

DECISION OF THE COMPETITION COUNCIL
no. 192 of 22.08.2006
regarding the state aid to be granted to
SC NAVOL SA Oltenita

THE COMPETITION COUNCIL,

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

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

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

With regard to the provisions of the Regulation on the form, content and other details regarding the notification of State aid, published in the Official Gazette, Part I, no. 82 of 25.01.2005,

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

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

Based on the following reasons,

1. PROCEDURE

(1) By address no. VP4/1388/27.02.2006, registered to the Competition Council with no. RS-AS 37/27.02.2006, AVAS notified based on Article 15 of the State aid Law no. 143/1999, republished, the facilities to be granted to SC NAVOL SA Oltenita, based on *the Law no. 442/2004 for the approving the GEO no. 26/2004 on some measures for the completion of the privatization of the companies being under AVAS portfolio and for the consolidation of some privatizations.*

(2) Since the information were not accurate and complete the Competition Council requested AVAS supplementary information by addresses CC/441/07.03.2006 and RG no. 3619/26.04.2006 to which AVAS replied by letter VP4/1891/27.03.2006, no. VP4/2921/15.05.2006 and no. VP4/2967/17.05.2006.

(3) The notification became effective when information was accurate and complete, respectively on 17.05.2006.

2. DETAILED DESCRIPTION OF THE AID

The beneficiary – SC NAVOL SA

(4) SC NAVOL SA is a joint-stock company, registered in the Registry of Trade under no. J51/64/1991 and CUI 1925188, fiscal sign R. The company started its activity in 1944, has its headquarters in Oltenita, Calarasi County in the South Development Region that, according to Article 87(3) (a) of EC Treaty, is considered assisted zone.

(5) SC NAVOL SA was privatized in 1999; according to the registered request no. 3987/18.05.2004, the company has a share capital of ROL 20,697,531 shared into 98,559,669 shares, the shareholders structure is as follows:

Table no. 1 SC NAVOL SA Oltenita's shareholders structure

Shareholders	Capital share	
	Number of shares	Percentage in share capital (%)
SIF Muntenia	49,054,170	49.7710
Ioan Alexandru	30,102,300	30.5422
Other shareholders –natural persons	19,403,199	19.6868
Total	98,559,669	100.0000

Source: The notification form

(6) At the end of 2004, the number of employees was 779 and the company's turnover was of RON 198,532,834, being regarded as large enterprise.

(7) SC NAVOL SA produces fluvial-maritime ships for transport of goods and passengers and has complementary activities as ships reparations, metallic and industrial constructions, various equipments, duplicate parts and naval parts constructions.

(8) The ships fabrication technologic process supposes the following sectors:

- Manufacture Body (shot blasting hall, passivating, body-coating; parts construction hall; sandblasting hall; block transfer trestle-ship shop; assembly calla; Danube launching slipway fitting out basin berth);
- Manufacture Fitting out (machines hall; work hall; toolhouse, fitting out enhancement hall, metallic coating and vulcanization shop, cast house, improvement section and carpentry-assembling hall);
- Mechanical-Energetical sector (acetylene section, oxygen manufacture, compressors station and heat plant);
- Others (control laboratory with radiations, chemical analysis laboratory and fuel storehouse).

Relevant Market

(9) SC NAVOL SA operates on the ships building and reparation market. The company's products are commercialised either on the domestic market or on the external one. The beneficiaries are undertakings from heavy industry and from transports, as follows: CNM Petromin SA Constanta, Ruyven Netherlands, Danube Norway, Teigenes Norvegia, VEKA Scheepsbouw BV Netherlands.

(10) The main competitors of the company on domestic relevant market are: Orsova Shipyard, Severnav Turnu Severin, Mangalia Shipyard. According to the market survey, the market share hold by SC NAVOL SA and its competitors is presented in table 2:

Table no. 2 - Market share afferent to 2004

Nr. crt.	The undertaking	Market share¹ (%)
1.	S.C. NAVOL S.A.	10.18
2.	Orsova Shipyard	35.48
3.	Severnav Turnu Severin	49.06
4.	Mangalia Shipyard	5.28

Source: The notification form

A large part of SC NAVOL SA's production is exported, the company holds on the relevant European market a market share of 0.038%.

(11) According to the annual reports of AWES – Association of the European Ship's Constructors and Repairing - an upward trend of demand on the relevant domestic market

¹ The market share was calculated by taking into consideration the shipyards having projecting capacities similar with those of S.C. NAVOL S.A. (18,000 TDW) and a similar products nomenclator.

is envisaged, with 1.2 % in comparison with the present one. The trend of the demand has as explanation the necessity of replacing the existing ships with new ones, in order to meet the requirements of the rules for the naval registers currently operating on the market (Det Norske Veritas, Germanischer Lloyd Bureau Veritas, etc). On the external market demand will increase in the following years as 5,000 old ships that were previously put out of service shall be replaced by new ones. Another fact that has an influence on the increase of demand is the customers' general choice for maritime transport as this is the cheapest and environmental friendly form of transportation.

The restructuring since 2000

(12) SC NAVOL SA inherited excessive debts due to State budget, banks and suppliers from the period when it was State owned. In that period, ships without any ante-calculation of costs were contracted and launched to fabrication, fact that led to losses amounting of approximately USD 5 million. Also, the company contracted a credit for the construction of 2 ships and totally used it without completing the construction of the ships and having no other financing sources to overcome this. In addition, the delays in supplying the ships had a negative impact on the company's image that, in the end, led to the reduction of company's presence on the market. In this context, after privatization, the company's management had to completely reorganize the business in order to be able to adapt to the new market conditions. Since 2000, the company has began its restructuring by disaffecting the production spaces, selling assets, identification of the new financing sources, concluding new contracts. The buyer of the share controlling interest made investments in amount of RON 5,367,000. The company paid a part of the debts to the State budget amounting RON 8,594,000.

(13) In 2001 and 2004, 2 State aids² consisting in exemptions and rescheduling for payment of overdue budgetary debts have been authorized to the company. Because of its difficult situation reflected in the lack of liquid funds, the company was not able to meet the schedule of pay-backs and, consequently, the facilities were cancelled. The Giurgiu Competition Inspectorates underlined this fact in the Control Note no. 42/20.02.2006.

(14) In the period 2003-2004, in condition of an excessive dryness in Europe, the water level of the Danube decreased very much under the navigation level, being recorded the lowest level in the last 164 years. In these conditions, any activity related to ships (moving, transportation) as part of the shipyard production and supply was impossible to be performed. This fact led to serious delays in the process of building and supplying the ships to beneficiaries. All these generated delays in obtaining revenues and, consequently, making impossible for the company to reimburse the bank loans and the other debts in due time. In the end, all these facts led to a financial collapse of the company, making it impossible to carry on the restructuring process of the shipyard.

(15) *The European Commission's Regular Report on Romania's progress towards accession of October 2004* indicates within its section 3 - "Ability to assume the obligations of membership" - that "Romania complies with the criterion of being a

² The Competition Council's decisions no. 487/2001 and no. 171/2004.

functioning market economy”. Consequently, when SC NAVOL SA has started its restructuring in 2000, the Romanian economy could not be regarded as a functioning market economy yet, this status was obtained at the end of 2004.

Support measures notified

(16) During this period, the company has had to pay penalties related to due debts registered before privatization and, consequently, it did not have sufficient funds for paying entirely the current debts to the state budget. These non payments attracted a lot of penalties, fact that led to a difficult relation with credit institutions that repeatedly stopped the financing of the shipbuilding under way. Since the company’s activity is a long cycle production, it can function only by sufficient and timely financing of the production process. The lack of financing caused delays in ships supplying, inducing the non accomplishment of the production plan and implicit the estimated cash flows. All these led to the impossibility of SC NAVOL SA to pay entirely the current debts due to the State. Today, the company still needs to reimburse several debts to the State.

(17) The support measures notified consist in facilities to payment of due debts to the State amounting of RON 26,297,024.12, respectively:

- exemptions to payment of debts due to consolidated State budget consisting in interests and penalties afferent to debits remaining at 30.06.2004, calculated until 30.06.2004 amounting RON 16,173,999.01 RON;
- exemptions to payment of penalties afferent to overdue debits (withheld at source) at 30.06.2004, calculated until 30.06.2004 amounting RON 57,573.88;
- exemptions to payment of debts due to AVAB consisting in interests and penalties afferent to debits overdue at 30.06.2004, calculated until 30.06.2004, amounting RON 1,641,293.76;
- exemptions to payment of penalties calculated until 30.06.2004, afferent to overdue debits (withheld at source) at 30.06.2004, taken over by AVAB, amounting RON 185,874.32;
- exemptions to payment of interests, penalties and increased value due to delay payment calculated until the date of issuing the order (estimated data is 30.09.2006) amounting RON 6,941,265.00;
- reschedule to payment for a 5 year period, with 6 months grace period included in rescheduling period, of the basis debit CASS taken over by AVAB, owned and unpaid at 30.06.2004, amounting RON 1,297,018.15.

The notified restructuring plan

(18) The notified restructuring plan covers the period 2005-2010 and was elaborated by the company and its shareholders. It includes measures on organizational, technological and financial restructuring and environment investments aiming at solving the causes that led SC NAVOL SA to difficulty.

(19) Synthetic, the measures comprised in the restructuring plan are included in the following table:

**Table no. 3 - The synthesis of the measures included in the restructuring plan
-RON-**

Measures	Deadline	Restructuring cost	Financing		
			Own sources	Shareholders sources	State aid
Organizational restructuring measures		1,951,750	1,951,750	-	-
Re-organization of production section as profit center	2010	532,250	532,250	-	-
Implementation of a informatics integrated system	2010	900,000	900,000	-	-
Training of employees	2008	377,500	377,500	-	-
Disaffection and assets capitalization	2008	140,000	140,000	-	-
The efficiency of productive personnel	2010	2,000	2,000	-	-
Environment protection measures		52,500	52,500	-	-
Modernization of ventilation installation	2010	15,000	15,000	-	-
Endowment and modernization of water laboratory analysis machine	2010	14,500	14,500		
Controlled storing of the offal	2010	23,000	23,000		
Technological restructuring measures		26,124,172	21,124,171	5,000,001	-
Procurement of sandblasting station RB-2800	2007	2,290,750	2,290,750	-	-
Procurement of welding equipments for steel – inox and aluminium	2008	416,500	416,500	-	-
Modernization of equipment compressed air	2008	249,900	249,900	-	-
Procurement of automatic welding equipments	2008	208,250	208,250	-	-
Procurement of ship painting installation	2009	416,500	416,500	-	-
Procurement of moving equipments for cutting and pipe bending	2009	624,750	624,750	-	-
Modernization of ships launching - trolley	2010	8,756,122	3,756,121	5,000,001	-
Modernization of ships outfit	2010	2,082,500	2,082,500	-	-
Implementation of the inox welding technology and other specific operations	2010	8,746,500	8,746,500	-	-
Modernization of water installation	2009	416,500	416,500	-	-
Modernization of facilities - O2, CO2 network and H2C2 network	2008	291,550	291,550	-	-
Renewing of the access way	2008	249,900	249,900	-	-
Procurement of harbor crane	2010	1,249,500	1,249,500	-	-

Modernization of mechanic trying laboratory and non-destructive control checking	2008	124,950	124,950	-	-
Financial restructuring measures		26,297,024	-	-	26,297,024
Reschedule to payment of debts due to consolidated state budget	2010	1,297,018	-	-	1,297,018
Exemption to payment of penalties and interests	2010	25,000,0006	-	-	25,000,0006
TOTAL		54,425,446	23,128,421	5,000,001	26,297,024

Source: The restructuring plan of SC NAVOL SA

The accomplishment of the restructuring plan notified needs a financial effort of RON 54,425,446.

3. ASSESSMENT OF THE MEASURES

Existence of aid

- (20) The criteria at the basis of the assessment of the state aid character of a support measure are stipulated by Article 2 (1) of the Law on State aid, republished. Thus, State aid represents any support measure taken by the State or local authorities, from State resources or resources of the local administration, regardless of its form, that distorts or threatens to distort competition, by means of favourising certain undertakings, the production of certain goods or providing of certain services or that affects trade between Romania and Member States of the European Union, being incompatible with a normal competition environment.
- (21) The notified financial support consists in renouncing by the State to certain revenues. Thus, state resources are involved. This support measure shall address a certain undertaking, namely SC NAVOL SA, having therefore a selective character. Granting these facilities shall have a favorable effect on the economic and financial indicators of the undertaking, mainly on the cash-flow. Therefore, the undertaking is being granted an economic advantage, being favoured compared to its competitors.
- (22) Moreover, there is no doubt that the financial measures affect trade with Member States of the European Union, taking into consideration that the products offered by SC NAVOL SA compete with similar products manufactured by firms within the European Union.
- (23) Thus, the notified financial support measures to be granted to SC NAVOL SA are considered State aid and fall under the provisions of Law nr.143/1999 on State aid, republished.

Legal basis for the assessment

- (24) Article 2 of Law nr.143/1999 on State aid, republished, stipulates that state aid granted by the state or from state resources, distorting or threatening to distort competition and affect trade between Member States, are incompatible with a normal competition environment. Still, certain aid measures may be deemed compatible and authorised by the Competition Council, on the condition that these measures are granted observing certain criteria provisioned by the Regulations and Instructions of the Competition Council.
- (25) Since SC NAVOL SA faces serious financial difficulties, the notified aid can only be considered compatible if the conditions laid down in the Regulation on state aid for rescue and restructuring firms in difficulty, applied through Order of the Competition Council's President no. 501/23.11.2004, published in the Official Gazette no.1215/17.12.2004 (hereinafter called the Regulation) are respected.
- (26) The Competition Council assesses the compatibility of the State aid to be granted to SC NAVOL SA in accordance with the criteria stipulated by the Regulation, respectively:
- firm's eligibility - firm in difficulty and group affiliation;
 - restoration of long-term viability;
 - avoidance of undue distortions of competition;
 - aid limited to the minimum: real contribution, free of aid;
 - „one time, last time” principle;
 - full implementation of the restructuring plan and monitoring.

Eligibility - firm in difficulty

- (27) In order to benefit of state aid according to the Regulation, the firm has to be in difficulty. It is considered that “a firm is in difficulty if it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.
- (28) Article 2 (2) (c) of the Regulation stipulates that a firm, regardless of its type, is regarded as being a firm in difficulty, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.
- (29) Having current debts in a total value of RON 83.72 million in 2004 that represent almost four times the value of the registered share capital of the company, the Competition Council considers that the company is currently facing a situation of possible insolvency procedure. Thus, SC NAVOL SA fulfils the eligibility condition stipulated by Article 2 (2) (c) of the Regulation.

Group affiliation

- (30) According to the provisions of Article 2 (5) of the Regulation, a firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (31) SC NAVOL SA's difficulties are intrinsic and are mainly due to the high level of delay penalties afferent to debts accumulated prior to privatisation and to certain extraordinary situation the firm has been confronted with.
- (32) The firm's main shareholders are Ioan Alexandru, owning 30.5422% of the registered capital, and SIF Muntenia, owning 49.7710% of the registered capital.
- (33) Ioan Alexandru controls the following undertakings: SC SOLID SYSTEM SA, SOLID TRADE SERVICES GmbH Viena and SC ALEXANDER TRADING CO SRL. AVAS submitted to the Competition Council data on the economic-financial status of these undertakings. According to their balance sheets, these firms registered a total profit of RON 3,325,450 at the end of 2004. The Competition Council concludes that Mr. Ioan Alexandru carried out investments in SC NAVOL SA with a total value of RON 5,367,000 during 2000-2004 and commits to the financing of the notified restructuring plan with RON 5,000,001.
- (34) SIF Muntenia³ is a collective investment organism which, according to the legislation in this field, is not allowed to grant loan or provide guarantees to an undertaking, but only subscribe shares or bonds issued by the firm. As mentioned before, SIF Muntenia owns 49.7710% of the SC NAVOL SA registered capital. If SIF Muntenia had participated to a new increase in registered capital of S.C. NAVOL S.A., it would exceeded the 50% quota, and according to Article 203 of the Law no.297/2004 on the capital market, would have been obliged to organise the public takeover offer of the SC NAVOL SA shares owned by the other shareholders. In these conditions, SIF Muntenia could reach aprox 90% of S.C. NAVOL S.A.'s registered capital and, according to the legal provisions in force, the undertaking would be unlisted. Moreover, according to the prudential provisions on the structure of a collective investment organism portfolio, SIF Muntenia has to limit its shareholdings in not listed undertakings to less than 30% of the undertaking's share capital. Consequently, according to the legislation regulating SIFs' activity, if SIF Muntenia participated in the increase of S.C. NAVOL S.A.'s registered capital over the owned quota, CNVM⁴ would have cancelled the subscriptions and subsequently the undertaking would have no longer benefit from the funds obtained by subscription.

³ Muntenia Financial Investments Society

⁴ National Securities and Exchange Commission

- (35) The Competition Council notes that, in order to obtain the funds required for the development of SC NAVOL SA's activity, the shareholders have decided to issue new shares. SIF Muntenia subscribed and acquired shares in SC NAVOL SA in 2003 and 2004 (reaching 49.7710% of NAVOL's registered capital), the financing obtained by this means amounting to 8,228,441 RON.
- (36) Taking into consideration the above-mentioned facts, the Competition Council concludes that the resources and the support possibilities of SC NAVOL SA's shareholders are insufficient for solving the difficulties the firm is confronted with. Thus, state's intervention is necessary.

Restoration of long-term viability

- (37) According to Article 13 of the Regulation, the grant of the restructuring aid must be conditional on implementation of the restructuring plan which must be endorsed by the Competition Council. The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. The improvement in viability must derive mainly from internal measures contained in the restructuring plan; it may be based on external factors such as variations in prices and demand over which the company has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring. The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges.
- (38) Restoration of SC NAVOL SA's viability mainly derives from:
- financial restructuring by means of granting the notified state aid;
 - carrying out technological and environmental investments leading to increased productivity by means of reducing production costs, to increased quality of the products/services, as well as to the observance of the environmental standards.
 - organisational restructuring mainly consisting in the de-allocation and selling of certain assets, reorganisation of the production centres as profit centres and carrying out an extensive personell training, specialization and certification program.
- (39) By means of the proposed restructuring measures, harmonisation of the production capacities with the possibilities of the internal and external products absorbtion markets, rehabilitation and modernisation of technical equipments in view of correlating them with the firm's production necessitites and of reducing production costs, profit generation, as well as increased financial liquidities are envisaged.
- (40) The firm's restoration to viability options have been assessed and are supported by:

- positive forecasts of the market study (annex to the restructuring plan) on the evolution of the shipbuilding and repairs market;
- firm's external partners' orders for shipbuilding, ongoing during the restructuring period;
- experience in building any complete ship to the capacity of 5,600 TDW, qualified workforce, agreed by all naval registers, high request adaptability of the firm's technologies.

- (41) By means of the granting of the State aid, the firm shall be relieved of the payment of the debts to the state consolidated budget, therefore becoming credible against creditors. Thus, the firm shall obtain its shipbuilding projects' financing and be able to respond to the clients' orders.
- (42) Through implementation of the measures included in the restructuring plan, an improvement of the economic-financial indicators is foreseen, as follows:

Table no.4 – Forecasted evolution of the economic-financial indicators – RON –

Indicators		2005	2006	2007	2008	2009	2010
1	Total incomes, out of which:	17,950,000	25,580,000	26,680,000	28,150,000	29,400,000	30,890,000
	- Exploitation incomes	16,400,000	23,500,000	25,400,000	26,600,000	27,900,000	28,700,000
	- Net turnover	16,040,000	21,820,000	24,620,000	25,520,000	26,300,000	26,580,000
	- Financial incomes	1,550,000	2,080,000	1,280,000	1,550,000	1,500,000	2,190,000
	- Extraordinary incomes	0	0	0	0	0	0
2	Total expenditures, out of which:	23,470,550	26,620,000	27,170,500	28,050,500	28,840,500	30,000,500
	a) exploitation	20,120,550	22,890,000	23,770,500	24,850,500	25,840,500	27,150,500
	b) financial	3,250,000	3,530,000	3,200,000	3,000,000	2,800,000	2,650,000
	c) extraordinary	100,000	200,000	200,000	200,000	200,000	200,000
6	Gross profit (+) / Loss (-)	-5,520,550	-1,040,000	-490,500	99,500	559,500	889,500

Source: SC NAVOL SA's restructuring plan

- (43) As a result of the achievement of the measures in the restructuring plan, the firm forecasts to reach the following target indicators in 2010:

Table no.5 - Targeted economic-financial indicators

Gross profit	RON	889,500
Turnover	RON	26,580,000
Employees	number	779
Own capital	RON	20,767,500
Claims recovery duration	zile	28
Debts payment duration	zile	201
Indebtness degree	%	71,51
Economic rentability	%	0,75
Financial rentability	%	3,60
Cash flow	RON	4,837,900

Source: SC NAVOL SA's restructuring plan

- (44) Taking into consideration the above-mentioned facts, the Competition Council considers that the proposed restructuring plan shall lead to restoration of SC NAVOL SA's long term viability.

Avoidance of undue distortions of competition (compensatory measures)

- (45) According to the provisions of the Regulation, in order to ensure that the adverse effects on trading conditions are minimized as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken. The measures must be in proportion to the distortive effects of the aid and, in particular, to the size and the relative importance of the firm on the relevant markets. Reducing the firm's market presence is established on the basis of the market survey attached to the restructuring plan and, where appropriate, on the basis of any other relevant information. The reduction must be an integral part of the restructuring as laid down in the restructuring plan.
- (46) According to the information submitted by AVAS, the firm closed and de-allocated the following non-viable assets: oxygen storage facility, turning and boring lathe type SC 43, galvanizing installation, carbon dioxide storage facility and related installation, plasma-jet cutting machine. The de-allocation of these assets led to a reduction in production capacity of 3%. This capacity reduction is not considered a compensatory measure according to the Regulation, because it contributes to the elimination of loss generating activities.
- (47) Taking into consideration the 10.18% market share of SC NAVOL SA on the relevant market, with a view to avoid the distortion of competition, as a compensatory measure, the firm shall irreversibly reduce its viable production capacity from 12,000 tonnes in 2004 to 9,600 tonnes in 2010, namely 20%. Thus, 10 assets and 547 fixed assets shall be closed and capitalised: lathes, rolling bridges, acetylene plant, cranes, metallic coating installation, iron sheet bending press, metal-processing machines, etc.
- (48) Taking into consideration the above-mentioned facts, the Competition Council considers that the state aid shall only be used to the firm's restoration of long term viability, without allowing the beneficiary to extend its production capacity while implementing the restructuring plan.

Aid limited to the minimum: real contribution, free of aid

- (49) According to the provisions of article 15 of the Regulation, the amount and intensity of the aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. In accordance with the provisions of Article 15 (2) of the

Regulation, for large undertakings, a contribution of at least 50% is considered to be appropriate.

- (50) SC NAVOL SA's total restructuring cost amounts to RON 54,425,446 and is supported from the following sources:

- firm's own sources	RON 23,128,421
- shareholder capital injection	RON 5,000,001
- state aid	RON 26,297,024.

- (51) The state aid's beneficiary's contribution to the covering of the restructuring costs, in a total value of 28,128,422 RON, represents 51.7% and is ensured by:

- shareholder capital injection	RON 5,000,001
- incomes from the sale of assets ⁵	RON 10,831,807
- credit under market conditions	RON 12,296,614

The state aid's intensity, calculated as ratio between the state aid value and the total restructuring cost is that of 48.3%.

- (52) Taking into consideration the above-mentioned facts, the Competition Council considers that own financial sources are certain and the own contribution of 51.7% to the restructuring costs is significant, demonstrating reliability in the practical value of the restructuring, as well as the fact that the value and intensity of the state aid have been limited to minimum necessary in order to allow restructuring depending on the existent financial resources of the undertaking and its shareholders. Thus, the firm does not receive additional liquidities that might be used in aggressive, distortive activities on the market.

“One time, last time” principle

- (53) The Competition Council considers that both the restructuring started in 2000 and ongoing, and the notified restructuring plan (which spreads until the end of 2010) constitute parts of the same and single restructuring. Such a long restructuring period as one single restructuring is not usually accepted. However, in SC NAVOL SA's case, the Competition Council has found a conjunction of exceptional circumstances (see para (14) si (15)), justifying that the restructuring measures realised since as far as in 2000 should be seen as being parts of the same restructuring as the notified measures. Firstly, as already mentioned, when the restructuring started in 2000, Romania could not yet be considered as a functioning market economy. Secondly, the overdue budgetary debts to be exempted and rescheduled find their origin in the period prior to the privatization (2000), when Romania was not yet a market economy. Thirdly, during this period, a situation of absolute necessity (excessive drought 2003-2004) took place, that affected the normal development of the firm's restructuring process.

⁵ Actives were evaluated by independent authorised experts.

- (54) As shown in para. (13), SC NAVOL SA has not benefited from the facilities for the payment of overdue budgetary debts authorized in 2001 and 2004, these debts being replaced in the firm's liability. Since following the extraordinary circumstance presented above, the period 2000-2010 was accepted as restructuring period, the Competition Council evaluated as restructuring state aid the facilities for the payment of the debts accumulated by the firm until 30.06.2004 (including the debts replaced in the firm's liability). The Competition Council hereby underlines that this extraordinary circumstances could not justify any prolongation of the restructuring beyond the dates included in the notified plan or the granting of any additional rescue or restructuring aid.

Annual monitoring and reporting

- (55) According to the provisions of Article 18 of the Regulation, the Competition Council permanently monitors the implementation of the restructuring program in order to ensure fulfilment of the established objectives.
- (56) The Competition Council shall monitor the implementation of the restructuring program until the end of the period, in order to ensure that increases in the production capacities, major failures in achieving the restructuring measures shall not exist and that the state aid shall not lead to additional liquidities to be used for different activities than the ones included in the restructuring program.

4. CONCLUSIONS

- (57) Taking into consideration the above-mentioned facts, the Competition Council considers that the individual state aid to be granted to SC NAVOL SA is compatible with a normal competition environment and does not significantly affect trade with Member States of the EU.

DECIDES

Art. 1. The financial support measures to be granted to SC NAVOL SA represent State aid according to Article 2 (1) of the Law no. 143/1999 on State aid, republished.

Art. 2. According to the provisions of Article 21 (2) (c) corroborated with Article 23 (1) (e) of the Law no. 143/1999, republished, the restructuring aid intended to be granted to SC NAVOL SA is authorized with the condition to observe the provisions of Articles 3 and 4 of the present Decision.

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

Art. 4. The company shall reduce the production capacities until 2010 according to the assumed restructuring plan.

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

Art. 6. The value of the State aid that is going to be granted is of 26,297,024 RON.

Art. 7. The present decision becomes applicable since its communication.

Art. 8. In accordance with the provisions of Article 32 of the Law no. 143/1999 on State aid, republished, AVAS shall submit to the Competition Council information on the State aid granted in order to be inventoried and monitored. In addition, AVAS shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must demonstrate that the company observed the compensatory measures concerning the reduction of the production capacities imposed by the present decision.

Art. 9. In accordance with Article 46 of the Law no. 143/1999 on State aid, republished, the present decision can be appealed by the interested parties in the Court of Appeal, Administrative Contentious Department, within 30 days from the communication.

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

- AVAS, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- SC NAVOL SA, str. Portului nr. 45-46, Oltenita, Judetul Calarasi, cod postal 915400.