

**DECISION OF THE COMPETITION COUNCIL**  
**no. 121 as of 07.07.2005**

regarding the state aid notified  
by the Authority for State Assets Recovery  
to be granted to S.C. MECANEX S.A. Botosani

**CONSILIUL CONCURENTEI,**

Taking into consideration the dispositions 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 the Law no.20/1993, published in the Official Gazette, Part I , no. 73 on April the 12<sup>th</sup>, 1993;

Taking into consideration the provisions of the Competition Law no. 21/1996, published in the Romania's Official Gazette no. 88, I Part on 30.04.1996, amended and completed by the EGO no.121/2003, approved by the Law no.184/2004;

Taking into consideration the provision of the Law no 143/1999 on State aid, with the subsequent modifications and completions;

Taking into consideration the dispositions of the Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1.215 of December 17, 2004;

Taking into consideration the Decree no. 57/2004 regarding the appointment of the Competition Council;

**Based on the following,**

**1. PROCEDURE**

(1) By address no. VP4/1396/07.06.2005, filed with the Competition Council no. RS-AS 27/07.06.2005, the Authority for State Assets Recovery (hereafter AVAS) notified, based on art. 6 of the Law no. 143/1999 on state aid, with the subsequent modifications and completions the intent to grant an individual state aid for the restructuring of S.C. MECANEX S.A. Botosani.

(2) By address no. DAAS/525/07.06.2005 supplementary information was requested in completion of the notification form. The Authority for State Assets Recovery replied by address no. VP4/1543/14.06.2005 filed with the Competition Council no. RG 4196/16.06.2005.

(3) The notification became effective as of the date when data was accurate and complete, respectively 16.06.2005.

## **2. DESCRIPTION OF THE STATE AID MEASURE**

### **2.1. The legal base for granting the state aid**

- Law no. 137/2002 on certain measures for accelerating the privatization, with the subsequent amendments and completions;
- GD no. 577/2002 on the approval of the Methodology for applying the EGO no. 88/1997 regarding the privatization of the undertakings, with the subsequent amendments and completions and of the Law no. 137/2002 on certain measures for accelerating the privatization;
- GD no. 1131/2000 regarding the privatization strategy of S.C. MECANEX S.A. Botosani.

### **2.2. The concrete modality for granting the state aid**

(4) By the state aid proposed by AVAS in total amount of ROL 34,555,553,349 is envisaged the granting of some facilities consisting in the exemption from payment of interest and penalties of any kind related to past due budgetary obligations representing the contribution to the technological risk fund, the contribution to the solidarity fund, the contribution to the education fund, income tax, payable VAT, social insurance contribution, employer's contribution to social insurance.

### **2.3. Presentation of the beneficiary S.C. MECANEX S.A. Botosani**

(5) The Beneficiary of the state aid is the commercial company S.C. MECANEX S.A. Botosani, established in 1972 under the name 'Intreprinderea de Utilaje si Piese de Schimb'. By the GD no. 157/07.03.1991 regarding the organization of some companies under the authority of the Ministry of Resources and Industry as joint stock companies, the company changed its name to S.C. MECANEX S.A.

(6) In 2002, the company has been privatized by selling the shares held by APAPS (currently AVAS) to the Employees Association of MECANEX. As of the date of signing the share purchase-sale agreement no. 10/29.04.2002, the company had with the Registry of Trade shareholders equity of ROL 19,255,600,000 divided in 770,224 shares with ROL 25,000 face value. Subsequent the share ownership transfer, the ownership structure of S.C. MECANEX S.A. Botosani was the following:

**Table no. 1**                      **Ownership structure of SC MECANEX SA**

<b>SHAREHOLDERS</b>	<b>EQUITY HOLDINGS</b>	
	<b>Number of shares held</b>	<b>Equity holdings ( % )</b>
MECANEX Employees Association	392,462	50.955
SIF Moldova	294,282	38.207
Individuals	83,480	10.838
<b>Total</b>	<b>770,224</b>	<b>100.000</b>

Source:AVAS Notification

(7) At a later date, the shareholders equity of S.C. MECANEX S.A. Botosani was increased and the ownership structure became the following:

**Table no. 2**                      **Ownership structure of SC MECANEX SA after the capital increase**

<b>SHAREHOLDERS</b>	<b>EQUITY HOLDINGS</b>	
	<b>Number of shares held</b>	<b>Equity holdings ( % )</b>
MECANEX Employees Association	569,198	60.108
SIF Moldova	294,282	31.076
Individuals	83,480	8.816
<b>Total</b>	<b>946,960</b>	<b>100.000</b>

Source:AVAS Notification

(8) The company is active in the industrial field. S.C. MECANEX S.A. has as core business the manufacturing of pumps and compressors – CAEN code 2912.

(9) The turnover and results of the financial exercises of S.C. MECANEX S.A. Botosani based on information from financial statements between 2001-2004, are presented in table no. 3.

**Table no. 3**    **Turnover and profit/loss for SC MECANEX SA**

-ROL thousand -

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Turnover	50,298,715	50,984,000	56,041,000	68,846,500
Turnover on the Romanian market	49,957,715	50,564,933	48,162,714	61,636,500
Result of the exercise	-23,955,925	23,316,094	-4,268,459	1,917,159

Source:AVAS Notification

It can be observed that the weight of export in turnover is quite small, respectively 0.7% in 2001, 0.8% in 2002 and 14.1% in 2003 and 10.5% in 2004.

(10) The undertaking is a large company (it had 319 employees in 2002, 304 employees in 2003, and 347 employees in 2004) and does not meet the criteria provided by the Regulation on state aid for SMEs, with the subsequent modifications and completions, in order to be defined as a SME.

(11) The products manufactured at S.C. MECANEX S.A. Botosani can be divided in several categories, as follows:

- pumps, electric pumps and fuelpumps;
- gray cast iron and non ferrous parts for pumps;
- metallic sub-components and spare parts for pumps.

(12) The production capacities of S.C. MECANEX S.A. at the end of 2002, prior to the beginning of the company restructuring, are presented in table no. 4.

**Table no. 4** **Production capacities at SC MECANEX SA**

Description	Units	Production capacity	Capacity utilization(%)
Pumps and electric pumps	pieces/year	1,500	78.6
Spare parts for pumps	pieces/year	18,000	91.3
Cast parts	pieces/year	63,000	70.8

*Source:AVAS Notification*

#### **2.4. Description of the markets S.C. MECANEX S.A. activates on**

(13) The company manufactures and sells pumps, electric pumps and fuelpumps, as well as gray iron and non ferrous cast parts and metallic parts and spare parts for these, the production levels for 2001-2004 being presented in table no. 5.

**Table no. 5** **Production levels for 2001-2004**

No.	Product range		2001	2002	2003	2004
1	Pumps and electric pumps	ROL million	26,460	24,900	29,000	37,500
2	Spare parts for pumps	ROL million	9,752	10,785	6,950	10,021
3	Cast parts for pumps	ROL million	8,310	15,299	20,000	21,325

*Source:AVAS Notification*

(14) Taking into consideration that spare parts and cast parts are used in the manufacturing of pumps and electropumps, the relevant market the company is active on is the market of pumps and electric pumps, of the spare parts and cast parts related to these. S.C. MECANEX S.A. has attached a market study to the restructuring plan where the following aspects were analyzed:

- the size of the domestic market and its evolution during 1999-2004;
- evolution of production and sales of the company in 1999-2004;
- evolution of the prices for the company's products in the same period;
- structure of the company's clients and demand changes during 2000-2004;
- estimate of the market supply up to 2007;
- demand trends on the domestic market up to 2007.

(15) According to this study, the company sales by product range on the domestic market in 2001-2004, are presented in the table below:

**Table no. 6 Sales of SC MECANEX SA**

<b>Products</b>	<b>Sales (ROL million)</b>			
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Pumps and electric pumps	26,460	24,900	29,000	37,500
Spare parts for pumps	9,752	10,785	6,950	10,021
Cast parts for pumps	8,310	15,299	20,000	21,325

*Source:AVAS Notification*

(16) In the market study is stated that on the domestic market there is a strong competition because there are manufacturers with identical type pumps and technical parameters. Also, there are foreign pump manufacturers which entered the Romanian market (Flygh, Grundfos, Lowara, Allweiler, Ingersoll etc.) whose market share grows year by year, mainly due to higher technical performance of their products. The market is characterized also by the existence of 25 small private manufacturers, beginning to hold, at least by some geographical areas, a significant weight (TRICOMSERV Sf. Gheorghe, HIDROTICA Bucuresti, FLUIDPROIECT Bucuresti etc.), as well as by the existence of some Romanian firms with a different profile but included in their manufacturing program various pump types (NEPTUN Campina, SC ENERGOREPARATII SA Bucuresti, UPRUC TAP SA Fagaras). Thus, the market shares of the company and its competitors are the following:

**Table no. 7 Competitors and market share held**

<b>Competitors</b>	<b>Market share held on the pump, spare parts and cast parts market (%)</b>
SC MECANEX SA	20.0
SC AVERSA SA Bucuresti	35.0
SC UPSS SA	15.0
Foreign manufacturers (imports)	24.0
Others (small manufacturers + companies with other profile)	6.0

*Source:AVAS Notification*

It has to be mentioned that the massive penetration of imported products on the Romanian market was due to some facilities, such as:

- investment programs financed from external funds regarding water supply, modernization of thermic power stations, irrigations; for these programs, the financing institutions imposed that pumping equipments included in the respective installations be purchased from foreign companies.

(17) In the market study there is an estimate of the market evolution up to 2007 according to which, after the steep decrease in demand until present, the market will witness flat growth. Also, the import increase trend will be maintained in covering the market demand. Under these circumstances, it is estimated the company will retain its 20 % domestic market share only if the range of pumps and electric pumps offered for sale will diversify, if their quality will increase and if trade relations with traditional clients will be maintained.

(18) The traditional customers of the company activate, mainly, in the following fields: land enhancement, energy sector, oil and gas sector, chemical industry, public utilities. In the future, the company will extend collaboration with famous companies in the field of water supply within the programs for rehabilitating infrastructure and utilities in rural areas.

(19) On the external market, sales were sporadic with a small weight in turnover and were achieved both indirectly, with Romanian companies specialized in foreign trade, as well as directly with companies from Italy, France, Germany.

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

(20) Among the 64 companies with majority state owned equity privatized through the Private Sector Adjustment Loan (PSAL) and the Private Sector Institutional Building Loan (PIBL) there was also S.C. MECANEX S.A. Botosani.

(21) The announcement regarding the sale of the majority stake held by APAPS (AVAS) at S.C. MECANEX S.A. Botosani was published in the international press (New York Times) and the Romanian press on 21.12.2001. There were bids submitted by S.C. A1 IMPEX S.R.L. and the Employees Association of MECANEX. Following the analysis of the participating documents, the two bidders were accepted to negotiations. After the assessment and analysis of the binding offers, final, improved and irrevocable submitted by the two bidders, the Negotiation Commission noted that the only offer to be considered was that of Employees Association of MECANEX. During five negotiating meetings, held between 03.04.2002-22.04.2002, the main contractual clauses were negotiated and agreed by the representatives of Employees Association of MECANEX.

(22) The share purchase-sale agreement no. 10 has been concluded on 29.04.2002, and the transfer of the shares ownership has been achieved on 16.05.2002.

(23) Regarding the economic concentration as a result of purchasing the majority stake, the Competition Council noted that, because the buyer is the Employees Association of

MECANEX – association which does not have a business turnover – the transaction does surpass the ‘de minimis’ threshold of ROL 65 billion and therefore notification is not necessary in order to be authorized.

### **3. DESCRIPTION OF THE RESTRUCTURING PLAN**

(24) Starting from the situation the company was in, at the moment when the privatization contract was signed, the buyer of the main share package, together with the company, drafted a restructuring plan for the period 2003-2006, including measures of organizational, technological restructuring, environmental investments and financial restructuring, all those amounting ROL 70,845.66 million. The restructuring plan is based on a market study for the pumps and electric pumps, spare parts and cast parts related to these.

#### **3.1. The structural/organizational restructuring**

(25) The structural/organizational restructuring of the company refers to a series of measures envisaged to lead to the reduction of expenses related to premises in excess and even to revenues from their use, to better climate conditions, to elimination of maintenance and utility expenses, to give up the services of the local heating power station and reduction of expenses for heating. In order to increase labor productivity the personnel will be enrolled in a modern and efficient training system by attending the following training courses:

- Professional training for the personnel working on the determination of chemical composition of some materials with SPECTROPORT-CCD. spectrometer, organized by Spectro-Service SRL Campina;
- Training on the management of human resources, organized by Raimar SRL Sibiu;
- Course for training and authorization of responsible person with supervision and checking of installations falling under ISCIR regulations, organized by ISCIR Suceava;
- Training, examination and authorization by ISCIR of staff working with forklift operators, organized by SC ALCALIA SRL;
- Training and perfecting of working relationships, organized by Training Center of the Labor Inspectorate Botosani;
- Certification and recertification course for the staff with firefighter responsibilities staff, organized by the Inspectorate for Emergency Situations “Nicolae Iorga” Botosani.

(26) The total cost of the organizational restructuring presented summarized below in table no. 8 is of ROL 4,992.5 million and will be borne from own sources of the company and the majority shareholder.

**Table no. 8 Organizational restructuring measures at SC MECANEX SA**

Measure description	Deadline	Implementation costs (ROL million)	Financing sources (ROL million)		
			Own sources	Investor sources	State aid
Upgrading of the A/C installation	2005	673.00	-	673.00	-
Preparation and sale of “Wood modelling” asset	2003	43.70	43.70	-	-
Repair, dismantling and lease of “MUF Casting”	2004	172.70	172.70	-	-
Repair, dismantling and lease of “Cafeteria”	2004	33.60	33.60	-	-
Reduction of activity in the administrative building to ground floor and first floor and lease of freed space	2005	31.40	31.40	-	-
Maintenance repairs for the administrative building	2003	42.30	42.30	-	-
Dismantling of the medical cabinet and relocation in the administrative building and service apartment; selling spaces	2003	32.30	32.30	-	-
Staff training	2005	34.00	34.00	-	-
Creating 30 new jobs according to the privatization agreement	2006	3,929.50	-	3,929.50	-
<b>TOTAL</b>	<b>-</b>	<b>4,992.50</b>	<b>390.00</b>	<b>4,602.50</b>	<b>-</b>

Source: Restructuring program of SC MECANEX SA

(27) By the privatization agreement, the buyer committed to create 30 new jobs, the costs of implementing the measure amounting ROL 3,929.5 million, to be covered by the majority shareholder from own sources.

### 3.2. Technological restructuring

(28) In order to make the activity viable, the company proposes to achieve some technological restructuring measures presented in table no. 9. These measures will lead to reduction of losses and an increase in operating profit.

**Table no. 9 Technological restructuring measures at SC MECANEX SA**

Measure description	Deadline	Implementation costs (ROL million)	Financing sources (ROL million)		
			Own sources	Investor sources	State aid
Upgrading of induction melting capacity	2005	3,700.00	3,700.00	-	-
Upgrading of sandblasting installation	2005	2,405.00	2,405.00	-	-



Upgrading of mechanized moulding installation	2005	1,295.00	1,295.00	-	-
Upgrading of compressors station	2004	1,135.00	-	1,135.00	-
<b>TOTAL</b>	<b>-</b>	<b>8,535.00</b>	<b>7,400.00</b>	<b>1,135.00</b>	<b>-</b>

Source: Restructuring program of SC MECANEX SA

### 3.3. Environmental restructuring

(29) In order to comply with the environmental requirements, the new investor assumed, in the Share sale-purchase contract, to make some environmental investments from own sources. In the restructuring plan, these amounts were supplemented from company's own sources in order to make a storage platform for the galvanic mud. The measures are synthetically presented in the table no. 10 and will have, along the positive economical effects at the company's level, effects on the preservation of the environmental agents by reducing the pollution of the waste waters and soil rehabilitation.

**Table no. 10 Environmental restructuring measures at SC MECANEX SA**

Measure description	Deadline	Implementation costs (ROL million)	Financing sources (ROL million)		
			Own sources	Investor sources	State aid
Upgrading of emission retention galvanizing installation	2004	460.80	-	460.80	-
Building a storage platform for the galvanic mud	2006	573.50	573.50	-	-
Preparation of waste platforms	2003	399.96	-	399.96	-
<b>TOTAL</b>	<b>-</b>	<b>1,434.26</b>	<b>573.50</b>	<b>860.76</b>	<b>-</b>

Source: Restructuring program of SC MECANEX SA

### 3.4. Financial restructuring

(30) At the date of the privatization, the company needed a financial restructuring in order to function within the normal parameters of the production activity, together with the other restructuring measures assumed in the restructuring plan.

(31) The financial restructuring measures of S.C. MECANEX S.A. Botosani whose total costs amount to ROL 55,883.90 million, are financed from state sources by granting the state aid, as well as from company's own sources and of the majority shareholder. In table no. 11 these measures are summarized.

**Table no. 11 Financial restructuring measures at SC MECANEX SA**

Measure description	Implementation costs (ROL million)	Financing sources (ROL million)		
		Own sources	Investor sources	State aid
Payment facilities for pastdue budgetary obligations	34,555.55	-	-	34,555.55
Assumming by majority shareholder of some company	4,804.00	-	4,804.00	-

debts				
Loan contracting	16,524.35	16,524.35	-	-
<b>TOTAL</b>	<b>55,883.90</b>	<b>16,524.35</b>	<b>4,804.00</b>	<b>34,555.55</b>

*Source: Restructuring program of SC MECANEX SA*

(32) Payment facilities granted at company's privatization refer to exemption from payment of interest and delay penalties related pastdue budgetary obligations, in amount of ROL 34,555,553,349. In order to purchase raw materials and pay suppliers, it was necessary for the company to take a loan, in market terms. The total loan expenses (principal and interest) amount to ROL 16,524.35 million and will be borne from company's own sources. Also, the majority shareholder assumed the payment of some company debts to its suppliers in amount of ROL 4,804 million.

(33) Through the restructuring plan, the company realistically sized the restructuring financing sources for the following period, on one hand based on own sources, and on the other hand based on the Buyer's funds providing technological, organizational and environmental investments absolutely necessary for the company activity.

(34) The restructuring plan, through its financial restructuring component, provides for the increase of cash flow, ensuring a stable cash flow, which will relieve and ease the financial activity of the company. This way, the company will be able to pay its current debts towards the state and to allocate necessary liquidities in order to carry out planned investments required to develop and sustain the production program in the long run.

#### **4. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES GRANTED TO THE COMPANY**

(35) In order to be considered state aid within the meaning of Law no. 143/1999 on state aid, with the subsequent modifications and completions, the financial support has to meet cumulatively four requirements provided at art. 2:

- is granted by the state or from state resources,
- the measure is selective,
- provides an advantage to the undertaking,
- distorts or threatens to distort competition and affects the trade of Romania with the Member States of the European Union.

(36) The financial support granted to S.C. MECANEX S.A. Botosani and notified by A.V.A.S. consists in foregoing by the state of some revenues, therefore there are state resources involved.

(37) The financial support measures granted in the basis of the Law no.137/2002 on some measures for speeding up the privatization were intended only for companies to be privatized, among which S.C. MECANEX S.A. Botosani. The measures granted S.C. MECANEX S.A. Botosani have therefore a selective character.

(38) By the financial support measures granted under the form of fiscal facilities an economic advantage is created for S.C. MECANEX S.A. Botosani, the company being

exempted from payment of past due obligations to the state budget, as well as from payment of interest and related delay penalties. As a result of granting these fiscal facilities the company does not have to pay its debts to the state budget, which has a favorable effects on the economic and financial indicators and cash-flow. Therefore, the company is created an advantage, being favorized compared to its competitors.

(39) Granting financial support to S.C. MECANEX S.A. Botosani creates the premises for a possible distortion of competition on the relevant market because it allows the company to maintain or even to consolidate its position on this market.

(40) Also, there is no doubt that the financial measures taken affect trade with the European Union Member States since the products of the company can be sold in the future on the external market.

(41) In consequence, the Competition Council notes that the measures of financial support granted to S.C. MECANEX S.A. Botosani are considered state aid and fall under Law no. 143/1999 on state aid, with subsequent modifications and completions.

## **5. ASSESSING THE STATE AID**

(42) Article 2 from Law no. 143/1999 on state aid, with subsequent modifications and completions, provides that the aids granted by the state or from state resources which distort or threaten competition and affect trade with the members states of the European Union are incompatible with the normal competitive environment.

(43) The Competition Council assess the state aid granted to S.C. MECANEX S.A. Botosani according to the criteria provided in the Regulation on state aid for rescue and restructuring of companies in difficulty. In order to be considered compatible with the normal competitive environment, the state aid has to meet all criteria from the above mentioned Regulation.

### **5.1. Eligibility S.C. MECANEX S.A. Botosani – company in difficulty**

(44) According to provisions of art. 2 para (2) b) from the Regulation on state aid for rescue and restructuring of companies in difficulty, a company is considered in difficulty when from its financial statements it can be concluded that more than half of the equity has been lost and, in addition, more than a quarter of this capital was lost in the last 12 months. Art. 2 para. (2) c) from the Regulation on state aid for rescue and restructuring of companies in difficulty, provides that, irrespective of its form, a company is considered in difficulty when it meets requirements to be subject of procedure provided by the legislation regarding judicial reorganization and bankruptcy.

(45) S.C. MECANEX S.A. Botosani has been privatized in 2002. In the year prior to privatization – 2001 – at a shareholders equity of ROL 19,255,600 thousand, the company had a loss of ROL 22,951,857 thousand. In consequence, the Competition

Council notes that the company complies with the criterion provided at art. 2 para. (2) b) from Regulation on state aid for rescue and restructuring of companies in difficulty.

(46) In case of S.C. MECANEX S.A. Botosani, for a level of total debts in 2001 amounting ROL 46,040,586 thousand, 2.39 times higher than the shareholders equity, it can be concluded that the company is in a position likely to be subject to the reorganization or bankruptcy procedure.

(47) Given the above mentioned, the Competition Council notes that S.C. MECANEX S.A. Botosani is a company in difficulty within the meaning of art. 2 from the Regulation regarding state aid for rescue and restructuring of companies in difficulty.

## **5.2. Belonging to a group of companies**

(48) According to provisions of art. 2 para. (5) of the Regulation regarding state aid for rescue and restructuring of companies in difficulty, a company belonging to a group is not normally eligible for granting aid for rescue and restructuring except the case when it can be demonstrated that company's difficulties are of its own and do not result from an arbitrary allocation of costs within the group and difficulties are too serious to be dealt with by the group.

(49) Fiscal facilities intended to be granted by S.C. MECANEX S.A. refer to historical debts – effect of economic results obtained in the years prior to the sale of the majority stake of shares, so company's own.

(50) The Buyer of the majority stake of the company's shares is the Employees Association of MECANEX which does not have a business turnover and does not own shares in any other company. Therefore, it can be concluded that S.C. MECANEX S.A. Botosani does not belong to a group of companies.

## **5. 3. Restoring the viability of the company**

(51) According to art. 13 from the Regulation regarding state aid for rescue and restructuring of companies in difficulty, granting of the state aid for restructuring is conditioned by implementing the restructuring plan which is the base for the assessment made by the Competition Council regarding the state aid. The restructuring plan, whose timing has to be as short as possible, must contain abandonment of loss generating activities in order to offer the company long term viability, allowing it to operate with own resources. The restructuring plan must be based on a realistic estimate of the market conditions, the restoration of the viability resulting mainly from internal measures contained by it, as well as from considering external factors such as price and demand variations, factors the company can not influence significantly.

(52) S.C. MECANEX S.A. Botosani together with the buyer and with AVAS drafted a restructuring plan containing measures of organizational, technological, environment

restructuring as well as financial restructuring measures. The measures contained in the restructuring plan were presented at point 3 of the current decision.

(53) AVAS and the company have submitted to the Competition Council the restructuring plan of S.C. MECANEX S.A. Botosani, stating that this has been drafted following a diagnostic analysis showing the strong and the weak points of the company and describes the circumstances leading to the appearance of the difficulties being confronted with. Thus, it is stated that the production activity has been negatively influenced by the following factors:

- the financial blockage from the Romanian economy, leading to accrual of debts due to payment incapacity of company's customers;
- downsizing of the chemical, energy, machine building, land enhancement sectors—sectors of the company's customers;
- worn out and obsolete equipments impacting on the quality of the manufactured products.

(54) The restructuring plan is based on a market analysis for the market of pumps and electric pumps, of the spare parts and cast parts having regard of the present market situation and its provisioned evolution, the restructuring plan comprises a series of measures which could lead to the viability of the company on long term in a reasonable period of time, respectively 4 years.

(55) The strategy of S.C. MECANEX S.A. Botosani aims to preserve the strong points, respectively the existence of production premises allowing modular organization of activity, easy access to communication means (in-house railway, access to national road DN 28, approximately 200m to European road E58, approximately 26 km. to the airport), recognizing the company is one of the traditional domestic pump manufacturers being the owner of the trade marks for a series of pump types, and also, and to limit the weak points, respectively the high worn out ratio of equipments, the poor IT infrastructure and technologies below EU standards.

(56) The future strategy has been elaborated based on the strengths and the weaknesses of the company and having regard the opportunities and threatens which the company can confront with. Thus, there have resulted a series of decisions regarding the development strategy of the company, which could make possible reaching the viability as a consequence of implementing the restructuring plan, respectively:

- minimizing production cost as much as possible;
- upgrading and revamping existing tangible assets;
- upgrading technologies and reorganization of production flows;
- increase of product quality and product diversification;
- realizing environmental investments to upgrade emission retention of galvanizing installations and preparation of waste and galvanizing mud storage platform;
- improving the marketing of products, of sale and delivery conditions by engaging the experienced staf within the company;

- expanding collaboration with renowned companies in the water supply field involved in the village infrastructure rehabilitation program.

(57) Implementing the restructuring plan has as main objective firstly the reduction of losses and gaining an operating equilibrium, in the perspective of gaining profits, especially from operating activity and afterwards from the overall activity. The first signs regarding the compliance of the company to the new conditions have started to appear at the end of 2004, year in which the company has managed to make a profit.

(58) Following the implementation of the restructuring plan it is envisaged to restore company viability by:

- improving economic and financial indicators and product quality, reducing the specific consumption;
- improving the financial independence of the company and equity return;
- increasing production capacity utilization, rational use of the workforce, increase of labor productivity;
- complying with the measures requested by protection of environment and pollution reduction;
- a steady production cycle, without gaps, essential for reaching the breakeven threshold and profitability;
- constant reduction of arrears and receivables collection.

(59) The fact that implementing the measures from the restructuring plan lead to the viability of the company is demonstrated by the forecast of the balance sheet during the restructuring, which is presented in table no. 12.

**Table no. 12**

-ROL million-

<b>Indicators</b>		<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>1</b>	<b>Total revenues, of which:</b>	<b>56,173</b>	<b>72,201</b>	<b>86,040</b>	<b>94,320</b>
	- Operating revenues	56,041	72,173	86,000	94,200
	- Net turnover	56,041	68,846	86,000	94,200
	- Financial revenues	132	28	40	120
	-Extraordinary revenues	-	-	-	-
<b>2</b>	<b>Total expenses, out of which:</b>	<b>60,442</b>	<b>69,291</b>	<b>83,075</b>	<b>91,116</b>
	a) exploiting, out of which:	60,128	66,835	80,875	88,716
	b) financial	314	2,456	2,200	2,400
	c) extraordinary	-	-	-	-
<b>3</b>	<b>Gross profit (+) / Loss (-)</b>	<b>-4,268</b>	<b>2,909</b>	<b>2,965</b>	<b>3,204</b>

Source: Restructuring program of SC MECANEX SA

(60) Following the implementation of the measures, at the end of the restructuring period, it is aimed reaching the target indicators, as follows:

**Table no. 13**

1. Net profit	ROL mill	2,220
2. Turnover	ROL mill	94,200
3. Employees	persons	367
4. Equity	ROL mill	34,189
5. Period of cashing the receivables	days	38
6. Debts payment period	days	72.5
7. Indebtedness degree	%	55.5
8. Economic return	%	4.1
9. Financial return	%	6.5
10. Cash flow	ROL mill	2,220

*Source: Restructuring program of SC MECANEX SA*

(61) From the above mentioned facts, the Competition Council considers that the proposed restructuring plan will lead the restoration of viability of S.C. MECANEX S.A. Botosani on long term.

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

(62) According to the provisions of Regulation on State aid for rescue and restructuring firms in difficulty, in view of minimizing as much as possible the negative effects on the competition on the relevant markets so as the positive effects envisaged by granting of the State aid to overcome the negative effects, compensatory measures must be taken.

(63) The beneficiary is a large undertaking, therefore compensatory measures need to be imposed in order to mitigate the negative effects of the granted aid on the normal competitive environment.

(64) By granting State aid and implementing the restructuring plan of S.C. MECANEX S.A. Botosani, the structure of the relevant market is not affected by anticompetitive effects. This operation is taking place with the purpose of increasing the economic efficiency of the company by reducing the production costs and does not lead to over-liquidity which could be used in aggressive actions of distorting the competition on the market with no connection whatsoever with the restructuring process.

(65) S.C. MECANEX S.A. Botosani has a market share of 20% on the pump, spare parts and cast parts market. In the market study is stated that on the domestic market there is a strong competition because there are domestic manufacturers with identical type pumps and technical parameters, there are foreign pump manufacturers which entered the Romanian market (Flygh, Grundfos, Lowara, Allweiler, Ingersoll etc.) whose market share grows year by year and 25 small private manufacturers, as well as some Romanian firms with a different profile but included in their manufacturing program various pump types.

(66) In order to diminish as much as possible the negative effects of granting the state aid on competition, S.C. MECANEX S.A. has set to reduce, by the end of the restructuring period, the following production capacities:

**Table no. 14 Reduction of production capacities at SC MECANEX SA**

<b>Production capacities</b>	<b>Unit</b>	<b>Reduction of production capacities</b>
Pumps and electric pumps	pieces/year	300
Spare parts for pumps	pieces/year	1,000
Cast parts	pieces/year	3,000

*Source: Supplementary information AVAS*

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

(67) In accordance with the provisions of art. 15 in the Regulation on the State aid for rescuing and restructuring firms in difficulty, the state aid amount and intensity must be limited to the minimum necessary, to allow the restructuring according to the company and the shareholders' existing financial resources. The State aid beneficiary must have a significant contribution from its own resources to the restructuring plan, including from the sale of assets unessential for the company's survival or from external financing contracted under market conditions. According to the provisions of art. 15 (2), for large companies a proper contribution is considered if it is of at least 50%.

(68) The total restructuring cost of S.C. MECANEX S.A. Botosani amounts to ROL 70,845.66 million, as follows:

- structural/organizational restructuring cost	ROL 4,992.50 million
- technological restructuring cost	ROL 8,535.00 million
- environmental restructuring cost	ROL 1,434.26 million
- financial restructuring cost	ROL 55,883.90 million.

(69) In the notification form and the information submitted in its completion it is specified that the restructuring plan is financed from the company and the buyer's own sources, as well as from the State aid. This way, the cost of the restructuring amounts to ROL 70,845.66 million, 35.1% will be financed from the company's own sources, 16.1% from the sources of the main share package' buyer and 48.8% from the financial support granted by the State.

(70) The own contribution of 51.2% to cover the restructuring costs derives from:

- capital infusion by the majority shareholder – The Employees Association of MECANEX (the Association members contribute monthly with amounts agreed according to shareholdings);
- revenues from lease of available spaces of the company;
- investment loan in amount of EURO 114,000 with an interest of 8.7% per year (market rate), taken from BCR Botosani – Loan agreement no. 46/5870 as of 14.02.2005.



(71) The State aid intensity, calculated as a proportion between the State aid and the total cost of the restructuring is of 48.8%.

(72) Regarding the above presented facts, the Competition Council considers as significant an own contribution representing 51.2% for sustaining the restructuring costs, this proving the trust in the practical value of the restructuring and the fact that the amount and the intensity of the State aid were strictly limited to allow the restructuring according to the company's and the main shareholder's existing financial resources. This way is avoided that the company would receive over –liquidities to be used in aggressive activities, distorting the market.

#### **5.6. Fulfilling the “first time- last time principle”**

(73) S.C. MECANEX S.A. Botosani has not received any other restructuring State aid, fulfilling this way the provisions of art. 24 in the Regulation on the State aid for rescue and restructuring firms in difficulty which stipulates that the restructuring State aid must be granted only once.

#### **5.7. Monitoring and annual reporting**

(74) In accordance with the provisions of art. 18 in the Regulation on the State aid for rescue and restructuring firms in difficulty, the Competition Council continuously monitors the implementing manner of the restructuring plan so that it would not divert from the fulfillment of the established objectives.

(75) The Competition Council shall monitor the implementation of the restructuring plan until the end of the period, to make sure that there will be no increases of the production capacities, major diversions from the accomplishment of the restructuring measures as well as of the fact that the state aid will not result in creation of supplementary liquidities to be used for activities other than those enclosed in the restructuring plan.

### **6. CONCLUSIONS**

(76) Taking into account the above mentioned reasons, the Competition Council notes that the individual State aid to be granted to S.C. MECANEX S.A. Botosani is compatible with the normal competitive environment and does not significantly affect the trade with the Member States of the European Union.

## **DECIDE**

**Art. 1.** The measure notified by the Authority for State Assets Recovery for S.C. MECANEX S.A. Botosani constitutes state aid for the purposes of Article 2 (1) of Law 143/1999 on State aid with the subsequent modifications and completions.

**Art. 2.** Under Article 12 para. 2 letter. (c), corroborated with Article 14 par. 1 letter. (e) of Law 143/1999 on State aid with subsequent amendments and completions the State aid for restructuring which to be granted to S.C. MECANEX S.A. Botosani is authorized provided that the conditions under Articles 3 and 4 of this decision are met.

**Art. 3.** The company is bound to implement in whole the restructuring program to which it has committed.

**Art. 4.** The company will reduce its production capacities compared to 2002 with 300 pieces/year for pumps and electric pumps, 1,000 pieces/year for spare parts and 3,000 pieces/year for cast parts.

**Art. 5.** If the conditions imposed by the present conditions are not observed, the provisions of art. 13 from the Law no. 143/1999 on State aid, with subsequent amendments and completions shall be applied.

**Art. 6.** The value of the state aid which is to be granted is of ROL 34,555,553,349.

**Art. 7.** This Decision is applicable as of the date when communicated.

**Art. 8.** Under Article 24 of Law 143/1999, with subsequent modifications and completions the Authority for State Assets Recovery shall submit to the Competition Council information on the state aid granted, in order to inventory and monitor it. The Authority for State Assets Recovery shall submit to the Competition Council annual reports regarding the implementation of the restructuring plan. The first report shall be submitted within 6 months as of the issuing of the decision. The following reports will have to show that the undertaking fulfilled the compensatory measures regarding the production capacities reduction imposed by the present decision.

**Art. 9.** According to the provisions of art. 29 of the Law no. 143/1999 on state aid, with subsequent amendments and completions, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeal, the Administrative Litigation Section, in 30 days from its communication.

**Art. 10.** The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- S.C. MECANEX S.A., str. Manolesti Deal nr. 60-62, Cod 710005, Botosani, judetul Botosani.

**PRESIDENT**

**MIHAI BERINDE**