

## **DECISION of the Competition Council**

**no. 193 from 23.08.2006**

**regarding the State aid to be granted to  
S.C. C.N.F. GIURGIU NAV S.A. Giurgiu**

### **THE COMPETITION COUNCIL,**

Taking into consideration the provisions of the European Agreement establishing an association between Romania and the European Communities and their Member States, ratified by Law no.20/1993, published in the Official Gazette, Part I, no. 73 of 12.04.1993;

Taking into consideration the provisions of Competition Law no. 21/1996, republished in Romania's Official Gazette no 742, I Part of 16.08.2005;

Taking into consideration the provision of Law no 143/1999 on State aid, republished in the Official Gazette no. 744/16.08.2005, Part I;

Taking into consideration the provisions of the Regulation regarding the Regulation on the form, content and other details provided in the complaint regarding the State aid notification, adopted by Order no. 528/31.12.2004, published in the Official Gazette of Romania no.82/25.01.2005;

Taking into consideration the provisions of the Regulation regarding the State aid for the rescuing and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1215 of 17.12.2004;

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

**Based on the following,**

### **1. PROCEDURE**

- (1) By the letter no. VP4/2734/08.05.2006, registered at the Competition Council no. RS-AS 87/10.05.2006, the Authority for the State Assets Recovery (hereinafter named AVAS) notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the individual state aid for the restructuring of S.C. C.N.F. GIURGIU NAV S.A. Giurgiu (hereinafter named GIURGIU NAV) within the privatization context.

- (2) Since the information provided was not complete and accurate, the Competition Council requested AVAS additional information by letters no. DAAS/738/15.05.2006 and DAAS/771/18.05.2006. AVAS transmitted the required information by letters no. DCS/1649/16.05.2006, DCS/1706/22.05.2006 and VP4/3074/23.05.2006.
- (3) The notification became effective at the date when the information was accurate and complete, respectively on 23.05.2006.

## 2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

- (4) The financial support measures will be granted to GIURGIU NAV on the basis of EGO no. 26/2004 regarding several measures for the achievement of the privatization of the undertakings within the portfolio of AVAS and the consolidation of several privatizations, amended, completed and approved by Law no. 442/2004 and of EGO no. 26/2005 *regarding abrogation of the legal provisions concerning facilities for the payment of overdue budgetary obligations*, approved with subsequent amendments and completions by Law no. 244/2005.
- (5) The support measures consist of facilities for the payment of overdue obligations, in amount of RON 8,455,901.31, respectively exemptions from payment in amount of RON 7,035,697.27 and payment scheduling in amount of RON 1,420,204.04 as follows:

***Tabel no. 1 - Facilities to be granted to GIURGIU NAV***

No.	Facility	Amount -RON-	Grantor
1.	Exemption from the payment of 87% of the overdue budgetary obligations unpaid until 31.12.2003	1,642,676.90	MFP <sup>1</sup>
2.	Exemption from the payment of interest, penalties of any type corresponding to the overdue budgetary obligations unpaid until 31.12.2003	4,843,015.25	MFP
3.	Exemption from the payment of interest and delay penalties owed to FNASS overtaken in order to be recuperated by AVAS	550,005.12	AVAS
	<b>TOTAL EXEMPTIONS</b>	<b>7,035,697.27</b>	
5.	Payment scheduling over a period of 5 years, with a 6-month grace period, of the overdue budgetary obligations unpaid until 31.12.2003	981,183.66	MFP

<sup>1</sup> Ministry of Public Finances.

6.	Payment scheduling of the debts towards FNASS overtaken in order to be recuperated by AVAS	439,020.38	AVAS
	<b>TOTAL PAYMENT SCHEDULING</b>	<b>1,420,204.04</b>	
	<b>TOTAL FACILITIES</b>	<b>8,455,901.31</b>	

Source: Notification form

### 3. BENEFICIARY OF THE FINANCIAL SUPPORT MEASURES – GIURGIU NAV

- (6) GIURGIU NAV is a joint stock company with headquarters in Giurgiu, Giurgiu county, with the registration number at the Trade Register J52/32/1991 and CUI 1285410, fiscal attribute R. The beneficiary is situated in the South Development Region, which is considered an assisted area, in accordance with the provisions of Art. 87(3) (a) of the EC Treaty.
- (7) The company was privatized in 2004, by signing the shares sale-purchase contract no. 86/13.12.2004. As a result of the share ownership transfer, on 13.12.2004, the shareholders' structure, according to the registration request no. 882/28.01.2005, is as follows:

**Table no. 2 - GIURGIU NAV's shareholders' structure after privatization**

SHAREHOLDERS	CAPITAL OWNED	
	Number of shares	Percent in the equity (%)
S.C. PETROMSERVICE S.A.	3,592,648	68.5380
Asociatia PAS Giurgiu Nav	1,539,706	29.3734
Other shareholders	109,480	2.0886
<b>TOTAL</b>	<b>5,241,834</b>	<b>100.0000</b>

Source: Notification form

- (8) At the end of 2004, the company had an average number of 675 employees and a turnover of RON 21,794,662, being therefore a large company.
- (9) The main activity of the company is the transport on inland waterway - code CAEN 6120. Therefore, the main services provided by the company are the following:
- fluvial transport of merchandise and passengers, domestic and international;
  - rental of fluvial means of transport with ship's crew;
  - maintenance and repair of ships for third persons.
- (10) Secondary, the company has other activities related to fluvial transport, such as: piloting and mooring, supplying the ships, rescuing the ships, cleaning the barns and storehouses of the ships, clearing the tankers, binding - unbinding ships at the shore, brokerage.

- (11) Fluvial transport is done by propelled ships (passengers ships, pushers and fluvial tug boats) and by non-propelled ships (barges, fluvial tanks, deposit tanks, barge tanks, mooring pontoons). At the same time, the company has a department of maintenance and repairs ships and portuar equipments, where there are workshops for mechanical processing by cutting, for welding, winding, forge and foundry, charging accumulators, carpentry, radio stations - telephones and radar stations.

#### **4. RELEVANT MARKETS**

- (12) GIURGIU NAV is active on the following relevant markets: fluvial transport of merchandise, fluvial transport of passengers, rental of fluvial means of transportat with ship's crew and maintenance and repair of ships. The company is providing these services on both the Romanian and external market.

- (13) [...] <sup>2</sup>

- (14) The main competitors of GIURGIU NAV and their market shares are the following:

- for fluvial transport of merchandise: CNFR Navrom SA (33.8%), SC Argos SA (17.01%), SC Touax Rom SA (4.25%), SC Spet Shipping SA (3.59%) SC Navigatia Fluviala Romana Drobeta SA (2.95%) etc.;
- for rental of fluvial means of transport: CNFR Navrom SA (28.82%), SC Argos SA (14.64%), SC Touax Rom SA (3.72%), SC Spet Shipping SA (3.31%) SC Navigatia Fluviala Romana Drobeta SA (2.67%) etc.;
- for maintenance and repair of ships: SC Daewoo Mangalia Heavy Industries SA (24.96%), SC Santierul Naval Damen SA (20.36%), SC Aker Tulcea SA (8.37%), SC Santierul Naval SA Constanta (7.29%), SC Aker Braila SA (6.33%), SC Santierul Naval Orsova SA (4%), SC Rig Service SA (3.68%) etc.

- (15) The customers of GIURGIU NAV's services of merchandise transport and ships rental are companies from the chemical industry, metallurgical industry, wood and furniture industry, agriculture, as well as fluvial transporters. GIURGIU NAV performs repair activities for national and foreign companies endowed with ships. Therefore, the main beneficiaries of GIURGIU NAV's services are the following: SC Northstar Shipping SA Constanta, SC Hercules SA Braila, SC Lufadori Extract SA Constanta, Luftner, Quality Tours, Imet Viena, Yufos, SC Pilot Autogas SA Bucuresti, SC Port Nav Galati, SC Danubtrans Tulcea, SNP Petrom SA, SC Romnav Braila, Petbul 6 LTD Bulgaria, Seabuilt Bulgaria.

- (16) According to the information transmitted by AVAS, the company is delivering services of passangers transport only on the external market, on the routes Passau – Budapesta –Viena –Passau and Giurgiu-Viena-Giurgiu, in this respect having concluded contracts with tourism companies from Austria and Denmark. On this market, the company is competing with more than 70 passangers ships that belong

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<sup>2</sup> Confidential data.

to companies from Switzerland, France, Ukraine, Germany, Bulgaria, Netherlands and Austria, having a market share of approx. 5.8%.

- (17) According to the market study, the demand on the relevant markets where the company is active will have an increasing trend in the next 5 years. For the fluvial transport of passengers this trend is determined by the increase of the number of passengers, at European and global level, who purchase touristic services on the Danube, as well as by the increase of the number of travel agencies which offer such services. The continuous demand for fluvial transport of merchandise is based on the fact that this type of transport represents the most advantageous solution from the economic point of view (in terms of reduced costs and transport duration) and the ecological one. On the routes Novisad-Constanta, Budapesta-Constanta an intensification of cereals and phosphate transit, arriving from the Middle East to Constanta harbour, is foreseen and on the route Romania-Serbia an increase of the oil products transport is foreseen. At the same time, the repair of ships services will be more and more demanded on the Romanian market, since an important part of the national fleet needs repairing in order to comply with the national and European naval technical requirements, because otherwise purchasing new ships would imply high amounts of money.

## 5. FINANCIAL STATUS OF THE COMPANY PRIOR TO PRIVATIZATION

- (18) The evolution of the main economic and financial indicators registered by GIURGIU NAV between 2002-2004 is the following:

**Table no. 3 -** The evolution of the main indicators for 2002-2004

INDICATORS	2002	2003	2004
Turnover (RON)	18,515,510	19,966,078	21,794,662
Inflation rate	1	1.14	1.09
Turnover, in prices compared to 2002 (RON)	18,515,510	17,514,104	17,539,564
Gross result (RON)	654,209	(1,964,344)	(5,116,829)
Own capital (RON)	11,959,494	6,849,376	(5,220,555)
Total debts (RON)	8,465,898	11,645,607	16,690,444
Stocks (RON)	297,838	286,931	343,586
Indebtedness degree (%)	95.25	212.74	-300.55
Intermediary liquidity (%)	1.005	0.72	0.19

*Source: Notification form*

The analysis of the above-presented economic and financial indicators, registered by GIURGIU NAV prior to privatization, shows: a decrease of the turnover in compared prices, an increase of losses, a significant increase of the amount of debts, a deterioration of own capital which had negative values, liquidity indicators much below the normal limit, all these indicating a decline of the economic-financial situation of the company.

(19) The main causes leading to this difficult situation of the company are the following:

- fortuitous events: imposing the embargo and blocking the fluvial transport on the Danube as a consequence of the war in Yugoslavia, stopping navigation on the Danube as a consequence of the strong drought from 2003;
- lack of the necessary financial funds for repairing and modernizing the propelled and non-propelled ships;
- deterioration of the technical status of the ships for merchandise transport, which made some of them unusable since they did not comply with the new international naval requirements on up-stream Danube and on Rhine–Main Channel;
- keeping in its portofolio some unprofitable assets for which the company is paying high costs;
- obsoleted and worn out assets, involving high consumptions of fuel and physical work, which do not comply with the labor protection standards (having high risks for accidents and exposure to work diseases);
- most of the non-propelled ships are equipped with wood floor ceilings which deteriorate easily and causing losses of merchandise;
- lack of installation within department of maintenance and repairs;
- defficiencies of the organizational structure and of the IT and informational system.

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

## **6. DESCRIPTION OF THE PRIVATIZATION PROCESS**

(21) In 2004, AVAS offered for sale, by meaning of negotiation based on final and irrevocable offers, the shares controlling interest hold by GIURGIU NAV, representing 97.9114% of its registered capital, 5,132,354 shares respectively.

(22) The sale announcement was published in „Romania Libera” „Economistul” „Gazeta de Giurgiu”, and in „Wall Street Journal” on internet and at the undertaking’s headquarters and at AVAS’ headquarters in July 2004.

(23) Through the shares sale offer, potential buyers were informed about the possibility to request, in written form, according to the legislation in force, direct access to the technical, economic, financial and legal data concerning the company. Moreover, the presentation dossier stipulated that the undertaking would benefit from facilities for the payment of debts due to the budgetary creditors, in accordance with the legal provisions.

(24) 4 presentation files were bought and one purchase bid was submitted by the Consortium made up of Employees’ Association (PAS CNF GIURGIU NAV) and

the company SC PETROMSERVICE SA Bucuresti. The bid was declared admitted and negotiations with the investor started.

- (25) The privatization was finalised by signing the share sale-purchase contract no. 86/13.12.2004, concluded between AVAS and the Consortium made up of Employees' Association and the company SC PETROMSERVICE SA Bucuresti. The conditions of the privatization contract are the following: [...] <sup>3</sup>.

## **7. DESCRIPTION OF THE RESTRUCTURING PROGRAM**

- (26) The restructuring plan for 2005 – 2009 submitted to the Competition Council was drawn up by the company in cooperation with the buyer and approved by AVAS. This plan includes the measures required to carry out the company's re-organization, technical and financial restructuring and environment investments aiming to intervene on the causes which determined the difficult situation of GIURGIU NAV.

- (27) GIURGIU NAV's restructuring is focused on the following main directions:
- modernization of the ships in order to comply with the international technical standards and to be able to face competition;
  - costs reductions regarding raw materials, materials and utilities;
  - modernization of the current informational systems with the design of new modern decision-making systems;
  - increased use of the capacities from the department of repairs ships and of the fluvial transport ships;
  - improvement of the activity' performance and the increase of labour productivity;
  - attaining the financial balance;
  - diversification of the portfolio of clients;
  - compliance with environmental requirements.

- (28) Synthetically, the measures included in the restructuring plan are as follows: [...] <sup>4</sup>

- (29) Implementing the restructuring program requires a total financial effort amounting to RON [...] <sup>5</sup> and seeks to restore GIURGIU NAV's viability.

### **7.1. Organizational restructuring**

- (30) The organizational restructuring comprises the following measures:

[...] <sup>6</sup>

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<sup>3</sup> Confidential data.

<sup>4</sup> Confidential data.

<sup>5</sup> Confidential data.

<sup>6</sup> Confidential data.

## **7.2. Technical restructuring**

- (31) The technical restructuring measures imply a cost of RON [...] <sup>7</sup> and are entirely financed by the buyer; these are synthetically presented in table no. 6.

[...] <sup>8</sup>

## **7.3. Environmental protection restructuring measures**

- (32) The environmental protection restructuring measures regard environmental investments comprised in the Compliance program, annex to the environment opinion, amounting to RON [...] <sup>9</sup>.

## **7.4. Financial restructuring**

- (33) The financial restructuring encloses the following measures:

[...] <sup>10</sup>

## **8. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES**

- (34) The criteria which allow to establish if a measure constitutes State aid, are presented in art. 2(1) of Law no.143/1999 on State aid, republished. Thus, any support measure granted by the State or from State resources or resources of the local administration, no matter the form, that distort or threaten to distort competition, by favouring certain enterprises, the production of certain goods or the provision of certain services, or that affect the trade with the Member States represents State aid and is considered incompatible with a normal competitive environment.
- (35) The financial support granted to GIURGIU NAV, in the privatization context, consists in the State renouncing to collect certain revenues, therefore state resources are involved.
- (36) The financial support measures are granted to a certain undertaking, namely GIURGIU NAV, thus having a selective character.
- (37) Taking into consideration the fact that the facilities are granted in the privatization context, in order to assess whether an economic advantage is granted to GIURGIU NAV, the behaviour of the State should be compared to that of a prudent private investor/seller acting in similar conditions (the prudent private investor test). It can be considered that the State is acting like a prudent private investor/seller at

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<sup>7</sup> Confidential data.

<sup>8</sup> Confidential data.

<sup>9</sup> Confidential data.

<sup>10</sup> Confidential data.



privatization, if it can be proved that it obtains the best price for the selling of its shares, respectively the price obtained is higher than the amount of the facilities to be granted.

- (38) The price paid by the buyer for purchasing the main share package amounts RON 5,813,242.8 and is lower than the facilities intended to be granted to GIURGIU NAV, namely RON 8,455,901. A private investor would have accepted a negative price only if the costs of winding-up have exceeded the privatization costs. AVAS informed the Competition Council that, prior to privatization, no comparative analysis of the liquidation and privatization costs of GIURGIU NAV was conducted.
- (39) Taking into consideration the above mentioned facts and the terms from the privatization contract<sup>11</sup>, the Competition Council considers that the principle of the prudent private investor does not apply in case of GIURGIU NAV's privatization. Granting the facilities to the company will have a favorable effect on the economic-financial indicators, especially on cash-flow, thus an advantage is created on the relevant markets.
- (40) In addition, there is no doubt that the financial support affect the trade with the Member States, since GIURGIU NAV's services compete with similar services provided by companies from the European Union.
- (41) Therefore, the financial support measures to be granted to GIURGIU NAV in the privatization context are considered State aid and fall under the provisions of State aid Law no. 143/1999, republished.

## **9. STATE AID COMPATIBILITY WITH THE LEGISLATION IN THE FIELD**

- (42) The State aid objective is the restructuring of GIURGIU NAV in view of company's return to viability at the end of the restructuring period.
- (43) The restructuring State aid must be conditioned by the implementation of a feasible, coherent restructuring plan to prove the company's long term viability. For this, the *Regulation on state aid for rescuing and restructuring firms in difficulty*, (hereinafter called Regulation) published in the Official Gazette no. 1215/17.12.2004 issued in application of Law no. 143/1999 on state aid, republished, provides that the restructuring usually implies one or more of the following elements: re-organizing and rationalizing the company's activities on a more efficient basis, usually meaning the redrawn from those activities that are generating losses, restructuring the existing activities which can become competitive again and sometimes their diversification towards new, profitable activities. The

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<sup>11</sup> It should be mentioned that the existence of the conditions imposed by the privatization contract (see paragraph 25) is normally sufficient to consider that private investor test is not fulfilled .

industrial restructuring must be usually followed by the financial restructuring (capital injections, reduction of the indebtedness degree, etc.).

- (44) The Competition Council assesses the State aid granted to GIURGIU NAV according to the criteria foreseen in the Regulation pursuing:
- firm eligibility– firm in difficulty and affiliation to a group of firms;
  - the restructuring plan; the restoration of the long-term viability
  - preventing any excessive distortion of competition;
  - the correct dimensioning of aid which must be limited to the minimum necessary (proportionality of aid);
  - fulfilling the “first time- last time” principle;
  - assurance of the fulfilment of the objectives included in the restructuring plan and monitoring their implementation.

### **9.1. FIRM IN DIFFICULTY**

- (45) In order to benefit of State aid in accordance with the Regulation, a company must be in difficulty. It is considered that “a company is in difficulty when it is not able to cover its losses either from its own financial resources or from resources that it may obtain from the owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost certainly lead to the company’s demise.
- (46) According to Article 2 (2) (b) of the Regulation “a company is considered as being in difficulty when more than half of its own capital, as the accounting records of the company show, and more than a quarter of its capital was lost during the last 12 months”.
- (47) In this respect, the Competition Council notes that, according to those mentioned at paragraph (18), the company registered a loss in capital amounting RON 12,070,931 during the last 12 months before restructuring, from RON 6,849,376 in 2003 to RON 5,220,555 in 2004. This loss represents “more than half of its own capital”, thus being fulfilled the condition provided in article 2 (2) (b) of the Regulation in order for GIURGIU NAV to qualify as “firm in difficulty”.

### **9.2. AFFILIATION TO A GROUP OF FIRMS**

- (48) According to the provisions of art. 2 (5) of the Regulation, a company belonging to a group is not normally eligible to receive State aid for rescue and restructuring, except for the case when it can be proved that the financial difficulties belong to the company itself and are not the outcome of an arbitrary allocation of costs within the group and that these difficulties are too serious to be handled by the group itself.
- (49) GIURGIU NAV’s difficulties are specific, since they are not the outcome of an arbitrary allocation of costs within the group, due to the large amount of delay penalties corresponding to debits accrued prior to privatization.

(50) [...] <sup>12</sup>

- (51) According to AVAS's information, as the company's balance sheets show, the firms within the group to which GIURGIU NAV belongs after privatization, achieved in 2004 a cumulated turnover in amount of RON 1,194,646,951 and a total profit of RON 68,749,244. At the same date, their debts amounted to RON 301,512,971, approximately 4,4 times higher than the registered profit. Simultaneously, through the privatization contract, SC Petromservice SA Bucharest committed to invest in the company an amount of Euro 2,989,496.97, respectively approximately RON 12,050 thousand.
- (52) Based on the above analysis, the Competition Council concludes that the group of which GIURGIU NAV is part after privatization does not have the financial capacity to deal with the company's difficulties, respectively to cover its overdue debts to the state, in amount of RON [...] <sup>13</sup>.

### **9.3. RESTORING THE COMPANY'S LONG TERM VIABILITY**

- (53) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan (subject to an assessment by the Competition Council). The restructuring plan, which must be as short as possible, must include the abandonment of loss making activities and it must offer the company long term viability, thereby allowing it to function on its own resources. The restructuring plan must be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures as well as from taking into consideration external factors such as price and demand variation over which the company has no substantial influence.
- (54) Given the difficult situation of GIURGIU NAV at privatization, the restructuring of the company was decided and a restructuring program was drafted for the period 2005-2009. The summary of the restructuring measures of GIURGIU NAV was presented in chapter 7.
- (55) The analysis of the restructuring plan and the assessment of the way in which it leads to the achievement of the long term viability of GIURGIU NAV take into consideration the provisions of article 13 of the Regulation.
- (56) The restructuring plan of GIURGIU NAV starts from the technical and economic data that reflects the company's activities in the period prior to privatization. This includes the circumstances which led to the difficult financial situation of GIURGIU NAV and also the measures which will allow the restoring of company's long term viability. The Competition Council notes that the measures foreseen in the restructuring plan aim at counteracting the causes of the company's difficulty situation by modernizing and increasing the efficiency of the ships and installation

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<sup>12</sup> Confidential data.

<sup>13</sup> Confidential data.

from department of maintenance and repair, the reduction of costs, the increase of quality for the provided services, the profit generating and the increase of the financial possibilities.

- (57)** Through the organizational restructuring measures it is pursued the reduction of the operating costs of the maintenance and repair department and the increase of labour productivity. The re-organization of the organizational structure by closing and fusing some departments and the modernization of the IT system and informational flow aims, on the one hand to improve the efficiency of the transport and repairing activities, the improvement of the decision making system and of the informational flow, and on the other hand, to reduce costs and to establish a unitary control of costs.
- (58)** Through the technical investments to be made it is aimed to eliminate the causes which led to the company being in difficulty such as the obsolete and outdated assets, large consumers of fuel and physical labour, that do not fulfil the norms for labour protection and the technical standards for international navigation and also the lack of equipments needed in the repair department. The acquisition of equipments needed for developing the activity in the repair department will lead to the reduction of the work duration, the reduction of costs corresponding to raw materials and electricity and the diminishing of work accidents risks. The modernization of merchandise ships requires the replacement of floor ceilings from wood and with other metallic ones and the re-technologizing of 3 pushers 2400 PH, which will result in diminishing the travel duration, the reduction of costs and of merchandise losses, the increase of the automatization degree and attracting new clients. The endowment of the passenger ships with automatized generators leads to the diminishing of air emissions and compliance with the EC's norms, to the reduction of fuel consumption and to obtaining of a better energetic balance sheet.
- (59)** The lack of liquidities is counteracted by the financial restructuring measures, respectively the recovery of receivables and the State aid that will relieve the company from payment of some overdue debts. This way GIURGIU NAV will be able to pay its current debts towards the state and to allocate its liquidities needed for making the planned investments.
- (60)** The restructuring strategy aims to preserve the company's strong points, namely: the strategical placement of the company on Danube's left bank, the ability to transport large and varied quantities of goods, the increased demand for passengers and merchandise fluvial transport. At the same time it is aimed to limit and counteract, with appropriate measures, the weak points such as: the relatively old merchandise transport fleet, the lack of ships with access to Rhine-Meuse channel and the lack of liquidities.
- (61)** By applying the measures contained in the restructuring plan the economic and financial indicators are estimated to improve as follows:

**Table no.11 Estimated evolution of the economic and financial indicators – RON –**

Description of indicators		2005	2006	2007	2008	2009
<b>1</b>	<b>Total revenues, of which:</b>	22,800,000	28,764,700	24,825,000	27,989,600	30,345,700
	- Operating revenues	21,778,000	21,834,700	23,945,000	27,089,600	29,425,700
	- Net turnover	20,299,000	19,131,800	21,045,000	23,149,600	25,464,600
	- Financial revenues	1,022,000	850,000	880,000	900,000	920,000
	- Extraordinary revenues	-	6,080,000			
<b>2</b>	<b>Total expenses, of which:</b>	<b>27,178,000</b>	<b>22,584,700</b>	<b>24,625,000</b>	<b>27,739,600</b>	<b>30,045,400</b>
	a) operating	26,255,000	21,734,700	23,745,000	26,839,600	29,125,400
	b) financial	946,000	850,000	880,000	900,000	920,000
	c) extraordinary	0	0	0	0	0
<b>3</b>	<b>Gross profit(+) / Loss(-)</b>	<b>(4,378,000)</b>	<b>6,180,000<sup>14</sup></b>	<b>200,000</b>	<b>250,000</b>	<b>300,300</b>
<b>4.</b>	Current assets	6,889,000	8,644,400	9,775,000	11,097,800	12,667,200
<b>5.</b>	Total debts	22,415,000	10,197,000	10,559,800	10,335,100	9,152,000
<b>6.</b>	Intermediary liquidity	0.1	1.30	1.27	1.34	1.61

From the above data it is revealed that the company's activity will register an ascending trend, fact proved by the positive evolution of the turnover, the profit and of liquidity and also by the reduction of total debts.

The company already achieved a large part of the restructuring measures, namely: the IT and informational flow has been modernised, the needed equipments for the repair department were bought and 4 non-propelled ships were modernized. The cost of these measures, in quantum of RON 2,716,094, was sustained by the investor. At the same time, from the data submitted by AVAS and the company, it is shown that, up to the present, Giurgiu Nav managed to attract new internal and external clients, having concluded contracts and firm offers for the rental ships, passengers and merchandise transport services.

- (62) The restoration of company's long term viability mainly results from the internal measures included in the restructuring plan. At the same time, in order to asses whether the company will become viable at the end of the restructuring period, it was also taken into account the evolution of markets on which it will act. Given the above, the Competition Council considers that the proposed restructuring plan will lead to the restoring of GIURGIU NAV's long term viability

#### **9.4. PREVENTING EXCESSIVE DISTORSION OF COMPETITION (COMPENSATORY MEASURES)**

- (63) According to the provisions of the Regulation, in order to minimize as much as possible the negative effects on competition on the relevant markets affected by granting of State aid, compensatory measures are necessary. These measures shall be proportionate with the distorting effects caused by the State aid and especially

<sup>14</sup> The economic and financial indicators corresponding to 2006 are influenced by the accounting registration of state aid in the form of exemption.

with the company's size and its relative importance on the relevant markets. Reducing the company's presence on the market will be established based on the market study annexed to the notification, as well as on any relevant information and will be part of the restructuring.

(64) During the implementation of the restructuring plan the company reduces its non viable production capacities, consisting in 6 ships used for merchandise transport. These reductions of the production capacities are not considered as compensatory measures according to the Regulation, because they are loss-making and are absolutely necessary in order to restore viability.

(65) Taking into consideration that GIURGIU NAV is a large enterprise AVAS enforced compensatory measures that consist in irreversible reduction of viable production capacities, that are part of the restructuring plan:

a) for fluvial merchandise transport: 3 ships, from 120 ships in 2004 to 117 in 2009;

b) for ship rental: 3 ships, from 43 in 2004 to 40 ships in 2009.

The production capacities, that will be irreversible reduced, consist in 2 pushers (of 1640 HP and of 600 HP) , in 2 lighters and 2 barges of 11,000 tonnes.

(66) Taking into consideration the small market shares held by the company on these relevant markets (see chapter 2), the Competition Council considers these reductions of capacities as sufficient. At the same time, having in view that the company also acts on the external market of passenger transport on Danube, in order to avoid the distortion of competition, the Competition Council considers that the company must not increase its market share during restructuring and limits GIURGIU NAV's presence on this market to [...] <sup>15</sup>%.

(67) Considering the above-mentioned facts, the Competition Council estimates that the State aid shall only be used for the company's return to viability, without allowing the beneficiary to extend its production capacity while implementing the restructuring plan.

## **9.5. STATE AID LIMITED TO THE MINIMUM NECESSARY (PROPORTIONALITY OF AID)**

(68) In accordance with the provisions of art. 15 of the Regulation, the State aid amount and intensity must be limited to the minimum necessary, to allow restructuring according to the company's and shareholders' existing financial resources. The State aid beneficiary must bring a significant contribution to the restructuring plan by its own resources, inclusively through the sale of assets which do not essentially contribute to the company's survival, or through external financing under market conditions.

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<sup>15</sup> Confidential data.

(69) GIURGIU NAV's total restructuring cost is of RON [...] <sup>16</sup> and is composed of:

- organizational restructuring cost RON [...] <sup>17</sup>,
- technological restructuring cost RON [...] <sup>18</sup>,
- environmental restructuring cost RON [...] <sup>19</sup>,
- financial restructuring cost RON [...] <sup>20</sup>.

(70) GIURGIU NAV's restructuring cost is financed from the following sources: [...] <sup>21</sup>

(71) [...] <sup>22</sup>.

(72) In case of GIURGIU NAV the State aid intensity, calculated as a ratio between the value of the State aid and the total restructuring cost, is of 40.6%.

(73) The Competition Council considers as adequate the beneficiary's contribution of 59.4% to the implementation of the restructuring plan. This shows trust in the practical value of the restructuring, as well as the fact that the amount and intensity of State aid are strictly limited to allow restructuring according to the existing financial resources of the company and of the majority shareholder. As a consequence, the ability of the company to apply any surplus liquidity for aggressive activities, with the possible distortion of the market, is prevented.

## **9.6. FULFILLING THE „FIRST TIME, LAST TIME” PRINCIPLE”**

(74) According to the information submitted by AVAS, GIURGIU NAV did not previously receive restructuring State aid. Therefore, the provisions of art. 24 of the Regulation, stipulating that the restructuring State aid must be granted only once, are observed.

## **9.7. MONITORING AND ANUAL REPORT**

(75) In accordance with the provisions of art. 18 of the Regulation, the Competition Council permanently monitors the restructuring plan's implementation so that the established objectives are fulfilled.

(76) The Competition Council shall monitor the restructuring plan's implementation until the end of the period, in order to ensure that there will be no increases in the production capacities, serious deviation from the restructuring measures and that the

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<sup>16</sup> Confidential data.

<sup>17</sup> Confidential data.

<sup>18</sup> Confidential data.

<sup>19</sup> Confidential data.

<sup>20</sup> Confidential data.

<sup>21</sup> Confidential data.

<sup>22</sup> Confidential data.

State aid shall not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program.

## 10. CONCLUSIONS

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

## DECIDES

**Art. 1.** The financial support measures intended to be granted to GIURGIU NAV represent State aid according to art. 2(1) of the *Law no. 143/1999, republished*.

**Art. 2.** On the basis of art. 21 (2)(c) corroborated with art. 23 para. (1) (e) of *Law no. 143/1999, republished*, the restructuring State aid to be granted to GIURGIU NAV at its privatization is authorised, under the condition of fulfilling art.3 and art.4 of the present decision.

**Art. 3.** The company is compelled to fully implement the assumed restructuring plan. The modification of the restructuring plan shall be done only if the provisions of art. 19 of the Regulation on the State aid for rescue and restructuring firms in difficulty, applied by Order of Competition Council's President no. 501/23.11.2004, published in the Official Gazette no.1215/17.12.2004 are fulfilled.

**Art. 4.** The company shall reduce its production capacities by 2009, in accordance with the assumed Restructuring Program and shall limit its presence on the Danube passenger transport market to [...] <sup>23</sup>%.

**Art. 5.** If the conditions imposed by the present decision are not fulfilled, the provisions of art. 22 and 25 of Law no. 143/1999 on State aid, republished, and art. 194<sup>1</sup> and 192<sup>2</sup> from the Fiscal Procedure Code, completed by E.G.O. no 129/2005, shall be applied.

**Art. 6.** The value of the State aid to be granted is RON 8,455,901.

**Art. 7.** This decision is applicable as of its date of communication.

**Art. 8.** According to the provisions of art. 32 of *Law no.143/1999*, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the granted State aid, for its inventorying and monitoring. At the same time, the Authority for State Assets Recovery shall submit to the Competition Council annual reports on the implementation of the restructuring plan. The first report shall be submitted

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<sup>23</sup> Confidential data.



within 6 months from the date of issuance of the present decision. The following reports should prove that the company fulfilled the compensatory measures on production capacities' reduction enforced by the present decision.

**Art. 9.** According to Art. 46 of *Law 143/1999 on State aid, republished*, this decision may be appealed by the interested persons at the Bucharest Court of Appeal, the Administrative litigation section, within 30 days from its communication.

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

- The Authority for State Assets Recovery, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- SC GIURGIU NAV SA, strada Soseaua Portului no. 1, Giurgiu county, postal code 8375.