

DECISION OF THE COMPETITION COUNCIL
No 314 of 26.11.2004

**Regarding the State aid notified by the Authority for State Assets Recovery
granted to S.C. Santierul Naval S.A. Constanta**

THE COMPETITION COUNCIL,

Having in regard the provisions of the Decree no. 57/2004 for the appointment of the Competition Council's members,

Having in regard the provisions of the Competition Law no.21/1996, published in the Official Gazette, Part I, no. 88 of April 30, 1996, amended and completed by GEO no. 121/2003, approved by Law no. 184/2004,

Having in regard the provisions of the Law on State Aid no. 143/1999, published in the Official Gazette, Part I, no. 370 of 03.08.1999, amended and completed by Law no. 603/2003,

Having in regard 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 Official Gazette, Part I, no. 73 of 12.04.1993,

Having in regard the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 470 of July 2, 2002;

Having in regard the provisions of the Regulation for amending and completing the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 521 of June 9 2004,

On the following grounds:

I. NOTIFICATION PROCEDURE

(1) By note no. P9074/14.09.2004, registered at the Competition Council as RS-AS no. 81/14.09.2004 the Authority for State Assets Recovery (AVAS) notified on the basis of art. 6 of the Law on State Aid no. 143/1999 amended and completed by Law no. 603/2003, the individual State aid granted for restructuring of S.C. SANTIERUL NAVAL S.A. Constanta within the context of its privatization.

(2) Supplementary information regarding the production capacities, State aid quantum granted under conversion of debts into shares and the period of State aid granting was requested from the State aid grantor. AVAS submitted the answer to the supplementary information under note no 717/28.09.2004.

II. LEGAL FRAMEWORK FOR STATE AID GRANTING

(3) The privatization of the company was achieved in compliance with the provisions of:

- GEO no. 88/1997 regarding the privatisation of trading companies, with subsequent amendments and completions;
- GD no. 450/1999 with subsequent amendments and completions;;
- GD no. 532/2001 for approving the Privatisation Strategy of SC Şantierul Naval SA Constanţa included in project "Privatisation of 50 companies owned in majority by State, grouped in packages" within PSAL;
- Law no. 137/2002, regarding some measures for speeding up the privatisation and other legal regulations in force applicable at the privatisation of companies owned in majority by State;
- G.O. no. 72/2002 regarding certain measures for finalizing the privatization of SC „Santierul Naval” SA Constanta.

III. DESCRIPTION OF THE BENEFICIARY S.C. SANTIERUL NAVAL S.A. CONSTANTA

(4) The beneficiary, S.C. Santierul Naval S.A. Constanta, is a private company established in 1991 by taking over the entire patrimony of the former Shipbuilding Company Constanta.

(5) The Romanian authorities decided to privatize it within PSAL and Program for Institutional Development of Private Sector – with the support of the International Bank for Reconstruction and Development.

(6) The privatization of this company was achieved under G.O. no. 72/2002 regarding certain measures for finalizing the privatization of SC „Santierul Naval” SA Constanţa, certain facilities for the payment of historical debts was to be granted during the process. The sale offer was achieved as follows:

- ◆ The selling announcement of the share stock owned by APAPS at S.C. Santierul Naval S.A. Constanţa was published in newspapers: *Adevărul*, *România Liberă*, *Independentul*

de Constanța and *Financial Times* (through consultant company SG. CONSEIL PAUS EMERGENTS PARIS – according to the agreement with the World Bank within PSAL program), on 20,07,2001.

- ◆ 19.10.2001 was the first deadline for submitting the offers, prolonged until 13.11.2001, by a new announcement published in the same newspapers on 19.10.2001.
 - ◆ two Presentation Dossiers were bought by RESOURCE INTERNATIONAL S.A., and KLEVEN HOLDINGS AS;
 - ◆ A lawful offer was submitted by RESOURCE INTERNATIONAL S.A. with which it was negotiated and signed the shares selling-buying contract no. 6/12.04.2002.
- (7) By Decision no. 323 of 5,08,2002, Competition Council approved the economic concentration made by Resource International SA by acquisition of the majority shares stock of the company, since it was noticed that “there are no possible anticompetitive effects on the international shipbuilding market and on ship maintenance and repair market and that the operation does not generate the restriction, prevention or distortion of competition”.
- (8) Before the signing of the shares selling-buying contract, the registered capital of S.C. Santierul Naval S.A. Constanta in value of ROL 494,820,719 thousands, consisting of 19,792,828 shares with nominal value of ROL 25,000 each, was structured as follows:

Table no. 1

SHAREHOLDERS	CAPITAL	
	Number of shares	Weight in registered capital (%)
AVAB	11,584,267	58.53
FPS	4,827,816	24.40
SIF MOLDOVA	1,310,901	6.62
SIF TRANSILVANIA	471,605	2.38
Other shareholders	1,598,239	8.07
Total	19,792,828	100.00

Source: AVAS

- (9) Following the transfer of the ownership right on shares and achievement of some measures of financial restructuring provided under normative acts adopted for company’s privatisation, the structure of the shareholding is the following:

Table no. 2

SHAREHOLDERS	CAPITAL	
	Number of shares	Weight in registered capital (%)
RESOURCE INTERNATIONAL SA	38,378,651	85.7712
SIF MOLDOVA	1,310,901	2.9296
SIF TRANSILVANIA	471,605	1.0539
AJOFM Constanța	1,088,572	2.4328
Consiliul Local Constanța	644,412	1.4395
AVAS	161,432	0.3607
DGFP Constanța	456,383	1.0199
SC Termoelectrica București	380,041	0.8493
RAJA Constanța	202,921	0.4535
APM Constanța	52,505	0.1173
Other shareholders	1,598,239	3.5718
	44,745,392	100.00

Source: AVAS

(10) The company activates in industry field, with main activity object shipbuilding and repair of maritime and fluvial ships with capacity up to 200,000 dwt.

III.1. Manufactured products

(11) The main products manufactured and services performed by the shipyard are presented below:

1. SHIPBUILDING

a) Dry bulk goods

- Carriers for general goods/1.920 dwt displacement: 15 pieces delivered during 1970-1974;
- Bulk carriers/7.580 dwt displacement: 2 pieces. delivered in 2001;
- Ore carriers/55,000 dwt displacement: 11 pieces delivered during 1975-1980;
- Ore carriers /65,000 dwt displacement: 13 pieces delivered during 1980-1986;
- Ore carriers /170,000 dwt displacement: 7 pieces delivered during 1986-1999;

b) Petroleum products and liquid gas

- Oil carriers/85,000 dwt displacement: 4 pieces delivered during 1987-1994;
- Oil carriers /155,000 dwt displacement: 6 pieces delivered during 1978-1991;
- chemical carriers/1,100 dwt displacement: 1 piece delivered in 2000;
- liquid gas carriers/capacity of 3,650 mc: 2 pieces delivered during 1999-2002;
- liquid gas carriers/capacity of 5,600 mc: 2 pieces delivered during 2000-2001;

c) Ro-Ro / ferry boat

- ferry boats/ 12,000 dwt displacement: 2 pieces delivered during 1988-1991;
- Ro-Ro ships & tanks/ 5,000 dwt displacement: 1 piece delivered in 2000;

d) Container goods

- tanks/capacity of 1,100 TEU: 6 pieces delivered during 1998-2003;

e) *specialised ships*

- fishing ships/ 1,070 dwt displacement: 1 piece delivered in 2000;
- ships supplying petroleum platforms/VS 4403 PSV type: 1 piece delivered in 2002;

f) *floating docks/10,000 and 20,000 tf lifting capacity;*

- g) *Fluvial ships* (Europe type barges, tank barges, tugboats, pusher tugs, floating dock pontoons etc.)

(12) At present, S.C. Santierul Naval S.A has to export a number of 4 oil and chemical tanks of 37,000÷41,000 dwt displacement, the contract value exceeding USD 100 million; over 60% of this value represents raw materials, equipment, utilities and services made in Romania.

2. SHIP REPAIR

- construction and body repair;
- replacement and repair of pipe installations
- mechanic/electric installations repair
- sandblasting and painting works;
- ship conversion;
- re-building;
- Overhaul repairs.

(13) During 2003 over 80 ships with USD 18,7 million were repaired, of which 80% for exports.

III.2. Market

(14) Relevant markets on which the company activates are:

- international shipbuilding market
- international ship repair and maintenance market.

(15) During 2000 – 2002, the Romania's shipbuilding production had a descendent evolution, decreasing from 22 ships produced in 2000 to 9 produced in 2001 and a slight increase in 2002 to 12 ships, as shown in Table 3. All ships were produced for external beneficiaries.

Table no. 3 Ships built in Romania during 2000 -2002

Years	2000	2001	2002
Number of ships	22	9	12
Volume in compesated gross tones	153,805	105,126	148,587
of which Export	153,805	105,126	148,587
Total value in MEuro	257	186	272

Source: AWES – Association of European Shipbuilders and Ship repairs –Report on 2002

(16) The market shares had by the company on relevant markets were not modified after the moment the economic concentration was achieved. S.C. Santierul Naval S.A has at present, 0.048% market share on international market and 4.8% on Romanian market.

(17) During 2003, Santierul Naval Constanta SA focused more on ship repair and less on new shipbuilding due to the modernisation of the existing equipment and the investments program of the buyer. Subsequently, only Ferrostaal Germany and Daewoo Mangalia are customers for new shipbuilding (Ferrostaal Germany according to a contract prior to privatization, and Daewoo Mangalia according to a collaboration contract for building half of a ship) the rest of them being customers for ship repair.

(18) Main clients for company's products in 2003 were: FERROSTAAL Germany, DAEWOO Mangalia, SETE TECHNICAL Greece and EUROTANKERS Greece.

III.3. Main competitors

(19) In 1989, Romanian shipyards were specialised on different categories of shipbuilding and repair, as follows:

- Maritime shipbuilding and ship repair with capacity up to 200,000 dwt: Constanta and 2 Mai Mangalia;
- Maritime shipbuilding and ship repair with capacity up to 60,000 dwt: Galati and Tulcea;
- Maritime shipbuilding and ship repair with capacity up to 18.000 dwt and fluvial ships: Orsova, Drobeta Tr. Severin, Giurgiu, Oltenita, Brăila;
- Repair workshops: Năvodari – cap Midia and Hârsova;

(20) The severe decline of the economic activity after 1990, materialized in both collapse of horizontal industry which produced ship equipment and installation, and estrangement and losing part of the national commercial float caused the closure of shipyards from Giurgiu and Hârsova, as well as severe activity restriction of shipyards from Orsova, Turnu Severin, Oltenita, Brăila and Tulcea.

(21) By taking over the majority share stock and implicitly the control on some of these shipyards by foreign industrial groups had positive effects on their activity and improved their economic performances.

Shipyard	Year of establishment	Majority shareholder	Privatization year
2 Mai Mangalia 1996	1980	Daewoo Heavy Industries, South Korea	
Galati	1893	Damen Hoogezand Group, Nederland	1999
Brăila	1902	Scandinor AS, Norway	2000
Tulcea	1974	Aker Brattvaag, Norway	2000
Oltenita	1946	Romanian natural persons	2000

(22) From the turnover point of view, the market share of the main shipyards in Romania is the following:

Table no. 4 Turnover of main shipyards in Romania

Company	Turnover (ROL)			
	2001	%	2002	%
- DAEWOO-MANGALIA HEAVY INDUSTRIES SA	2,012,987,172	30.41	3,234,823,902	29.70
- SANTIERUL NAVAL DAMEN GALATI SA	1,491,491,257	22.54	2,305,439,404	21.17
- SN CONSTANTA	465,889,965	7.04	784,495,541	7.20
- AKER TULCEA SA	944,476,341	14.27	1,649,498,564	15.14
- AKER BRAILA SA	554,458,970	8.38	916,786,873	8.42
- SANTIERUL NAVAL ORSOVA SA	296,386,326	4.48	487,688,920	4.48
- 2 X 1 HOLDING CAPE MIDIA SHIPYARD SA	174,747,789	2.64	185,182,813	1.70
- NAVOL SA	219,875,028	3.32	219,879,929	2.02
- SEVERN AV SA	433,476,196	6.55	1,059,868,189	9.73
- SORENA SA	14,255,931	0.22	21,225,010	0.19
- SANTIERUL NAVAL CARSINAV SA	9,496,495	0.14	26,505,732	0.24
- SANTIERUL NAVAL GIURGIU SA	880,695	0.01		0.00
Total	6,618,422,165	100.00	10,891,394,877	100.00

(23) On external market, the shipbuilding activity of the company is competed by shipyards from:

- Black Sea Area from Bulgaria, Turkey and Ukraine for ships such as: Handysize (10 – 30,000 dwt) Handymax (30 – 45,000 dwt) and Panamax (45 – 75,000 dwt);
- Poland, Croatia, Russia and Greece for ships such as: Panamax (65 – 75,000 dwt), Aframax (80 -120,000 dwt), Suezmax (120 -150,000 dwt) and tanks and general cargos;
- West Europe for specialized ships such as: LPG, LNG, cruise ships, tanks and technique ships;
- Far East Orient – South Korea, Japan, China, Hong Kong and Singapore for ships such as Panamax (65 – 75,000 dwt), Capesize (170,000 dwt) and tanks Aframax (80.120.000 dwt) respectively Suezmax (120,000 – 150,000 dwt).

IV. CONCRETE WAY OF GRANTING THE FINANCIAL SUPPORT

IV.1. Measures of financial support granted at privatisation

(24) According to information send through the notification, the State aid is granted only once, at company's privatisation, for its restructuring, with the observance of the Regulation on State aid for rescue and restructuring firms in difficulty.

(25) The following facilities were granted at the company's privatisation:

A. facilities for the payment of budgetary obligations and AVAS own claims, according to the provisions of normative acts, consisting in:

(a) – (i) [...] ¹

B. payment facilities for taxes towards Constanța Harbour [...] ²

(26) Payment facilities were granted at privatisation, total quantum of ROL **945,458,395,364**.

IV.2. Facilities granted during 2003 - 2005 under GO no. 14/1995

(27) [...] ³

(28) The total amount of facilities granted according to GO no 14/1995 for the loan is ROL 102,395,053,207.

IV.3. Financial support previously received

(29) During 2000-2003, S.C. Santierul Naval S.A benefited from facilities granted under *GO no. 14/1995 regarding some incentive measures for carrying out complex objectives and production with long term fabrication cycle*, as follows:

A. Letters of indemnity granted by Eximbank

- Decision of the Ministry of Public Finance no. 71/27.07.2000 and Decision of Inter-ministerial Committee of Guarantees and Foreign Commerce Credits no. 8852/13.06.2000 : Letter of indemnity= DEM 3,520,000
- Decision of the Ministry of Public Finance no. 72/27.07.2000 and Decision of Inter-ministerial Committee of Guarantees and Foreign Commerce Credits no. 8852/13.03.2000: Letter of indemnity = DEM 1,144,000

¹ Confidential data

² Confidential data

³ Confidential data

- Decision of the Ministry of Public Finance no. 89/26.09.2001 and Decision of Inter-ministerial Committee of Guarantees and Foreign Commerce Credits no. 8852/13.03.2000: Letter of indemnity = USD 1,082,250
- Decision of the Ministry of Public Finance no. 91/30.11.2001 and Decision of Inter-ministerial Committee of Guarantees and Foreign Commerce Credits no. 8852/13.03.2000: Letter of indemnity = USD 1,053,000

(30) These letters were granted for the current activity of the shipyard, and guarantee one or more activities but they were entirely repaid without any forced execution, repayment of the advance payments given by customers or letters of indemnity.

B. exemption from the payment of custom duties granted during 2001-2002, in amount of ROL **20,070,865,000.**

(31) In grantor's opinion, all facilities mentioned above were granted under art. 2 of the GO no. 14/1995 regulating incentive ways for production with long term fabrication cycle complex exports and the way they are achieved, to all companies carrying out such activities and not especially to Santierul Naval Constanța.

(32) The Competition Council will analyse the State aid character of these financial measures and their compatibility with the regulations in force.

V. THE RESTRUCTURING PLAN

(33) Since its establishment, Santierul Naval Constanta confronted many difficulties caused by problems with equipment reliability, decreasing reputation of Romanian shipyards on international market, decline of the Romanian float after 1990. Consequently, export orders were reduced, registering also a total lack of orders from the Romanian companies as regards shipbuilding.

(34) With all the efforts to remain on a strong competitive market, the company did not succeed to receive orders as to record a satisfactory operation degree of its production capacities. For contracted orders, due to market pressure, characterised by overcapacity and low prices, the company charged prices not covering costs even in the initial phase.

(35) The lack of investments in technology, equipments, tools and gears, during the last 20 years, previous to the privatisation, lead to technological gap in comparison with modern shipyards. As a result of the low productivity, old technology, inefficient organisation caused by financial problems, the company registered important losses as well as delays in delivering with afferent economic consequences. Therefore, the implementation of restructuring measures was necessary, such as: reorganisation, re-technology, investment in environment and financial restructuring.

(36) S.C. Santierul Naval S.A. Constanta, together with the buyer and APAPS, drew up a Restructuring Program, for 2003-2008, with measures for structural reorganisation, technical and technological restructuring, environmental investments and financial restructuring.

V.1. The Restructuring of the Company Organization

(37) The main measures for reorganizing the Company refer to:

- Implementing a new organization chart/settling new directorates – the measure was necessary for solving certain problems that, following the analysis of the situation existing prior to the privatization, proved to be neglected, especially the fact that the management was focused on contracting and achieving the product, leaving behind problems that finally represented the basis for a good contracting (the legal department) or for creating the bases necessary for achieving the production, namely: the existence of the necessary personnel, trained appropriately, for developing the activity or a functional infrastructure leading to interruptions or dead time in the production process. As well, a special attention was given to the quality, environment and labour protection, activities that recorded important deficiencies during the period prior to the privatisation.
- Redistributing the personnel/replacing the management of medium level – This measure was necessary for increasing the personnel directly involved in the production activity and for increasing the production capacity. As well, the replacement of a large part of the medium management aims at changing the mentality of the management board and attracting it towards the Buyer policy for a better implementation of the Company policy settled by it.
- Lay-off personnel– which led to the reduction of the indirect expenses of the Company.
- Training the existing personnel – the increase of the professional training of the employed personnel, action that will lead to the increase of the labor productivity per employee.
- Promoting and marketing the repair activity – necessary for increasing the reparation volume, the reduction of the shipyard dependence to the activity of certain agents and/or brokers.
- Consultancy for orienting the activity of new constructions - Having in regard the prior experience of the Company on building unique ships that require unique technologies, impossible to be optimized after the analysis of the former ship, it was established as marketing strategy the design of a ship required by the market, which to be promoted in order to build series ships. The Company, together with the Ship Research Institute Galati – ICEPRONAV – achieved the project of a ship of 37,000 dwt, oil tank for clean and chemical products, on which basis the two ships contracted in 2003 will be built, transformed in series production by the expressed option to build also the ships 3 and 4. The option was expressed and accepted also in May 2004.

(38) The costs for implementing and the terms for finalizing the measures are included in table no 5.

Table no. 5

No.	Measure	Deadline	Implementati on cost	Financing (ROL mil)	
				Company own sources	Investor's sources
0	1	2	3=4+5+6	4	5
1	New organisational chart/new departments	2004	2,884	2,884	-
2	Personnel re-allocation	2003	-	-	-
3	Personnel lay off		608	608	-
4	Personnel training	2008	20,400	20,400	-
5	Implementation of a marketing plan for promoting the repair activity	2004	2,690	2,690	-
6	Consultancy for focusig on new shipbuilding activity	2005	1,852	1,852	-
	TOTAL		28,434	28,434	-

V.2. Technologic Restructuring

(39) [...] ⁴

(40) The measures' implementation cost and deadlines are presented in table no. 6.

Table no. 6

No.	Measure	Deadline	implementati on cost	Financing (ROL mil)	
				Own sources	Investor's sources
0	1	2	3=4+5+6	4	5
1	Investments in equipments and technology	2007	81,900	-	81,900
2	Modernisation of existing equipments	2007	42,500	-	42,500
3	Investment in IT system (hardware and software) and specialised software for design	2005	7,480	-	7,480
4	Investments in infrastructure	2007	55,000	-	55,000
5	Introducing new electronic systems of access	2004	1,820	-	1,820
6	Introducing an IT system for planning and management of resources ERP	2006	15,300	-	15,300

⁴ Confidential data

TOTAL		204,000	-	204,000
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V.3. Environmental investments

(41) The buyer assumed environmental investments, presented in the Agreement plan which was approved by the Environmental Protection Agency Constanta in amount of USD 260,000, respectively ROL 8,840 millions.

(42) From the environmental investments, the most important regard:

- The modernizing of the installation for applying – passivity of sheet metals and profiles;
- The acquisition of automatic and semi-automatic machines for solder in protector gas environment approx. 300 peaces;
- The acquisition of a new compressed air station;
- Construction of a plant for dying sanding block-departments;
- Ventilators for evacuating the gas from the merchandise tanks.

(43) These investments lead to the accomplishment of the agreement environmental plan but in the same time, a special contribution in increasing the labour productivity, representing mainly technological investments.

(44) [...] ⁵.

V.4. Measures regarding the financial restructuring of the company

(45) At the moment of the privatization, the company needed a financial restructuring in order for the production activity to function in normal parameters, along with the investments assumed by contract by the buyer.

(46) The restructuring program, by its financial restructuring component, gives the possibility of increasing the cash flow, insuring a stable cash flow, which will exempt and ease the financial activity of the company. This way, the company will be able to allot its liquidities necessary for making the programmed investments and necessary for developing and sustaining the future production program.

(47) Having in regard the disastrous financial situation of the company at the date when the privatization started, some financial restructuring measures were taking as follows:

- Conversion into shares of the debts from the state budgets, of the security budgets and the local budgets owed at the date when the privatization was ended, in amount of ROL 201,448 mill;
- Annulling the majorities and penalties for the budgetary debts, in amount of ROL 259,821 mill;

⁵ Confidential data

- Re- scheduling of unpaid budgetary debts in amount of ROL 31,799 mill;
- Conversion into shares of the company's debts towards the Agency for Commercializing the Bank Assets as result of some credits granted and un-repaid in totality, as well as of some expenses made by AVAB in the name of the company, debts estimated at ROL 398,189 mill;
- Conversion into shares of some dividends and restructuring funds owed to APAPS in amount of ROL 14,227 mill;
- Conversion into shares of some debts towards the utility and services' suppliers, in amount of ROL 38,074 mill;
- Giving up to the repayment the Constanta Harbour should have cashed in for the passing privilege, ROL 1,900 mill.

Table no. 7

No. Crt	Measure	Dead line	Implementation cost	Financing (ROL mill)		
				Own resources	Investor's sources	State aid
0	1	2	3=4+5+6	4	5	6
1	Conversion budgetary debts	2003/2004	201,448	-	-	201,448
2	Annulling majorities and penalties	2004	259,821	-	-	259,821
3	Re-scheduling budgetary debts	2004	31,799	-	-	31,799
4	Conversion debts AVAB	2004	398,189	-	-	360,130
5	Conversion debts APAPS	2004	14,227	-	-	14,227
6	Conversion debts towards the utility and services suppliers	2004	38,074	-	-	38,074
7.	Giving up to the repayment the Constanta Harbour should cash in for passing privilege	2006	1,900	-	-	1,900
	TOTAL		945,458	-	-	945,458

(48) The Buyer's contribution to the financial restructuring of the company consists in the following:

- Providing working capital by the Buyer and from the company's own resources for the payment of the debts toward private third persons – At the date of the Company's privatization the unpaid debts toward the private suppliers were of ROL 207,543 mill, from which ROL 158,161 mill. were rescheduled till September 2004. The difference was immediately paid after the end of the privatization – 8.10.2002.

- Providing working capital for ending the litigations on roll - the litigation Anopolis approx. ROL 192,015 mill.;
- providing working capital for ending the litigations on roll for the ships in building at the ending date ROL 8,558 mil;
- Providing working capital for financing the ships in building at the ending date—ROL 34,306 mill.

(49) [...] ⁶

VI. THE ASSESSMENT OF THE STATE AID MEASURES GRANTED TO SC SANTIERUL NAVAL S.A. CONSTANTA

VI.1. The state aid character of the financial support measures granted to the company

(50) The financial support measures were granted for S.C. Santierul Naval S.A. Constanta's restructuring, at its privatization, as the company needed a financial restructuring for functioning at normal parameters for the production activity. The state aid's granting corroborated with the actions included in the restructuring program will determine the increase of the company's activity financial efficiency.

(51) Assessing the financial support measures, the Competition Council observed that there is no doubt that these are financed from state resources and give an advantage to S.C. Santierul Naval SA Constanta. In the same time, there is no doubt that the taken financial measures affect the trade with the member States of the European Union, since the products obtained by the company are mainly commercialised on the external market.

(52) In conclusion, the granted financial support measures are considered state aids and fall under the incidence of the Law no. 143/1999 of the state aid, modified and completed by the Law no. 603/2003. The facilities were notified after their granting, so they represent an illegal state aid, in accordance with art. 3¹ of the Law no. 143/1999 on State aid. The facilities weren't notified before their granting, taking into account the size of the privatization process and the need to urgently implement the restructuring plan.

VI.1.2 The state aid character of the financial measures granted by EXIMBANK on the basis of GO no. 14/1995 regarding some incentive measures for carrying out complex objectives and production with long term fabrication cycle

VI.1.2.1 The scheme established by EGO no. 14/1995

(53) The regime established by the scheme provides granting of some advantages for stimulating the accomplishment of complex objectives and of long term manufacturing production, designated for the export by:

- a) guarantees for participation to international tenders, workings and other guarantees established in external contracts;

⁶ Confidential data

- b) granting of state guarantees for short, medium and long term credits used for the domestic and foreign production, designated for complex exports, as well as for export credits up to 8 years;
- c) granting of discount interest of 60% from the interest paid for the credits received for the production designated to the complex exports;
- d) insuring, on behalf and the account of the State, of long and medium term export credits for the country risk;
- e) exemption from the anticipated payment or from the guaranteeing the payment of custom duties, of the custom commission and of VAT for the completing imports related to the complex exports.

(54) Article 2 in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, stipulates that the aids granted by the state or from state resources which distorts or threatens to distort the competition and affect the trade with the Member States are incompatible with the normal competitive environment. The measures established by the scheme provisioned in the EGO no. 14 from 1995 creates, without any doubt, an advantage for the beneficiaries, by facilitating the access to funds, providing certain incomes for the exporter, or significantly decreasing the interests. In the same time, the provisioned measure is selective, being applied only for the production with long term manufacturing cycle and for complex exports. In conclusion, the measures stipulated in GO no. 14/1995 represent state aid according to the definition from the Law no. 143/1999 of the state aid, with the subsequent modifications and completions.

(55) The Competition Council notes that the scheme established by the EGO no.14/1995 represents an existing state aid scheme which wasn't subject to any decision in accordance with the law.

VI.1.2.2 The facilities granted by EXIMBANK for SC Santierul Naval SA Constanta on the basis of GO no. 14/1995

(56) The facilities granted to Santierul Naval SA Constanta during 2000 – 2003 are assessed by the Competition Council, without any relevant provisions in the Romanian legislation, according to the Council's Regulation no. 1540/1998 regarding the state aid for shipbuilding.

(57) According with article 5(4), the state aids under the form of facilities for the credits granted to the undertakings of shipbuilding, regardless the nationality, or to the third parties, with the purpose of building or converting ships can be considered compatible with the common market and aren't subject to the ceilings provisioned at paragraph 1 of the same article if these state aids meet the OECD Council's Resolution from August the 3rd, 1981 (OECD Arrangement on guidelines for officially supported export credits for ships) or other agreements for modifying or replacing it. According to art. 3(5) in the Council's Regulation no. 1540/1998, the state aids for development related to the shipbuilding or ship conversion granted for the developing countries, are not subject to the ceilings stipulated by the Regulation. They can be considered compatible if they met the OECD framework established by the Agreement regarding the interpretation of art.6 and 8 in the OECD Agreement.

(58) For this, the Competition Council notes that the scheme established by the GO no. 14/1995 meets the provisions of the Agreement regarding the subsidies and the compensatory measures established within the Multilateral Commercial Negotiations- the Uruguay round. The VIII Part of the art. 27 (4) provides that the developing countries will give up to the export subsidies in a 8 year time limit, with prolonging right depending on the justified development necessities of that specific country in the economic, financial and development field.

IV.1.2.3 Facilities granted by EXIMBANK, during 2004 -2005, SC Santierul Naval SA Constanta on the basis of G.O. no. 14/1995

(59) On January the 1st, 2004, came into force the legal Framework regarding the state aid for shipbuilding, establishing new rules for the granting criteria of the state aids for shipbuilding. According to the provisions of paragraph 23 in the Commission's Framework, the state aids under the form of facilities for credits granted to the shipbuilding companies, regardless the nationality, or to the third parties, for building or converting ships, can be considered compatible with the common market if they meet the conditions stipulated in the OECD Arrangement on guidelines for officially supported export credits, respectively the Sectoral Understanding regarding the Export Credits for shipbuilding or any other agreement amending or replacing one of them.

(60) In accordance with the new Sectoral Understanding are established the following conditions for considering compatible the state aids for shipbuilding under the form of facilities for export credits:

- (i) the maximum duration wouldn't exceed 8 and a half years from delivery and repayment other than by equal installments at regular intervals of normally six months and a maximum of twelve months;
- (ii) the payment of at least 20% from the price of the contract;
- (iii) the interest rate is at least 8%, net of all charges.

(61) The credit contracted by SC Santierul Naval SA Constanta in amount of ROL 812,500,000,000 granted based on the GO no. 14/1995 and guaranteed by the Romanian State in proportion of 85% meets the criteria stipulated in the OECD Agreement and in particular the provisions from the Sectoral Understanding regarding the Export Credits for ships. However, the facilities granted on the basis of O.G. nr. 14/1995 during the restructuring period are included in the restructuring costs and taken into account when calculated the aid intensity.

VI.2. ASSESSMENT OF THE STATE AID MEASURES GRANTED TO SC SANTIERUL NAVAL SA CONSTANTA

(62) According to the art. 2 align. (2) and (3) in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, the Competition Council has to assess if the state aid is compatible with the normal competitive environment.

(63) 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 the Law no. 20/1993, provides that any public aid which distorts or threatens to distort the competition and affects the trade with the Member States will be assessed based on the criteria resulting from the application of the rules from art. 85, 86 and 92 (at present 81, 82 and 87) in the EC Treaty. The assessment of the notified measure was made according to the state aid granting criteria enclosed in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

VI.2.1. The assessment of the state aid in the light of the provisions in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty

(64) The state aid is granted for the restructuring of SC Santierul Naval SA Constantza. According to the art. 10 in the Regulation, the restructuring state aid can be authorized by the Competition Council only if the criteria established at art. 11 - 17 are fulfilled and if it is certain that the advantages resulting from the company's survival shall compensate for any distortion of the competition, especially in the case when the net effect of the collective dismissals, as a result of the company's bankruptcy, combined with the effects of the bankruptcy on the company's suppliers, would increase the unemployment problems at national, regional or local level.

(65) The provisions of the Regulation regarding the state aid for rescuing and restructuring firms in difficulty allows the Romanian authorities to grant restructuring state aid only if :

- a) The firm is in economical difficulty;
- b) Implementing the restructuring plan shall lead to the undertaking's viability under normal market conditions at the end of the restructuring period;
- c) The value and the intensity of the state aid are strictly limited to the minimum necessary for the return to viability;
- d) The state aid is granted for the first and last time ;
- e) By granting the state aid it must be avoided the distortion of the competition on the relevant market.

VI.2.1.1 The eligibility of S.C. Santierul Naval S.A. Constanta – firm in difficulty

(66) According to the Regulation regarding the state aid for rescuing and restructuring firms in difficulty, a firm is in difficulty when it isn't capable to cover the losses, either from its own financial resources, or by resources it can obtain from shareholders or creditors. These losses would almost certainly condemn the firm to exit from the market on short or medium term without the external intervention of the public authorities. The signs showing that a firm is in financial difficulty are: increased losses, decrease of the turnover, increase of the stock volume, decrease of the cash flow, increase of the debts, increase of the financial burdens and decrease of and the disappearance of the net asset value.

(67) The undertaking was in difficulty at the moment of its privatization, the difficulty stage being due, on one hand, to the lack of orders on the domestic market, and on the other hand, to the lack of liquidities necessary for receiving and finalizing export orders.

(68) The assessment of the economical- financial indexes registered by the company during 2000 – 2002 is presented in the following manner:

a) *The turnover's evolution*

Table no. 9		- ROL thousand-	
	2000	2001	2002
Turnover	490,945,056	465,889,967	784,495,541
Inflation index	1	1.3	1.18
Turnover in prices comparable with 2000	490,945,056	358,376,898	511,405,177
Sold production	484,088,748	453,763,195	772,808,298
Sold production corrected with the inflation index	484,088,748	349,048,612	503,786,374

(69) From the assessment of the turnover made by the company in prices compared with 2000 it results an important depreciation of 27% in 2001 compared to 2000, while the current prices register an ascending trend.

b) *The evolution of the gross result and the result from exploiting*

Table no. 10		- ROL thousands-	
	2000	2001	2002
Registered capital	494,820,719	494,820,719	494,820,719
Gross result	(130,701,995)	(348,533,824)	(250,554,546)
Result from exploiting	(50,541,466)	(277,534,826)	(160,853,743)
Result from exploiting / Registered capital (%)	-10.21	-45.98	-32.51

(70) The undertaking registers losses every year, with a peak in 2001 when it reaches at ROL 348,551,822 thousands. The loss from that year was mainly determined by the expenses higher than the cashing relating to the ships in building process of ROL 130,198 mill, uneducible expenses of ROL 176,423 mill and financial expenses mostly representing exchange differences of ROL 120,998 mill. The loss cumulated at the end of 2002, the year of its

privatization, was of ROL 708,686 mill, being of 143.22% compared to the registered capital of ROL 494,821 mill.

c) The evolution of the stock volume

Table no. 11

- ROL thousand -

	2000	2001	2002
Stocks	147,208,792	274,046,846	260,434,958
Turnover	490,945,056	465,889,967	784,495,541
Stocking days	107.9	211.7	119.5

The speed of rotation for the stocks= (total stocks/turnover) x 360 (days)

(71) The stocks registered an increase of 1.86 times more than in 2001 compared to 2000 and of 1.77 times more in 2002 compared to 2000. The highest proportion in the stocks is held by the production in execution, which represents 79.32% from the total.

d) The evolution of own capitals

Table no. 12

- ROL thousand -

	2000	2001	2002
Own capitals	276,768,918	(71,634,935)	(277,461,082)

(72) Own capitals register a negative value in 2001 and 2002 due to the reported losses.

f) The indebtedness degree, calculated as total debts / own capital

Table no. 13

ROL thousand -

	2000	2001	2002
Total debts	753,184,443	1,240,189,755	1,630,931,265
Own capital	276,768,918	(71,634,935)	(277,461,082)
Indebtmnt degree (%)	272.13	-1731.2	-587.8

f) Intermediate Liquidity (Reduced)

Table no. 14

- ROL thousand -

	2000	2001	2002
1. Floating assets	189,296,732	345,357,057	500,957,575
2. Stocks	134,798,404	274,046,846	260,434,958
3. Difference 1-2	54,498,328	71,310,211	240,522,617
4. Current debts	505,174,424	1,078,870,387	1,630,931,265
Reduced liquidity	0.10	0.06	0.14

Intermediary liquidity (Lr) = (Floating assets – Stocks) / Current debts

(73) The values of the company's intermediary liquidity in the assessed period situated below 0.5 shows the company's difficult situation from the point of view of the possibility to insure the necessary short term resources.

(74) [...] ⁷.

VI.2.1.2. Belonging to the group

(75) According to the provisions of art. 2 align. (5) in the Regulation, a company belonging to a group isn't normally eligible for the granting of the state aid for rescuing and restructuring, excepting the case when it can be proven that the company's difficulties are its own, and not from an arbitrary allocation of the costs within the group as well as the difficulties are too serious to be solved by the group.

(76) SC Santierul Naval Constanta's privatization was made within the Program for Supporting the Private Sector (PSAL) and within the Program for Institutional Development of the Private Sector closed with BIRD having as purpose the privatization of certain undertakings which accumulated huge debts to the State budget.

(77) For the privatization, the Romanian Government issued GD no. 532 on July the 7th, 2001 on the approval of the privatization strategy of SC Santierul Naval SA Constanta, included in the project in the component "The privatization of 50 undertakings with majority State owned capital, grouped in packages", within PSAL. This decision mentions at Art.2: "For increasing the attractiveness of the undertaking at privatization it shall be granted scheduling to the payment of the unpaid budgetary obligations and to the exemption to the payment of delay penalties and/or majorities related to them, in the amounts existing at the date when the certificate of budgetary obligations was issued by the budgetary creditors, in accordance with the legal provisions in force."

(78) In the same time, during the negotiations came into force the Law no. 137/2002 on certain measures for accelerating the privatization, law that also gave the involved public institution the possibility to grant other facilities (for example conversions into shares of the debts to budgets, state institutions, regions and national companies) accordingly to the situation of the company to be privatized.

(79) These facilities were enclosed in the company's Presentation Dossier for privatization.

(80) - (86) [...] ⁸.

(87) The granting of the restructuring state aid for SC Santierul Naval S.A. Constanta was made in the basis of the abovementioned legal provisions and was a condition of the company's privatization, as resulted from the negotiations between A.P.A.P.S. (now A.V.A.S.) and the representatives of the Resource International S.A. and took into account:

- a. The financial situation at the moment of the privatization, actually bankrupt since many years and not liquidated as a result of the state's decision of not executing the state's debts (on 31.12.2002 the value of the cumulated loss was of ROL

⁷ Confidential data

⁸ Confidential data

986,973,830,000 compared to the social capital of ROL 494,820,719,000). For this, art. 153 of the Law 31/1990 stipulates that: “If the managers found a loss of a half of the social capital have to call the extraordinarily general meeting to decide the re- establishment of the capital, its limitation to the remained value or the company’s dissolving.” This confirms the fact that the undertaking was bankrupt.

- b. The situation of the commercial contracts closed by the company and in action at the moment of the privatization, the disadvantageous commercial contracts which produced losses and accumulated every day delay penalties;
- c. The situation of the litigations in amount of mill USD to which the company was engaged;
- d. The level of the investments necessary for bringing SC Santierul Naval SA Constanta to a technological level comparable with those of its competitors;
- e. The working capital necessary for making the company’s balance sheet viable;
- f. The price per shares negotiated between the two parties.

VI.2.1.3 Return to the company’s viability

(88) According to the provisions of art. 12 of the Regulation regarding the state aid for rescuing and restructuring firms in difficulty, the Competition Council may consider as compatible a restructuring state aid when by implementing the restructuring plan is ensured the company’s viability at the end of the restructuring period.

(89) Starting from the analysis of the activity carried out, for rehabilitating the enterprise, the company’s management aims the accomplishment of the following post-privatization period:

- A.** The company’s organizatoric restructuring, by:
 - Appointment of a new Administration Council and of a new leading team;
 - Reorganization of the company by establishing new directions, clear responsibilities, well established on horizontal as well as on vertical;
 - Personnel restructuring by re-training it within other departments, controlled and limited dismissal of personnel;
 - Implementing a systems of control for the personnel activity;
 - Implementing training programs for the personnel;
 - Implementing an integrated system for planning and management of the company’s financial, human and material resources;
- B.** Finalizing the new shipbuilding current contracts, by renegotiating the delivery terms and the penalties as well as the working capital providing by the new majority shareholder of the company, for ending these contracts, taking into account the registered losses;

- C. Ending the litigation on roll, by closing deals, where possible, and/ or urging the action in court, of these litigations;
- D. Implementing the investment program proposed and assumed by the privatization contract, by allocating the funds planed by the Buyer;
- E. Switch from the building of small ships to the building of medium sized and large ships and from the ship bodies to complete ships and restarting the program for new shipbuildings by making ships in series, in the next years, based on studies made by specialized companies;
- F. In the repairing field, the increase of the repairing volume, by drawing complex reparings and implementing a marketing policy aiming for:
 - Establishment of the maximum importance markets and of strategically customers;
 - Visits to ship-owners;
 - Participation to fairies and exhibitions;
 - Reducing the dependence on agents and brokers;
- G. Increase of the labour productivity, by re-organization and restructuring, introducing technological investments and personnel training for increase specialization;
- H. Reducing costs by their tight control, establishment of budgets and responsible for their development.
- I. Rectifying the financial situation by negotiating an echeloning with the private creditors and paying the debts from the funds resulted from the working capital injections of the Buyer.

(90) The business plan takes into account the company's past experience regarding the shipbuilding of unique ships which need unique technologies, impossible to be made better after the assessment of the previous achievements and it is based on a detailed analysis of the relevant market. According to the AWES studies (the Association of the Shipbuilders and Ship repairers in Europe) contracting specialised ships during 2001-2003 registered an important increase, the biggest increase of over 60% being registered by the shipbuilding for chemical products.

(91) Under these circumstances, the investor assumed as marketing strategy the design of a ship demanded on the external market, to be promoted afterwards for building serial ships. The company together with the Naval Research Institute Galati made the project of a 37,000 dwt ship, oil tank for clean and chemical products, based on which it will be built two ships already contracted in 2003, which shall be transformed in series production by the expressed option of building the ships 3 and 4. Having the experience of the first two ships, oil tank for clean and chemical products type, the company expects an intensification of the delivery

rhythm for an identical ship series for the years 2006-2008 and an occupation degree for the production capacities of 64% in 2008. One underline that during 2000-2004, SC Santierul Naval SA Constanta functioned much under the projected capacity, respectively a covering average for the production capacities for the shipbuilding activity of 16%.

(92) Though it is a strong competition in the shipbuilding sector, a relatively small number of orders can be sufficient for increasing the degree of production capacities' utilization. There is no prove that the investor's business plan will fail. There is the possibility that SC Santierul Naval SA Constanta will accept orders with a low profitability rate, but the company's activity cannot be considered as "structural loss making".

(93) As far as the future shipbuilding activity is concerned, there are uncertainty elements for the domestic deliveries. The domestic market for new buildings is directly correlated with the shipping companies' financial resources, as well as with the general trend of the Romanian economy. According to the studies of the Institute of Economy and Industry, starting with 2003 -2005, the national maritime fleet will enter in capacity deficit. For avoiding this situation it would be necessary the application of a policy for renewing the fleet with ships, fact that is an opportunity for the Romanian shipyards in the field.

(94) [...] ⁹

(95) At the end of the implementing period of the restructuring plan, the company aims to accomplish the following target indexes:

Table no 16

No. crt.	Indexes	U/M	Values
1	Net profit	ROL Mill.	111,515
2	Turnover	ROL Mill	2,208,822
3	Employees number	Persons.	2,600
4	Own capital	ROL Mill	1,529,842
5	Duration for recovering the debts	Days	24.35
6	Duration for paying the debts	Days	17.11
7	Indebtmnt degree	%	6.86
8	Economic rentability	%	6.51
9	Financial rentability	%	7.29
10	Cash flow	ROL Mill	81,496

(96) [...] ¹⁰

(97) The Competition Council concludes that the measures assumed by the privatization plan are reasonable and realistically, ensuring the company's viability at the end of the restructuring period.

⁹ Confidential data

¹⁰ Confidential data

VI.2.1.3. Avoidance of significant distortion of the normal competitive environment

(98) By granting the state aid and applying the restructuring program of S.C. Santierul Naval S.A. the market structure is not distorted by adverse effects, as this operation has the purpose raising the economic efficiency of the company through reducing the production costs and does not lead to a surplus of liquidities which might be used in aggressive activities of distorting the competition on the market without any connection with the restructuring process.

(99) S.C. Santierul Naval SA Constanta owned on 31.03.2003 a small domestic market share of 4,8% and on the external market 0,048%. As shares on relevant markets are insignificant both at domestic and external level, it is considered that there is no significant distortion of competition according to Art. 13 of the Regulation.

(100) After implementing the restructuring program, S.C. Santierul Naval S.A. Constanta does not significantly increase its domestic market share; it will just improve the level of use of its own capacities. According to the forecasts for 2007 and 2008, the company may reach the level of delivering four vessels during the same year approximately 70,000 tg; the following market shares will correspond to this level:

- on the domestic market: 9,6%
- on the external market: 0,096%.

(101) Having in regard precarious situation of Romanian maritime fleet for the next years it forecast an increasing of demand of bulk carrier, oil carrier and port on domestic market. That will increase the competition on the shipbuilding market. For avoiding a favourable position on the market for the company by granting the state aid, the Competition Council finds necessary to limit the production of the company at 98,341 TGC, corresponding to 90% occupation degree of production capacities till 2008.

VI.2.1.4. Aid limited to the minimum

(102) According to the provisions of the Regulation on rescuing and restructuring firms in difficulty, the amount of state aid and its intensity must be limited to the minimum necessary for allowing the restoration of viability of the firm, taking into account the existing financial resources of the company, of the shareholders and of the group to which the company belongs.

(103) In this case, the amount of state aid corresponds to the price paid by the buyer for purchasing the majority block of shares, including the debts taken over and the pending trials. The aid was granted by the state in the privatization process for covering part of the restructuring costs of the company, as the financial resources of the company were insufficient, but in the same time for ensuring an adequate profit rate compared to the capital invested in the company's activities. The profit forecasted by the company is not disproportional high from this perspective.

(104) It must be underlined that the Romanian authorities responsible for the privatisation of the company carried out a open and transparent bidding procedure, in order to ensure that the best price shall be obtained and that the participation of the state at the company's restructuring shall be diminished. The advertisement on the sale of majority block of shares owned by APAPS in S.C. Șantierul Naval S.A. Constanța was published in a few local, national and international newspapers widely distributed. The initial deadline for submitting the offers was extended by one month, so that the potential investors may have the time to submit the offers. Two investors bought the presentation file, of which only one - SC Ressource International – submitted a valid offer. It was not possible to finalize the sale on the basis of the offer submitted, considering that the value of the company, unlike that of the buildings or lands, is not static. Taking into account that the only and best offer was accepted, the price paid by the buyer is the market price, so that the state aid is limited to the minimum necessary for the restructuring of the company.

(105) The Contribution of S.C. Santierul Naval S.A. to the implementation of the measures comprised in the restructuring program is 39.48% of the total financial effort. The Competition Council highlights the fact that both the investor and the company contribute to the restructuring of the company, by financial support of 100% of the technological and technical restructuring, of the environmental and organizatorical restructuring, but also supports the financial restructuring of the company by 31,88%.

VI.2.1.5. Intensity of the state aid and restructuring cost

(106) The value and intensity of the state aid have to be strictly limited until the level of achieving the objectives of the restructuring program (attaining the reliability).

(107) The total cost of the company restructuring amounting to ROL 1,731,549 million is made up of:

- cost of the restructuring of the company organization: ROL [...] million
- cost of the technical and technological restructuring: ROL [...] million
- cost of building the two ships (Eximbank facilities 2004-2005): ROL [...] million
- cost of the environment investment : ROL [...] million
- cost of the financial restructuring: ROL [...] million.

and is supported as follows:

- | | |
|--------------------------|---------------------------------|
| - company's own sources | ROL [...] ¹¹ million |
| - investor's own sources | ROL [...] ¹² million |
| - state aid | ROL 1,047,853 million |

(108) The intensity of the state aid, calculated as ratio between the value of the state aid and the restructuring cost, has a value of 60.52%.

¹¹ Confidential data

¹² Confidential data

VI.2.1.6. Observance of the principle “first and last time”

(109) S.C. Santierul Naval S.A. Constanta has not received any aid for restructuring, observing therefore the provisions of art. 18 of the Regulation stipulate the fact that the restructuring aid has to be granted only once.

VI.2.1.7. Monitoring and annual reporting

(110) In accordance with the dispositions of article 17 of the Regulation, the Competition Council permanently monitors the way in which the restructuring plan is being implemented in order for it not to deviate from attaining the objectives of the restructuring plan.

(111) The Competition Council will monitor the implementation of the restructuring plan until the end of the period in order to make sure that there are no increases of the production capacities, major deviations from the compliance of the restructuring measures and that the state aid will not lead to the creation of additional liquid assets that will be used for other activities than those included in the restructuring program.

VII. CONCLUSIONS

(112) It was found that the state aid was notified after being granted, so it represents an illegal state aid, in accordance with art. 3¹ in the Law no. 143/1999 of the state aid.

(113) Taking into account the above-mentioned grounds, the Competition Council finds that the individual state aid granted to S.C. Santierul Naval SA Constanta is compatible with the normal competitive environment and does not significantly affect the trade with the member states of the European union.

DECIDES

Art. 1. The measure notified by the Authority for the Capitalization of State Assets for S.C. Santierul Naval SA Constanta represents state aid in the sense of art. 2 (1) of the Law no.143/1999, amended and completed by the Law no. 603/2003.

Art. 2. Based on art. 12 (2) c) corroborated with art. 14 (1) e) of Law no. 143/1999, as subsequently amended and completed, the state aid in view of restructuring granted to S.C. Santierul Naval SA Constanta is authorized, provided art. 3, 4 and 5 of this decision are observed.

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

Art. 4. The company is prohibited to increase the projected production capacity..

Art. 5. The company must limit the production of the company at 98,341 TGC till 2008.

Art. 6 In the case of unfulfillment of the conditions imposed by the present decision, it will apply the provisions of art. 13 of the Law no. 143/1999 on the state aid, with the subsequent modifications and completions.

Art. 7. The maximum value of the state aid is of ROL 1,047,853 million.

Art. 8. This Decision becomes effective on the date of its communication.

Art. 9. According to the dispositions of art. 24 of Law no. 143/1999, as subsequently amended and completed, the Authority for State Assets Recovery shall transmit to the Competition Council information regarding the state aid granted, in order to inventorying and monitoring it. The Authority for the Capitalization of State Assets will also transmit to the Competition Council annual reports regarding the implementation of the restructuring plan. The first report shall be transmitted within 6 months from the delivery of the decision.

Art. 10. According to the provisions of art. 29 of Law no. 143/1999 on state aid, as subsequently amended and completed, this Decision may be attacked by the persons concerned at the Court of Appeal Bucharest, Contentious Administrative Section, within 30 days from communication.

Art. 11. This Decision shall be communicated by the General Secretariat within the Competition Council:

- to the Authority for State Assets Recovery, street. Cpt. Av. Alexandru Serbanescu, no. 50, district 1, Bucharest;
- to the S.C. Santierul Naval S.A. Constanta, street Incinta Port, cod postal 900900, jud. Constanta.

Art. 12. The General Secretariat and the Department for State Aid Authorization within the Competition Council shall supervise the execution of this Decision.

PRESIDENT

MIHAI BERINDE