

DECISION OF THE COMPETITION COUNCIL
No. 68 of 28.03.2006
concerning the state aid notified by
the Authority for the Recovery of State Assets
to be granted to SC HIDROTEHNICA SA Galati

THE COMPETITION COUNCIL,

With regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993,

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette no. 742, Part I, of 16.08.2005,

With regard to the provisions of the State aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 of 16.08.2005,

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

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

Based on the following,

1. PROCEDURE

(1) By address no. VP4/343/18.01.2006, filed with the Competition Council no. RS-AS 4/20.01.2006, the Authority for the Recovery of State Assets (hereinafter AVAS) has notified based on art. 15 from Law no. 143/1999 on state aid, republished, the individual state aid for the restructuring of SC HIDROTEHNICA SA Galati within the privatization process.

(2) The Competition Council requested to AVAS additional information by address no. DAAS/116/27.01.2006. AVAS transmitted its answers to the requested information by addresses no. VP4/899/07.02.2006 and no. DCS/613/17.02.2006, filed with the Competition Council no. RG 1323/08.02.2006, DAAS/295/17.02.2006 respectively. The notification became effective on 17.02.2006.

2. DESCRIPTION OF THE STATE AID MEASURES

2.1. Legal basis for granting the aid

- EGO no. 26/2004 regarding certain measures for completing the privatisation of the companies in AVAS' portfolio and consolidating some privatisations, approved with amendments and completions by the Law no. 442/2004;
- EGO no. 26/2005 regarding the abrogation of the legal provisions concerning the granting of facilities for the payment of the remaining budget obligations, approved with amendments and completions by the Law no. 244/2005

2.2. Beneficiary of the measures – SC HIDROTEHNICA SA Galati

(3) The State aid beneficiary is SC HIDROTEHNICA SA Galati¹ (hereinafter HIDROTEHNICA GALATI). The company was set up as joint-stock company by GO no. 80/1991, on the basis of the provisions of Law no.15/1990 and Law no. 31/1990. HIDROTEHNICA GALATI undertook the patrimony assets of the former „Group Building Working Site Galati”, unit set up in 1948, as a new investment, in the framework of the Plant Hidrotechnical Buildings Constanta.

(4) HIDROTEHNICA GALATI was privatized in 2004, by signing the share sale-purchase agreement no. 98/28.12.2004, concluded between AVAS, on the one hand and the consortium comprising SC METALEUROEST SRL Campina, SC ELSID SA Titu and Mr. Florian Vasilescu, on the other hand; the shareholders structure after privatization is presented in table no. 1. The share ownership transfer took place on 13.01.2005.

Tabel no. 1 **Ownership structure at HIDROTEHNICA after privatization**

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares held	Percentage from the social capital (%)
SC METALEUROEST SRL Campina	2,509,993	86.8166
SC ELSID SA Titu	105,684	3.6554
AVAS	7,008	0.2424
Florian Vasilescu	26,421	0.9139
Natural persons	242,038	8.3717
TOTAL	2,891,144	100.0000

Source: Notification AVAS

(5) The company is activating in four subsidiaries and more working points situated across the Danube, in Orsova, Oltenita, Braila, Galati and Tulcea areas. HIDROTEHNICA GALATI has an advanced degree of integration of the manufacturing, disposing of its own exploitations of the quarry, its own means of auto and naval transportation, fixed and floating concrete plants, equipments for the fabrication of centrifuge concrete columns, arrangeable banks for the logistics of the hydrotechnical works.

¹At the date of signing the privatization contract, the company had a share capital of ROL 72,103,400 thousand divided in 2,884,136 shares with a FACE value of ROL 25,000; the company is registered at the Trade Register under no.: J17/119/1991, CUI: 1631140 fiscal attribute R, headquarters in: Galati, 30 Mihai Bravu str., Galati county, postal code 800208;

(6) HIDROTEHNICA GALATI's main activity object consists in hydro-technical structures (CAEN code 4524), namely making river hydro-technical structures for shipyards, ports, communication networks (flood/river control and banks' protection, shores and quays for any water bourn) and making the trenches for sub-crossing the Danube.

(7) The company's main groups of services are the following:

- River hydro-technical construction workings for shipyards, ports, flood/river control and banks' protection, quays etc.;
- Services with the ships;
- Services with construction installations and auto-vehicles;
- Exploiting stone quarries.

(8) Economic- financial results of HIDROTEHNICA GALATI based on balance sheet data prior to the privatization are the following:

Tabel no. 2 Economic-financial results , based on balance sheet data

2002	2003	2004
Turnover (RON)		
18,838,611	27,397,715	28,838,824
Loss (RON)		
842,000	1,137,400	177,500

Source: Notification AVAS

The company does not export, its entire turnover being made on the domestic market. As shown by the data presented above, the company made losses prior to privatisation.

(9) HIDROTEHNICA GALATI is a large enterprise, since its number of employees exceeds the limits imposed by the Regulation on State aid for SMEs, with the subsequent amendments and completions. Thus:

- 86.82% of HIDROTEHNICA GALATI equity is held by SC METALEUROEST SRL Campina; therefore, HIDROTEHNICA GALATI and SC METALEUROEST SRL Campina are related companies within the meaning of Art. 2 (7) of the Regulation on State aid for SMEs, with the subsequent amendments and completions;
- The number of employees and financial values are the following:
 - The number of employees of HIDROTEHNICA GALATI at the end of 2004 is 523, and that of the majority shareholder, of 58;
 - The turnover made by the company is RON 28,838,824, while the majority shareholder makes a turnover of RON 13,464,188.

2.3. Financial position of HIDROTEHNICA GALATI prior to privatization

(10) Prior to privatization, HIDROTEHNICA GALATI was in a difficult economic-financial situation shown by:

- decrease of cash flow due to a low recovery of receivables and payment of debts which do not ensure available cash to carry out business;
- increase of company debts due to lack of liquidity;
- increase of financial burdens, shown by intermediate liquidity, which is much below the minimum limit of the admissible margin of 0.5; this fact confirms the incapacity of

the company to generate the necessary liquidities for making the payments from the current activity

(11) Among the causes that led to the difficulties that the company is confronted with, one can enumerate:

- exploitation of obsolete technology, leading to continuous productivity decline;
- severe lack of investment funds which impeded the replacement of obsolete technology;
- lack of coherent policies and strategies in marketing;
- the blockage in the Romanian economy as a whole which affected the revenues of HIDROTEHNICA GALATI, which then delayed the payments of the budget obligations and for the social insurance budget.

(12) Taking into consideration this difficult situation, AVAS decided to privatize HIDROTEHNICA GALATI and to grant some facilities conditioned by the implementation of some restructuring measures. According to the information from the notification, the privatization presentation file informed the potential investors of the facilities for the payment of overdue budgetary payments.

2.4. Financial support measures for HIDROTEHNICA GALATI

(13) At privatisation, the company was granted support totalling RON 15,408,784 and consisting of:

[...]²

2.5. Relevant markets

(14) HIDROTEHNICA GALATI is active on the following relevant markets: market of hydrotechnical construction assembly works, market of amenities with river ships, market of amenities with construction equipments and vehicles and market of quarry exploitation. The company has attached to the restructuring plan a „Market study for the main products and services provided on the market by SC HIDROTEHNICA SA Galati in view of establishing the company’s restructuring and economic-financial relaunch strategy”. The market study has been drawn up by IPCMG SA Bucharest – Design and Consulting Public Company and presents mainly the following aspects:

- an analysis of the markets on which the company operates (hydrotechnical construction assembly works, market of amenities with river ships, market of amenities with construction equipments and vehicles) over the period 2002-2004;
- analysis of the competition on the internal markets;
- perspectives for the development of the markets on which the company operates during 2005-2009 (market of hydrotechnical construction assembly works, market of amenities with river ships, market of amenities with construction equipments and vehicles and market of quarry exploitation.) .

(15) According to this market study, the size of the relevant markets on which the company operates and the market shares held by it during 2002-2004 are the following:

² Confidential data

Table no. 3 Size of the relevant markets and market shares held by HIDROTEHNICA GALATI during 2002-2004

[...]³

The company does not export, its services being intended only for the domestic market.

(16) In what regards the exploitation of the quarry, between 2002-2004, HIDROTEHNICA GALATI exploited in Bidia Tucea aggregates necessary for its own consumption (the aggregates were used in the implementation of the work „Bank defence of the Danube”, whose beneficiary was AFDJ Galati) and for the production of concrete. At the end of 2004, the contract for the implementation of this work was interrupted, so that the company had to reorient its selling of aggregate quarries towards the market, especially because there was demand from construction companies on the markets of Tulcea si Constanta counties. According to the market study, the share on this market is of 3.7% in 2005.

(17) [...]⁴

(18) The main customers of the company are:

- The lower Danube River Administration;
- City halls and county councils (Consiliul Local Ramnicelu, Consiliul Local Namoloasa, Consiliul Local Roscani);
- The National Administration of the Danube Ports (CN-APDF SA) Giurgiu;
- companies (VEGA 93 SRL Galati, IPTANA Bucuresti, SC TASTROM 2 Galati, SYNCRON Galati etc.).

(19) The market study points out for the future an increase tendency of the market of hydrotechnical construction assembly works with approximately 20% per year. The market of rent services for naval equipments and that of amenities with construction equipments and vehicles will also have an increasing evolution, but with lower increase rates.

2.6. Description of the privatisation process

(20) AVAS decided on the privatization of the company based on negotiations on final enhanced and irrevocable offers. The privatization process was initiated on 27.10.2004 by the publication, in the daily newspapers „Ziarul Financiar” and „Bursa” and the local newspaper „Monitorul de Galati”, on the Internet, at the company’s headquarters and at AVAS headquarters of the sale announcement of the share package held by AVAS in HIDROTEHNICA GALATI.

(21) The company file, compiled in view of selling the share package held by AVAS at HIDROTEHNICA GALATI, contained information on the financial, legal and environmental status of the company, as well as debts that would be exempted. At the negotiation only the bidders who proved to fulfil the following additive prequalification criteria could participate:

- experience in the main activity of HIDROTEHNICA GALATI;
- the average of the turnover in the last 5 years to be at least 20 million USD;

³ Confidential data

⁴ Confidential data

- Romanian or foreign natural or juridical persons who, directly or by the companies where they are shareholders/ majority associates, did not conspicuously worsen the economic-finacial situation of some companies previously privatised as a result of not fulfilling or fulfilling late the assumed obligations in the share sale-purchase agreements concluded with FPS and/or with APAPS/AVAS.

(22) The company file was put for sale starting with 28.10.2004 and was purchased by the following:

- SC METALTRADE INTERNATIONAL SRL – in consortium
- SC ERG TERMROM SA - in consortium
- SC METALEUROEST SRL – in consortium
- CNFR NAVROM SA – in consortium
- SC CONFORT SA – in consortium
- SC AMEROM SA – in consortium.

(23) At the deadline for the submission of the bids (12.11.2004) purchase bids were submitted by the following:

- Consortium made of SC METALEUROEST SRL Campina, SC ELSID SA Titu and Mr. Florian VASILESCU – Romanian natural person;
- Consortium made of SC METALTRADE INTERNATIONAL SRL Galati, SC PORT BAZINUL NOU SA Galati, SC DOCURI SA Galati, SC VULCASCOT ROMANIA SRL Bucuresti and Mr. Ion BESCHEA – Romanian natural person;
- Consortium SC CNFR NAVROM SA Galati and PAS HIGA Association of the employers and board of HIDROTEHNICA;
- Consortium ERG TEROM composed of SC ERG TERMROM SA Galati, SC DELTACONS SA Tulcea, SC SIREG SA Galati, SC VEPEXCOM SA Galati, SC MARANG IMPEX '94 SRL Bucuresti and SC CHEMATEX INTERNATIONAL SRL Bucuresti;

All bidders were accepted for negotiations and they were asked to improve their financial and technical bids submitted.

(24) The final negotiation of the contractual clauses was done with the consortium made of SC METALEUROEST SRL Campina, SC ELSID SA Titu and Mr. Florian VASILESCU – Romanian natural person (hereinafter named the Buyer).

(25) [...] ⁵

3. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(26) The company has drafted a comprehensive restructuring plan for the period 2005-2009, comprising organizational, technological, environmental and financial measures. The restructuring plan has been drawn up by the company and the buyer with IPCMG – Design and Consulting Public Company and was approved by AVAS.

(27) The restructuring plan submitted by AVAS contains the causes which led to HIDROTEHNICA GALATI's difficulties, as well as measures to ensure the long term

⁵ Confidential data

viability of the company. AVAS estimates that by implementing the measures comprised in the restructuring plan, the company will become profitable and will secure its own financial resources in order to properly conduct business without debts to the consolidated budget of the state or to AVAS.

(28) In brief, the restructuring program entails the following measures:

Tabel no.4 Summary of the restructuring measures for HIDROTEHNICA GALATI
[...]⁶

(29) The implementation of the restructuring plan requires a financial effort of RON 31,330.4 thousand, of which RON 8,377.7 thousand are committed by the investor, RON 7,543.9 thousand are committed by the company while the State contributes to the company's financial restructuring with RON 15,408.8 thousand. This plan is expected to restore the viability of the company in 2009 (at the end of the restructuring period).

3.1. The organisational restructuring

(30) The organisational restructuring of the company implies a financial effort of RON 1,743.4 thousand that will be entirely borne by the company. In brief, the organisational restructuring is the following:

Tabel no. 5 Measures regarding the organisational restructuring of HIDROTEHNICA
[...]⁷

(31) [...]⁸

3.2. Technological restructuring

(32) The proposed technological restructuring measures refer to:

Table no. 6 Measures regarding the technological restructuring
[...]⁹

The total implementation costs of these measures are of RON 11,064.7 thousand from which the investor is ensuring RON 6,904.7 thousand, and the company RON 4,160.0 thousand.

3.3. Restructuring measures for environmental protection

(33) Investments in environmental protection amount to RON 3,111.0 thousand and are briefly presented in table no.7. These investments are aimed at complying with the environmental obligations and the measures in the compliance program for the Environmental permit.

Tabel no. 7 Restructuring measures for environmental protection
[...]¹⁰

⁶ Confidential data

⁷ Confidential data

⁸ Confidential data

⁹ Confidential data

¹⁰ Confidential data

3.4. Financial restructuring

(34) At privatization, the company needed financial restructuring for the normal functioning of the production activity, besides other restructuring measures assumed through the restructuring plan.

(35) In the case of HIDROTEHNICA GALATI, the financial restructuring contains the financial support from the State granted at privatization, consisting of exemptions from the payment of overdue obligations to the consolidated state budget, and to AVAS, in total amount of RON 15,408.8 thousand.

(36) The financial restructuring contains the following measures:

Tabel no. 8 Financial restructuring measures
[...]¹¹

The restructuring plan, through its financial component, gives the possibility to increase cash flow, to secure a stable cash-flow, which will ease the financial activity of the company.

4. STATE AID ASSESSMENT OF THE MEASURES

4.1. The State aid character of the notified measures

(37) The criteria, which allow establishing if a measure is State aid, are presented in art. 2 (1) of Law no. 143/1999 on State aid, republished. Thus, any support measure granted by the State or from State resources or resources of the local administration, no matter the form, that distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the provision of certain services, or that affect the trade with the Member States represents State aid and is considered incompatible with a normal competitive environment.

(38) The financial support granted to HIDROTEHNICA GALATI and notified by AVAS consists in the State renouncing to collect certain revenues; therefore, resources of the State are involved.

(39) The financial support measures granted on the basis of EGO no. 26/2004, concerning certain measures for completing the privatisation of the companies in AVAS' portfolio and consolidating certain privatisations, approved with amendments and completions by the Law no. 442/2004, only concern the undertakings to be privatised, among which HIDROTEHNICA GALATI. Thus, the financial support granted to this company is selective.

(40) The argument that debt cancellation or rescheduling represents an advantage is valid only in a non-privatization context. In the present case, debt cancellation and rescheduling are part of the privatization process and, as a consequence, it should be established whether these represent State aid. Thus, in order to assess whether an economic advantage is granted to HIDROTEHNICA GALATI through these facilities, the behaviour of the State should be

¹¹ Confidential data

compared to that of a private investor/seller acting in similar conditions, i.e. the private investor test should apply.

(41) Normally, an investor/creditor shall seek to obtain a positive price, that is a price higher than the amount of the debts. Nevertheless, in this case the price is negative, i.e. smaller than the value of the facilities. An investor/creditor might be predisposed to accept a negative price, should the cost of privatization be less than the cost of liquidation. In the present case, such an analysis is not possible as AVAS informed the Competition Council that no comparative analysis of the liquidation and privatization costs was conducted. Consequently, the decision to privatize the company could not have been made on the above basis.

(42) Further, considering the additional social costs and the costs of liquidating the company (such costs are not usually borne by a private investor/creditor), the State opted to privatize and grant the facilities mentioned as part of the privatization process. In this context, the Competition Council concludes that the private investor test is not applicable to the privatisation of HIDROTEHNICA GALATI¹².

(43) Granting financial support to HIDROTEHNICA GALATI sets the premises for a possible distortion of the competition on the relevant markets, since it allows the company to stay on these markets. Moreover, there is no doubt that the financial support granted to HIDROTEHNICA GALATI may affect trade with the Member States of the European Union, since the products manufactured by the company may compete with similar products manufactured in the European Union.

(44) To conclude, the financial facilities granted to the company at privatization are considered to represent State aids and fall under the scope of the Law no. 143/1999 on State aid, republished.

4.2. Compatibility with the State aid legal framework

(45) Art. 2 of the Law no. 143/1999 on State aid, republished, foresees that State aid granted by the State or from State resources that distort or threaten to distort competition and affect trade with the Member States are incompatible with a normal competitive environment.

(46) The State aid objective is the restructuring of HIDROTEHNICA GALATI in order to restore its viability at the end of the restructuring period .

(47) The Competition Council evaluates the State aid granted to HIDROTEHNICA GALATI, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty, published in the Official Gazette no. 1215/17.12.2004, issued in application of the Law no. 143/1999 on State aid, republished. To be considered compatible with a normal competitive environment, the State aid must fulfil the criteria set in the above mentioned Regulation.

¹² In any event the fact that there are conditions attached to the privatization package (see paragraph 21 above) is normally sufficient to dislodge the application of the private investor principle.

(48) The restructuring aid is conditioned by the implementation of a viable and coherent restructuring plan, demonstrating the long term viability of the company. To this effect, the Regulation states that the restructuring usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient base, generally implying the retreat from actions that are generating losses, the restructuring of the existing activities that may become again competitive and sometimes the diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied the financial restructuring (capital injections, reduction of debts degree, etc.).

(49) The aid granted upon the privatization of HIDROTEHNICA GALATI is considered as state aid for restructuring and is to be granted based on a restructuring plan for 2005-2009, drafted by the company together with the buyer and AVAS, the main objective being the restoration of the company's viability until the end of the implementation period

(50) The Competition Council assesses the state aid granted to HIDROTEHNICA GALATI according to criteria provided in the Regulation on state aid for rescuing and restructuring firms in difficulty, as follows:

- eligibility of the company - company in difficulty;
- restoring the company's long term viability;
- avoid undue distortion of competition;
- aid limited to the minimum necessary (proportionality of the aid);
- observing the "first time, last time" principle;
- ensuring the fulfilment of the restructuring plan and permanently monitoring its progress;
- affiliation to a group of companies.

4.2.1. Eligibility of HIDROTEHNICA GALATI – firm in difficulty

(51) In order to benefit from State aid in accordance with the Regulation on State aid for rescuing and restructuring firms in difficulty, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not able to cover its losses either from its own financial resources or from other sources that it may obtain from owners/shareholders or creditors, and which, in the absence of external intervention of the State will almost certainly lead to the company's demise.

(52) In article 2 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty, a company is considered as being in difficulty when more than half of its own capital, as the accounting records of the company show, and more than a quarter of its capital was lost during the last 12 months, and a company, irrespective of its legal status, is considered in difficulty when it fulfils the conditions to allow the application of the procedure concerning the legal reorganization and the bankruptcy.

(53) In this respect, the Competition Council notes that, according to the company's balance sheet, in 2004 HIDROTEHNICA GALATI registered a loss in amount of RON 1,744,991.7 at an equity of RON 7,210,340.0. This loss is added to the ones registered in the previous years, resulting a total loss in amount of RON 3,327,160.0, representing 46% of the shareholders' equity. Besides, with a total debt of RON 13,890,000 in 2004, which exceeded 3 times the total

value of assets, the company can be considered to fulfil the criteria to undergo the judicial reorganization and bankruptcy procedure

(54) In view of the above, the Competition Council finds that the criteria foreseen under Art. 2 (2) (b) and (c) of the Regulation on State aid for rescuing and restructuring firms in difficulty are met in order for HIDROTEHNICA GALATI to qualify as a “firm in difficulty”.

4.2.2. Restoring the long term viability of the company

(55) Difficulties confronting HIDROTEHNICA GALATI led to the drastic reduction in its business activities, coupled with the cumulation of debts to the state budget and AVAS which attracted increment and delay penalties higher than overdue debts.

(56) Subsequent to the privatization in 2004, a restructuring plan for 2005-2009 has been drawn up. The summary of the measures included in the company’s restructuring plan has been presented in chapter 3.

(57) The assessment of the restructuring plan and of the way in which it leads to the restoration of the company’s long term viability has in view the provisions of article 13 of the Regulation on State aid for rescuing and restructuring firms in difficulty.

(58) According to article 13, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on the restructuring plan. The restructuring plan, which must be as short as possible in time, must include the abandonment of loss making activities and to offer the company long term viability, thereby allowing it to function with its own resources. The restructuring plan must be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures as well as from taking into consideration external factors such as price and demand over which the company has no substantial influence.

(59) The restructuring plan of HIDROTEHNICA GALATI starts from the financial and economic data that reflects the company’s activities in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong and weak points of the company as well as the circumstances that led to the difficulties the company faces.

(60) [...] ¹³

(61) The implementation of the measures provisioned by the restructuring plan financed by the company and the majority shareholder, as well as by the state by facilities granted to the company for the payment of budgetary obligations is foreseen to improve the financial - economic indicators in the period 2005-2009, as follows:

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

[...] ¹⁴

¹³ Confidential data

(67) [...] ¹⁸

(68) According to provisions of art. 14 from the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, stipulating that compensatory measures will be proportionate with the distorting effects of the state aid over the competition and considering the market share held by the company on the relevant markets, the Competition Council considers that in the case of HIDROTEHNICA GALATI, reductions of production capacities proposed through the restructuring plan are sufficient.

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

4.2.4. Aid limited to the minimum necessary (proportionality of the aid)

(70) In accordance with art. 15 of the Regulation on the rescue and restructuring of firms in difficulty, the State aid intensity and quantum is limited to the minimum necessary in order to allow restructuring according to the existing financial resources of the company and of shareholders. The State aid benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art. 15 (2) of the Regulation, for large undertakings a contribution of at least 50% is considered adequate.

(71) The total restructuring cost of HIDROTEHNICA GALATI is RON 31,330.4 thousand and is composed of :

- Organisational restructuring cost	RON 1,743.4 thousand
- Technological restructuring cost	RON 11,064.7 thousand
- Environmental restructuring cost	RON 3,111.0 thousand
- Financial restructuring cost	RON 15,411.3 thousand

(72) The total restructuring cost of HIDROTEHNICA GALATI, in amount of RON 31,330.4 thousand, is supported from the following sources:

- own sources of the Buyer	RON 8,377.7 thousand
- company's own sources	RON 7,543.9 thousand
- State aid	RON 15,408.8 thousand

(73) [...] ¹⁹

(74) The Competition Council notes that the recovery of receivables constitutes an integral part of the company operations, being comparable with cash flow. In consequence, revenues from recovery of receivables can not be accepted as own contribution of the company to the financing of restructuring costs.

(75) [...] ²⁰

¹⁸ Confidential data

¹⁹ Confidential data

²⁰ Confidential data

(76) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 49.2%.

(77) Given the above, the Competition Council notes that the own financing sources are certain and considers sufficient the own contribution of 50.8% to from restructuring costs, this showing trust in the practical value of the restructuring and the fact that the amount and intensity of the state aid were strictly limited to allow restructuring according to the existing financial resources of the company and the Buyer. As a consequence, the ability of the company to apply any liquidity surplus for aggressive activities, with the possible distortion of the market, is reduced.

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

(78) HIDROTEHNICA GALATI never received restructuring aid in the past. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

4.2.6. . Affiliation to a group of companies

(79) According to the provisions of art. 2 (5) of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, a company belonging to a group is not normally eligible to receive State aid for rescuing and restructuring, except for the case when it can be proved the financial difficulties belong to the company itself are not the outcome of an arbitrary allocation of costs within the group and that the said difficulties are much too serious to be handled by the group itself.

(80) The fiscal facilities intended to be granted to HIDROTEHNICA GALATI refer to historical debts – consequence of the economic results obtained in the years preceding the sale of the majority share package, so they are the company’s own

(81) [...] ²¹

(82) [...] ²²

(83) [...] ²³

(84) [...] ²⁴

(85) Therefore, the Competition Council considers that SC METALEUROEST SA Campina, SC ELSID SA Titu, AND Mr. Florian Vasilescu could not have coped with the financial difficulties of HIDROTEHNICA GALATI and the restructuring of the company without a consistent intervention of the State, the company’s debts to the consolidated State budget and to AVAS being in total amount of RON 15.408,8. As compared with the financial resources of

²¹ Confidential data

²² Confidential data

²³ Confidential data

²⁴ Confidential data

the group of company that includes SC METALEUROEST SA Campina and SC ELSID SA Titu, as well as the other members of the consortium, this contribution is significant.

4.2.7. Monitoring and annual reporting

(86) In accordance with article 18 the Regulation on State aid for rescue and restructuring firms in difficulty, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.

(87) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities are not registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of complementary liquidities to be used for other activities contained in the restructuring program.

5. CONCLUSIONS

(88) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to HIDROTEHNICA GALATI is compatible with a competitive normal environment and does not significantly affect the trade with the Member States of the European Union.

DECIDES

Art. 1. The financial support measure notified by the Authority for the Recovery of State Assets for SC HIDROTEHNICA SA Galati represents a State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.

Art. 2. Based on the provisions of article 21 (2) letter c) corroborated with art. 23 (1) e) of the Law no. 143/1999 on state aid, republished, the restructuring aid that is going to be granted to SC HIDROTEHNICA SA Galati at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision

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

Art. 4. The company shall reduce the production capacities until 2009, according to the assumed restructuring plan.

Art. 5. If the conditions imposed by the present decision are not observed, the provisions of article 22 of the Law no. 143/1999 on State aid, republished shall apply.

Art. 6. The amount of the State aid that is going to be granted is of RON 15,408,784.

Art. 7. The present decision becomes applicable as of communication.

Art. 8. In accordance with the provisions of article 32 of the Law no. 143/1999 on State aid, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the State aid granted in order to inventory and monitor. In addition, the

Authority for State Assets Recovery shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must include the necessary data on the (physical and value) stage of implementation of the restructuring plan. At the same time, information on the enforcement of compensatory measures related to the production capacities imposed by the present decision will be submitted.

Art. 9. In accordance with article 46 of the Law no. 143/1999 on State aid, republished, the present decision can be appealed by interested parties at the Court of Appeals, the Administrative Litigation Section within 30 days from its communication.

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

- The Authority for the Recovery of State Assets, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- SC HIDROTEHNICA SA, Galati, 30 Mihai Bravu str., Galati county, postal code 800208.

PRESIDENT

MIHAI BERINDE