

**DECISION OF THE COMPETITION COUNCIL**  
**no. 89 of 11.04.2006**  
concerning the state aid for S.C. TIMPURI NOI S.A. Bucharest

**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,

Taking into consideration the provisions of the Regulation regarding the form, contents and other details of the notification of a State aid, published in the Official Gazette, Part I no. 82 of 25.01.2005;

Taking into consideration the provisions of the Regulation regarding the state aid for small and medium sized enterprises, published in the Official Gazette, Part I no. 340 of 19.04.2004, with the subsequent amendments and completions;

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

**Based on the following,**

**I. PROCEDURE**

- (1) By address no. VP4/628/24.11.2005, filed with the Competition Council no. RS-AS 15/26.01.2005, the Authority for the Recovery of State Assets (hereafter AVAS) has notified based on art. 15 from Law no. 143/1999 on state aid, republished, the individual state aid for the restructuring of S.C. TIMPURI NOI S.A. Bucharest, within the privatization process.
- (2) The Competition Council requested from AVAS supplementary information by address no. DAAS/209/08.02.2006 and DAAS/317/23.02.2006, DAAS/443/14.03.2006 and DAAS/496/23.03.2006 regarding their own financing

sources and their certainty, the restructuring and compensatory measures. The notification became effective on the date the information was exact and complete, namely 23.03.2006.

## **II. DESCRIPTION OF THE MEASURES**

### **1. Description of the financial support measures granted to S.C. TIMPURI NOI S.A. Bucharest**

#### ***1.1. Legal Basis for granting the financial support***

- (3) The financial support measures granted to S.C. TIMPURI NOI S.A. Bucharest are introduced by the following legal acts :
- Law no. 137/2002 regarding some measures for speeding up privatization, with the subsequent amendments and completions;
  - GD no. 577/2002 regarding the approval of methodological norms for the application of GEO no. 88/1997;
  - GEO no. 26/2004 regarding some measures for speeding up privatization of the companies in AVAS' portfolio and consolidating some privatizations, amended and completed by Law no. 442/2004;
  - GD no. 1233/2002 for approving the list of companies in AVAS' portfolio, that benefit from the extension of payment facilities foreseen by art. 18 of Law no. 137/2002.

#### ***1.2. The financial support measures***

- (4) The financial support measures notified by AVAS were granted within the privatization of S.C. TIMPURI NOI S.A. Bucharest and consisted in facilities at the payment of overdue obligations to the consolidated State budget and AVAS.
- (5) The financial support in amount of 16,978,659 consists of exemptions - in amount of RON 12,018,612 – and rescheduling – in amount of RON 4,960,046 - at the payment of budgetary obligations, as follows:

##### **a) Exemptions**

- exemption from the payment of overdue obligations to the consolidated state budget, representing debts calculated until 31.12.2002: RON 3,840,000;
- exemption from the payment of overdue obligations to the consolidated state budget, representing accessories of the debts, calculated until 13.12.2002: RON 3,100,000;
- exemption from the payment of overdue obligations to the consolidated state budget, representing accessories of the rescheduled debts, calculated as of 01.01.2003 until the ownership transfer: RON 4,000,000;
- exemption from the payment of obligations to AVAS representing own overdue receivables: RON 308,612;

- exemption from the payment of obligations to AVAS representing overdue accessories of own receivables (dividends), calculated until the share ownership transfer: RON 210,000;
- exemption from the payment of accessories of the obligations to the single health fund, taken over from AVAS: RON 560,000.

#### **b) Rescheduling**

- rescheduling of the obligations to the State consolidated budget, represented by basic debts, including the ones retained at the source, calculated until 31.12.2002: RON 800,000;
- rescheduling of the obligations to the State consolidated budget, represented by basic debts, calculated as of 01.01.2003 until the ownership transfer: RON 2,900,000;
- rescheduling from the payment of obligations to AVAS representing own overdue receivables: RON 9,546;
- rescheduling from the payment of obligations to AVAS representing overdue accessories of own receivables: RON 10,500;
- rescheduling of accessories of the obligations to the single health fund, taken over from AVAS: RON 1,240,000.

## **2. Beneficiary**

- (6) S.C. TIMPURI NOI S.A. is a public company headquartered in Bucharest, no. 165, Splaiul Unirii Str., registered with the Trade Registry no. J40/238/1991 and the unique registration code R 326717.
- (7) The company was privatized in 2003, by signing the share sale-purchase agreement no. 31/12.09.2003. At the time the share sale-purchase agreement was signed, it had a shareholders' capital of RON 7,788,435, divided into 1,115,374 shares. The ownership property transfer took place on 25 November 2003.
- (8) The ownership structure after privatization is presented in table no. 1.

*Table no. 1 - Ownership structure at S.C. TIMPURI NOI S.A. after privatization*

SHAREHOLDERS	EQUITY HOLDINGS	
	Number of shares held	Shareholdings (%)
Employees' Association Timpuri Noi	779,724	69.907
SIF Moldova	232,501	20.845
Broadhurst Investments Ltd	8,170	0.732
S.C. TGH Investment S.A.	393	0.036
PPM	94,586	8.480
<b>Total</b>	1,115,374	100.000

*Source: Notification form*

- (9) The year prior to privatization, S.C. TIMPURI NOI S.A. had registered a turnover of RON 11,212,353 and an average of 761 employees, thus qualifying as a large enterprise.

- (10) The main business of the company is manufacturing machinery for the production and use of mechanical power, except aircraft, vehicle and cycle engines – CAEN code 291. The main products manufactured by S.C. TIMPURI NOI S.A. are engines and aggregates equipped with engines and spare parts.
- (11) The company may also perform ancillary activities such as: casting iron, casting of light metals, manufacturing other general purpose machinery, manufacturing other special purpose machinery, building constructions, joinery installation etc.

### 3. Financial position of S.C. TIMPURI NOI S.A. prior to privatization

- (12) Financial results of S.C. TIMPURI NOI S.A. Bucharest, based on balance sheet data for 2001-2003 are the following:

*Table no. 2 – Evolution of the turnover and financial result of S.C. TIMPURI NOI S.A. Bucharest during 2001-2003*

Turnover (RON)		
2001	2002	2003
11,883,572	11,212,353	11,165,485
Profit(+)/Loss (-) (RON)		
+350,750.1	- 3,356,003.3	- 3,422,861.8

*Source: Notification form*

The data above shows that the company made significant losses during 2002 -2003.

- (13) According to the data in the corresponding balance sheets, the own capital evolution during 2001-2003 is presented in the following table:

*Table no. 3 – Own capital evolution of S.C. TIMPURI NOI S.A. Bucharest during 2001-2003*

Own capital (RON)		
2001	2002	2003
+3,771,046	+415,045	-3,077,817

*Source: Notification form*

It is found that over the reporting period, the own capital fell sharply, registering a negative value in 2003.

- (14) In addition, over the analysed period the company registered a turnover decrease in real terms, an increase in debt, high inventories, a decrease in net assets and liquidity indicators far below the normal limit, all of these pointing at a decline in the company's financial position.
- (15) Main causes leading to the company being in difficulty:
- the obsolete technology, incurring high consumption of raw materials, energy, water, gas, and the lack of the funds necessary for a technology upgrade leading to increased efficiency;
  - high functioning costs of the production units;
  - acute lack of liquidities;

- difficult introduction into the production process of new, modern products, technically comparable to the ones manufactured by the foreign competitors;
- maintaining unused assets in the patrimony (spaces and production means in excess), for which the company bears high costs.

(16) Taking into consideration this difficult situation, AVAS decided to privatize the company, and to grant facilities for the payment of overdue budgetary obligations.

#### **4. Relevant market**

(17) S.C. TIMPURI NOI S.A is active on the following relevant markets: the market for engines and engine aggregates and the market for spare parts. The company mainly sells on the domestic market, 78% of the company's turnover in 2003 being registered on the Romanian market. The company exports part of its products to Germany.

(18) S.C. TIMPURI NOI S.A.'s main customers are:

- On the domestic market: S.C. Baps Campina S.A., S.C. Reloc Craiova S.A., S.C. Electroputere Craiova S.A., S.C. Alprom Slatina S.A., S.C. Aprodem Ploiesti S.A., S.C. Ascon Ploiesti S.A., CFR Scad Brasov, Canale Navigatie Constanta, Baza Aprovizionare Chitila, S.C. Electromotor Timis, S.C. Electroturist Turnu-Magurele;
- On the foreign market: Motoren Fabrik Hatz, AWS Kompressoren und Pumpen.

(19) [...]\*

(20) [...]\*

(21) [...]\*

#### **5. Privatization process**

(22) [...]\*

(23) [...]\*

(24) [...]\*

(25) [...]\*

#### **6. Description of the restructuring programme**

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\* confidential data

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(26) The restructuring plan been drawn up by the company and the buyer, approved by AVAS, submitted to the Competition Council, describes the organizational, technological, environmental and financial measures.

(27) The restructuring of S.C. TIMPURI NOI S.A. Bucharest aimed to:

- Increase turnover by improving the utilisation rate of production capacities;
- Increase labour productivity by better staff organisation and training;
- Enhancing product quality;
- Cutting manufacturing costs in order to obtain profits;
- Identifying new potential customers on the external market;
- Endowment with new equipment and/or upgrade of the existing equipment;
- Complying with the environmental protection and pollution reduction measures;
- Relief from historical budgetary debts by obtaining State incentives;
- Getting rid of excess production capacities and space by relocating the company to an area outside town and constructing compact buildings on a significantly narrower space.

(28) [...]\*

#### ***6.1. The organizational and managerial restructuring***

(29) [...]\*

#### ***6.2. Technological restructuring***

(30) [...]\*

#### ***6.3. Restructuring measures for environmental protection***

(31) [...]\*

#### ***6.4. Financial restructuring***

(32) [...]\*

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### **III. ASSESSMENT OF THE FINANCIAR SUPPORT MEASURES GRANTED TO S.C. TIMPURI NOI S.A. BUCHAREST**

#### **1. The State aid character of the financial support measures granted to S.C. TIMPURI NOI S.A. Bucharest**

- (33) The criteria, which allow establishing if a measure represent 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.
- (34) The financial support granted to S.C. TIMPURI NOI S.A. Bucharest and notified by AVAS consists of the State renouncing to collect certain revenues; therefore, resources of the State are involved.
- (35) The financial support measures are granted to an undertaking, namely S.C. TIMPURI NOI S.A. Bucharest. Thus, the financial support granted to this company is selective.
- (36) Considering that the incentives are granted within the privatization process, in order to determine whether this grant an economic advantage to S.C. TIMPURI NOI S.A. Bucharest, the private investor/creditor test should apply. The State can be considered to act as a prudent private investor/creditor if it process to obtain the best price from selling its shares, namely if the price obtained exceeds the incentives granted. Is the State acting like a prudent private investor in the case of S.C. TIMPURI NOI S.A.?
- (37) As shown at point 5 Chapter II of the present decision, the privatization of S.C. TIMPURI NOI S.A. has been carried out by negotiation based on final, improved and irrevocable offers. The Competition Council notes that AVAS imposed certain pre-qualification criteria on the potential investors, that might have reduced the number of bids. Furthermore, the procedure was conditioned by the implementation of investments for development and compliance with the environmental standards, by assuming all the obligations in the collective labour contract, maintaining the number of employees and reaching a certain turnover target etc.

(38) [...]\*

(39) [...]\*

(40) [...]\*

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\* confidential data

\* confidential data

\* confidential data

- (41) To conclude, the financial facilities which is granted to S.C. TIMPURI NOI S.A. in the form of payment exemptions and rescheduling of the obligations to AVAS and the State budget are considered State aids and fall under the scope of the Law no. 143/1999 on State aid, republished.

## **2. Compatibility with the state aid legal base**

- (42) The State aid objective is the restructuring of S.C. TIMPURI NOI S.A. Bucharest, in order to restore its viability at the end of the restructuring period.
- (43) 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 on State aid for rescue and restructuring of 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 (hereinafter named 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.).
- (44) The Competition Council assesses the state aid granted to S.C. TIMPURI NOI S.A. according to the criteria provided in the Regulation. In order to be considered compatible with a normal competitive environment, the State aid must fulfil all the criteria.

## **3. Criteria to be fulfilled for granting the restructuring aid**

- (45) These are:
- Sectoral eligibility;
  - Company in difficulty; affiliation to a group of companies;
  - Restoring the long term viability of S.C. TIMPURI NOI S.A.; the restructuring plan;
  - Avoid undue distortion of competition;
  - Proportionality of the aid (aid limited to the minimum necessary);
  - Observing the "first time, last time" principle;
  - Ensuring the fulfilment of the restructuring plan and permanently monitoring its progress (annual monitoring and reporting).

## **4. Sectoral eligibility**

- (46) As shown in par. (10), the company's activity is the manufacturing of equipment for the production and use of mechanical energy. The ancillary activities also include cast iron.



- (47) According to art. 1 of the *Regulation on State aid for rescue and restructuring and State aid for closing in the steel sector*, set into application by Order no. 40/02.03.2005 of the President of the Competition Council, „State aids for rescue and State aids for restructuring firms in difficulty in the steel sector, as defined in Annex 1 to the multi-sectoral Regulation on regional aid for large investment projects, are forbidden”. Raw cast iron is included in the steel products mentioned at Annex 1 (code CN 72.01).
- (48) According to the own declaration of the beneficiary and to the information submitted by AVAS, the company does not have the capacity to produce raw cast iron, since it is not endowed with all the necessary machinery, namely a furnace for producing cast iron out of iron ore, but only with iron casting ovens; this is destined exclusively to producing its own finished products.
- (49) Regarding the presented facts, the Competition Council considered that, the company is eligible to receive restructuring state aid, from the point of view of the sector in which it acts, as far as it doesn't commercialize/ will not commercialize any steel product enclosed in the Annex 1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions*.

#### **5. Firm in difficulty**

- (50) 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.
- (51) In article 2 (2) of the Regulation, 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.
- (52) In view of the above the Competition Council finds based on par. 13, that the company registered an own capital loss of 3,492,862 over the last 12 months prior to restructuring, representing „more than half of its own capital”, thus fulfilling the criteria foreseen at art. 2 par. (2) letter b) of the Regulation, in order to qualify S.C. TIMPURI NOI S.A. Bucharest as a „company in difficulty”.

#### **6. Affiliation to a group of companies**

- (53) 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.

- (54) The difficulties met by S.C. TIMPURI NOI S.A. Bucharest are company-specific, due to a lack of liquidities confronting prior to privatization. The tax incentives granted to this company concern debts arisen in the years preceding the sale of the majority share package.
- (55) The new majority shareholder at S.C. TIMPURI NOI S.A. Bucharest is the Employees' Association, composed of employees of the company and members of the management. Thus, following privatisation, S.C. TIMPURI NOI S.A. Bucharest does not become part of a group, thus being eligible to be granted restructuring aid.

#### **7. The Restructuring Plan. Restoring the long term viability of S.C. TIMPURI NOI S.A. Bucharest**

- (56) According to article 13 of the Regulation, the granting of a restructuring State aid is conditioned by the implementation of the restructuring plan based on which the Competition Council assesses the State aid. 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 to 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.
- (57) At the end of 2003, S.C. TIMPURI NOI S.A. Bucharest was privatized. In order to come out of its difficult situation, the company drew up, with the Buyer and AVAS, a restructuring plan for 2004-2008. The summary of the measures included in the company's restructuring plan has been presented at subchapter II.6.
- (58) 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.
- (59) The restructuring plan of S.C. TIMPURI NOI S.A. Bucharest starts from the financial and economic data that reflects the company's activities in the period prior to privatization. This plan presents both the circumstances that led to the difficulties S.C. TIMPURI NOI S.A. faces, as well as measures ensuring the company's long term viability. The Competition Council notes that the measures included in the restructuring plan counteract the causes leading to the company's state of difficulty, aiming to capitalize its assets, reorganise production by profit centres, diminish exploitation costs, make profit and increase financial liquidities.
- (60) Thus, the financial restructuring measures counteract major causes of the company's state of difficulty, such as the lack of liquidities, the high indebtedness ratio and the maintenance in the patrimony of unused assets. The Competition Council considers that the financial restructuring aims at streamlining the

company's financial activity. Thus, by managing assets (sale, rental), it is intended to obtain resources needed for restructuring, the working capital injection allows to continue the current activity and the State aid unburdens the company from the payment of historical obligations, thus making it eligible for bank loans on the market. Thus, S.C. TIMPURI NOI S.A. shall be able to pay its current debts to the State and to allocate the necessary liquidities to carry out the planned investments, needed for its development of the production programme in the future.

- (61) The organisational and managerial restructuring measures aim at reducing the functioning costs of the production workshops and increasing labour productivity. By reorganising the production units and corresponding services as profit centres and by implementing an integrated IT system, it is aimed to meter every unit and ensure a rigorous cost control in order to cut specific consumptions and render production more efficient. In order to obtain high quality products, it is necessary to increase the professional training of the working force, by their participation to in-house or specialised courses. Additionally, staffs need to be trained as regards the use of the new integrated IT system and the operation of digital command and automatised machine-tools that will be purchased.
- (62) Another main cause – the precarious technical endowment and obsolete equipment – is eliminated by the technical investments to be made. These aim at improving the products' functional characteristics, increase production efficiency and labour productivity, cutting energy consumption, all of these contributing to the reduction of losses, increased exploitation profit margins and products manufactured at the highest quality standards. Moreover, the purchase of certain tools shall allow the company to upgrade its product list (to manufacture modern products demanded on the domestic and foreign market), in accordance with the market requirements. The relocation of the production spaces is a necessary measure, since, on the one hand, the headquarters in the centre of the Bucharest did not allow a normal functioning of the company (as regards compliance with the environmental criteria, high-tonnage transportation etc.) and on the other hand, due to the need to adapt production units to the level of orders and working force.
- (63) The restructuring plan was drawn up following a diagnosis analysis regarding the strong points and weak points of the company. S.C. TIMPURI NOI S.A. Bucharest's strategy aims to preserve the strong points, namely: the experience in the field, the qualified staff and the existence of a growing market for the company's products. At the same time, the strategy aims at limiting and counteracting with appropriate measures the weak points, i.e. obsolete and outdated technology, poor investment rate, insufficiency of process components, deficiencies in the company's marketing policy, the high indebtedness ratio, high production costs and high energy consumptions.
- (64) The Competition Council considers that the implementation of the measures included in the restructuring plan, during 2004 – 2008, will lead to an improvement in the financial indicators, as follows:

**Table no. 10 - Estimates of the economic and financial indicators subsequent to the implementation of the restructuring measures**

-RON-						
	Indicators	2004	2005	2006	2007	2008
1.	Net turnover	10,600,000	11,300,000	11,700,000	12,400,000	15,000,000
2.	Total revenues, out of which:	10,900,000	11,500,000	13,700,000	14,230,000	16,970,000
	-Operating revenues	10,800,000	11,400,000	13,600,000	14,130,000	16,670,000
	-Financial revenues	100,000	100,000	100,000	100,000	300,000
3.	Total expenses, of which:	15,300,000	14,600,000	11,863,000	12,353,000	12,990,000
	-Operating	14,950,000	14,500,000	11,763,000	12,253,000	12,890,000
	-Financial	350,000	100,000	100,000	100,000	100,000
4.	Gross profit (+) / Loss (-)	-4,400,000	-3,100,000	1,837,000	1,877,000	3,980,000
5.	Current assets	4,350,000	4,500,000	4,600,000	4,700,000	4,700,000
6.	Total debts	16,750,000	19,300,000	17,000,000	13,500,000	9,500,000

Source: Restructuring plan of S.C. TIMPURI NOI S.A. Bucharest

From the analysis of the main financial indicators, it is to be noted an upward trend as concerns the turnover and revenues, together with a reduction of the total expenses and total debts. The company foresees to register profit starting with 2006.

- (65) As a result of accomplishing the measures provisioned by the restructuring plan, at the end of the restructuring period the company forecasts to reach the following target indicators:

**Table no. 11 Target financial-economic indicators**

1. Net profit	RON	3,343,200
2. Turnover	RON	15,000,000
3. Equity	RON	7,551,600
4. Receivables collection period	days	40
5. Return on assets	%	9.9
6. Cash flow	RON	5,690,234

Source: Restructuring plan of S.C. TIMPURI NOI S.A. Bucharest

- (66) Taking into account the above data, the Competition Council considers that the proposed restructuring plan will lead to the restoration of the long term viability of S.C. TIMPURI NOI S.A. Bucharest, viability that results mainly from the internal measures included in the restructuring plan and that is not based on external factors such as the fluctuation of prices and demand. The restructuring plan implemented by the company shall ensure a significant change that will allow the company, after restructuring is completed, to fully cover costs and compete on its own on the market.

## **8. Preventing any excessive distortion of the competition**

- (67) According to the provisions of the Regulation, in order to minimize as much as possible the negative effects that the State aids granted have on the competition on the relevant markets, compensatory measures are needed. The reduction of the company's presence on the market will be set based on the market research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

- (68) In accordance with the provisions of art. 14 par. (3) of the Regulation, the Competition Council notes that the reduction of the loss-making capacities does not represent compensatory measures, these being absolutely necessary to restore the company's viability.
- (69) Considering that S.C. TIMPURI NOI S.A. Bucharest qualifies as a large company, the State aid grantor has imposed as a compensatory measure the reduction of the company's viable production capacities as follows:
- by 15% compared with the level of 2003 on the engines and engine aggregates market;
  - by 10% compared with the level of 2003 on the spare parts market.
- (70) In accordance with art. 14 of the Regulation, the compensating measures will be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the affected markets. S.C. TIMPURI NOI S.A. Bucharest holds small shares of the relevant markets on which it is active; from the attached market study it results that, following the enforcement of the restructuring plan, the existing market shares will not increase. Consequently, the Competition Council considers the reduction of production capacities imposed by AVAS through the restructuring plan as sufficient.
- (71) The fixed assets resulting from the above-mentioned capacity reductions are the following: pressurised casting machine, sand coating machine, core forming machine, FRUA forming machine, rolling bridges, cilinder forming machine, polishing machine, tunnel oven, lathes, grinding machines, milling machines presses etc.
- (72) The functioning production capacities and their capacity utilisation during the enforcement period of the measures in the restructuring plan are the following:

**Table no. 12 - Capacity utilization ratio between 2004 – 2008**

Relevant market		Engines and engine aggregates	Spare parts
2004	Capacity in function	400	1300
	Utilization ratio	40	63
2005	Capacity in function	400	100
	Utilization ratio	45	61
2006	Capacity in function	340	1050
	Utilization ratio	61.8	80
2007	Capacity in function	300	950
	Utilization ratio	73.3	92.6
2008	Capacity in function	250	925
	Utilization ratio	96	99

*Source: additional information*

- (73) Having in view the above mentioned, the Competition Council acknowledges that the State aid is to be used only for restoration of the company's viability. The Council does not allow the beneficiary to increase its production capacities during the implementation of the restructuring program.

## **9. Aid limited to the minimum necessary**

- (74) 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 for implementing the restructuring plan. 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.
- (75) The total restructuring cost of S.C. TIMPURI NOI S.A. is RON 34,093,691 and is composed of:
- |      |                                   |                 |
|------|-----------------------------------|-----------------|
| i.   | Organisational restructuring cost | RON 420,000;    |
| ii.  | Technological restructuring cost  | RON 11,181,033; |
| iii. | Environmental restructuring cost  | RON 4,004,000;  |
| iv.  | Financial restructuring cost      | RON 18,488,658. |
- (76) The total restructuring cost of the State aid beneficiary is supported from:
- |                                       |                 |
|---------------------------------------|-----------------|
| - Own sources of S.C.TIMPURI NOI S.A. | RON 13,167,958; |
| - Own sources of the Buyer            | RON 3,947,075;  |
| - State aid                           | RON 16,978,658. |
- (77) The total restructuring cost in amount of RON 34,093,691 shall be financed 50.2% by own sources and 49.8% from State aid.
- (78) [...]\*
- (79) 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 for implementing the restructuring plan according to the existing financial resources of the company, shareholders or the group to which it is affiliated. In the case of S.C. TIMPURI NOI S.A. Bucharest, the State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 49.8%.
- (80) Having in view the above mentioned aspects, the Competition Council considers as significant the contribution of S.C. TIMPURI NOI S.A. Bucharest to the restructuring costs and considers that the aid is limited to what is needed to restore the company's viability.

## **10. Observing the „first time, last time” principle**

- (81) According to the information supplied by AVAS, the company did not received restructuring aid. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, are observed.

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\* confidential data

## **11. Monitoring and annual reporting**

- (82) In accordance with article 18 of the Regulation, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.
- (83) 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, that there are no major deviations 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 programme.

## **IV. CONCLUSIONS**

- (84) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended granted to S.C. TIMPURI NOI S.A. Bucharest 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 measures notified by the Authority for the Recovery of State Assets for S.C. TIMPURI NOI S.A. Bucharest, represent State aid according to article 2(1) of the Law no. 143/1999 on State aid, republished.
- Art. 2.** Based on the provisions of art. 21 (2) letter c) corroborated with art. 23 (1) letter e) of the Law no. 143/1999 on state aid, republished, the restructuring aid to be granted to S.C. TIMPURI NOI S.A. Bucharest, is authorized under the condition of fulfilling art. 3, art. 4 and art.5 in the present Decision.
- Art. 3.** The company is compelled to fully implement the assumed restructuring plan.
- Art. 4.** The company shall reduce its production capacities until 2008, according to the assumed restructuring plan.
- Art. 5.** The company shall not commercialize steel products which are enclosed in the Annex 1 to the *Multisectorial Regulation on the regional state aid for large investment projects, with the subsequent amendments and completions, published in the Official Journal, Ist Part, no. 165 /17/03/2003.*
- Art. 6.** 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. 7.** The amount of the State aid that is going to be granted is of RON 16,978,658.

**Art. 8.** The present decision becomes applicable as of its communication.

**Art. 9.** 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.

**Art. 10.** 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 Appeals Court, the Administrative Litigation Section within 30 days from its communication.

**Art. 11.** The present decision shall be communicated by the General Secretariat of the Competition Council to:

- The Authority for the Recovery of State Assets, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;
- S.C. TIMPURI NOI S.A., no. 165, Splaiul Unirii, Bucharest.

**Art. 12.** The General Secretariat of the Competition Council and the Directorate for State Aid Authorisation shall follow the fulfilment of the present Decision.

**PRESIDENT**

**MIHAI BERINDE**