

Class: UP/I 430-01/07-02/13
Reg. no: 580-03-2011-17-72
Zagreb, 13 October 2011

The Croatian Competition Agency, pursuant to Article 13 paragraphs 1, 2, and 3 of the State Aid Act (Official Gazette 140/05 and 49/11), in the administrative procedure for authorizing the State aid for restructuring of the undertaking Brodograđevna industrija Split d.d. having its registered office in Split, Put Supavla 21, initiated upon the request of the Ministry of the Economy, Labour and Entrepreneurship, in pursuance of the Decision of the Competition Council consisting of Olgica Spevec, MSc, president of the Council, Mladen Cerovac, LL.M, vice-president of the Council, and the Council members Milivoj Maršić, BBA, Vesna Patrlj, LLB, and Mirna Pavletić Župić, LL.D, at its 86th session held on 13 October 2011, adopted the following:

DECISION

I. The State aid for restructuring as per the Restructuring Plan for the undertaking Brodograđevna industrija Split d.d. having its registered office in Split, Put Supavla 21 drawn up by the undertaking DIV d.o.o. having its registered office in Samobor, Bobovica 10/A is hereby authorized.

II. The State aid referred to under point I of the statement of reasons hereof amounts to HRK 6,623,023,898.00 and applies for a period from 1 March 2006 until the end of the restructuring process.

III. The Restructuring Plan referred to under point I of the statement of reasons hereof shall be implemented throughout a period of five (5) years pursuant to requirements and commitments assumed by the Republic of Croatia in connection with restructuring of the Croatian shipbuilding sector in the negotiations for acquiring membership in the European Union as per the EU Common Position, Chapter 8: Competition policy and Annex VIII of the Accession Treaty: Treaty concerning the accession of the Republic of Croatia.

IV. Own contribution of the undertaking in the restructuring process amounts to HRK 4,425,141,820.00 in total, that accounting for 40% of the total restructuring costs and it involves the investments of the undertaking DIV d.o.o. and compensation for the expropriated real estate on maritime domain under the Agreement regulating the property rights issues made on 11 February 2011.

V. The following terms and deadlines are hereby established that must be met to in order for the measures envisaged by the Restructuring Plan for Brodograđevna industrija Split d.d. to be met:

a) Compensatory measures in the form of reducing the output capacity of 29,611 CGT, involve closure of the slipway no 4 having 27,421 CGT capacity and reducing the production land area of the shipyard by 5% or 2,190 CGT, shall be implemented within a year from the date of signing the privatization contract.

b) Compensatory measure entailing overall annual output of the undertaking of 132,078 CGT shall be implemented pursuant to requirements under the Agreement on mutual rights and obligations in connection with the overall output limit from 2011 to 2020, signed on 17 May 2011 between the Ministry of the Economy, Labour and Entrepreneurship and the following undertakings: 3. Maj having its registered office in Rijeka, Brodograđevna industrija Split d.d. having its registered office in Split, Brodotrogir d.d. having its registered office in Trogir and Brodogradilište Kraljevica d.d. having its registered office in Kraljevica.

c) The Ministry of the Economy, Labour and Entrepreneurship shall submit to the Croatian Competition Agency the evidence of compliance with the measure under point V a) of the statement of reasons hereof within a year from the date of signing of the privatization contract.

d) The Ministry of the Economy, Labour and Entrepreneurship shall submit to the Croatian Competition Agency the evidence of compliance with the measure concerning own contribution under point IV of the statement of reasons hereof.

Implementation deadline: no later than by 15 January and 15 July each year for the preceding 6 months during the entire restructuring period.

e) The Ministry of the Economy, Labour and Entrepreneurship shall submit to the Croatian Competition Agency the reports concerning the implementation of the Restructuring Plan for Brodograđevna industrija Split d.d. until completion of the restructuring process.

Implementation deadline: no later than by 15 January and 15 July each year for the preceding 6 months during the entire restructuring period.

f) The Ministry of the Economy, Labour and Entrepreneurship shall submit annual financial statements to the Croatian Competition Agency.

Implementation deadline: each year throughout the entire restructuring period, no later than by 30 April of the current year for the previous year.

VI Pending completion of the restructuring period, as laid down under point II of the statement of reasons hereof, Brodograđevna industrija Split d.d. may only receive the State aid provided in the Restructuring Plan for Brodograđevna industrija Split d.d. under point I of the statement of reasons hereof.

VII Brodograđevna industrija Split d.d. may not receive new aid for restructuring prior to the expiry of ten years from the date of signing of the privatization contract.

VIII This Decision shall be published in the Official Gazette.

Statement of reasons

I. Initiating the procedure

The Croatian Competition Agency (hereinafter: the Agency) received from the Ministry of the Economy, Labour and Entrepreneurship (hereinafter: the Ministry) the Restructuring Plan for the undertaking Brodograđevna industrija Split d.d., having its registered office in Split, Put Supavla 21 (hereinafter: the Restructuring Plan for Brodosplit d.d.)

With the act of submission of the Restructuring Plan for Brodosplit d.d., the obligation was fulfilled under the Decision of the Agency dated 21 September 2006, Class: UP/I 430-01/2006-02/49, Reg. no 580-03-06-43-12 by virtue of which Brodosplit-Brodogradilište d.o.o., having its registered office in Split, Put Supavla 21 was granted state guarantees in the amount of USD 204,001,167.00 and EUR 66,222,744.00, or in the total amount of HRK 1,687,618,850.45 aimed at implementing the recovery, ordering, within a period of six (6) months, or by 21 March 2007 at the latest, delivery to the Agency of the Restructuring Plan or the Liquidation Plan for the undertaking Brodosplit Brodogradilište d.o.o. or communicating the evidence that the loans secured by state guarantees have been repaid in entirety or that the state guarantee expired. Decision of the Agency of 21 September 2006 was in entirety published in the Official Gazette 135/06.

Furthermore, with the act of submission of the Restructuring Plan for Brodosplit d.d., the obligation was fulfilled under the Decision of the Agency, Class: UP/I 430-01/2006-02/50, Reg. No. 580-03-07-59-12 of 18 January 2007 by virtue of which Brodosplit Brodogradilište specijalnih objekata d.o.o., having its registered office in Split, Put Supavla 21, was granted state guarantees in the amount of EUR 847,500.00, expressed in equivalent value of HRK 6,237,912.73, and EUR 18,129,619.80, expressed in equivalent value of HRK 133,440,691.56, or in the total amount of HRK 139,678,604.29 aimed at implementing the recovery, ordering, within a period of six (6) months, or by 21 March 2007 at the latest, delivery to the Agency of the Restructuring Plan or the Liquidation Plan for the undertaking Brodosplit-Brodogradilište specijalnih objekata d.o.o. or communicating the evidence that the loans secured by state guarantees have been repaid in entirety or that the state guarantee expired. Decision of the Agency of 18 January 2007 was also published integrally in the Official Gazette 25/07.

The indicated Decisions of the Agency of 21 September 2006 and 18 January 2007 are based on the State Aid Act (Official Gazette 140/05) and the Regulation on State aid (Official Gazette 121/03) which in Articles 16 to 19 regulates the criteria for granting the State aid for rescuing and restructuring.

II Rules applicable

In this procedure the Agency applied the State Aid Act (Official Gazette 140/05 and 49/11) (hereinafter: the SAA), the Regulation on State aid (Official Gazette 50/06) (hereinafter: the Regulation), and by virtue of Articles 2, 3, and 4 of the Regulation also the Decision of the Government of the Republic of Croatia on publishing the rules on State aid for the rescuing and restructuring (Official Gazette 20/07) (hereinafter: The Decision concerning the rescuing and restructuring) containing Community guidelines on State aid for rescuing and restructuring firms in difficulty (Official Journal of the European Union, C 244 of 1 October 2004).

In the part regulating the procedure falling within the competence of the Agency, under Article 7 of the State Aid Act, the General Administrative Proceedings Act (Official Gazette 53/91 and 103/06) (hereinafter: the GAPA) is applied, since the provision of Article 168 of the General Administrative Procedure Act (Official Gazette 47/09) lays down that all procedures launched prior to the entry of said Act into force (it entered into force on 1 January 2010) must proceed or be brought to completion on grounds of the General Administrative Procedure Act that was in force until 31 December 2009.

Applying the regulations aforementioned, the Agency also consulted the Act Regulating the Rights and Obligations of Shipyards Undergoing the Restructuring Process (Official Gazette 61/11), the Agreement regulating the property law issues of 11 February 2011 made between the Republic of Croatia and Brodograđevna industrija Split d.d., Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o., and the Agreement on mutual rights and obligations in connection with overall 2011-2010 output limit of 17 May 2011 made between the Ministry and Brodograđevna industrija Split d.d., Brodograđevna industrija 3. Maj d.d., Brodotrogir d.d., and Brodogradilište Kraljevica d.d.

III Course of procedures

III.1 Special inquiry procedure

The Agency has within the meaning of Article 142 of the GAPA enforced special inquiry procedure in order to establish all the relevant facts and circumstances of significance for resolving of this administrative issue, or in order to render possible for the parties to materialize and protect their rights and legal interest. The Agency has pursuant to Article 9, paragraph 1 and 2 of the SAA requested the Ministry to forward all documents and the Restructuring Plan for Brodosplit d.d. which are necessary for issuing the Decision.

As the documents submitted were inadequate for issuing the Decision on the merits by the Agency, the Ministry was requested to submit supplementary data and statements concerning the following: the strategy for producing of ship types, market analysis, ownership structure and equity, as well as ownership and organizational structure following the restructuring of Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o., the data on mutual relations between undertakings within the group, financial indicators, detailed data on all credit commitments on 31 December 2006, financial plans during the restructuring period and two years following the reconstruction period, the data on technological recovery and properties, the characteristics of production plants and equipment for Brodosplit- Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o., the data on the restructuring process, and especially the duration of the restructuring process, the restructuring costs, the data on State aid and production programme of the undertaking, detailed calculation of costs including and not the subsidies and guarantees and the losses/profits incurred per each newbuilding delivered or not yet delivered, as well as the data on compensatory measures and own contribution of the undertaking. In its stated request of 3 April 2007, the Agency pointed out that the Restructuring Plan for Brodosplit d.d. must constitute a single document, and that the Ministry must approve the authenticity of all data and documents submitted, as well as declare whether the Restructuring Plan for Brodosplit d.d. was drawn up in compliance with the Decision concerning the rescuing and restructuring.

Respectively, in the procedure of assessing the Restructuring Plan of Brodosplit d.d., the Agency takes into account and considers authentic only the data forwarded by the Ministry as a provider of State aid.

On 13 April 2007 Brodosplit d.d. forwarded to the Agency the amended Restructuring Plan for it mentioned undertaking. Therefore the Agency has again by its letter of 17 April 2007 directly requested the provider of State aid to forward the Restructuring Plan for Brodosplit d.d., as it is only the provider of State aid that has the obligation to confirm to the Agency the authenticity of all submitted data, documents, and statements of reasons included in subject Restructuring Plan, as well as to declare whether the Restructuring Plan for Brodosplit d.d. was drawn up in compliance with the Decision concerning the rescuing and restructuring, and particularly whether the submitted Restructuring Plan for Brodosplit d.d. guarantees long-term viability of operations of said undertaking.

On 21 and 28 May 2007, the Ministry submitted to the Agency some of the requested data and statements, which were inadequate to issue a valid decision, therefore, on 16 July 2007 the Agency requested the Ministry to provide additional statements which referred in particular to the data on daughter companies of the undertaking Brodograđevna industrija Split d.d., more precisely Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o.

With regard to Brodosplit - Brodogradilište d.o.o., data were requested concerning the types of ships to be built, and which are to ensure profitable operation, the market analysis study elaborated by ship broker Clarkson translated in Croatian, the declaration on legal status change of Brodosplit - Brodogradilište d.o.o. since envisaged time frame was not defined realistically, the clarifications of certain items in the Balance sheet, additional data on restructuring costs, the data on compensation measures as well as the data on privatization.

With regard to Brodosplit - Brodogradilište specijalnih objekata d.o.o., the data were requested which concern market analysis, clarifications of particular items of the Balance sheet, integral table containing the data on the newbuildings and units specified in the order book, accurate data on compensatory measures and the declaration on own contribution.

On 7 December 2007 the Agency was informed of the letter from the Ministry of 10 October 2007, Class: 310-14/07-01/55, Reg. No: 526-03-03/2-07-115, which was addressed to all the shipyards undergoing the restructuring process, that also including Brodosplit d.d., by which the Ministry, essentially requested all the shipyards to, for the sake of transparency of their restructuring plans, revise those, in order that such programs get adapted to the current operating status, or actual deadlines for their adoption and implementation.

Brodosplit d.d. has on 28 and 30 August 2007 and on 17 January 2008 submitted to the Agency the data concerning Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o., as well as the market analysis and the data on newbuildings for which contracts were placed and those planned in the 1999-2012 period; allocated and planned subsidies by newbuildings and allocated and planned performance and financial guarantees for pursuing the construction of ships since 2002, ending with the newbuildings which placing the contracts for is planned until 2012; allocated and planned financial guarantees in the 2002-2012 period (financing the production and restructuring of debt, technological renewal, etc.).

The Agency has within the context of the case titled *Restructuring of the shipbuilding industry*, kept under the operating number class: 430-01/2006-63/35, in the notice to the Ministry of 14 February 2008 stated the reasons owing to which it is not possible to authorize the Restructuring Plan for Brodosplit d.d. and other shipyards in difficulty. In the

aforementioned notice, the Agency pointed out the fact that the practice of the European Union in substantial number of the restructuring cases evidenced that the entry of new investors or privatization represents one of the easier and also more efficient modes of implementing the restructuring process for undertakings in difficulty, as in such cases the relationship towards the compensatory measures, own contribution to restructuring, is substantially different, and the confidence of authorities competent for authorizing the restructuring aid in results of restructuring is greater as it is being implemented by new owner or private entrepreneur. Namely, the interest of private investors reveals the confidence of the market in particular industry and market viability of the entrepreneur undergoing the restructuring, and at the same time the Ministry was requested to amend substantially the Restructuring Plan for Brodosplit d.d. Concrete moves are necessary in order not to threaten, on one part the contractual obligations of Brodograđevna industrija Brodosplit d.d., and on the other the fulfilling of legal obligations on State aid, complying with international obligations under the Stabilization and Accession Agreement (Official Gazette 14/01, 14/02, 1/05 and 7/05) (hereinafter: SAA) as well as to provide for the required time schedule for negotiations with the European Union. Mentioned assessment of the Agency was produced on the basis of analysis of proposed restructuring plans which were on the basis of findings and concrete availability of data on operations of each individual shipyard, implemented by independent experts or consultants of Ecorys within the framework of special project of the European Union, entitled "Assistance in the process of restructuring of the shipbuilding industry in Croatia", selected on the basis of the open call for bids by the European Commission to carry out the evaluation of proposed restructuring programmes for Croatian shipyards in difficulty.

The aim of the project was to establish whether the restructuring programmes of Croatian shipyards lead to restoring of the long-term viability of each shipyard, and that particularly concerned the following:

- evaluation of the realistic approach of restructuring plans,
- the feasibility of maintaining the competitiveness of a shipyard on the market,
- assessment of whether the plans at the end of the restructuring period guarantee operational efficiency comparable to that of West European shipyards (profitability, productivity, production, employment, etc.)
- ascertaining the weaknesses in restructuring plans and proposing possible improvements.

As a consequence of aforesaid, on the basis of facts established and opinion of the Council, the Ministry was requested to forward the restructuring plans for Croatian shipyards in difficulty, those to include all the elements necessary for issuing the Decision on granting the restructuring aid pursuant to the Decision concerning the rescuing and restructuring, among them also the Restructuring Plan for the undertaking Brodograđevna industrija Split d.d.

On 2 June 2008, the Ministry submitted to the Agency the amended Restructuring plan for Brodosplit d.d.

However, in addition to the Restructuring Plan for Brodosplit d.d., the Ministry submitted to the Agency also the Decision of the Government of the Republic of Croatia of 21 May 2008, Class: 310-14/08-01/03, Reg. no: 5030105-08-1, on the intent to implement the privatization and on the privatization principles concerning the companies Uljanik d.d. from Pula, Brodogradilište Kraljevica d.d. from Kraljevica, Brodotrogir d.d. from Trogir, Brodograđevna industrija 3. Maj d.d. from Rijeka, and Brodosplit d.d. (hereinafter: Decision of the Government of the Republic of Croatia on the intent to implement the privatization and on the privatization principles).

With regard to Brodosplit d.d., point III of the Decision of the Government of the Republic of Croatia on the intent to implement the privatization and on the privatization principles stipulates that Brodosplit d.d. was recommended to elaborate a model, arrange for and implement privatization of the company Brodosplit - Brodogradilište specijalnih objekata d.o.o., while Croatian Privatization Fund was entrusted to ensure enforcement of the Decision of the Government of the Republic of Croatia on the intent to implement the privatization and on the privatization principles, through the bodies of company Brodosplit d.d.. In the realization of aforesaid, Brodosplit d.d. will collaborate with the Ministry.

Point IV of the Decision of the Government of the Republic of Croatia on the intent to implement the privatization and on the privatization principles stipulates that bureaus of the Ministry and Croatian Privatization Fund are entrusted to implement the restructuring of Brodosplit d.d., in compliance with the restructuring plans that the Government of the Republic of Croatia will accept on proposal of the Ministry, and to elaborate a model, to arrange and implement the privatization of such companies.

Point IV of the Decision of the Government of the Republic of Croatia on the intent to implement the privatization and on the privatization principles essentially stipulates that the Investment plan and the Operating plan to be drawn up from the part of the investor in compliance with the terms laid down in Article 70 of SAA and Community guidelines on State aid for rescuing and restructuring firms in difficulty which ensures long-term viability of the company, will be authorized from the part of the Agency, the European Commission and the Government of the Republic of Croatia.

As in the course of procedure for authorizing the aid for restructuring for Brodosplit d.d., the Government of the Republic of Croatia adopted the Decision of the intent to implement the privatization and on the privatization principles, also involving Brodosplit d.d., the Agency in present case adopted on 29 July 2008 the Decision under aforementioned Class, Reg. no: 580-03-08-43-25, suspending the administrative procedure for authorizing State aid for restructuring Brodosplit d.d.

Mentioned Decision on suspension was adopted by the Agency on grounds of Article 144, paragraph 1 and Article 148 of the GAPA, as the privatization procedure for Brodosplit d.d. is considered the ex-ante issue, implemented pursuant to special provision, more precisely the Privatization Act (Official Gazette 21/96, 71/97 and 73/00) and failing the resolving whereof the Agency may not complete the procedure launched pursuant to regulations on State aid. The procedure of implementing the restructuring process will proceed upon receiving the notice on completion of the privatization process and submitting stated documents or once the Agency assesses that the circumstances owing to which the procedure was launched ceased.

Further to the Decision concerning privatization, the Agency on 16 July 2009 received the Decision of the Government of the Republic of Croatia concerning the launching of an open call for bids for the purchase of shares of the company Brodograđevna industrija Split d.d. from Split, under special terms, dated 11 July 2009, Class: 310-14/09-02/01, Reg. no: 5030120-09-5 and Decision of the Government of the Republic of Croatia concerning the launching of an open call for bids for the purchase of single business share of the company Brodosplit - Brodogradilište specijalnih objekata d.o.o. Split, dated 11 July 2009, Class: 310-14/09-02/06, Reg. no: 5030120-09-1. On the basis of mentioned Decisions of the Government of the Republic of Croatia, the Croatian Privatization Fund on 1 August 2009 launched the Open call for bids for the purchase of shares of the company Brodograđevna industrija Split d.d. from Split, under special terms, as well as the Open call for bids for the purchase of 1 (one) business share of the company Brodosplit - Brodogradilište specijalnih

objekata d.o.o. from Split. The deadline for submitting the bids was scheduled for 30 September 2009.

Although the Open calls for bids were conducted and published, the Government of the Republic of Croatia selected no potential buyer. For that reason, on grounds of the Decision of the Government of the Republic of Croatia of 28 January 2010 concerning the launching of the Open call for bids for the purchase of 8,073,568 shares of the company Brodograđevna industrija Split d.d. from Split under special terms, Class: 310-1/10-02/01, Reg. no: 5030120-10-1 and the Decision of the Government of the Republic of Croatia forwarded to the Agency on 16 February 2010, defining binding terms of the open call for bids for the purchase of 8,073,568 shares of the company Brodograđevna industrija Split d.d. from Split, under special terms of 11 February 2010, Class: 310-14/10-02/01, Reg. no: 5030120-10-4 and the Decision recommending to Brodograđevna industrija Split d.d. to define binding terms of the open call for bids for the purchase of a single business share of the company Brodosplit - Brodogradilište specijalnih objekata d.o.o. Split, dated 11 July 2009, Class: 310-14/10-02/05, Reg. no: 5030120-10-4, Croatian Privatization Fund published on 15 February 2010 a new Open call for bids for the purchase of Brodograđevna industrija Split d.d. and Brodosplit - Brodogradilište specijalnih objekata d.o.o. The deadline set for submitting the bids was 19 April 2010, but it was extended to 19 May 2010. Besides on the official Internet pages of the Croatian Privatization Fund, the public bid notices were also published in Vijesnik, Tradewinds, Financial Times, The Economist, and LLOYD's List.

From Public bid notices for the purchase of shares of Brodograđevna industrija Split d.d., it essentially ensues that consolidated state portfolio of 8.073,568 shares having total nominal value of HRK 484,414,080.00 is being sold at the price of HRK 1, that constituting 99.78% of the total share capital of Brodograđevna industrija Split d.d., and that the bidder, apart from submitting the bid for the purchase of shares undertakes to draw up and forward the Restructuring plan for the Company for a period not exceeding 5 (five) years from the date of entering the contract on sale and transfer of shares of the Company. The Restructuring plan must be drawn up pursuant to Article 70 of SAA, or rules of the European Union specified in the Community Guidelines for firms in difficulty, or in the Decision concerning the rescuing and restructuring. The Restructuring Plan must be authorized by the Agency and the European Commission.

The Public bid notices for the purchase of 1 (one) business share of the company Brodosplit - Brodogradilište specijalnih objekata d.o.o. constituting 100% of total capital stock of the company at initial price of HRK 18,160,000.00 also specify that the bidder, apart from submitting a bid for the purchase of 1 business share undertakes to elaborate and forward the "Business plan" for a period of no less than 5 (five) years, anticipating the restructuring during a period not exceeding five (5) years from the date of purchase of 1 business share constituting 100% of capital stock of the Company in compliance with the terms laid down in Article 70 of SAA, rules of the European Union on State aid as well as the Decision concerning the rescuing and restructuring. The Bidder shall assume the obligation to agree and secure authorization for the Restructuring plan (Business plan and Investment plan) with/from the Agency and the European Commission.

Upon conducting the Open call for bids, the bid of the undertaking DIV d.o.o., having its registered office in Samobor, Bobovica 10/A was selected.

As result of aforesaid, the Ministry forwarded to the Agency on 30 July 2010 the Restructuring Plan for Brodograđevna industrija Split d.d. (hereinafter: The Restructuring Plan) which was drawn up by DIV d.o.o. within the framework of privatization process and which was previously submitted to the Croatian Privatization Fund.

Since the Ministry forwarded new Restructuring Plan to the Agency, the circumstances owing to which the procedure was suspended in this case by virtue of Decision of the Agency of 29 July 2008 ceased, and the procedure in this case was resumed.

By consulting the forwarded new Restructuring Plan, the Agency established that it is still incomplete, and that it should be amended pursuant to the Decision concerning the rescuing and restructuring. Therefore the Agency through its requests made to the Ministry dated 10 August and 17 September requested amending of the Restructuring Plan, and the Ministry complied with requests of the Agency on 5 and 21 October 2010.

Upon request of the European Commission - Directorate General for Market Competition, the Competition Council has at the 64th session of the Council held on 10 February 2011 issued the Decision on submitting to the European Commission - Directorate General for Market Competition, of prior opinion of the Agency on the Restructuring Plan, pursuant to Article 6, paragraph 1, point i) of the State Aid Act.

In its preliminary opinion the Agency essentially pointed out that the Restructuring Plan submitted to the Agency by the Ministry on 1 February 2011 represents a viable restructuring plan the content whereof is compliant with provisions of the *acquis* of the European Union concerning the rescuing and restructuring of firms in difficulty and the requirements specified in Common position of the European Union of 25 June 2010, and thereby also the provisions concerning State aid which are in force in the Republic of Croatia (State Aid Act, the Regulation, and the Decision concerning the rescuing and restructuring).

In the preliminary opinion the Agency stipulated that the Restructuring Plan involves a new approach in resolving basic causes inducing the present status of Brodosplit d.d., and that particular attention should be paid to the control of realization of such a plan and fulfilling of the obligations assumed. Having regard of the fact that it is the matter of prior opinion, the Agency pointed out in particular that it shall analyse in detail each item of the plan in the procedure of issuing final Decision, or while producing the Decision on the merits authorizing the Restructuring plan.

The Ministry forwarded to the Agency additional amendments to the Restructuring Plan on 8 April 2011, while on 25 May 2011 the Agency received the following documents from Brodograđevna industrija Split d.d.: the Report produced by independent auditor and consolidated financial statements for 2010, for the Group Brodograđevna industrija Split d.d.; the Report by independent auditor and financial statements for 2010 for Brodograđevna industrija Split d.d.; the Report by independent auditor and consolidated financial statements for 2010, for the Group - Brodosplit - Brodogradilište d.o.o.; the Report by independent auditor and financial statements for 2010 for the undertaking Brodosplit - Brodogradilište d.o.o.: Annual financial statement for the undertaking Brodosplit Brodogradilište specijalnih objekata d.o.o. for 2010, as well as the Report by independent auditor and financial statements for 2010 for Brodosplit - Brodogradilište specijalnih objekata d.o.o.

DIV d.o.o. on 28 June 2011 submitted to the Agency the following: the data on newbuildings delivered and productivity indicators of the undertaking Brodogradilište - Brodosplit d.o.o., declaration regarding the change of planned scheduling for implementing the restructuring measures and the change of scheduled deliveries for planned production programme, the number of employees in Brodosplit d.d. and updated projection of the timing for outplacement and employment, revised plan of receipts and payments in compliance with the new scheduling for deliveries of ships or the data on fulfilling the obligation towards the Republic of Croatia and the result of clearing mutual claims between the Republic of Croatia and Brodosplit d.d.

On 27 July 2011, the Ministry submitted to the Agency the statement specifying that it is familiar with the statement made by DIV d.o.o. and that it accepts amendments to the Restructuring Plan forwarded to the Agency by DIV d.o.o. on 28 June 2011. In the statement, the Ministry furthermore states that the restructuring will proceed throughout a 5 year period.

Therefore, the Restructuring plan for Brodosplit d.d. submitted to the Agency by the Ministry on 30 July 2010, together with all the amendments as well as the Agreement regulating the property law issues of 11 February 2011 made between the Republic of Croatia and Brodograđevna industrija Split d.d., Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o., and the Agreement on mutual rights and obligations in connection with the overall 2011-2020 output limit of 17 May 2011 between the Ministry and Brodograđevna industrija Split d.d., Brodograđevna industrija 3. Maj d.d., Brodotrogir d.d. as well as Brodogradilište Kraljevica d.d. submitted to the Agency on 1 August 2011 represents final version of the Restructuring Plan on grounds of which this Decision authorizing the State aid as per the Restructuring Plan was issued.

III.2 The restructuring of Croatian shipbuilding and the commitments assumed by the Republic of Croatia in connection with restructuring of the Croatian shipbuilding industry in negotiations for acquiring membership in the European Union.

The Republic of Croatia, consistent with the provisions of Article 70 of SAA (Article 35 of Interim agreement) assumed certain obligations in the field of protecting market competition and State aid. Among others, SAA regulates as being incompatible with this Agreement, any aid that disrupts or threatens to disrupt market competition by favouring certain undertakings or certain products, to the extent in which such behaviour has an impact on trade between the Republic of Croatia and the European Union. At that any proceeding contrary to SAA is assessed on the basis of criteria resulting from the application of the rules on market competition of the European Union or Article 107 of the Treaty on the functioning of the European Union and the instruments for interpretation adopted by institutions of the Union.

In the case of State aid, acquis of the European Union stipulated in Article 107 of mentioned Treaty bans the aid which disrupts or which may disrupt the trade among Member States. At that, mentioned Article also allows for possible derogations in allocating the aid specified therein, those being additionally dealt with in a series of directives and Decisions of the European Commission. In concrete case, when it is the case of allocating the aid for rescuing or restructuring, such may be granted only on the terms specified in Community Guidelines on State Aid for Rescuing and Restructuring of Firms in Difficulty (OJ C 244, 1 October 2004).

Under the aforementioned Guidelines, the restructuring of firms in difficulty is based on a feasible, coherent and far-reaching plan with the scope of restoring long-term viability (profitability) of the undertaking. The elements of restructuring are the reorganization and rationalization of activities of the undertaking on efficient basis, that involving the abandoning of activities that incurred losses, restructuring of those activities that might become competitive again, and where possible, the diversification of activities (the development of new or upgraded products and manufacturing processes) that will be new and marketable.

The Republic of Croatia furthermore, pursuant to the provisions of Article 70 of SAA assumed the obligation to align present State aid programmes with the rules on market competition in the Community within a period of four years from entry of SAA into force (1 March 2002) or until 1 March 2006. Mentioned obligation in the field of aid granted to the shipbuilding industry placed the demand on the Republic of Croatia to modify entirely the system of granting the aid to all major shipyards, those being: Brodograđevna industrija 3.

Maj from Rijeka, Brodogradilište Kraljevica d.d. from Kraljevica, Brodogradilište Brodotrogir d.d. from Trogir, Brodograđevna industrija Split d.d. from Split, Brodosplit - Brodogradilište specijalnih objekata d.o.o. (BS) from Split, as well as Brodogradilište Uljanik d.d. from Pula. Namely, the aid that has traditionally been granted to mentioned shipyards in the form of subsidies set in respect of agreed price of the ship and state guarantees for financing the building of ships and for advance payments, are not compliant with the rules on State aid under Article 107 of the Treaty on the functioning of the European Union.

On the other hand, in spite of the aid thus allocated, almost all the shipyards operated at a loss and were under criteria of the *acquis* considered as firms in difficulty which the State aid may be allocated to only in the form of restructuring aid pursuant to - the Guidelines for rescuing and restructuring which regulate the method and requirements for granting the aid to the firms which are not in position to ensure profitable operation with their own resources and activities. Therefore the restructuring of Croatian shipyards was one of the benchmarks, both for the opening and closing of negotiations on membership of the Republic of Croatia in the European Union in Chapter 8: Market Competition.

As early as in May 2006 the requirements (benchmarks) for opening the negotiations under Chapter 8: Market Competition were known, and those demanded from the Republic of Croatia to adopt for each shipyard in difficulties the individual restructuring plan that would be compliant with the criteria under Article 70 of SAA and authorized by the European Commission. In spite of the fact that those plans were produced and re-elaborated on several occasions and forwarded to the European Union, they were not granted authorization.

The Government of the Republic of Croatia decided in May 2008 to implement the restructuring process for the shipyards through privatization thereof, that being accorded support by the European Commission as well. After agreeing and aligning the terms of the bidding procedure with the European Commission (aligning took place from the moment of adopting the Decision concerning privatization dated 21 May 2008 until July 2009) for the purchase of shares and privatization of all the major shipyards, the first call for bids was launched on 1 August 2009. However, as there were no bids complying with requirements of the bidding procedure, and for certain shipyards there was no bidder whatsoever, in February 2010 the new call for bids was launched, substantially upgraded and more concrete where, save in the case of Uljanik, there was a response from domestic and foreign investors interested in purchasing Croatian shipyards, and in spring 2010 for the majority of shipyards the negotiations commenced concerning the terms of privatization. Open calls for bids for the sale of shares of Brodogradilište Kraljevica d.d. was repeated once again, and for Brodograđevna industrija 3. Maj d.d. as well owing to withdrawal of the investor.

Taking into account mentioned progress, the European Commission proposed to the European Council to open the negotiations in Chapter 8: Market Competition.

The European Council on 25 June 2010 adopted the Common Position of the European Union in Chapter 8: Market Competition, establishing four benchmarks for provisional closing in this chapter, where the benchmark concerning the shipbuilding stated as follows:

- for each of the shipyards in difficulty, the Restructuring Plan must be adopted that is aligned with the *acquis* of the European Union and authorized by the Agency and the European Commission;
- no shipyard shall take new orders pending authorization of the restructuring plans by the European Commission;
- should any shipyard not be capable of submitting the acceptable restructuring plan, the Republic of Croatia shall have to adopt bankruptcy plan for such a shipyard in compliance with national legislation, as authorized by the Agency and the European

Commission. Such shipyards will no more be authorized to take new orders and they will only be authorized to receive new State aid in a strictly limited manner and only where it is indispensable for completing of the existing orders.

The negotiations in Chapter 8:Market Competition were opened at the session of Inter-Governmental conference on 30 June 2010.

Proceeding from the benchmarks demanding from the Republic of Croatia to draw up the restructuring plans for all shipyards in difficulty and the authorization thereof from the part of the European Commission and the Agency, during second half of 2010 the activities intensified in drawing up and thereafter also re-elaborating the restructuring plans from the part of the bidders selected as potential investors through the privatization tendering procedures conducted in February 2010 and later. In order to provide objective and realistic assessment of the restructuring plans, both from the part of the Agency and the European Commission - Directorate General for Market Competition, in the circumstances of substantially deteriorated trends on the market, the European Commission and the Agency agreed the implementation of the project the purpose of which was to involve independent experts, specialists for the shipbuilding industry market, in assessing the restructuring plans submitted. It is the matter of the project financed by the European Commission, and on the basis of which company Ecorys was selected in the open bidding procedure, its basic task being assisting the Agency and the European Commission in assessing the market acceptability and viability of proposed restructuring plans of the shipyards in difficulties.

Namely, the backbone of the Project of experts from Ecorys involved the analysis of individual restructuring plans for Croatian shipyards with regard to the following elements:

- market orientation strategy of the shipyard, including the evaluation of production profitability;
- industrial restructuring: production processes and plants, planned investments, productivity,
- organizational restructuring: management tools, structure of employees
- sales strategy (break-even point, planned production, methods of financing the production);
- results planned for the end of the restructuring period (in respect of profitability, productivity, production output, structure of employees, etc.)

The analyses should have provided the evaluation of various assumptions on the basis of which plans were drawn up (whether they are realistic and reasonable at a given moment and viable) and whether it is possible to expect a long-term viability of each particular shipyard on the market.

While working on the restructuring plans submitted, the experts from Ecorys identified the weaknesses and shortcomings of the restructuring plans, and assisted potential investors in re-elaborating or clarifying and ensuring higher transparency of particular parts of such plan.

Ultimately, assessments of the experts from Ecorys regarding the viability of each of the shipyards or of each particular restructuring plan for Brodosplit d.d., 3. Maj d.d., Brodotrogir d.d. and Kraljevica d.d. (Brodogradilište Uljanik d.d. was, based on operating results in 2009 and in the first half of 2010 and considering the perspectives of further profitable operations, subject to prior positive opinion from the Agency and consent from the European Commission exempted from the restructuring process, and it undertook to refund the unlawfully granted aid in the period since 1 March 2006) have pursuant to tasks envisaged by the Project, constituted the backbone of final findings of the European Commission and the Agency concerning the acceptability of such plans. Namely, following analysis of the plans produced by Ecorys (included in the Report entitled "Support for privatization and

restructuring of the shipbuilding industry in the Republic of Croatia"), the Agency has pursuant to the requirement under the benchmark for closing of negotiations delivered prior opinion to such plans. More precisely, in February 2011, prior opinion was delivered for the Restructuring plan for Brodosplit d.d., and following that, in June 2011 for other shipyards as well. Mentioned prior opinion is described under point III.1 of the statement of reasons hereof.

Thereafter the European Commission also delivered positive opinion first for Brodosplit d.d., and then also for other restructuring plans of the shipyards in difficulty proposed by potential investors.

Thus, the prerequisites for closing Chapter 8: Market Competition have been fulfilled.

The European Union on 22 June 2011 adopted the Common Position of the European Union for Chapter 8: Market Competition, thereby completing the negotiation process or provisionally closing this negotiation field, and the requirements were specified which must be fulfilled in the process of restructuring Croatian shipyards, more specifically:

- All State aids received by the shipyards since 1 March 2006 are considered to be restructuring aid. The undertakings shall provide contribution to the restructuring plan from their own resources, which must be real, State aid free, and must constitute at least 40% of the aggregate restructuring costs.
- Total output capacity of undertakings is reduced, compared to the levels of 1 June 2011, from 472,324 CGT to 372,346 CGT or by 21%.
- For each shipyard, the extent or reduction of output capacities expressed in CGT's was defined, which for Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o. totals 29,611 CGT.
- Total annual output for 5 shipyards undergoing the restructuring process is limited to 323,600 CGT during a period of ten years, starting from 1 January 2011. The undertakings reduce their output capacities twelve months following the signing of privatization contracts at the latest. Capacity reduction is implemented by permanent closure of slipways, designating the slipways for producing for naval purposes solely, within the meaning of Article 346 of the Treaty on the functioning of the European Union and/ by reducing the land areas. CGT is a unit of measure for production that is calculated pursuant to valid rules of the Organization for Economic Cooperation and Development (OECD).
- For each shipyard, the maximum annual output expressed in CGT's was defined, which for Brodosplit - Brodogradilište d.o.o. and Brodosplit - Brodogradilište specijalnih objekata d.o.o. amounts to 132,078 CGT.
- The shipyards may not receive new aid for rescuing or restructuring for at least ten years from the date of signing of the privatization contract. Following accession of the Republic of Croatia into the European Union, the European Commission will order the Republic of Croatia to provide for refunding of the aid for rescuing and restructuring granted by violating this provision, plus accrued interest.
- The Restructuring Plans approved by the Agency and the European Commission must be incorporated in the privatization contracts agreed between the Republic of Croatia and buyer undertakings. The privatization contracts shall be submitted to the European Commission for approval and shall be signed prior to accession of the Republic of Croatia into the European Union.

- Any subsequent amendments to these plans must be compliant with key requirements in the restructuring process and shall be submitted to the European Commission for authorization.
- The refunding of State aid granted since 1 March 2007 with accrued statutory interest is envisaged should privatization contract not be signed yet (pending membership in the European Union) or the requirements specified in the restructuring plan as authorized by the Agency and the European Commission have not been incorporated therein in an integral manner, or the undertaking failed to provide contribution from own resources that is real, State aid free and representing at least 40% of restructuring costs, or the reduction of aggregate capacity has not been implemented within twelve months from signing of the privatization contract, or total production output limit was exceeded in any particular calendar year in the period between 2011 and 2020.
- The European Commission monitors the implementation of the restructuring plan and adherence to the requirements defined with regard to the level of State aid, own contribution, capacities reduction, output limit and the measures undertaken in order to ensure restoring the viability.

The indicated restructuring requirements for Croatian shipyards are elaborated in detail in the Common Position of the European Union which the Republic of Croatia accepted at the Inter-Governmental Conference held on 30 June 2011 and will also be included in the Accession Treaty: Treaty concerning the accession of the Republic of Croatia, as separate Annex (Annex VIII) to the Act Concerning the Conditions of Accession of the Republic of Croatia to the European Union.

Thus, the process of conducting and closing the negotiations in Chapter 8: Market Competition in the part concerning the restructuring of Croatian shipyards in difficulty ran in parallel with the process of assessing the restructuring plans and granting the aid for restructuring based on the State Aid Act, managed by the Agency, the course of which is specified in this Decision. In other words, the conditions under which Croatian shipyards are being restructured were the object of negotiations of the Republic of Croatia for acquiring the membership in the European Union and constitute an integral part of the Treaty concerning the Accession Treaty: Treaty concerning the accession of the Republic of Croatia into said integration. With that in mind, Decisions of the Council approving the proposed restructuring plans of each particular shipyard are imperatively and directly related to the requirements and commitments which the Republic of Croatia assumed during the negotiations.

IV Establishing the facts

On the basis of data submitted, the following was established during the procedure:

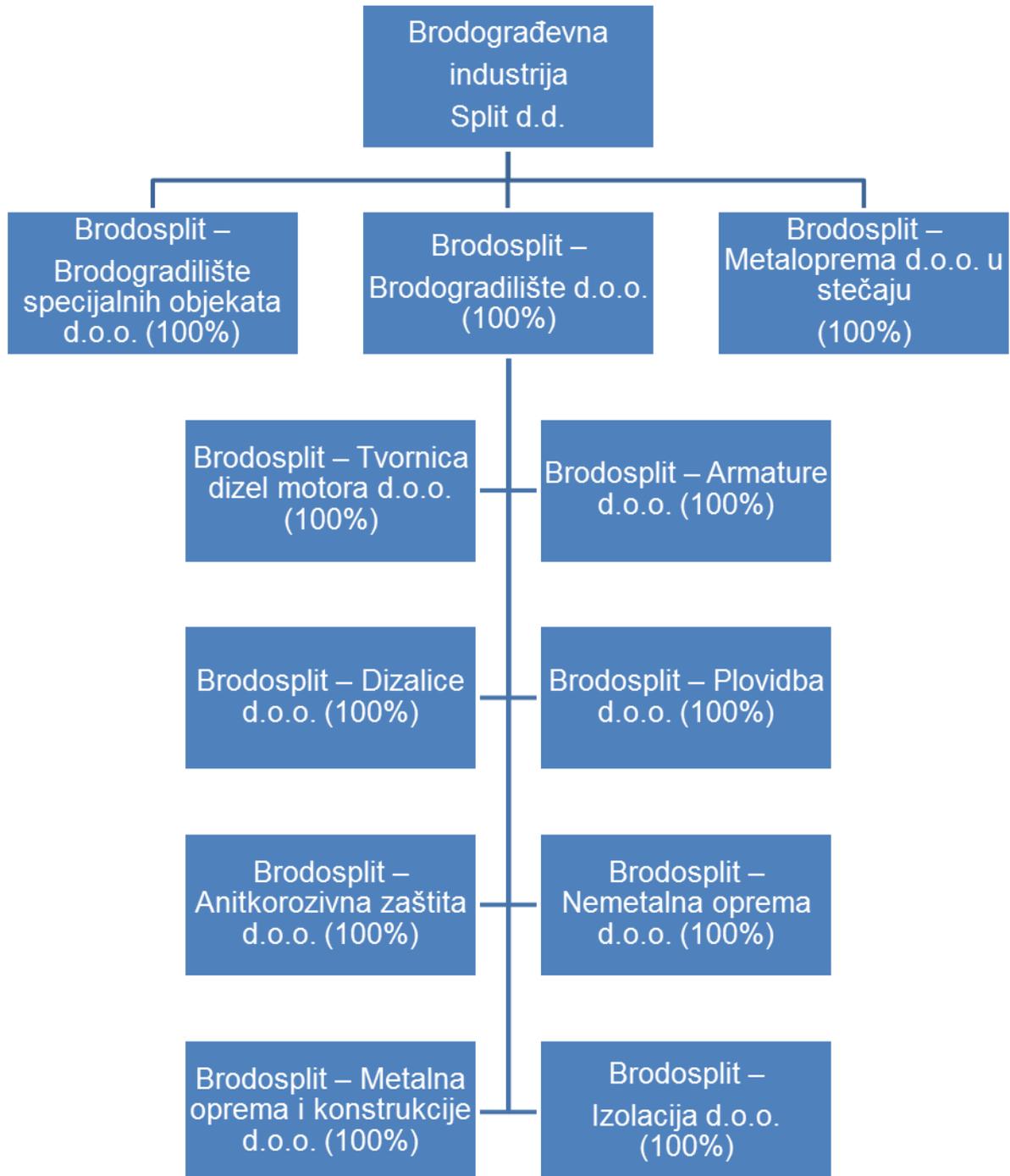
IV 1. Description, activity and the analysis of operations of Brodograđevna industrija Split d.d.

The undertaking Brodograđevne industrija Split d.d. is entered into the register of Commercial Court in Split under registration number of the object of entry: 060175040, PIN: 18556905592, as joint stock company, having registered office in Split, Put Supavla 21 (hereinafter: Brodosplit d.d., that representing abbreviated company name of Brodograđevna industrija Split d.d. entered in the register of Commercial Court in Split).

The Group Brodosplit d.d. consists of the holding company Brodosplit d.d. which is the sole founder and holder of 100% share in subsidiary companies or daughter companies:

Brodosplit -Brodogradilište d.o.o., Brodosplit - Brodogradilište specijalnih objekata d.o.o., and Brodosplit - Metaloprema d.o.o. in bankruptcy as shown in Figure 1.

Figure 1. Structure of the Group Brodogađevna industrija Split d.d. (Brodosplit d.d.)



Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Share capital of the holding company, the undertaking Brodosplit d.d. is entered in the register of Commercial Court in Split and amounts to 485,465,940.00 HRK, and it is divided into 8,091,099 ordinary registered shares having face value of HRK 60 per share, as shown in Table 1.

Table 1. Ownership structure of Brodograđevina industrija Split d.d.

Item no	Name of the shareholder	Stock (number of shares)	Share in %
1.	Central State Administrative Office for State Property Management	5,404,268	66.80
2.	CPF (0/1) / Croatian Pension Insurance Institute (1/1)	914,494	11.30
3.	Croatian Privatization Fund	756,445	9.35
4.	Croatian Institute for Health Insurance	630,322	7.79
5.	State Agency for Deposit Insurance and Bank Rehabilitation	281,162	3.48
6.	CPF (0/1) / Croatian Employment Service (1/1)	60,111	0.74
7.	Croatian Waters (Hrvatske vode)	25,781	0.32
8.	Croatian Chamber of Economy	11,637	0.14
9.	Osiguranje Zagreb d.d.	5,894	0.07
10.	Hrvatske šume d.o.o.	967	0.01
11.	Hrvatska brodogradnja – Jadranbrod d.d.	18	0.00
12.	Total	8,091,099	100.00

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Basic activity of the company Brodosplit d.d. is the following: shipbuilding, ship repair and ship conversion, activities directly related to shipbuilding, manufacturing two-stroke and four-stroke marine engines and other metal structures. Shipbuilding is represented through the design and building of commercial ships which, owing to its complexity, involves a whole series of complementary manufacturing and service activities.

Total land area of the site at disposal of Brodosplit d.d., including all the daughter companies, within the framework of present limits of maritime domain extends over 580,589 square metres. After changing the limits and re-allocating a part of land area for other activities, total land area available for the shipbuilding industry following privatization will be 350,549 square metres.

Table 2. Overview of slipways of the undertaking Brodosplit d.d.

Slipways	Size in m (length x width)	Maximum crane capacity in t	Presumed product mix	Capacity in CGT	Share
1	282 x 50	160	„product“ tanker 166,000	61,665	28.2%

2	250 x 37.75	160	„chemical“ tanker 45,000	82,519	37.7%
3	175 x 25	112	Reefer 11,000	31,492	14.4%
4	175 x 22	60	„chemical“ tanker 15,200	27,421	12.5%
5	56 x 12	80	Ro-pax 59m	15,925	7.3%
Total	-			219,021	100.00

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Table 2 shows that Brodosplit d.d. has at its disposal 5 slipways of various sizes and crane capacities. Total calculated capacity, or potential production output, according to technical characteristics of slipways, is 219,021 CGT annually, but not all the capacities are being used at their maximum. Namely, slipway no 3 is used continuously, while slipway no 4 has not been used for a number of years. Therefore, total output capacity of Brodosplit d.d. during recent years amounted to 146,754 CGT per annum.

As the Restructuring Plan for Brodosplit d.d. and other accompanying documents necessary in this procedure specify the terms that are commonplace in shipbuilding industry, and are being mentioned in this Decision as well, the meaning of individual acronyms and English terms used in this Decision is indicated hereinbelow:

- Bulk Carrier (BC): ship used for carrying cargo in bulk,
- Container: ship carrying the containers,
- Ro-pax:(Roll on/Roll Off passenger): ship carrying vehicles and passengers,
- Cruise vessel: ship designated for tourist purposes, passenger ship,
- Chemical tanker: tanker for chemicals,
- Product carrier/tanker: tanker for oil products,
- Shuttle Suezmax tanker: tanker carrying crude oil from oilfields of Suezmax type (120.000-200.000 gross tons),
- Aframax tanker – tanker carrying liquid cargo of Aframax type (80.000 – 120.000 gross tons),
- Reefer – ship carrying refrigerated cargo,
- Wind farm vessel – ship used for the maintenance of marine wind farms,
- Heavy lift – **** – ship carrying heavy cargo (type ****),
- Multipurpose field supply vessel – multipurpose ship for used for supplying the rigs,
- DWT (Deadweight tonnage) (hereinafter: dwt): unit measure for carrying capacity of a ship including all the cargos and
- CGT (Compensated Gross Tons) (hereinafter:CGT): a measure representing the indicator of required amount of work when constructing a ship, and is calculated by multiplying tonnage of a ship by a coefficient defined for particular type and size of a ship, so as to make comparable different ship types.

Brodosplit d.d. is an undertaking in difficulties, that being evident from the Balance sheet of said undertaking since it recorded the loss exceeding the equity value, resulting from cumulating permanent current losses incurred during the last decade. The operation of Brodosplit d.d. was financed by unfavourable short-term borrowing and by State aid granted, and thus the indebtedness reached exceptionally high level and the liquidity of entire Brodosplit d.d. was put at risk. The problems in operations arose above all in the basic shipbuilding activity undertaken by two most significant daughter companies of said undertaking: Brodogradilište - Brodosplit d.o.o. and Brodosplit – Brodogradilište specijalnih objekata d.o.o., that being substantiated in detail hereinbelow:

The business operations of Brodosplit d.d. are showing permanent cumulation of losses during years-long period of operations, so that by the end of 2010 Brodosplit d.d. records total cumulated loss amounting to HRK 5.508 billion, where loss exceeding the assets value is HRK 3.818 billion. Such a loss was for the most part incurred by shipbuilding activity, or with Brodogradilište - Brodosplit d.o.o.

In the Balance sheet of Brodosplit d.d. (Group) shown in Table 3 it is evident that Brodosplit d.d. is undergoing severe difficulty as share capital vanished long ago, the operations being financed solely by borrowing, and the indicators of indebtedness and liquidity are extremely poor.

Table 3 Consolidated Balance sheet for Brodosplit Group for 2006-2010 period

in 000
HRK

Balance sheet item	31.12.2006	31.12.2007	31.12.2008	31.12.2009	31.12.2010
1	3	4	5	6	6
1. Fixed assets	866,814	830,514	303,646	367,932	342,569
2. Current assets	589,227	623,352	1,038,016	774,338	1,102,551
3. Prepayments and accrued income	557,705	398,137	384,983	496,670	256,359
4. Loss above the equity value	2,170,488	2,692,121	3,261,863	3,390,871	0
TOTAL ASSETS	4,184,233	4,544,123	4,988,509	5,029,812	1,701,480
1. Capital and reserves	0	0	0	0	(3,818,195)
- Subscribed capital	485,466	485,466	485,466	485,466	485,466
- Reserves	1,208,280	1,208,280	1,205,305	1,205,377	1,205,317
- Loss carried forward	(1,372,136)	(1,172,098)	(1,121,602)	(1,561,763)	(5,081,714)
- Current year loss	(321,610)	(521,648)	(569,169)	(129,080)	(427,264)
2. Long-term provisions	0	0	203,717	78,799	48,763
3. Long-term liabilities	1,549,680	1,190,521	1,030,123	817,299	1,118,586
4. Short-term liabilities	1,766,865	2,695,894	3,458,054	4,004,464	4,298,965
5. Accruals and deferred income	867,688	657,708	296,615	129,250	53,361
TOTAL LIABILITIES	4,184,233	4,544,123	4,988,509	5,029,812	1,701,480

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

Pursuant to point 9 of the Decision concerning the rescuing and restructuring, it is deemed that the undertaking is in difficulty insofar as it is not capable, using own resources or resources it may acquire from its owners/shareholders or creditors, to prevent the losses, which would, failing external intervention by the state, almost certainly threaten its survival in the short- or long-term.

Within the meaning of point 10 a) of the Decision concerning the rescuing and restructuring, it is deemed that the undertaking is in difficulty, irrespective of its size, especially in case where more than half of the subscribed capital or equity is missing, and more than one quarter of such capital was lost in the previous twelve months.

Pursuant to point 11 of the Decision concerning the rescuing and restructuring, it is deemed that the undertaking is in difficulty especially where typical indicators prevail that the undertaking is in difficulty, such as for instance increasing losses, decrease of total income, increasing stocks, surplus capacity, reduced cash flow, increasing debt, growing interest rates costs, and decline or zero net value of assets.

From the aforementioned it results, beyond dispute, that Brodosplit d.d. is the undertaking in difficulty within the meaning of points 9, 10a) and 11 of the Decision concerning the rescuing

and restructuring, and that it is certain that without State aid it would not be capable to survive on the market in the long term.

IV 1.1 Brodosplit - Brodogradilište d.o.o.

The sole member or founder and 100%-holder of stock in capital of Brodosplit - Brodogradilište d.o.o. is Brodosplit d.d.

Brodosplit - Brodogradilište d.o.o. is entered in court register of the Commercial Court in Split, under the following registration number of the object of entry: 06175953, PIN: 05532178397. Share capital of Brodosplit - Brodogradilište d.o.o. amounts to HRK 165,368,700.00. Registered office of the undertaking is in Split, Put Supavla 21.

Taking into account the strong competition on global market in the field of standard commercial ships (tankers, bulk carriers, container ships), the production strategy of Brodosplit - Brodogradilište d.o.o. is oriented towards the construction of more complex ship types, among which one may particularly single out the ships carrying vehicles and passengers (Ro-Pax), the ships in offshore programme and the orange juice carriers.

More complex ship types mean highly specialized ships of higher unit price, or higher added value compared to standard ships. More complex ship types provide the access to more demanding market of high value products, especially in winning the market for offshore products, the ships for the installation and supply of wind turbines producing the electricity, the ships transporting refrigerated cargo, ships supplying the oil rigs, ships carrying vehicles and containers, ships in the fishing fleet programme. Mentioned ship types belong to non-standard market segments and thus are less exposed to changing conditions on the market.

Brodosplit - Brodogradilište d.o.o. is the holder of shipbuilding activity in Brodosplit d.d., and it mainly places its newbuildings on foreign markets, that making it a significant exporter as well. In the 2004 - 2009 period, the production programme of Brodosplit - Brodogradilište d.o.o. included various types of ships for transport of oil and oil products and two multipurpose vessels. In the period from 2004 to 2010, 34 ships were built according to the orderbook, those being mainly tankers.

Table 4 The overview of ships delivered by Brodosplit - Brodogradilište d.o.o. in the 2004 - 2010 period and productivity indicators

Year of delivery	Ship type	Number of ships delivered	CGT realized	Direct manhours / CGT (07)	Average number of directly employed	Realized CGT / number of directly employed
1	2	3	4	5	6	7
2004	tanker	4	120,912	46.40	-	-
2005	tanker	5	101,134	56.75	1,992	50.77
2006	tanker	7	123,109	49.99	1,600	76.94
2007	tanker	5	112,705	42.94	1,580	71.33
2008	tanker	5	109,685	41.22	1,522	72.07
2009	tanker	3	83,412	40.45	1,467	56.86
2010	tanker, bulk carrier	5	61,550	42.86	1,383	44.50
Average Δ =		4.85	105,873	46.14	1,632	65.60

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

During the period under consideration, the undertaking Brodosplit - Brodogradilište d.o.o. produced 4 - 5 ships annually, or average 105,873 CGT annually. In majority of cases those are ships for transport of oil and oil products which, regardless of State aid granted to Brodosplit - Brodogradilište d.o.o., incurred significant losses.

From Table 4 it is evident that significant number of directly employed workers was engaged in the construction of ships in the 2004 - 2010 period, so that the efficiency and productivity of labour on those newbuildings is inadequate in comparison with world standards. Namely, while according to world statistics, producing of one CGT for ships like "product" tanker and "chemical" tanker, requires 20 and 36 workhours respectively, in Brodosplit - Brodogradilište d.o.o. such an average varies between 40 and 45 workhours per CGT, depending on a year. Furthermore, the quantity of CGT's realized per direct employee (column 7) is less than a world average or efficient production.

It is necessary to point out that Brodosplit - Brodogradilište d.o.o. calculates also the workhours of sub-contractors as total workhours, that not being practised by shipyards worldwide, especially those in the Far East, who calculate such work as part of the equipment or sections assembled on the newbuildings. Generally, it may be said that working method in Far East is the ship assembling method, while in Croatian shipyards the ship construction is involved.

In the future, that also being the intention of the new owner, the number of direct workhours per CGT must be significantly reduced insofar as Brodosplit - Brodogradilište d.o.o. wants to utilize the workforce to the maximum extent and achieve satisfactory efficiency of the entire manufacturing process.

Although all the ships delivered may be classified as standard commercial ships, it is important to point out that thanks to particular technical features they are custom-built in their class. The biggest ships built in Brodosplit - Brodogradilište d.o.o. are Suezmax tankers of 166,447 dwt capacity, with length of 281.2 metres. Apart from mentioned ships, Brodosplit - Brodogradilište d.o.o. stands out by building high ice class ships which are used in northern seas and the demand whereof demonstrates positive trend.

The ships built in Brodosplit - Brodogradilište d.o.o. are mainly equipped with main and auxiliary marine engines built in Brodosplit - Tvornica dizel motora d.o.o. (hereinafter: TDM d.o.o.). TDM d.o.o. mainly delivers diesel engines to other domestic shipyards as well, whereby such a product may ultimately be considered as export product.

IV 1.1.1 Analysis of business operations of Brodosplit - Brodogradilište d.o.o.

Brodosplit - Brodogradilište d.o.o. in the 2006-2010 period incurs loss in business operations each year, that being evident in Table 5. Besides that, with the exception of 2009, it incurs operating loss from its operations, or operating income does not cover operating expenses, that ultimately resulting in insolvency and non-liquidity. Therefore it is considered to be the undertaking in difficulty referred to under point 9. of the Decision concerning rescuing and restructuring.

Table 5. Profit and loss account for Brodosplit - Brodogradilište d.o.o. for 2006-2010 period.

in 000 HRK

Item no	Description	2006	2007	2008	2009	2010
1.	Operating income	1,914,458	1,929,686	2,056,364	1,709,763	1,462,423
2.	Operating expenses	2,068,949	2,467,728	2,289,799	1,678,107	1,494,306
3.	Financial income	400,386	293,663	91,957	136,424	59,030

4.	Financial expense	202,992	211,869	399,815	261,880	453,689
5.	Extraordinary income	31,898	8,932	0	0	0
6.	Contingency expenditure	416,306	25,462	0	0	0
7.	TOTAL REVENUE	2,346,742	2,232,281	2,148,321	1,846,188	1,521,453
8.	TOTAL EXPENSES	2,688,247	2,705,059	2,689,614	1,939,987	1,947,995
9.	LOSS	(341,505)	(472,778)	(541,293)	(93,7999)	(426,542)
10.	Profit tax	0	0	0	0	0
11.	Other taxes not reported at preceding items	3,607	684	0	0	0
12.	LOSS	(345,112)	(473,462)	(541,293)	(93,799)	(426,542)

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

Table 6 shows the Balance Sheet in which it is evident that years-long cumulation of current losses lead to the loss exceeding the stock capital which at the end of 2010 amounts to HRK 3.725 billion, thus fulfilling the requirement under point 10 a) and point 11 of the Decision concerning the rescuing and restructuring stipulating when the undertaking is in difficulty, that being additionally expounded hereinbelow.

Furthermore, owing to extremely long building periods and delays in ship deliveries, actual construction costs for ships were higher compared to those calculated. For aforesaid reasons, Brodosplit - Brodogradilište d.o.o., apart from financing the construction of ships by ordinary advance guarantees, had to take additionally the short-term loans in order to bridge the liquid funding gap and fully complete the construction of ships. Further to aforesaid, unfavourable and significant borrowing as well as the delay in implementing the rescuing and restructuring of operations had as a consequence that Brodosplit - Brodogradilište d.o.o. by the end of 2010 owes a total of HRK 3.6 billion against short-term and long-term loans.

It is evident that Brodosplit - Brodogradilište d.o.o., that being substantiated by structure of the Balance Sheet of the undertaking in Table 6, is overindebted and extremely insolvent. Total liabilities of Brodosplit - Brodogradilište d.o.o. amount to HRK 5.269 billion, while the total assets value is only HRK 1.622 billion, that not being sufficient for covering all the liabilities. Short-term liabilities increased significantly in the 2006 - 2010 period, from HRK 1.681 billion to HRK 4.177 billion, that being a proof that Brodosplit Brodogradilište d.o.o. is not able to meet its current obligations towards the employees, suppliers, creditors and the state.

Besides that, owing to exceptionally unfavourable financial state presented in financial statements, Brodosplit - Brodogradilište d.o.o. is not in position to provide on its own the advance payment guarantees and to take the loans for financing the construction of a ship on financial market, as no commercial bank is willing to grant loans to Brodosplit - Brodogradilište d.o.o. insofar as loans are not secured by state guarantee.

Table 6 Balance Sheet for Brodosplit - Brodogradilište d.o.o. for 2006-2010 period

	in 000 HRK				
Balance Sheet item on 31/12	2006	2007	2008	2009	2010
1. Fixed assets	758,751	723,700	236,467	307,031	285,722
2. Current assets	516,845	560,609	938,104	717,246	1,080,173
3. Prepayments and accrued income	545,353	392,158	384,262	458,959	256,229
4. Loss above the capital stock value	2,191,155	2,664,616	3,204,877	3,298,606	0
TOTAL ASSETS	4,012,104	4,341,083	4,763,710	4,781,842	1,622,124
1. Capital and reserves	0	0	0	0	(3,725,208)
- Subscribed capital	165,369	165,369	165,369	165,369	165,369

- Reserves	4,642	4,642	1,896	1,966	1,906
- Retained earnings	1,626,711	1,626,711	1,630,490	0	
- Loss carried forward	(1,451,610)	(1,323,260)	(1,256,462)	(73,535)	(3,465,941)
- Current year loss	(345,112)	(473,462)	(541,293)	(93,799)	(426,542)
2. Long-term provisions	0	403,795	203,717	78,798	30,283
3. Long-term liabilities	1,513,168	1,154,219	993,629	780,984	1,091,855
4. Short-term liabilities	1,681,498	2,563,614	3,304,035	3,817,485	4,177,251
5. Accruals and deferred income	817,438	219,455	262,329	104,575	47,942
TOTAL LIABILITIES	4,012,104	4,341,083	4,763,710	4,781,842	1,622,124

Source: documents of the entrepreneur DIV s.o.o. and of the Brodosplit Group.

Analysis by: The Croatian Competition Agency

** Remark: pursuant to the Ordinance amending the Ordinance concerning the structure and content of annual financial statements (Official Gazette 130/10), in the Balance Sheet for 2010, the loss exceeding the capital stock value is no more indicated as an item in the Assets, but total cumulated loss is shown in Liabilities within the framework of the item Assets and reserves as Transferred loss.*

Total amount of credit commitments secured by state guarantee, on 31 December 2010, to be assumed by the Republic of Croatia, amounts to 3,587,513,435 HRK and those are associated with the following:

a) Loans secured by state guarantee approved prior to 1 March 2006.

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>	<u>Refund date</u>
HRVATSKA POŠTANSKA BANKA d.d.	HRK	73,046,490	73,046,490	30.09.2011
SOCIETE GENERALE - SPLITSKA BANKA d.d.	USD	16,200,000	90,205,682	15.12.2010
SOCIETE GENERALE - SPLITSKA BANKA d.d.	USD	25,200,000	140,319,950	15.12.2010
ERSTE & STEIERMARKISCHE BANK d.d.	USD	5,000,000	27,841,260	31.03.2011
ERSTE & STEIERMARKISCHE BANK d.d.	USD	20,200,000	112,478,690	31.03.2011
ERSTE & STEIERMARKISCHE BANK d.d.	USD	29,700,000	165,377,084	31.03.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	6,925,650	51,147,130	30.09.2011
ZAGREBAČKA BANKA d.d., Zagreb	USD	9,000,000	50,114,268	02.01.2012
ZAGREBAČKA BANKA d.d., Zagreb	EUR	12,000,000	88,622,076	02.01.2012
OTP BANKA d.d., Zadar (ex HRK 58,000,000)	EUR	8,004,207	59,112,456	30.06.2011
OTP BANKA d.d., Zadar (ex HRK	EUR	3,414,605	25,217,448	30.06.2011

25,000,000)				
HBOR - USD 20 mil.- technological renewal	USD	8,571,428	47,727,874	from 31.03.2004 to 31.12.2013
HYPO-ALPE-ADRIA BANK, Klagenfurt	USD	4,124,529	22,966,420	from 01.07.2005 to 01.04.2014
HYPO-ALPE-ADRIA BANK d.d., Split	USD	81,479,326	453,697,425	from 01.07.2008 to 01.04.2016
TOTAL EXPRESSED IN HRK			1,407,874,257	

b) Loans secured by state guarantees for implementing the rescuing, as approved by Decision of the Agency, Class: UP/I 430-01/2006-02/49, Reg. no 580-03-06-43-12 of 21 September 2006, published in the Official Gazette 135/06.

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>	<u>Refund date</u>
ZAGREBAČKA BANKA d.d., Zagreb	EUR	42,106,277.05	310,962,140	02.01.2012
ZAGREBAČKA BANKA d.d., Zagreb	EUR	14,180,000.00	104,721,753	02.01.2012
ZAGREBAČKA BANKA d.d., Zagreb	EUR	6,726,242.34	49,674,463	02.01.2012
ZAGREBAČKA BANKA d.d., Zagreb	EUR	14,246,181.28	105,210,513	02.01.2012
ERSTE & STEIERMARKISCHE BANK d.d.	HRK	35,000,000.00	35,000,000	31.03.2011
HYPO-ALPE-ADRIA BANK d.d., Split	HRK	115,000,000.00	115,000,000	30.09.2011
TOTAL EXPRESSED IN HRK			720,396,218	

The Agency has by virtue of its Decision approving the issue of state guarantees for rescuing of Brodosplit - Brodogradilište d.o.o., dated 21 September 2006 approved state guarantees in the amount of HRK 1,687,618,850.45 which involved the following:

- (i) USD 149,248,942 (HRK 874,693,573.20) for granting short-term credit for operations until the end of March 2007,
- (ii) USD 29,750,000 (HRK 174,353,891.25) and EUR 30,292,744 (HRK 225,078,511.00) as security for advance payments for the newbuildings 460 and 461,
- (i) USD 14,202,225 (HRK 83,234,056.91) for granting short-term credit for the newbuilding 456,
- (iv) USD 10,800,000 (HRK 63,294,858.00) and EUR 35,930,000 (266,963,960.09) for pursuing financially the newbuildings 462 i 463, or as security for advance payments made by the buyer.

Loans secured by state guarantee for building of the newbuildings were approved after 1 March 2006.

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>	<u>Refund date</u>
HYPO-ALPE-ADRIA BANK d.d., Split	USD	9,276,000.00	51,651,105	30.09.2011
HYPO-ALPE-ADRIA BANK d.d., Split	USD	15,555,079.01	86,614,599	30.09.2011

HYPO-ALPE-ADRIA BANK d.d., Split	USD	9,276,000.00	51,651,105	30.09.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	7,618,216.01	56,261,843	30.09.2011
ZAGREBAČKA BANKA d.d., Zagreb	EUR	10,761,987.74	79,479,141	02.01.2012
HRVATSKA POŠTANSKA BANKA d.d.	EUR	6,233,691.11	46,036,887	30.09.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	4,124,261.24	30,458,382	31.12.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	2,749,507.49	20,305,588	31.12.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	4,124,261.24	30,458,382	31.12.2011
HRVATSKA POŠTANSKA BANKA d.d.	EUR	2,062,130.62	15,229,191	31.12.2011
OTP BANKA d.d., Zadar	EUR	8,270,000.00	61,075,380	30.06.2011
OTP BANKA d.d., Zadar	EUR	9,580,780.00	70,755,717	31.03.2011
NOMURA INTERNATIONAL PLC, LONDON	USD	24,679,000.00	137,418,891	31.03.2011
TOTAL EXPRESSED IN HRK			737,396,218	

d) Liquidity loans secured by state guarantee approved after 1 March 2006

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>	<u>Refund date</u>
HRVATSKA POŠTANSKA BANKA d.d.	HRK	82,500,000	82,500,000	from 01.07.2009 to 01.07.2016
SOCIETE GENERALE - SPLITSKA BANKA d.d.	EUR	30,000,000	221,555,190	from 01.07.2009 to 01.07.2016
CREDIT INTERNATIONAL	USD	75,000,000	417,618,900	25.03.2013
TOTAL EXPRESSED IN HRK			721,674,090	

Apart from mentioned credit commitments secured by state guarantee, on 31 December 2010, total amount of protested state guarantees amounts to HRK 1,336,309,331

IV 1.2 Brodosplit - Brodogradilište specijalnih objekata d.o.o.

The sole founder and holder of 100% stock in the undertaking Brodosplit - Brodogradilište specijalnih objekata d.o.o. (hereinafter: BSO d.o.o.), is Brodosplit d.d. The undertaking BSO d.o.o. is entered into the register of Commercial Court in Split as a limited liability company,

with its registered office in Split, Put Supavla 21, under the following registration number of the object of entry: 060175259, PIN: 15413473504 Capital stock of BSO d.o.o. amounts to HRK 18,160,100.00.

With regard to production programme, in a period from 2005 until 2009, BSO d.o.o. delivered the following newbuildings: ferry and coast guard ship in 2005, two pontoon vessels in 2006, two cruise ships in 2007 and one in 2008, and one exploration ship and a ferry in 2009. Total value of newbuildings delivered amounts to 43.849 million EUR or approximately 324,482 million HRK.

Table 7 Profit and loss account for the undertaking BSO d.o.o. for 2006-2010 period

Item no	Description	2006	2007	2008	2009	2010
1.	Operating income	61,577,715	124,402,412	85,120,280	113,387,566	50,340,924
2.	Operating expenses	80,829,599	152,294,259	94,275,299	134,915,345	67,764,877
3.	Financial income	1,748,893	1,795,366	3,808,920	3,712,955	1,858,704
4.	Financial expense	3,069,221	4,309,393	7,739,228	7,316,685	6,852,517
5.	Extraordinary income	278,894	128,745	0	0	0
6.	Contingency expenditure	868,095	3,992,726	0	0	0
7.	Total REVENUE	63,605,502	126,326,523	88,929,200	117,100,521	52,199,628
8.	Total EXPENSES	84,766,915	160,596,378	102,014,527	142,232,030	74,617,394
9.	Loss	(21,161,413)	(34,269,855)	(13,085,327)	(25,131,509)	(22,417,766)

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

Similar to Brodosplit - Brodogradilište d.o.o., BSO d.o.o. is also operating at a loss in a 2006 - 2010 period, precisely at the level of operating loss itself, or operating expenses exceed the business income. Furthermore, when comparing the business income in the mentioned period, it is evident that BSO d.o.o. in 2010 realized significantly less operating income with respect to preceding years, especially 2007 and 2009, that being a proof of diminished business activity in 2010.

Total losses exceeding the capital stock value in 2010 amount to about 97,680 million HRK.

Total long-term and short-term liabilities in 2010 amount to 145,671 HRK. Therefore, it has been established that BSO d.o.o. is considered an undertaking in difficulty under points 9, 10 a) and 11 of the Decision concerning the rescuing and restructuring which lays down the cases when the undertaking is considered as being an undertaking in difficulty.

Total amount of credit commitments secured by state guarantee, on 31 December 2010, to be assumed by the Republic of Croatia, amounts to 60,240,673.38 HRK and those are associated with the following:

a) Loans secured by state guarantee granted prior to 1 March 2006.

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>
Refund date			
HYPO-ALPE-ADRIA BANK d.d., Split	EUR	2,656,544.76	19,619,042.63 from 01.01.2010 to 01.04.2016

b) Owing to significant difficulties entailing the inability to pay for the liabilities due, the Agency has by its Decision of 18 January 2007, Class UP/I 430-01/2006-02/50, Reg. no 580-03-07-59-12, that was published in the Official Gazette 25/07, approved state guarantees to the undertaking BSO d.o.o. for rescuing in the amount of HRK 139,678,604.29 for the following:

(i) EUR 847,500 (HRK 6.237.912,73) for borrowing in order to bridge the funding gap for financing the newbuildings 507,508, and 509,

(ii) EUR 18,129,619.80 (HRK 133,440,619.56) as security for advance payments for the newbuildings 510,511 and 512,

c) Liquidity loans secured by state guarantee approved after 1 March 2006.

<u>Creditor</u>	<u>Currency</u>	<u>Amount in foreign currency</u>	<u>Amount in HRK</u>	<u>Refund date</u>
HRVATSKA POŠTANSKA BANKA d.d.	EUR	1,374,753.75	10,152,794.28	31.12.2011
HYPO-ALPE-ADRIA BANK d.d., Split	EUR	1,625,676.74	12,005,903.97	from 01.01.2010 to 01.07.2016
CROATIA BANKA d.d.	EUR	2,500,000.00	18,462,932.50	31.12.2011
TOTAL EXPRESSED IN HRK			40,621,630.75	

Apart from mentioned credit commitments secured by state guarantee, on 31 December 2010, total amount of protested state guarantees amounts to HRK 35,441,069.86

IV 1.3 Portrayal of the market

Brodosplit d.d. has a long tradition in design and construction of various ships types and designated purposes, such as the ships carrying oil and oil products, chemicals, containers, bulk and refrigerated cart, multipurpose ships, dredgers, passenger vessels, ships for the transport of vehicles, as well as orange juice carriers. Besides, Brodosplit d.d. and its daughter companies have to date taken part in building complex metal structures such as the bridges, parts of oil rigs, pipelines for hydroelectric plants, that being the proof of flexibility and conferring to Brodosplit further possibility for its presence on wider market.

As already mentioned, in operations to date, Brodosplit d.d. built the ships of various types and designated purposes. However, for the most part Brodosplit d.d. was present on the world market in the field of standard commercial ships such as tankers, bulk carriers and container ships. Considering the fact that the fiercest competition on the world market involves precisely the building of the mentioned ships, Brodosplit d.d. had difficulties in coping with the strong competition from Far East.

According to reports of the Community of European Shipyards Associations (hereinafter: CESA) on 31 December 2009, there was a total of 158 million CGT of ships of various types and designated purposes ordered on world markets. Bulk of the total global demand for ships, as much as 83% concerned the ships built in the leading world shipyards in South Korea, China and Japan. The orders in European shipyards in 2009 constituted merely 6.4 % of world orders, while the share of Croatian shipbuilding industry at global level was 0.4 % or 5.9% of the European market.

According to CESA Annual Report for 2008 and 2009, the share of Croatian shipbuilding in the European orderbooks in 2008, expressed in CGT, was 3.71%.

According to analyses by Shipping Intelligence Network, Croatian orderbooks record a drop after 2008 and 2009, so that in 2010, Croatian shipyards reached the production level below the one achieved in 2001.

The analysis of trends for the newbuildings based on particular ship types for 2008, carried out by that very organization, shows that South Korea held a leading world position in the construction of tankers with 6 million CGT, and 3,3 million CGT in the construction of container ships, while China had the leading world position in production of bulk carriers with as much as 10.8 million CGT.

From the aforesaid, it follows that Croatia, and thus also the European shipbuilding industry, is not able to compete with the shipyards from Far East on the market for standard commercial ships such as tankers, bulk carriers and chemical carriers. However, Croatian shipyards, and thus also Brodosplit d.d., must get oriented towards highly specialized ships entailing higher added value, that are not produced in Far East, respectively find a niche in which they will succeed to achieve profitable operation.

IV 2 DIV d.o.o. tvornica vijaka, Samobor

The Decision of the Government of the Republic of Croatia stipulating binding terms of the open call for bids for the purchase of 8,073,568 shares of the company Brodograđevna industrija Split d.d. from Split, under special conditions of 11 February 2010, Class: 310-14/10-02/01, Reg. no: 5030120-10-4 and Decision recommending to Brodograđevna industrija Split d.d. to define binding terms of the open call for bids for the purchase of a single business share of the company Brodosplit - Brodogradilište specijalnih objekata d.o.o Split, dated 11 July 2009, Class: 310-14/10-02/05, Reg. no: 5030120-10-4, lays down the binding terms of the open call for bids for the purchase of shares/stock of mentioned shipyards. The binding term, apart from submitting a bid, is producing of the Restructuring plan. The terms referred in the public bid notice are described under point III of the statement of reasons herein.

The selected submitter of a bid and of the Restructuring programme for Brodosplit d.d. is DIV tvornica vijaka d.o.o.

DIV d.o.o. tvornica vijaka (hereinafter: DIV d.o.o.) is entered in court register of the Commercial Court in Zagreb, under the following registration number of the object of entry: 080127368, PIN: 33890755814, as a limited liability company, with its registered office in Samobor, Bobovica 10/A. Capital stock of DIV d.o.o. amounts to HRK 31,103,500.00.

The 100% stock holder in DIV d.o.o. are natural persons from Samobor. DIV d.o.o. started in 1971 as a small family trade, and today it is a group having 800 employees in 3 factories, 5 subsidiaries and two branch offices in 6 countries.

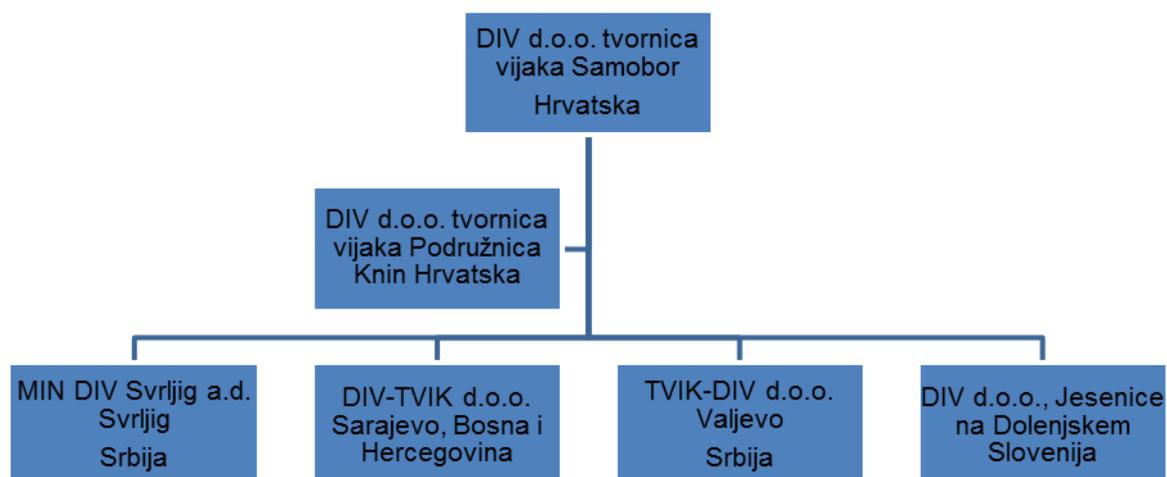
Namely, DIV d.o.o. is heading the DIV Group, and holds several factories for hot and cold forging, as well as the plants for treating steel plates and other light metal structures and components, the plant for manufacturing big plastic products, as well as its own distribution network which is considered to be one of the largest in Europe, with warehousing capacities exceeding 30,000 palette positions and more than 100,000 items ready for delivery, with organized kanban and just-in-time delivery systems. Its intense growth started in late 90's and is lasting to these days, with average growth rate of more than 40% per annum placing it among the undertakings with the highest growth rate in metal industry.

The majority of employees are in the Republic of Croatia, at registered office of the undertaking in Samobor, and in the subsidiary in Knin (440), while other employees are deployed in daughter companies in the Republic of Serbia, Bosnia and Herzegovina and the Republic of Slovenia, as well as in branch offices in Germany and France.

DIV d.o.o. Group consists of the following undertakings shown in Fig. 2:

- MIN-DIV Svrlijig a.d., having its registered office in Svrlijig, the Republic of Serbia, ownership share: 83.70% of equity capital,
- DIV-TVIK d.o.o., having its registered office in Sarajevo, Bosnia and Herzegovina, ownership share: 100% of capital stock,
- TVIK-DIV d.o.o., having its registered office in Valjevo, Serbia, ownership share: 100% of capital stock,
- DIV d.o.o., having its registered office in Jesenice na Dolenjskem, Slovenia, ownership share: 100% of capital stock,
- DIV d.o.o., having its registered office in Knin, Croatia, ownership share: 100% of capital stock.

Figure 2. Structure of DIV Group



Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

The undertaking DIV d.o.o. holds significant experience in privatization and restructuring of an undertaking in difficulty, and some of the results of preceding privatization processes are the following:

- Successful privatization and restructuring of the undertaking TVIK d.d. in bankruptcy, having its registered office in Knin, which the undertaking DIV d.o.o. acquired at the end of 2003 through an open call for bids of the Croatian Privatization Fund. Currently 80% of the products are exported directly and more than 97% indirectly (products incorporated in other Croatian export products). Furthermore, there is a completely new factory built in Knin, within the existing factory yard, the capacity of which is 10 times that of the existing one, and thus the development of all branches of the undertaking is proceeding.

Presently mentioned factory operates as a subsidiary company of DIV d.o.o., that being shown in Figure 2.

- By mid 2006, MIN Svrlijig factory from Serbia was bought, its basic activity being the manufacturing of fastening systems for railway infrastructure, light railway machinery and rolling stock components. The privatization of MIN Svrlijig, which operates under the name of MIN DIV Svrlijig, has on several occasions been declared as being one of the best privatization processes in Serbia. MIN DIV Svrlijig a.d. constitutes a part of DIV d.o.o. Group, that being shown in Figure 2.

IV 3 Restructuring plan

The Restructuring plan was drawn up for the Brodosplit d.d. Group, and involves Brodosplit - Brodogradilište d.o.o. and BSO d.o.o., particularly owing to years-long liaison of resources, infrastructure, human resource, management method, and development plans. Furthermore, the reason for submitting the Restructuring Plan for Brodosplit d.d. for the entire Brodosplit Group arises from the fact that BSO d.o.o. has no independent physical access, but is situated within the principal shipyard, Brodosplit - brodogradilište d.o.o., and for certain technology services depends on the principal shipyard. Separating the two shipyards would be extremely complicated and illogical move as it would bring about a lot of organizational and logistics difficulties and would require significant capital investment.

Since from point IV. 1 of the statement of reasons herein it follows that Brodosplit d.d. as well as its daughter companies Brodosplit - Brodogradilište d.o.o. and BSO d.o.o. are undertakings in difficulty, it is to the undertakings in difficulty that the requirements for granting State aid for restructuring referred to under point 17 and section 3.2.2 of the Decisions concerning the rescuing and restructuring apply.

The following requirements are involved:

- right to State aid is conferred only to the undertaking in difficulty, as per point 33 of the Decision concerning the rescuing and restructuring,
- restoring long-term viability (profitability) (points 17 and 34 - 37 of the Decision concerning the rescuing and restructuring),
- avoiding excessive disruption of market competition - compensatory measures (points 38 to 42 of the Decision concerning the rescuing and restructuring),
- State aid must be restricted to the minimum level necessary: actual contribution without the elements of aid (own contribution) (points 43 to 45 of the Decision concerning the rescuing and restructuring),

IV.3.1. Undertaking in difficulty and description of the circumstances that lead to difficulties

By virtue of the business operations analysis of Brodosplit d.d. carried out, including also two major daughter-companies Brodosplit - Brodogradilište d.o.o. and BSO d.o.o., as described under point IV.1 of the statement of reasons herein, it is ascertained that it is in difficulty.

Under point 36 of the of the Decision concerning the rescuing and restructuring, it is stipulated that the restructuring plan must include the description of circumstances that led to difficulty of an undertaking, it constituting the grounds in evaluating whether the measures proposed are appropriate,.

DIV d.o.o. has in its Restructuring plan for Brodosplit d.d. specified the causes of difficulties of Brodosplit d.d., which may be classified as external and internal.

Although external causes such as war events and market developments did have certain impact on the operations of Brodosplit d.d., the fact is that internal causes and business policy also created the difficulties faced by Brodosplit d.d.

It is mainly the following causes that are at issue:

- frequent changes of management which prevents achieving the continuity in organizational and management sense,
- the lack of integrated system of planning and monitoring the life cycle of ships, starting with placing the contract until delivery up to 2007, which ultimately resulted in delays of delivery and extra expenses per each newbuilding,
- supply range consisting of standard non-profitable ship types having low sale prices and entailing increased financing costs throughout a period of ship construction,
- lack of the cost management and rationalization through simplification of the procedures, standard ship supply, standardization in procurement, optimization and specialization of operating processes; it is only since mid 2005 that the ongoing work proceeds in upgrading these domains, and it should keep on further,
- the construction of ships at fixed sale prices and with delivery periods of two years from the date of signing the contract, which entails significant risks with respect to exchange rate fluctuations and rising prices of materials and services, primarily steel, as well as the lack of safeguards against mentioned risks.
- surplus of the total number of employees, unfavourable ratio of productive and administrative workers and poorly managing the employees and workhours, as a result of which Brodosplit d.d. lost much productivity and efficiency.

IV.3.2 Restoring the long-term viability (profitability)

Under point 34 of the Decision concerning the rescuing and restructuring it is stipulated that the restructuring plan, the duration whereof must be as short as possible, must restore long term viability (profitability) of the undertaking in course of a reasonable time period, on the basis of realistic assumptions on future operating environment.

Pursuant to point 17 of the Decision concerning the rescuing and restructuring, the restructuring is based on a feasible, coherent and far-reaching plan with the scope of restoring long-term viability (profitability) of the undertaking. The restructuring often involves one or more of the following elements: reorganization and rationalization of activities of the undertaking on efficient basis, which often involves the abandoning of the activities that incurred losses, restructuring of those current activities that might become competitive again, and where possible, the diversification of activities (the development of new or upgraded products and manufacturing processes) that will be new and marketable, all that being considered as the so-called business restructuring.

The financial restructuring under point 17 of the Decision concerning the rescuing and restructuring is considered the injection of fresh funding, reducing the debt, etc., and it should often follow business restructuring of an undertaking. The activities associated with restructuring within the meaning of the Decision concerning the rescuing and restructuring may not be restricted to financial aid directed at eliminating previous losses without resolving the causes of incurrence of such losses.

Furthermore, point 37 of the Decision concerning the rescuing and restructuring stipulates that the expected return on investment must be sufficient in order to enable the restructured undertaking to compete on the market relying on its own forces.

In the submitted Restructuring Plan of Brodosplit d.d., DIV d.o.o. distinguished business restructuring from financial restructuring. By implementing the business and financial restructuring, Brodosplit d.d. will again restore the long-term viability. Furthermore, DIV d.o.o. described the restructuring measures, that being described hereinafter in more detail.

Thus, taking account the level of indebtedness of Brodosplit Group and the losses amounting to 3.818 billion HRK above the equity capital, the prerequisite for implementing the Restructuring Plan and of the measures envisaged is financial and business restructuring. Upon completed privatization of Brodosplit d.d., all the requisite measures of financial restructuring must be implemented in the first place, and then the undertaking DIV d.o.o. will through a three-year period proceed with the implementation of business restructuring.

IV 3.2.1 Restructuring measures - financial restructuring

Financial restructuring of Brodosplit d.d. includes the following:

1. In entering the Agreement regulating the property law issues between the Republic of Croatia and the undertaking Brodosplit d.d., on 11 February 2011 the contractual parties established the existence of mutual claims and liabilities. Pursuant to the Agreement regulating the property law issues between the Republic of Croatia and the undertaking Brodosplit d.d., mutual liabilities and claims by said undertaking and the Republic of Croatia in the amount of HRK 2,897,300,000.00 will be cleared. Mentioned amount represents the compensation that the Republic of Croatia pays to the undertaking for the value of expropriated real estate on the land that is declared to be maritime domain, that being compensated through the following claims of the Republic of Croatia towards Brodosplit d.d.: by respective part of paid protested guarantees that should have been paid by Brodosplit d.d. and credit commitments of Brodosplit d.d. towards the banks, secured by state guarantees, to be assumed and met by the Republic of Croatia.
2. Upon clearing mutual liabilities and claims, the remaining credit commitments of the undertaking secured by state guarantees will be written off and assumed in 100% amount by the Republic of Croatia.

Upon entering into the Agreement regulating the property law issues between the Republic of Croatia and Brodosplit d.d., and clearing and writing off the remaining obligations, the Balance sheet of Brodosplit d.d. will no more be burdened with enormous credit commitments, but will for the most part be brought into balance, with equity capital restituted. In that manner, the restitution of equity and "cleaning" of the Balance sheet will render possible securing of liquid funds necessary for implementing the measures of business restructuring on the financial markets, and proceeding of negotiations concerning the entry of strategic partners into Brodosplit d.d.

The planned duration of the restructuring period to be implemented by DIV d.o.o. is September 2011 - December 2015, while the Restructuring plan of Brodosplit d.d. envisages combined approach according to various business models:

- restructuring of the production of newbuildings for the market which stems entirely from the present operations method, but subject to the following changes: change of the content of supply range - tendency towards a profitable "product" instead of filling up the "capacity", change of the construction financing method, generating new revenues from barter and sale of equipment as well as creating partnership relations with suppliers and participants in the sales channel, and

With regard to daughter companies Brodosplit - Brodogradilište d.o.o. and future organization of Brodosplit d.d., or potential dissociating of individual daughter companies from Brodosplit d.d., currently such an option is not the priority for the following reasons:

- daughter companies currently do not incur losses to be eliminated,
- currently they are not enjoying a stable position on external market, and independent from the activity of the very shipyard, and therefore do not even have market value at which they could be dissociated from Brodosplit d.d.
- they constitute a significant part of procurement chain for the principal shipyard, Brodosplit - Brodogradilište d.o.o. and by their sale or closure an alternative procurement source should immediately be identified for the shipyard prior to closure or sale of the company,
- the sole reasonable solution for daughter companies is their opening towards independent market and achieving the profitability based on market prices that will result from management, organizational and cost-wise restructuring of the shipbuilding activity, in which case it will be possible to effect possible sale or dissociation of a daughter company from Brodosplit d.d.

IV 3.2.2.1 Capital investment in technological renewal

The Restructuring plan of Brodosplit d.d. proposes restricted investment in the capacities of Brodosplit d.d. during a short-term period, that for the most part, along with the procurement of new equipment, applying to daughter companies as well and their physical dissociation from the shipyard.

Namely, DIV d.o.o. holds the view that investment in replacing the equipment and technology which is currently at the disposal of Brodosplit d.d. is not economically profitable, since said equipment is in good state and at satisfactory technological level, therefore fully appropriate for achieving the envisaged restructuring measures. Satisfactory technological state of production capacities of the shipyard is the result of investment in technological renewal of the shipyard, where the most recent investment took place in 2004 and 2005.

Furthermore, DIV d.o.o. holds that the investments in equipment to date were proper, and the causes of non-competitiveness of Brodosplit d.d. are inefficient procurement and sales based on inappropriate business policy.

Therefore the funds should be invested in stabilization of the market and achieving the financial stability of Brodosplit d.d., that being the prerequisite for technological breakthrough, but then in stable circumstances.

In the long term, Brodosplit - Brodogradilište d.o.o. requires investment in gantry crane and drydock, however such investment will be implementable only once Brodosplit - Brodogradilište d.o.o. becomes financially stable and acquires stronger and more stable position on the market. At this moment, significant investment in equipment would not produce immediate effects, but would increase the share of depreciation in costs, without secured return of funds, especially against compensatory measures limiting the output capacity, and present reduced demand from the market.

Furthermore, more significant investment in the capacities such as gantry crane or drydock, require longer time for realization.

Table 9 The investment of undertaking DIV d.o.o. in facilities and equipment of Brodosplit d.d.

Description of investment	Amount in HRK	Period	Effect of investment
Hydraulic system for modelling the plates in curves (3D), joining sections	37,000,000	3 years	Accelerating the process of hull construction
Presses of 2000 tons, 12 m length	13,000,000	2 years	Processing big parts in one piece
Renewal of the plant for processing steel plates	45,000,000	3 years	Optimization of utilization of equipment utilization
CNC machines, CNC machines for plate banding	15,000,000	3 years	Improving the technological capabilities
Welding devices and equipment	20,000,000	2 years	Improving the technological capabilities
Software and hardware, CAD CAM	15,000,000	3 years	Pursuing the technology and increasing the efficiency
Cranes renewal	50,000,000	3 years	Improving the technological capabilities
Building the east-side entrance, renewal of buildings and workshops	15,000,000	3 years	Better working conditions, increased productivity and energy savings
TOTAL	210,000,000		

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Table 9 shows that through a period of 3 years DIV d.o.o. intends to invest 210 million HRK in capital investments involving the facilities, equipment and Information technology, or the purposes designated to upgrade technological capacities of the shipyard and accelerate the production process.

IV 3.2.2.2 Future production programme of Brodosplit - Brodogradilište d.o.o.

In the long-term, Brodosplit - Brodogradilište d.o.o. plans to focus on specialized segments of the market for ships having higher added value such as Ro-Pax ships, the dredger ships, shuttle tankers, passenger ships, cruise vessels, crane ships, etc. Namely, Brodosplit Brodogradilište d.o.o. has the experience in producing ships such as Ro-Pax ships, cruise ships, and rich experience has recently also been reinforced by building fresh juice carrier.

Long-term production orientation (during and after the restructuring):

- tankers of 115,000 dwt (including also the shuttle tankers),
- tankers of 155,000 dwt (including also the shuttle tankers),
- Ro-Pax ships for combined transport of passengers and vehicles,
- cruise ships for 1,200 passengers,
- cruise ships for 2,000 passengers,
- fresh juice carriers,
- dredgers,
- crane ships,
- ships for laying the pylons of marine wind turbines.

Table 10 Present and planned production programme of Brodosplit - Brodogradilište d.o.o. in the 2011-2014 period

Year of delivery	Newbuilding no	Ship type	Sale price	Delivery date	Calculated CGT
2011	468	Ro-Pax 11,300 dwt	**** EUR	8/2011	38,135
2012	XX1	Bulk carrier 52,000 dwt	****USD	5/2012	15,564
2012	XX2	Aframax tanker 115,000 dwt	****USD	9/2012	25,232
2012	XX3	Bulk carrier 52,000 dwt	****USD	10/2012	15,564
2012	XX4	Multipurpose field supply vessel 4,900 dwt	****USD	12/2012	8,699
2013	XX5	Multipurpose field supply vessel 4,900 dwt	****USD	3/2013	8,699
2013	XX6	Heavy lift – Jumbo 6 14,000 dwt	****USD	4/2013	12,708
2013	XX7	Aframax tanker 115,000 dwt	****USD	7/2013	25,232
2013	XX8	Juice Carrier 52,000 dwt	****USD	8/2013	10,435
2013	XX9	Wind Farm vessel	****USD	10/2013	33,820
2014	X10	Aframax tanker 115,000 dwt	****USD	1/2014	25,232
2014	X11	Shuttle Suezmax tanker 155,000 dwt	****USD	5/2014	29,640
2014	X12	Shuttle Suezmax tanker 155,000 dwt	****USD	10/2014	29,640
2015	X13	Ro-Pax 11,300 dwt	***EUR	1/2015	38,135

Source: documents of the undertaking DIV d.o.o.
 Analysis by: The Croatian Competition Agency

If one takes into account present situation on the market, the experience in building the ships, and certain time necessary for adjustment of the shipyard to new markets and highly specialized ships of higher added value, the envisaged production programme represents a logical solution.

Although with regard to present prices of steel, dollar exchange rate and ship sale price on the world market, it is difficult to presume that profit may be made on bulk ships, especially during the initial years of restructuring, the improvements and standardization in management of processes, purchase of materials and relations with the suppliers, use of workforce and overall construction costs will undoubtedly guide Brodosplit - Brodogradilište d.o.o. towards achievement of significantly better results on such newbuildings compared to those to date. The production of "known" ships will render possible the introduction and standardization of best business practices in procurement, production, sales and financing, and especially in managing human resources, all that to be reflected on future operations.

For aforementioned reasons the priorities of DIV d.o.o. presently involve the concentration of the shipbuilding activity on the existing projects and elaborated documents for ship types, such as those for carrying bulk cargo and tankers.

DIV d.o.o. estimated that it is not realistic to focus the production on desired production programme immediately following the takeover of shipyards, but certain adjustment time is necessary. It is necessary to take into account the transitional period for adjustment in order for the changes to be implemented to have effect and for Brodosplit - Brodogradilište d.o.o.

to enter new markets with such changes, for instance the improvement having instantaneous effects, the development of drawings and portfolios, estimating the costs of new drawings as well as financial stabilization of operations.

With regard to the fact that most recent ships from the present orderbook are under completion, it is necessary to employ work capacities, while the design and technical characteristics of bulk carriers provide for the quickest possible activating of or resuming with the production at no cost and postponements associated with introducing new models of ships in the production.

In the short term (during restructuring), the undertaking envisages to produce the following ships:

- bulk carriers of 52,000 dwt,
- bulk carriers of 58,000 dwt,
- tankers of 51,000 dwt.

Having regard to the aforementioned facts, should upon the takeover of Brodosplit d.o.o. not be possible to contract new ships with external buyers sufficiently quickly so as to insure continuity of production, DIV d.o.o. anticipated by future business model the expansion of operations by building the fleet of "standard" ships for the needs of own shipping company Brodosplit - Plovidba d.o.o. (daughter companies owned by Brodosplit - Brodogradilište d.o.o.) that should be reactivated.

At this moment Brodosplit - Plovidba d.o.o. is not an active undertaking, and within the framework of Brodosplit d.d. or Brodosplit - Brodogradilište d.o.o. it was established with the purpose of operative use of ships in own shipping company, should for any reason the buyers forfeit to buy the ships ordered. Within the framework of business restructuring, the plan is to reactivate Brodosplit-Plovidba d.o.o., to stabilize it in administrative and organizational sense, and to engage quality human resource who will successfully carry through the plans of the undertaking.

Furthermore, as the establishing of own fleet and earning the revenue from charter and ship sales once the prices become favourable is being planned during initial restructuring period, substantial funds will be necessary for said plan to be realized.

In its projected business operations, DIV d.o.o. presumes potential creation of the fleet of 14 ships in total, four ships having unit purchase price of 36 million USD or 200 million HRK, and ten ships having unit purchase price of 42 million USD or 234 million HRK.

According to the planned schedule, two ships would be purchased in 2011 and six ships in each of the following two years. Total estimated value of investment in own fleet is approximately HRK 3,145,202,000, of which 80% would be financed by designated loans from special purpose credit institutions, and 20% from investments in capital stock of the company where one third would be financed by a person taking over, one third by the funds, and one third by the partners, mainly the interested suppliers.

Furthermore, DIV d.o.o. foresaw in its forecasts the revenues from ship charter in the amount of USD **** a day, while in the higher-risk variant such a revenue is USD **** a day. Taking into account the current situation on world shipping market, said forecasts could prove to be too optimistic, and it is therefore necessary to take them with caution.

Through mentioned model it will be possible to achieve financial stabilization of Brodosplit - Brodogradilište d.o.o. as the ships will apart from being sold to Brodosplit - Plovidba d.o.o. be chartered, exploited or sold during or upon the completion of construction pending the achievement of targeted sale price for the ship on the market.

Furthermore, considering that a whole series of ships for the transport of bulk cargo is to be built for the needs of own shipping company, a possibility is secured for gradual implementation of structural changes, full employment of Brodosplit - Brodogradilište d.o.o. during restructuring, but also for the new revenue structure and making the profit on ships. Namely, apart from classic ships sales, Brodosplit - Plovidba d.o.o. will be in position to offer ships on the market in the form of short-term or long-term charter, barter deal with suppliers of the undertaking and sale of completed ship on the market once its sale price reaches the peak (option where the sale price exceeds the agreed sale price for the buyer).

Naturally, the possibility of entering into contracts for other ships as well, which are included in the planned production programme is thus not discarded, should circumstances on the market and manufacturing costs provide for earning profits on such ships. With the construction of the last ship envisaged, the Ro-Pax ferry for cruising, the undertaking should already be achieving more favourable results.

IV 3.2.2.3 Future production programme

BSO d.o.o. is capable of manufacturing the following programme:

- smaller cruise ships (50 to 100 passengers)
- ferries (Ro-Ro and Ro-Pax) up to 110 metres length
- coast guard vessels,
- steel structures and sections for bridges,
- steel structures for oil and gas production rigs
- supply ships
- yachts,
- submarines for tourist purposes

In the case of an undertaking BSO d.o.o., DIV d.o.o. intends to proceed with current production programme involving smaller cruise vessels, ferries and coast guard vessels, and supplement it using the workforce on the tasks of manufacturing specialized steel structures for domestic buyers, as well as the tasks of manufacturing and maintenance of yachts, supply ships and tourist submarines.

Table 11 Planned production programme of BSO d.o.o. in 2012-2015 period

Year of delivery	Newbuilding no	Ship type	Sales price in EUR	Delivery date	CGT
2012	B1	Cruise ship 50+2 passengers	****	10/2012	5,726.7
2013	B2	Cruise ship 50+2 passengers	****	4/2013	5,726.7
2013	B3	Coast guard vessel 40 m	****	10/2013	1,151
2013		Piles for Pelješac bridge	****	7/2013	
2013	B4	Coast guard vessel 40 m	****	10/2013	1,151
2014		Towers for wind turbines (10 km)	****	4/2014	
2014	B5	Ferry 107m (200 cars; 1400/2000 passengers)	****	12/2014	7,433
2014		Towers for wind turbines (10 km)	****	12/2014	

2015	B6	Cruise ship 50+2 passengers	****	9/2015	5,726.7
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Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

IV 3.2.2.4 Restructuring human resources in Brodosplit d.d. (business restructuring)

On 31 December 2009, Brodosplit d.d. employed 3727 workers, while on 31 December 2010 that figure was reduced to 3569 workers.

On several occasions DIV d.o.o. in its Restructuring plan showed the relationship between the workforce, or the ratio between production workers, production overhead personnel and administrative employees. Table 12 in column "Current status (%)" shows the percentage of production workers (50%), non-productive workers (24%) and administration (26%) in Brodosplit - Brodogradilište d.o.o. and BSO d.o.o. prior to implementing the restructuring process, in which the disproportion between those which by type of work represent fixed cost and those who work directly on the newbuildings is clearly evident.

The production and market for ships does not allow for negative ratios between the productive and non-productive workers, especially owing to long-lasting process from the start until completion of the product. In that respect, within a year the ratio will be brought to figures of 67% of productive workers, 21% of production overhead and 12% administrative employees. Positive ratio will reduce the workforce cost per newbuilding, against time standard set workhours demand. Central administrative employees will pending the sale of subsidiary companies perform the tasks for daughter-companies of Brodosplit d.d. as well, for agreed fee.

Table 12 Relationship between workforce prior to and after the first year of restructuring

Category	Present status (%)	After the first year of restructuring (%)	Change
Administrative employees	26	12	-54%
Non-productive workers	24	21	-13.5%
Productive workers	50	67	+34%

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Although DIV d.o.o. holds that the level of human resources of Brodosplit d.d., both administrative and professionally-wise, is satisfactory and that the majority of present employees now already constitute good basis for meeting the prerequisites for successful operation on free market, supplementary training and capacity building of management and production workers is necessary, and that will constitute an integral part of the implementing measures for technological renewal.

The Restructuring programme for Brodosplit d.d. envisages a selection of human resources at several levels:

- by terminating the employment contract and outplacing those who do not meet work requirements (professional skill, discipline, efficiency) and for which there is no real need,
- reassigning the employees who meet the criteria to other workplaces necessary,
- internal training and re-training,
- through new recruiting at workplaces for which permanent need prevails (engineers, welders, ship assemblers, corrosion protection)
- by generally rejuvenating for physically intense active workplaces.

Table 13 Planned dynamics of the employment trend in Brodosplit d.d. in 2011-2015 period

Company	Employment on 31/12						
	2009.	2010.	2011.	2012.	2013.	2014.	2015
Brodogradilište d.o.o.	2867	2756	2480	2300	2150	2050	2000
BSO d.o.o.	194	181	155	144	144	144	144
TDM d.o.o.	322	301	285	280	270	260	265
Armature d.o.o.	13	13	15	20	40	40	40
Dizalice d.o.o.	12	11	15	20	35	35	35
Plovidba d.o.o.	0	0	10	10	10	10	10
AKZ d.o.o.	167	159	180	200	300	300	300
Nemetalna oprema d.o.o.	57	55	60	60	65	65	65
MOK d.o.o.	50	48	55	55	70	70	70
Izolacija d.o.o.	45	45	50	50	50	50	50
TOTAL	3727	3569	3305	3139	3134	3024	2979

Source: documents of the undertaking DIV d.o.o.
 Analysis by: The Croatian Competition Agency

DIV d.o.o. holds that for efficient business operation of the shipyard it is necessary to outplace certain number of employees, about 800-1000, and it allocated about 40 million HRK for that purpose.

Outplacing will be implemented in several ways:

- through financial compensation pursuant to provisions of the law and collective agreement,
- by offering employment with another employer (arrangements with suppliers, sub-contractors),
- by establishing a new undertaking having an exclusive agreement with Brodosplit Brodogradilište d.o.o. in a period of 3 years (e.g. cleaning, ancillary services, catering, joinery, security services, etc.).

Considering the fact that half of the employees of Brodosplit d.d. are not productive workers, it is evident that it has a surplus of non-productive workers, while at the same time it lacks the workers of particular profiles who directly take part in the construction of ships. Therefore, certain measures shall be taken that will result in the ratio of employees in Brodosplit d.d. being increased in favour of productive workers.

IV 3.3 Avoiding excessive disruption of market competition (compensatory measures)

From point 38 of the Decision concerning the rescuing and restructuring it follows that compensatory measures shall be enacted with the scope of assuring that the aid produces minimum negative effects on commercial terms, so that the desired positive effects overrule the negative effects. Compensatory measures may consist of the sale or transfer of property,

reduction of capacities or presence on the market, as well as diminishing the obstacles to access the market on subject segments.

Furthermore, the measures must be proportional to the restrictive effect of aid on the market, and particularly to the size and position of undertakings on their market or markets. The measures should be implemented in particular on the market or markets on which the undertaking will hold a strong market position following the restructuring. The reduction of capacities or the restriction of presence of the undertaking on the market must constitute an integral part of the restructuring, as defined by the restructuring plan. Debt write-off and terminating the activities operating at a loss, which are in any case necessary for restoring the profitability, will for the purpose of evaluating the compensatory measures not be considered capacities reduction or presence on the market. Such evaluation will also take into account the previously allocated aid for rescuing, within the meaning of point 40 of the Decision concerning the rescuing and restructuring.

As the restructuring of Croatian shipyards constitutes one of the benchmarks for closing the negotiations in Chapter 8: Market Competition, the Republic of Croatia assumed the commitments to reduce the output capacity in Croatian shipyards, and to that end the Ministry entered with Brodosplit d.d., Brodograđevna industrija 3. Maj d.d., Brodotrogir d.d. and Brodogradilište Kraljevica d.d., into the Agreement on mutual rights and obligations in connection with the overall 2011 - 2010 production limit. Stated Agreement does not extend to Brodogradilište Uljanik d.d. as it is not considered to be an undertaking in difficulty.

Under the Agreement on mutual rights and obligations in connection with the overall 2011 - 2010 output limit, the overall annual output limit for all the shipyards (hereinafter: General limit) is 323,600 CGT during a 10-year period (2011 - 2010). General limit is subdivided into Individual annual output limits for individual shipyards.

Moreover, such compensatory measures are defined and approved at the level of entire Croatian shipbuilding through the Common Position by the European Union on closing Chapter 8 Market Competition (with the exception of shipyard Uljanik d.d.). Furthermore, the Common Position states that overall output capacity of Croatian shipbuilding, excluding Uljanik d.d. is 471,324 CGT per annum. Said capacity should for the purpose of compensatory measures be reduced by 21% or to 372,346 CGT.

In the case of Brodosplit d.d., the overall required reduction of output capacities is 29,611 CGT. The reduction of output capacities should be implemented within 12 months from the date of agreeing the privatization contract.

The total capacity of Brodosplit d.d. amounting to 146,754 CGT is calculated on the basis of an output in 2006 - 2008 period. Therefore, applying the reduction of output capacity by 21.5% it computed the maximum authorized capacity following the restructuring which amounts to 115,212 CGT.

The undertaking DIV d.o.o. indicated in its plan that the capacities reduction will be implemented by closing the slipway no 4 (by demolishing or burying) and by reducing the usable land area for the shipbuilding activity by 5%, but also by re-designating a part of present land area of the shipyard for other activities so that the shipyard would have at its disposal 60% of the area compared to previous years.

Moreover, the undertaking also presented technical characteristics of slipway no 4 to be closed. Therefore, possible capacity reduction ranges from 29,992 CGT to 32,838 CGT.

Specification of Slipway no 4:

- Berth size: length 163 m, length: 22 m, berth angle: 3.55°
- Capacity of existing cranes: east side: 1 x 40 t, west side: 1 x 27 t

The access on both sides of the berth is possible by mobile cranes of 300 t by laying blocks.

Table 14. Production programme of Slipway no 4

Ship type	LOA (m)	B (m)	GT	CGT	Steel mass (t)
Passenger ship	105	17.5	5,900	16,469	2900
Reefers/ Containership	143	22	10,366	14,520	4260
Ro-Pax ferry	125	20	11,200	14,996	2800

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

DIV d.o.o. has also anticipated different versions for building a ship on subject slipway, or it produced the calculation (reduction) of the annual output capacity which the shipyard will lose by closure of the slipway. In all the variants of construction, envisaged duration for building a ship is 6 months, measured from keel laying to its launching, with occasional running of mobile cranes.

1. Version „A“: building two passenger ships of 16,469 CGT, total 32,938 CGT,
2. Version „B“: building a reefer/(containership and passenger ship, total 30,989 CGT,
3. Version „C“: building a passenger (16,469 CGT) and RoPax ship (14,996 CGT), total 31,465 CGT,
4. Version „D“: building two Ro-Pax ships of 14,996 CGT ,total 29,992 CGT,

Additionally, DIV d.o.o. intends through subdividing and rationalization of the whole shipyard to reduce the area used for shipyard needs by 5% of the overall land area, by re-designating it for other activities. By reducing the area of a shipyard by 5%, the output capacity of the shipyard will be reduced by 1%, that amounting to 2,190 CGT.

In this way, by eliminating slipway no 4, calculated capacity whereof is 27,241 CGT and by reducing the productive land area of the shipyard by 5%, thus additionally reducing the capacity by 2,190 CBT, total output capacity of Brodosplit d.d. is reduced by 29,611 CGT.

Pursuant to the commitment to reduce the output capacity in shipyards that the Republic of Croatia assumed within the framework of negotiations in Chapter 8 (Market Competition) in the part concerning the privatization process and restructuring of the shipbuilding sector, the overall output capacity of Croatian shipbuilding following the restructuring process, not counting Uljanik d.d., should be 284,000 CGT and in the following 10 years the output capacity should not exceed 323,600 CGT.

With respect to Brodosplit d.d., pursuant to the Agreement on mutual rights and obligations in connection with 2011 - 2010 general limit on output, during a period of 10 years, upon agreeing the privatization contract, it may reach up to 132,078 CGT. With respect to other shipyards, individual annual production quotas are as follows:

- for Brodograđevna industrija 3. Maj d.d. 109,570 CGT,
- for Brodotrogir d.d. 54,955 CGT, and
- for Brodogradilište Kraljevica d.d. 26,997 CGT.

However, under the Common Position and the Agreement on the output limit, annual output of Brodosplit d.d. could even exceed 132,078 CGT insofar as Brodosplit d.d. reaches the

agreement with any of the aforementioned Croatian shipyards on ceding a part of unused production quota. Namely, should any shipyard not achieve its annual production quota in CGT, it will be able to cede the unused part of the production quota to Brodosplit d.d. The aforementioned will be feasible only on condition that the overall annual output in CGT for Croatian shipyards in a 2011 - 2020 period does not surpass the limit of 323,600 CGT.

IV 3.4 State aid restricted to the minimum level necessary: actual contribution without the elements of aid and the restructuring costs

Pursuant to point 43 of the Decision concerning the rescuing and restructuring, the amount and intensity of aid must be strictly limited to the minimum indispensable level of restructuring costs necessary for implementing the restructuring measures within the framework of the existing sources of financing of the undertaking, its shareholders or business group it belongs to.

Such an assessment will also take into account the previously allocated rescuing aid. It is expected from the aid beneficiary to contribute substantially to the restructuring process from its own resources, including the sale of property that is not necessary for survival of the undertaking, or from external sources of funding against market terms. The contribution is the sign that markets have confidence in the feasibility of restoring the viability (profitability). Such a contribution must be concrete, i.e. real, excluding any expected future profit, for instance cash flow, and the amount of contribution must be as high as possible.

Pursuant to point 44 of the Decision concerning the rescuing and restructuring, the following contributions are as a rule considered as being appropriate: at least 25% in the case of small-size undertakings, at least 40% in the case of medium-size undertakings and at least 50% in the case of large-size undertakings. In exceptional cases lower amounts may be allowed.

Pursuant to point 45 of the Decision concerning the rescuing and restructuring, with the scope of limiting the negative effects of disrupting the market competition, the amount of aid, or the form in which it is being allocated must be such as not to provide excess cash for the undertaking, which could be used for aggressive, restrictive activities on the market, which are not associated with the restructuring process.

Own contribution to the restructuring process for large-size undertakings amounts to 50% of the restructuring costs, while in exceptional circumstances a lower percentage may be allowed.

Considering the fact that restructuring of Croatian shipyards constitutes one of the benchmarks for closing the negotiations in Chapter 8 Market Competition, the amount of own contribution that is lower than the amount of 50% set by the Decision concerning the rescuing and restructuring is specified in the Common Position of the European Union in Chapter 8: Market Competition that was adopted at the Conference on the accession to the European Union held in Brussels on 22 June 2011.

Pursuant to the Common Position of the European Union on Chapter 8: Market Competition, the undertaking must provide at least 40% of own contribution of the overall restructuring costs, and it concerns own resources of the undertaking and/or external sources of funding on market terms.

Total costs of restructuring for Brodosplit d.d. include the following:

- State aid received up to 1 March 2006 until final completion of the restructuring process,

- liabilities toward the Ministry of Finance, incurred on the basis of protested guarantees issued, unpaid taxes and contributions or other statutory obligations,
- credit commitments of the undertaking towards commercial banks secured by state guarantees, including all the agreed interest in connection with such commitments,
- any other liabilities towards state creditors, including all agreed interest in connection with such liabilities, which pursuant to the Open call for bids and the Restructuring plan the undertaking is not bound to settle,
- own contribution necessary for implementing the Restructuring plan of Brodosplit d.d., concerning the restructuring of human resources, structural (business) restructuring, capital investments in the facilities and equipment, investment in own fleet, costs of closing the excess capacity, etc.

When calculating the State aid, any financial liabilities assumed by the Republic of Croatia constitute State aid in 100% amount, while in cases where the undertaking paid the loan secured by state guarantee or state guarantee issued for advance payments of the buyer is concerned, the equivalent of State aid will be calculated on the basis of valid reference rate at the moment of issuing the guarantee.

Table 15. Costs of restructuring and own contribution

Elements	Brodosplit Brodogradilište d.o.o.	BSO d.o.o.	Total
1) Current State aid	5,608,081,284.00	132,942,614.00	5,741,023,898.00
a) <i>Subsidies</i>	404,128,940.00	30,680,864.00	434,809,804.00
b) <i>Aid in state guarantees equivalent</i>	239,178,006.00	5,677,924.00	244,855,930.00
c) <i>Protested state guarantees</i>	1,339,143,596.00	36,056,419.00	1,375,200,015.00
d) <i>Credit commitments assumed by the state</i>	3,625,630,742.00	60,527,407.00	3,686,158,149.00
2) Part of the restructuring costs in transitional period	580,000,000.00	80,000,000.00	660,000,000.00
3) Future equivalents of aid for state guarantees issued in advance	200,000,000.00	22,000,000.00	222,000,000.00
A) Restructuring costs assumed by the state (1+2+3)	6,388,081,284.00	234,942,614.00	6,623,023,898.00
4) Restructuring of human resources	****	****	****
5) Organizational restructuring	****	****	****
6) Investment in equipment and facilities	****	****	****
7) Own fleet (Bulk carriers and cruisers)	****	****	****
B) Restructuring costs borne by DIV d.o.o.- own contribution (4+5+6+7)	****	****	****
C) Compensation for maritime domain	2,693,830,000.00	203,470,000.00	2,897,300,000.00
D) Total restructuring costs (A+B+C)	10,436,321,104.00	611,844,614.00	11,048,165,718.00
E) Minimum own contribution of 40%	4,174,528,441.60	244,737,845.60	4,419,266,287.20

F) Total own contribution (B+C)	4,048,239,820.00	376,902,000.00	4,425,141,820.00
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Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

Point A) „Restructuring costs assumed by the state“ shows total amount of State aid of HRK 6,623,023,898.00, and it consists of the following:

Under Item 1 „Current State aid“ presents State aid granted to Brodosplit d.d. after 1 March 2006.

Point a) „Subsidies“ specifies all the subsidies for newbuildings in a period from 1 March 2006 until the end of September 2009. After that the subsidies were not granted any more.

Under point b) „Aid in state guarantees equivalent“ stated amount concerns mainly the calculation of aid specified in guarantees issued for securing the advance payments of buyers.

Under point (c) „Protested state guarantees“ and d) „Credit commitments assumed by the state“ stipulated amounts concern total liabilities to be assumed by the Republic of Croatia. A part of such liabilities will first be compensated by the indemnity for expropriated real estate on maritime domain.

The amounts of State aid specified under points b), c), and d) are presented as per 28 February 2011, and therefore they slightly differ from the amounts presented on 31 December 2010.

Under item 2 „Part of restructuring costs in transitional period“ shows maximum losses related to loss coverage for newbuildings and to operating losses owing to unused capacities in a period from finalizing the Open call for bids until the signing of privatization contract. Actual losses will be established by the independent financial expert.

Under item 3 „Future equivalents of aid for the state guarantees issued in advance“ the figure shown represents maximum amount of State aid included for the most part in the guarantee for securing the advance payments of buyers in order to ensure the continuity of contracting new ships.

Under Point F) „Total own contribution“ presents the amount of own contribution of HRK 4,425,141,820,00, that representing 40.5% of total restructuring costs shown in item D). Total own contribution refers to the following:

Under Point B) „Restructuring costs borne by DIV d.o.o. - own contribution“ in the amount of **** HRK items 4 and 5 shows the amount of HRK 150,000,000,00 which concern the investment for restructuring the human resources and for structural restructuring, while individual investments and time schedule for such investments are presented in Table 16.

Table 16 Planned investment in human resources and organizational restructuring

Description of the investment	Amount in HRK	Period	Remark
Investment in human resources	****		
(i) Outplacing of employees	****	2011 - 2015	Reducing the costs of final product by 8-10%
(ii) Safety at work programme	****	2011 - 2014	Reducing the costs of final product by 0.2-0.5%
Organizational restructuring	****		

(i) Developing environmental standards	****	2011 - 2013	Reducing the costs of final product by 0.1-2%
(ii) Energy saving programme	****	2011 - 2013	Reducing the costs of final product by 0.2-0.36%
(iii) Procurement costs optimization	****	2011 -2012	Expected savings to 15%
TOTAL	****		

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Item 6 „Investment in equipment and facilities“ shows the amount of investment in technological renewal of Brodosplit d.d. as shown in Table 9.

Under item 7 „Own fleet (of Bulk carriers and cruisers)“ is presented as the amount of initial investment in the development of own fleet within the framework of Brodosplit - Plovidba d.o.o.

Point C) „Indemnity for maritime domain“ shows the amount of indemnity for expropriation of real estate on maritime domain, which constitutes the claim of Brodosplit d.d. from the Republic of Croatia and it makes a part of the total own contribution.

Related to the sources of funding from which DIV d.o.o./Brodosplit d.d. will provide their own contribution, it is necessary to point out that according to data to date, there are three investment options, those being the following:

1. Investment by the investment fund in DIV d.o.o. (20-25% of overall investment), investment by strategic partner/steel supplier in the shipyard (up to 15% of total investment), investment by the undertaking DIV d.o.o. up to 5% of the overall investment as well as the loans from commercial banks (60-80% of the overall investment),
2. Direct partnership with Russian shipping company (Sovcomflot) through recapitalization (ownership) of the shipyard up to 25% of total investment, investment by the undertaking DIV d.o.o. up to 5% of total investment as well as the loans from commercial banks (60-80% of total investment),
3. Partnership with the project holding from Katar through recapitalization of the shipyard (51-75% of the overall investment or partner's ownership), investment by the undertaking DIV d.o.o. up to 5% of total investment as well as the loans from commercial banks 20-30% of the overall investment.

DIV d.o.o. has in connection with the methods of financing of the restructuring process developed various models and made contacts with various financial institutions, while final arrangement depends on the moment in which all the prerequisites for agreeing the loan or investment contract will be known. The banks and loan institutions which are processing the applications expressed through various models of financing own fleet are the following:

1. EBRD (European Ban for Reconstruction and Development) - Croatia
2. Caterpillar Financial - SAD
3. Tufon Oceanic - Great Britain
4. Credit Suisse - Switzerland
5. NIBC - Netherlands
6. Den Norske Bank - Norway
7. Danish Ship Mortgage Bank - Denmark
8. DEGInvest - Germany
9. Hamburgische Schiffhypoteken Bank - Germany

All the interested financial institutions expect the completion of the privatization process, given the status of DIV d.o.o. as the loan applicant and owner of Brodosplit d.d. especially in respect of development of the situation concerning future financial status of Brodosplit d.d. as well as clear legal status of DIV d.o.o. in managing Brodosplit d.d.

Financial institutions did not express their interest for direct financing of Brodosplit Brodogradilište d.o.o. in view of accumulated debt which is several times the amount of capital stock, but are expressing their interest for the proposed model of building their own fleet that would earn revenue on the market, and repay credit commitments from such receipts.

From the list of financial institutions it is evident that DIV d.o.o. is oriented towards collaboration with foreign financial institutions, given that Croatian banks express their very limited business interest in financing the shipbuilding and shipping. In the same manner, capital available in the Republic of Croatia is limited in volume. From the above list of financial institutions it is evident that there are various financing methods, from classic mortgage loans and barter deals, to the stockholding.

In order for the credit risk on which financial institutions count to be reduced to the minimum, DIV d.o.o. is permanently engaged in the process of agreeing long-term charter arrangements with ship purchase obligation from the company Brodosplit - Plovidba d.o.o. after expiry of the arrangement. In mentioned process, the most intense contacts were established with companies Sovcomflot from Russia, Transatlantic from Sweden (shipping companies) as well as Duferco from Macedonia, a strategic supplier of ship plates for the purpose of transporting iron ore.

From the measures proposed, it is evident that the undertaking elaborated in detail the future financing models. Apart from investing own funds, DIV d.o.o. is ready to acquire a part of funds by spotting a strategic partner/investor who would become the owner of a part of Brodosplit d.d. Furthermore, DIV d.o.o. intends to develop charter arrangements with major shipping companies, which would earn it an additional source of revenue, in addition to classic ship sales, and also to develop strategic partnership relations with major suppliers who are also prepared to take part in recapitalization of Brodosplit d.d. and use its shipping services.

It is necessary to point out that DIV d.o.o. intends to continue building ships for the market, but as opposed to business operation methods by now, highly specialized ships are concerned which earn the profit calculated in advance and entail higher added value. By the very orientation towards more complex and profitable ships, it is evident that, after stabilization of the situation, the undertaking will find the sources of financing more easily.

IV 3.5 Projection of operating results

DIV d.o.o. presented in Restructuring plan the projections of operating results for Brodosplit - Brodogradilište d.o.o. and BSO d.o.o.

IV 3.5 1 The projections of operating results for Brodosplit - Brodogradilište d.o.o.

Pursuant to the rules on restructuring, when planning the operating results during restructuring period, DIV d.o.o. envisaged two versions: the anticipated version and the version involving higher risk. The version involving higher risk entails the 10% increase in material expenses for building and fitting out compared to the anticipated variant. Table 17

shows the anticipated version of the Profit and loss account, or planned receipts and payments in the 2011 - 2015 period.

Table 17 Profit and loss account for Brodosplit - Brodogradilište d.o.o. for 2011-2015 period.(anticipated version)

in 000 HRK

Specification of the item	2011	2012	2013	2014	2015
Receipts from basic activity, receipts from sales	810,994	1,452,552	1,806,299	1,560,973	2,222,601
Receipts from grants and subsidies	0	0	0	0	0
Receipts from operating lease	0	0	0	0	0
Receipts investment	0	0	0	0	0
Financial and other receipts (interest, exchange rate differentials, from sale of equipment, from reservation)	4,918,749	95,665	51,290	129,826	71,497
Extra receipts (from sale of evaluated fixed assets)	0	0	0	0	0
TOTAL RECEIPTS	5,729,743	1,548,217	1,887,589	1,690,799	2,294,098
Costs of material, equipment, engines, etc.	639,000	994,048	1,294,961	1,104,724	1,655,079
Outsourcing	17,005	34,898	37,165	31,629	34,481
Sub-contracting with associated companies	22,988	31,689	32,323	30,025	39,908
General proportionally variable costs material and services (energy, office material, safety at work, small inventory, advertising, overhead)	166,381	110,762	104,390	92,772	91,375
Costs of personnel (net salaries, taxes and contributions)	268,447	268,447	258,240	250,006	242,090
Other indirect costs, non-material costs, membership fees, expense account, fees	110,263	97,798	88,831	78,831	78,831
Depreciation	31,845	31,845	31,845	31,845	31,845
Reduced value of current assets					
Provision for costs and risks	21,220	35,796	15,080	14,778	14,482
Contingency expenditure	0	0	0	0	0
Expenses for financing (interest rates, guarantees, exchange rate differentials, write off of assets, deficits, penalties)	168,155	51,114	63,089	47,516	80,169
TOTAL EXPENSES	1,445,314	1,656,397	1,925,924	1,682,126	2,268,260
Pre-tax profit	4,284,429	(108,810)	(68,335)	8,673	25,838
Profit tax	0	0	0	0	0
Pre-tax profit	4,284,429	(108,810)	(68,335)	8,673	25,838

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

From Table 17 it is obvious that Brodosplit - Brodogradilište d.o.o. will in respect of 2010 significantly reduce the direct costs burdening the production such as the costs of material, sub-contractors and employees, or it will place such costs under control, which fact should, against higher revenues, result in positive operation as early as in 2014, when earning of profits is anticipated. By the end of 2015, it being the last year of restructuring, the operations of Brodosplit d.d. should reach stability and Brodosplit - Brodogradilište d.o.o. should proceed operating in black on its own.

Moreover, Table 17 shows that Brodosplit - Brodogradilište d.o.o. will in the first year of restructuring earn the profit of 4 billion HRK. The exceptionally high profit of Brodosplit - Brodogradilište d.o.o. in the first year of restructuring will be the result of implementation of the Agreement regulating the property law issues between the Republic of Croatia and the undertaking Brodosplit d.d. Namely, pursuant to mentioned Agreement, the contractual

parties set the compensation for expropriated real estate on maritime domain amounting to HRK 2,693,830,000.00 with regard to obligations of Brodosplit d.d. towards the Republic of Croatia. By revaluating of subject property which is transferred into the ownership of the Republic of Croatia, Brodosplit - Brodogradilište d.o.o. will earn the profit exceeding 2 billion HRK.

Upon clearing mutual liabilities and claims amounting to HRK 2,693,830,000.00, the Republic of Croatia will write off the remaining amount of credit commitments and protested guarantees from books of Brodosplit - Brodogradilište d.o.o. and assume those itself. Thus, Brodosplit - Brodogradilište d.o.o. will earn extra revenue of 2.4 billion HRK.

However, it is necessary to point out that this is not the profit from business operations, but is the profit earned on grounds of accounting statements of the value arising from enforcing the Agreement regulating the property law issues between the Republic of Croatia and the undertaking Brodosplit d.d. Pursuant to the Act Regulating the Rights and Obligations of Shipyards in the Restructuring Process, tax debt incurred through clearing the liabilities and claims, and thereafter by writing off the remaining debt, is cleared through tax loss of the shipyard, while the remaining debt is written off. Thereby Brodosplit - Brodogradilište d.o.o. will not have to pay the tax on profit earned in the first year of implementing the Restructuring plan.

In its projections, DIV d.o.o. also envisaged the "pessimistic" version involving certain risks, referring primarily to 10% higher material costs and invariable receipts. In the case of a riskier version, it may be assumed that Brodosplit Brodogradilište d.o.o. will overcome the difficulty, stabilize the operations and earn profit later than in the anticipated version.

Simultaneously, apart from potential risk that planned receipts will fail to materialize at desired level, the fact is that for using the maritime domain DIV d.o.o. will have to pay a concession fee amounting to HRK 3 per square metre of the shipbuilding area (following compensatory measures 350,549 square metres) and 1% of the total annual revenue.

As stated in the Restructuring Plan, mentioned concession fee will have a significant impact on the costs of the undertaking.

Table 18 Planned Balance Sheet for Brodosplit - Brodogradilište d.o.o. for 2011-2015 period. (anticipated version)

in 000 HRK					
Specification of the item	2011	2012	2013	2014	2015
Fixed assets	285,448	253,515	221,582	189,649	157,716
Intangible assets	99,250	99,250	99,250	99,250	99,250
Tangible assets	182,857	150,924	118,991	87,058	55,125
Financial assets	3,341	3,341	3,341	3,341	3,341
Current assets	564,317	628,575	644,197	701,661	785,971
Inventories (production materials, equipment, commercial products, stocks, finished products and semi-finished products)	124,902	230,994	173,948	208,676	233,535
Short-term receivables (buyers, employees, state, advance payments made)	192,007	200,734	200,056	222,792	282,243
Short-term financial assets (credits granted, loans, deposits)	0	0	0	0	0
Money and money equivalents	247,408	196,847	270,193	270,193	270,193

Accrued receivables - prepayments	178,000	178,000	178,000	178,000	178,000
TOTAL ASSETS	1,027,765	1,060,090	1,043,779	1,069,310	1,121,687
Capital and reserves	569,221	471,041	462,706	531,379	667,217
Subscribed capital and capital stock increase	175,369	185,369	245,369	305,369	415,369
Reserves	1,906	1,906	1,906	1,906	1,906
Retained earnings	(3,892,483)	391,946	283,766	215,431	224,104
Current year profit	4,284,429	(108,180)	(68,335)	8,673	25,838
Long-term provisions	21,220	35,796	15,080	14,778	14,482
Long-term liabilities	0	0	0	0	0
Short-term liabilities (suppliers, advance payments received, taxes, contributions)	359,098	475,027	487,767	444,927	361,762
Accrued costs and deferred revenues	78,226	78,226	78,226	78,226	78,226
TOTAL LIABILITIES	1,027,765	1,060,090	1,043,779	1,069,310	1,121,687

Source: documents of the undertaking DIV d.o.o.

Analysis by: The Croatian Competition Agency

In the Planned balance sheet for 2011-2015 period it is evident that by removal from books of the liabilities assumed by the state and the assets on maritime domain, and by writing off the residual liabilities of the undertaking towards the state against loans assumed and protested guarantees, above all culminated losses exceeding the capital will be annulled and capital stock will be restituted. Besides that, by removing of liabilities from books, the undertaking will no more present major long-term liabilities in the Balance sheet, and it will thus bring the Balance sheet into equilibrium, or be in position to borrow on the market or finance proper production on its own.

IV.3.5.2 The projections of operating results for BSO d.o.o.

Table 19 Profit and loss account for BSO d.o.o. for 2011-2015 period.

in 000 HRK

Specification of the item	2011	2012	2013	2014	2015
Receipts from basic activity, receipts from sales	62,280	139,621	172,016	191,491	222,494
Financial and other receipts (interest, exchange rate differentials, from sale of equipment, from reservation)	171,794	0	0	0	0
Extra receipts (from sale of evaluated fixed assets)	0	0	0	0	0
TOTAL RECEIPTS	234,074	139,621	172,016	191,491	222,494
Costs of material, equipment, engines, etc.	32,079	76,347	96,530	113,422	148,615
Outsourcing	11,254	17,712	18,897	20,153	19,453
General proportionally variable costs material and services (energy, office material, safety at work, small inventory, advertising, overhead)	3,560	14,303	21,018	20,770	18,793
Costs of personnel (net salaries, taxes and contributions)	17,398	17,066	16,775	17,004	17,004
Other indirect costs, non-material costs, membership fees, expense account, fees	2,100	4,853	5,835	2,834	2,834
Depreciation	1,140	1,140	1,140	1,140	1,140

Provision for costs and risks	0	0	0	0	0
Contingency expenditure	0	0	0	0	0
Expenses for financing (interest rates, guarantees, exchange rate differentials, writing off assets, deficits, penalties)	3,943	3,943	3,943	3,943	3,943
TOTAL EXPENSES	71,474	135,364	164,138	179,266	211,782
Pre-tax profit	162,600	4,257	7,878	12,225	10,712
Profit tax	0	851	1,576	2,445	2,142
Pre-tax profit	162,600	3,406	6,302	9,780	8,570

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

From Table 19 it is evident that BSO d.o.o. will also, thanks to revaluation of property which is by signing of the Agreement regulating the property law issues between the Republic of Croatia and the undertaking Brodosplit d.d. transferred into ownership of the Republic of Croatia, earn higher revenues amounting to 169.9 million HRK and thus substantially increase the profit in the first year of restructuring. However, just as in the case of Brodosplit Brodogradilište d.o.o., exceptional profit earned in the first year of restructuring will not burden the operations of BSO d.o.o. through significant amount of profit tax, as it is exclusively the bookkeeping value that will be compensated by tax loss, while the residue will be written off.

Table 20 Planned Balance Sheet for BSO d.o.o. for 2011-2015 period. (anticipated variant)

in 000 HRK

Specification of the item	2011	2012	2013	2014	2015
Fixed assets	8,485	8,485	8,485	8,485	8,485
Intangible assets	0	0	0	0	0
Tangible assets	8,485	8,485	8,485	8,485	8,485
Financial assets	0	0	0	0	0
Current assets	152,536	188,620	210,102	242,473	241,335
Inventories (production materials, equipment, commercial products, stocks, finished products and semi-finished products)	69,811	86,008	95,746	111,247	111,247
Short-term receivables (buyers, employees, state, advance payments made)	73,434	90,169	100,250	116,375	116,375
Short-term financial assets (credits granted, loans, deposits)	150	150	150	150	150
Money and money equivalents	9,141	12,293	13,956	14,701	13,563
Accrued receivables - prepayments	0	0	0	0	0
TOTAL ASSETS	161,021	197,105	218,587	250,958	249,820
Capital and reserves	64,920	68,326	74,628	84,408	92,978
Subscribed capital and capital stock increase	18,160	18,160	18,160	18,160	18,160
Reserves	0	0	0	0	0
Retained earnings	(115,840)	46,760	50,166	56,468	66,248
Current year profit	162,600	3,406	6,302	9,780	8,570
Long-term provisions	0	0	0	0	0
Long-term liabilities	17,953	39,286	48,639	64,575	54,843

Short-term liabilities (suppliers, advance payments received, taxes, contributions)	77,254	88,599	94,426	101,081	101,105
Accrued costs and deferred revenues	894	894	894	894	894
TOTAL LIABILITIES	161,021	197,105	218,587	250,958	249,820

Source: documents of the undertaking DIV d.o.o.
Analysis by: The Croatian Competition Agency

Furthermore, from the Planned balance sheet for BSO d.o.o. it is evident that financial restructuring in the form of clearance of mutual claims and liabilities as well as writing off the liabilities will render possible for BSO d.o.o. the restitution of capital stock and "cleaned" balance sheet within the meaning of long-term credit commitments, which fact should render possible for the undertaking the unhindered borrowing on the financial market and the operating liquidity.

V Decision of the Competition Council

The Competition Council (hereinafter: the Council) discussed the State aid for restructuring as per the Restructuring plan on the 82th Session of the Council held on 28 July 2011 and on the 86th session of the Council held on 13 October 2011 and issued the Decision approving the State aid for restructuring specified in the Restructuring plan, since the Restructuring plan which the Agency submitted to the Ministry on 8 April 2011 together with all the amendments was drawn up in compliance with the regulations on State aid.

Simultaneously the Council has on the occasion of issuing the Decision also considered the results of negotiations of the Republic of Croatia and the European Union in Chapter 8: Market Competition or the obligations and requirements that the Government of the Republic of Croatia accepted in the negotiations for acquiring membership of the Republic of Croatia in the European Union concerning the shipbuilding sector.

The Council provides the statement of reasons for its Decision as follows.

State aid for restructuring is designated for the undertakings in difficulty and the derogation from general ban regulated by Article 4, paragraph 1 of the State Aid Act is applicable under Article 4, paragraph 3, point d) of the State Aid Act, such derogation from general ban being related to State aid designated for stimulating certain economic activities or certain economic sectors.

Pursuant to Article 3, paragraph 1 of the State Aid Act, State aid constitutes actual and potential expenditures or diminished revenues of the state allocated by the State aid grantor, which disrupt or could disrupt market competition by favouring the State aid beneficiary on the market, regardless of the form of State aid, to the extent it could impact the fulfilling of the internationally assumed commitments of the Republic of Croatia under the SAA.

Article 4 of the State Aid Act regulates general ban and the derogation from general ban on granting State aid under Article 3 of the State Aid Act. Therefore Article 4, paragraph 1 of the State Aid Act sets out that the State aid which, regardless of its form, disrupts or could disrupt market competition through privileging the State aid beneficiary on the market is not compliant with the State Aid Act, particularly in the extent to which that could affect the fulfilling of internationally assumed commitments of the Republic of Croatia assumed by the

SAA. Article 4, paragraphs 2 and 3 of the State Aid Act lays down the derogations from general ban insofar as State aid complies with statutory requirements for derogation referred in Article 4, paragraphs 2 and 3 of the State Aid Act and in that case they are considered compliant with the State Aid Act.

In order for the State aid to qualify for application of derogation from general ban under Article 4, paragraph 3, point d) of the State Aid Act, the Council had to assess whether State aid meets the requirements for derogation under Article 4, paragraph 3, point d) of the State Aid Act, or the Decision concerning the rescuing and restructuring in the part related to restructuring of the undertaking in difficulty which specify the requirements for granting the State aid for restructuring to undertakings in difficulty which are elaborated in detail under point IV.3 of the statement of reasons herein.

Namely, the undertaking in difficulty, and the Council decided that Brodosplit d.d. is undoubtedly considered the undertaking in difficulty within the meaning of points 9, 10 a) and 11 of the Decision concerning the rescuing and restructuring, as set out under point IV.1 of the statement of reasons hereto, may be granted State aid for restructuring insofar as the Restructuring plan is drawn up in compliance with the Decision on the rescuing and restructuring.

With regard to the Restructuring plan, and on the basis of the facts stated under point IV.3 of the statement of reasons therein, the Council is of the opinion that the Restructuring plan includes all the requirements defined by the Decision on the rescuing and restructuring which concern the causes of difficulty, restoring of long-term viability, avoiding excessive disruption of market competition and own contribution (aid that is restricted to the minimum level required, actual contribution involving no elements of aid), and that the restructuring process for Brodosplit d.d. will be implemented throughout a period of five years starting with the date of signing the privatization contract.

The Council established, as described under point IV.3.1 of the statement of reasons hereto that the causes of difficulty of Brodosplit d.d. have been thoroughly elaborated.

In respect of restoring the long-term viability, the Council established that the Restructuring plan envisages both the financial and business restructuring, the aim of which is restoring the long-term viability of Brodosplit d.d., as described under point IV.3.2 of the statement of reasons hereto.

The Council on that occasion used expert assistance of the consultants from Ecorys who through the analyses and expertises as well as the knowledge of the respective market assisted in perceiving and assessing all the elements of the Restructuring plan.

The requirements for restoring the long-term viability of the undertaking Brodosplit d.d. result from the measures for business restructuring envisaged from the part of the undertaking DIV d.o.o. The orientation of the undertaking towards manufacturing of highly profitable ships with higher added value, as well as activation of the undertaking Brodosplit - Plovidba d.o.o through which the undertaking DIV d.o.o. will exploit the ships built and thereafter sell them at the highest market price at a given moment represents, in the opinion of consultants from Ecorys, a realistic business option and good foundation for implementing the necessary improvements in operation and cost reduction. In that manner, and applying efficient model of managing the organization and human resources, which the undertaking DIV d.o.o. has great experience in, that also having been accorded high grade by Ecorys consultants, the undertaking Brodosplit d.d. will be able to meet the prerequisites for achieving long-term viability and autonomous operation on the market.

Furthermore, the Council established that State aid for restructuring of Brodosplit d.d., which is shown in Table 15 and specified under point IV.3.4 of the statement of reasons hereto totals HRK 6,623,023,898.00 and apply to the period from 1 March 2006 until the completion of the restructuring process. Furthermore, the Council established with regard to the aforesaid that beginning of the period which State aid applies to is set by the Common position of the European Union on Chapter 8: Market Competition for the Conference on accession to the European Union of 22 June 2011, while the date of completion of the restructuring process is set for a period of five years starting with the date of signing the privatization contract.

With regard to own contribution amounting to HRK 4,425,141,820.00, the Council established that it is envisaged in the amount of 40% of the overall restructuring costs, the percentage being defined in the Common Position of the European Union on closing Chapter 8: Market Competition, and applies to investments of the undertaking DIV d.o.o. and to the compensation for expropriated real estate on maritime domain under the Agreement regulating the property law issues made on 11 February 2011, as elaborated under point IV.3.4 of the statement of reasons herein.

Therefore, in pursuance of the aforementioned the Agency has by virtue of the Decision of the Council decided as stated under points I, II, III and IV of the statement of reasons hereof.

Since the approval of State aid, as stipulated in Article 13, paragraph 3 of the State Aid Act may be granted against stipulating special requirements and deadlines for implementing the State aid, and it has been established during the proceedings, as ensuing from point IV.3.3 of the statement of reasons herein, that compensatory measures in the form of reduction of output capacities amounting to 29,611 CGT involve the reduction of production land area of the shipyard by 5% or 2,190 CGT and the closure of slipway no 4 of 27,421 CGT capacity, and that they must be implemented within a year from the date of agreeing the privatization contract, the Agency has on the basis of the Decision of the Council decided as under point V.a) of the statement of reasons hereof.

Namely, in connection with avoiding excessive disruption of market competition (compensatory measures) the Council established that those have been envisaged in the Restructuring plan for Brodosplit d.d., as specified under point IV.3.3 of the statement of reasons herein, pursuant to the Common Position of the European Union on closing Chapter 8: Market Competition and the Agreement on mutual rights and obligations in connection with the overall 2011 - 2020 output limit of 17 May 2011.

Furthermore, as decided by the Agency under point V.b) of statement of reasons hereof on the basis of Decision of the Council, the compensatory measure related to total annual output of the undertaking is 132,078 CGT and will be implemented pursuant to requirements under the Agreement on mutual rights and obligations in connection with total 2011-2020 output limit.

The Agency obliged the Ministry to forward to the Agency the evidence on enforcement of a compensatory measure in the form of reduction of output capacity, within a year from the date of signing the privatization contract at the latest, and therefore the Agency has on the basis of Decision of the Council decided as under point V.c) of the statement of reasons hereof.

Since own contribution which consists of the investment of the undertaking DIV d.o.o. and the compensation for expropriation of real estate on maritime domain must amount to 40 percent of the total restructuring costs, the Ministry will forward to the Agency semi-annual

reports on enforcement of this measure, and therefore the Agency has on grounds of Decision of the Council decided as under point V.d) of the statement of reasons hereof.

Points 49 and 50 of the Decision concerning the rescuing and restructuring envisage forwarding regularly the reports, on a particular date, on the enforcement of all measures under the Restructuring plan in order to provide evidence that the Restructuring plan is implemented properly. Since points V.c) and d) of the statement of reasons hereof envisage separate reports on the reduction of output capacities and fulfilling own contributions, it is necessary that the Ministry forwards regular semi-annual reports on implementation of the Restructuring plan for Brodosplit d.d., on implementation of all other measures envisaged by the Restructuring plan, and which refer in particular to fulfilling each item on State aid referred to in Table 15 in the statement of reasons herein, the evidence that total annual output does not exceed 132,078 CGT, fulfilling the production programme, trend of the number of employees, organizational changes undertaken in Brodosplit d.d., as well as implementing the timing of measures for business restructuring. Therefore the Agency on the basis of Decision of the Council decided as under point V.3) of the statement of reasons hereof.

The Council also decided that the Ministry is obliged to submit to the Agency annual financial statements no later than by 30 April of the current year for the preceding year, and therefore the Agency decided on the basis of the Decision of the Council as under point V.f) of the statement of reasons hereof.

Furthermore, as granting of State aid to the undertaking in difficulty who is implementing the restructuring process is subject to implementation of the restructuring plan, as provided under point 35 of the Decision concerning the rescuing and restructuring, the undertaking in difficulty is not in position to receive State aid which is not covered by the restructuring plan, and the Agency therefore decided on the basis of Decision of the Council that Brodosplit d.d. may pending completion of the restructuring process receive only the State aid envisaged by the Restructuring plan for Brodosplit d.d., it was then decided as under point VI of the statement of reasons hereof.

Since from chapter 3.3 of the Decision concerning the rescuing and restructuring it ensues that undertakings may not receive new State aid for restructuring until at least ten (10) years have elapsed from the date of granting the State aid for restructuring, and in concrete case it is considered that State aid is granted on the date of signing the privatization contract, the Agency, by virtue of Decision of the Council, decided as under point VII of the statement of reasons hereof.

Decisions of the Agency under Article 13 of the State Aid Act are published in the Official Gazette, so it was decided as under point VIII of the statement of reasons hereof.

Instruction on legal redress

This Decision is final in the administrative procedure. No complaint against this Decision shall be authorized, but unsatisfied party may launch an administrative procedure before the Administrative Court of the Republic of Croatia within thirty (30) days from the date of delivery of this Decision.

President of the Competition Council

Olgica Spevec, MSc

Cc:

- 1 The Ministry of the Economy, Labour and Entrepreneurship, Cabinet of the Minister; 1000 Zagreb; Ulica grada Vukovara 78
- 2 The Ministry of Finance, Cabinet of the Minister; 10000 Zagreb; Katančičeva 5
- 3 Brodograđevna industrija Split d.d., c/o President of the Management Board; 21000 Split; Put Supavla 21,
4. DIV d.o.o., c/o President of the Management Board; 10430 Samobor; Bobovica 10/A,
5. Archives (here)