDOFOREST was privatized. In order to come out of the difficult situation, the company elaborated, together with the Buyer and AVAS, a restructuring program for the period 2003-2007. The synthesis of the measures enclosed in the restructuring plan of MOLDOFOREST was presented at Chapter 5.
- (57) The analysis of the restructuring plan and the assessment of the ways to achieve the long term viability take into account the provisions of art. 13 of the Regulation.
- (58) The restructuring plan 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, the circumstances leading to the difficulties the company is confronted with.
- (59) By implementing the measures enclosed in the restructuring program, to which the firm and the Buyer contribute through their own resources, as well as the State through the facilities granted to the firm for the payment of its budgetary obligations, an improvement of the economic-financial indicators is foreseen, as follows:

[...] ²³

The above table sets out the expected future financial indicators with the following results:

- in 2007 the turnover will register an increase of 100% in comparison with the value registered in 2003;
- the incomes from operating registered a permanent increase, starting with an increase with 30% in the first year of restructuring, followed by a slower pace in the next years;
- the operating costs, forecast in the restructuring program, have an increasing trend, registering an increase with 30% in the first year of the program;
- the company aims an increasing trend for its gross profit, which, in the first years of restructuring, will be used for covering previous losses.

²³ Confidential data.

In fact, data in the profit and loss account show the positive evolution of the company. Thus, in the first years of the restructuring, i.e. 2003 and 2004, the company made a profit of RON 1,407 thousand, respectively RON 1,636 thousand. This was mainly due to the investment efforts comprised in the restructuring plan, which determined the improvement of the yield and efficiency of activity but also due to the withdrawal of the company from loss making activities. In the meantime, during the investigation it has been noted that the company implemented the restructuring measures whose deadline was 2003-2004.

(60) After implementing the measures in the restructuring program, at the end of the restructuring period, the company forecasts to reach the following target indicators:

[...] ²⁴

(61) Therefore, the Competition Council concludes that the proposed restructuring plan will lead to the long term viability of MOLDOFOREST.

7.3. Preventing excessive distortion of competition (compensatory measures)

(62) 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.

(63) According to the information received during the investigation period, when drafting the restructuring program, an assessment of the firm's viability through the closure of the following loss making production capacities was made:

[...] ²⁵.

(64) The compensatory measures to be undertaken by the end of the restructuring period, in order to prevent the distortion of competition, consist in irreversible reductions of production capacities, namely assets and installations. Therefore, the following assets contributing to the main object of activity shall be closed:

[...] ²⁶

(65) The irreversible reductions of capacities are part of the restructuring plan and consist in the reduction by 2,900 cubic meters of the forest exploitation sector.

(66) Significant differences are to be noted between the designed production capacity of MOLDOFOREST and the functioning production capacity. The company does not

²⁴ Confidential data.

²⁵ Confidential data.

²⁶ Confidential data.

intend to increase its production capacities but to accomplish a higher degree of use for the operational ones.

- (67) The functioning production capacities and their degree of use during 2000 – 2002, are as follows:

Table no. 13 – Degree of use for the production capacities during 2000 - 2002

Product	U.M.	2000			2001			2002		
		Existing maximum capacity	Operational capacity	Degree of use	Existing maximum capacity	Operational capacity	Degree of use	Existing maximum capacity	Operational capacity	Degree of use
Forest exploitation	Mc	194,300	130,500	30.38%	116,000	78,300	33.02%	87,000	72,500	41.48%
Forest transportation	Mc	191,432	175,250	22.62%	100,608	100,608	25.70%	80,688	72,720	41.36%
		187,771	187,771	16.64%	158,562	146,044	13.83%	104,317	77,565	30.56%
Timber	Mc	29,000	25,000	46.24%	25,000	21,000	42.18%	21,000	18,000	32.83%
Packaging	Mc	516	516	79.65%	516	516	39.15%	516	300	6.67%
Half finished products	Mc	1,500	1,500	13.33%	1,500	1,500	22.4%	1,500	1,500	27.33%
Other products	Mc	3,870	3,870	46.51%	3,870	3,870	45.22%	3,870	3,870	13.69%

Source: Supplementary information

- (68) After implementing the measures included in the restructuring plan, the production capacities and their degree of use are as follows:

[...] ²⁷

- (69) 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.

7.4. State aid limited to the minimum necessary (proportionality)

- (70) 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.

²⁷ Confidential data.

(71) MOLDOFOREST total restructuring cost amounts to RON 17,326.2 thousand and is formed of the following:

- | | | |
|---|-----------------------------------|------------------------|
| - | organizational restructuring cost | RON 500 thousand |
| - | technological restructuring cost | RON 4,420 thousand |
| - | environmental restructuring cost | RON 600 thousand |
| - | financial restructuring cost | RON 11,806.2 thousand. |

(72) MOLDOFOREST restructuring cost, amounting to RON 17,326.2, is financed from the following sources:

- | | | |
|---|------------------------------|---------------------------|
| - | MOLDOFOREST own sources | RON [...] ²⁸ . |
| - | investor's capital injection | RON [...] ²⁹ |
| - | State aid | RON 8,894.8 thousand. |

(73) Out of the total restructuring cost, amounting to RON 17,326.2 thousand, [...] ³⁰% shall be financed from the company's own sources, [...] ³¹% from the buyer's own sources and 51.34 % from the financial support granted by the State.

(74) The own contribution, covering the restructuring costs, amount to RON 8,431.4 thousand and is ensured by:

- capital injection by the main shareholder: RON [...] ³²;
- incomes obtained from the asset's capitalization: RON [...] ³³;
- stocks capitalization: RON [...] ³⁴;
- recovered claims: RON [...] ³⁵;
- credits contracted under market conditions: RON [...] ³⁶.

(75) The State aid intensity, calculated as a ration between the value of the State aid and the total restructuring cost, is 51.34 %.

(76) The Competition Council considers as adequate the Company's contribution of 48.66% for sustaining the restructuring costs. 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 prevents the granting of liquidities in excess, which could be used for aggressive, distortive activities.

7.5. Fulfilling the first time, last time principle

²⁸ Confidential data.

²⁹ Confidential data.

³⁰ Confidential data.

³¹ Confidential data.

³² Confidential data.

³³ Confidential data.

³⁴ Confidential data.

³⁵ Confidential data.

³⁶ Confidential data.

- (77) MOLDOFOREST 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.

7.6. Affiliation to a group

- (78) 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.

- (79) The fiscal facilities the company benefits from are related to certain historical debts, as an effect of the economic results prior to the privatization. Consequently, MOLDOFOREST financial difficulties are its own.

- (80) [...] ³⁷

- (81) The economic- financial results obtained in 2001 by the firms within the group are presented in the table below:

[...] ³⁸

- (82) According to the 2001 economic-financial results of the firms, the total debts value, at a total turnover of RON 26,128.5 thousand and a total net profit of RON 1,315 thousand, is RON 9,815 thousand, over 7 times higher than the profit obtained. Even if the whole value of the obtained profit of firms within the group would have been allocated for covering the debts of MOLDOFOREST, this could only have covered approx. 25%, the firm therefore remaining indebted.

- (83) Considering the above-mentioned facts, the Competition Council concludes that the group to which MOLDOFOREST is part of following the privatization does not dispose of financial solutions in order to solve the firm's difficulties, namely to cover the RON 8,894.8 thousand debt towards the State, nor to contribute with more than already has (as indicated in the restructuring plan). Therefore, it can be appreciated that the group has disposed of all financial resources to sustain the economic restoration and restructuring of MOLDOFOREST.

7.7. Annual monitoring and reporting

- (84) 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.

³⁷ Confidential data.

³⁸ Confidential data.

- (85) 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.

7.8. Conclusions

- (86) Taking into account the above-presented reasons, the Competition Council finds that the individual State aid granted to MOLDOFOREST 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 granted to S.C. MOLDOFOREST S.A. 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 granted to S.C. MOLDOFOREST S.A. 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 2007, 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 8,894,842.

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 with subsequent modifications and completions*, this decision may be appealed by the interested persons at the Bucharest Court of Appeal, administrative section, within 30 days from its communication.

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

- the Authority for State Assets Recovery, no. 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- S.C. MOLDOFOREST S.A., Lunca Cetatuii, Ciurea, Iasi.