

**DECISION No. 300**  
**Of 03.11.2004**

**Concerning the notification of the Bacau Local City Council on financial measures of support for SC CET S.A. Bacau**

**THE COMPETITION COUNCIL,**

Having regard to the provisions of the Decree no. 57/2004 on the appointment of the members of the Competition Council;

Having regard to the provisions of the Competition Law no. 21/1996, published in the Romanian Official Gazette no. 88, Part I, of 30.04.1996, amended and completed by Government Emergency Decree no. 121/2003, approved by Law no. 184/2004;

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

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

Having regard to the provisions of the Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest.

**On the following grounds:**

**1. PROCEDURE**

- (1) By the note 34185/11.10.2004, filed at the Competition Council no. RS-AS 88/12.10.2004, Bacau City Hall submitted to the Competition Council, under Art. 6 of Law 143/1999 on State aid, with subsequent modifications and completions, the notification of the financial measure of support for SC CET S.A. Bacau.
- (2) Since the data submitted in the notification were not complete, by note DAAS of 12.10.2004, supplementary information were requested to which SC CET S.A. Bacau answered on 12.10.2004, 13.10.2004 and on 18.10.2004. The notification became effective on the date the information were complete, mainly on 18.10.2004.

## **2. DESCRIPTION OF THE FINANCIAL MEASURE OF SUPPORT**

### **2.1. The form of the state aid**

- (3) The notified measure of support consist in deferrals in view of exemption from payment of fiscal obligations representing state social contributions amounting at ROL 15,530,268,000 due by the company on December 31, 2003, including interest rates and penalties related to them, calculated until 28.05.2004, amounting at ROL 76.013.519.538.

Payment facilities intended to be granted to the company, in total amount of ROL 91.543.787.538 are regulated through GEO 37/2004 regarding measures to reduce arrears in the economy.

- (4) The amounts that are subject to deferral are set by tax obligation certificates by the regional tax authorities having jurisdiction, mainly the Bacau General Division of Public Finances. For these revenues, no interest rates and penalties of any kind are due as of 28.05.2004.
- (5) Obligations are being relieved from payment on the date of ownership transfer in case of privatizations, under the law, or on December 31, 2006 if the undertaking pays monthly its current tax obligations upon due time as of January 1, 2004.
- (6) If the beneficiary does not meet its current tax obligations, the amounts that were subject to deferral become eligible, and the calculation of the related interest rates and penalties shall continue as of 28.05.2004.

### **2.2. The beneficiary of state support measure**

- (7) The beneficiary of the notified state measure of support is SC CET S.A. Bacau. The company was set up under the Romanian law, as stock company, with a single shareholder is the local City Council of the city of Bacau, on 01.06.2003, under the GO 104/2002 and GEO 78/2002 of outsourcing Electrocentrale Bacau Subsidiary belonging to SC Termoelectrica SA Bucharest.
- (8) Under GO 104/2002 *on transferring several thermo-power stations from the private ownership of the state and from SC Termoelectica SA's patrimony assets into the public domain of several regional administrations and their local city councils*, the Bacau thermo-power stations was transferred without payment in the public domain of the city of Bacau.
- (9) The Bacau local city council started proceedings, under GEO 78/2002 *to provide operating conditions for heating and electric power plants administered by local and county councils*, of registering the Bacau thermo-power station as trading company, under the name of **SC CET**

**S.A. Bacau.** The assets and liabilities of the thermo-power station were taken over in **SC CET S.A. Bacau**'s accounting records.

- (10) The company is headquartered in Bacau and is registered at the Trade Registrar under J04/320/2002; its single registration code is 14639374. The registered capital of the company is ROL 389,422,106,603.
- (11) The company's main line of business is the production , transport and distribution of heating energy for the population, institutions and undertakings from the city of Bacau.
- (12) The company produces and supplies electricity in cogeneration in the National Power Grid through SC ELECTRICA SA Bacau. This energy is dedicated to a market which is regulated by the National Agency for Energy Regulation ("ANRE"). The market share of company at the electricity market is of 0.7%.
- (13) SC CET S.A. Bacau also supplies industrial vapour on the industrial platform from the area around the following companies: SC SOFERT SA Bacau and SC LETEA SA Bacau.
- (14) The company performs the following secondary activities:
- a. production of de-hardened and de-mineralized water;
  - b. repair and maintenance of its own equipment.
- (15) Supply of urban heating energy for the heating and preparation of consumption warm water is made through the urban heating production system of the city of Bacau, *which is system entrusted under management contract to the company by the local City Council of Bacau.*
- (16) The thermo-power station is part of the company's patrimony assets; the company also manages the industrial power plant system from the area and the urban power production system belonging to the city of Bacau. The heating energy system consists mainly of :
- Primary transport grid of hot water – 22 km;
  - 55 of regional thermal units;
  - Secondary distribution grids of warm water – approx. 300 km.
- (17) SC CET S.A. Bacau is a classical cogeneration plant which holds the following equipment:
- a 420 ton/h energy boiler operating on lignite, and natural gas as fuel;
  - a 50 MW turbo-machine with 50 DSL vapour turbines;
  - 100 Gcal/h hot water boiler on mixed fuel, natural gas and fuel oil;
  - 100 ton vapour/h industrial vapour boiler.

- (18) The relevant product market is the market for the production and supply of heating energy. The relevant geographic market consists of the city of Bacau territory.
- (19) SC CET S.A. Bacau is the only producer and supplier of heating energy from the area it operates in. The company ensures 70% of the necessary urban heating energy.
- (20) The economical and financial results based on the balance sheet of the past 3 years are the following:

ROL thousand			
Indexes	2001	2002	2003
<b>Total turnover</b>	265,110,943	369,517,329	701,075,695
<b>Profit/loss</b>	-248,388,965	-286,786,759	-33,802,457

We notice that during 2001-2003, although the turnover has an upward trend, the company has losses caused by the difference between the operating cost and the delivery price of heating energy.

### 2.3. Received state aids

- (21) According to the data submitted in the notification, SC CET S.A. Bacau benefited in the past three years from state aid, as shown below:
- Relief from the payment of penalties for late payments related to the income wage tax, pursuant to the Ministry of Public Finances Order 1551/2001, amounting at ROL 170,332,000;
  - Write-off of debts to the state budget, pursuant to GEO 151/2001, amounting at ROL 1,190,026,000, standing for :
    - Social solidarity Fund for disabled persons – ROL 679,670.000 ;
    - Fund for support of state education system - ROL 510,356,000 ;
  - Relief from payment of increases and penalties for late payments related to the state budget, pursuant to GEO 152/2001, amounting at ROL 3,065,908,000, standing for:
    - Increases of the income wage tax - ROL 104,674,000;
    - Increases to the social solidarity Fund - ROL 2,116,934,000;
    - Increases to the education system Fund - ROL 827,057,000;
    - Penalties to the social solidarity Fund – ROL 11,225,000;
    - Penalties to the education system Fund – ROL 6,018,000.
  - Relief from the payment of interest rates and penalties for late payments related to debts toward the Health insurance Fund, pursuant to GEO 40/2002 to recover budget arrears, amounting at ROL 10,336,873,916, for the period 2002-2003.

- Subsidies to cover the difference between the national reference cot and the local delivery price for heating energy, amounting at ROL 322,969,946,000<sup>1</sup> :
  - 2001: ROL 11,539,787,000;
  - 2002: ROL 51,016,491,000i;
  - 2003: ROL 154,019,877,000;
  - 2004: ROL 106,393,791,000.

(22) Thus, in the past three years, S.C. CET S.A. Bacau benefited from a total state aid amount of ROL 337,733,085,916, from which:

- exemption of budgetary obligations: ROL 14.763.139.916;
- subsidies: ROL 322.969.946.000.

### **III. ANALYSIS OF THE STATE MEASURE OF SUPPORT**

#### **3.1. The object of the decision**

(23) Based on the notification submitted to the Competition Council by the Local Council of Bacau County, the object of the present decision are the state aids mentioned at paragraphs (3), (21) and (22).

#### **3.2. Obligation of service of general economic interest**

(24) The financial support granted to a company discharging a service of general economic interest is not considered state aid for the purposes of Art. 2 of Law 143/1999 regarding state aid with subsequent modifications and completions, if the following conditions are cumulatively met:

- a) the obligation to discharge a service of general economic interest is entrusted through a government/administrative act and is clearly defined;
- b) the parameters based on which the compensation is calculated must be established in advance, in an objective and transparent way, in order to avoid granting an economic advantage to the beneficiary;
- c) the compensation must not exceed the amount necessary to totally or partially cover the costs incurred through the service of general economic interest, taking in consideration the relevant incomes and a reasonable profit in performing these obligations;
- d) if the undertaking entrusted with the service of general economic interest was not selected through open public tender which would have allowed the selection of an bidder able to discharge this public service at the lowest costs, then the level of compensation must be set based on a comparative analysis of the company's costs and the costs of well-managed and profitable enterprise which meets all the conditions set for the performance of the particular public service, given the relevant incomes and a reasonable profit from the meeting of the service of general economic interest obligations.

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<sup>1</sup> Until the present time, S.C. CET S.A. Bacau collected only ROL 228,563,720,000 as subsidy according to the data submitted in the notification.

**3.3.The condition under par. 3.2.(a) is met in the following way:**

- (25) S.C. CET Bacau S.A. is entrusted to perform services of production and supplying caloric energy for the population, institutions and undertakings from the city of Bacau, by the licences ANRE no. 506/2002 and respectively 508/2002. In the licence are provisioned obligations regarding: the continuity in supplying caloric energy, insuring the access to the caloric networks for the new consumers, accomplishing the performance standards, etc.
- (26) According to the *Law on town management no. 326/2001*, the supply of heating energy which is produced centralized is a public use service.
- (27) According to Law no. 326/2001, public services must fulfil the following main conditions:
- a) Continuity both in quality and quantity, according to the conditions stipulated in the contract;
  - b) Adaptability to consumers' requests;
  - c) Equal access to the public service, in the conditions stipulated in the contract;
  - d) Ensuring the public health and life quality.
- (28) Organisation, operation and functioning of public services must ensure:
- a) Meeting the quantity and quality demands of users, according to the contract provisions;
  - b) The optimal operation in safety, profitability and economic efficiency conditions of buildings, equipments, installations and all assets, corresponding to the projected technological parameters and in accordance with the conditions of the contract, operation guidelines and regulations for organisation and functioning;
  - c) Protecting the public estate and environment by observing the legal provisions;
  - d) The information and consultation of citizens in the view to protect the health of the population benefiting from these services.
- (29) The obligations of the operators which are suppliers/providers of public services towards the consumer are mainly the following:
- a) to serve all users in the area for which they were authorized/certified;
  - b) to comply with all the performance parameters settled by the local public authorities and the national regulating authority, respectively;
  - c) to supply the information requested by the local public administration and the national regulating authority and to enable the access to the documentation of the respective utilities, according to the conditions of the operation contract.
- (30) The supply of town heating energy for preparing hot water for consumption is made through the heating energy system of town Bacau, part of the technical city infrastructure. The heating energy system, necessary for performing the services of general economic interest, is entrusted to the society through an administration contract by the City Council of Bacau.

**3.4. Condition in 3.2. b) is fulfilled, as follows:**

- (31) The heating energy market is a regulated market.

By the GED no. 162/1999 the national reference price for heating energy supplied to the population through centralized systems was instituted, in the view to heat the dwellings and to prepare hot water.

(32) Its level is settled in advance by Government decision, at the proposal of the National Regulating Authority in the Energy Field, as an average of the local prices of the producers, to which the corresponding distribution tariffs are added.

(33) The national reference price for 2000-2004 was the following:

Table no. 2 – *Evolution of the national reference price of heating energy*

	2000	2001	2002	2003	2004
The legal act establishing the national reference price	Government Decision no.756 Of 31.08.2000	Government Decision no.724 of 26.07.2001	-Government Decision no.1303 of 27.12.2001; -Government Decision no.340 of 04.04.2002 -Government Decision no.686 of 03.07.2002	Government Decision no. 686 din 03.07.2002	Government Decision no.1155 of 23.07.2004
National reference price (ROL/GCAL)	350,000	550,000	575,000 600,000 800,000	800,000	896,000

Source: National legislation in force

(34) The national reference price was regulated on grounds related to social protection. As a result, if the local price of producing and supplying the heating energy is higher than the national reference price, the population will only pay the latter.

(35) If the local price of the gig calorie is higher than the national reference price, according to the GED no. 162/1999, the difference is subsidized as follows:

- a) by the state budget, up to the ceilings approved through the budget law, which are allocated for this purpose;
- b) by the local budgets, for the part left uncovered by the state budget.

(36) The subsidies allocated for covering the differences between the local higher price of the gig calorie and the national reference price may be granted in advance to the undertakings supplying heating energy to the population, to constitute stocks of fuel oil and light liquid fuel for the cold season, covering also the transport expenditures corresponding to these stocks.

(37) Before the start of the financial exercise, S.C. CET S.A. Bacau makes a draft budget of incomes and expenditures. On this basis, a local delivery price for the heating energy is forecasted. This price is assessed and approved by A.N.R.E.

- (38) In the budget of incomes and expenditures of the company, as well as in the explanatory note of the local price, the incomes and expenditures are shown separately (material expenditures, maintenance and reparation expenditures, staff expenditure, other expenditure) corresponding to the operating activity.

**3.5. Condition in 3.2. c) is fulfilled, as follows:**

- (39) During 2001-2004, the national reference price (see Table no. 2) was lower than the local delivery price for the heating energy settled for S.C. CET BACAU S.A. For covering the difference between these, the company gets, according to GED no. 162/1999, subsidies in amount of ROL 322,969,946,000 (see para. 21-22).

Table no. 3 –*Evolution of the local delivery price, of the reference price and of the subsidy granted in order to cover the difference between them during 2001-2004.*

Period	Delivery price to the population without VAT	Delivery price to the population with VAT	Reference price without VAT	Reference price with VAT	Difference between reference price and delivery price without VAT	Difference between reference price and the delivery price with VAT	Legal grounds reference price	Volume delivered to the population	Subsidy value
	ROL Gcal	ROL /Gcal	ROL/G cal	ROL /Gcal	ROL/ Gcal	ROL /Gcal		Gcal	thousand ROL
Jan.01	298,370						GO 756/31.0 8.2000	43,365	
Feb.01	298,370						GO 756/31.0 8.2000	45,754	
Mar.01	298,370						GO 756/31.0 8.2000	34,900	
Apr.01	298,370						GO 756/31.0 8.2000	12,700	
May.01	298,370						GO 756/31.0 8.2000	0	
Jun.01	298,370						GO 756/31.0 8.2000	0	
	298,370						GO 724/26.0 7.2001	0	



Jul.01									
aug.01	298,370						GO 724/26.0 7.2001	0	
sep.01	586,720						GO 724/26.0 7.2001	0	
oct.01	586,720		462,185		-124,535		GO 724/26.0 7.2001	2,947	367,005
nov.01	586,720		462,185		-124,535		GO 724/26.0 7.2001	34,680	4,318,874
dec.01	586,720		462,185		-124,535		GO 1303/27. 12.2001	55,036	6,853,908
TOTAL YEAR 2001								229,382	11,539,787
Jan.02	604,271		483,193		-121,078		GO 1303/27. 12.2001	45,587	5,519,583
Feb.02	604,271		483,193		-121,078		GO 1303/27. 12.2001	25,891	3,134,830
Mar.0 2	604,271		483,193		-121,078		GO 1303/27. 12.2001	28,853	3,493,464
Apr.02	604,271		483,193		-121,078		GO 340/04.0 4.2002	16,508	1,998,756
May.0 2	629,049		504,202		-124,847		GO 340/04.0 4.2002	5,671	708,007
Jun.02	629,049		504,202		-124,847		GO 340/04.0 4.2002	0	0
Jul.02	1,025,800		672,269		-353,531		GO 340/04.0 4.2002	0	0
Aug.0 2	1,025,800		672,269		-353,531		GO 686/03.0 7.2002	0	0
Sep.02	1,025,800		672,269		-353,531		GO 686/03.0 7.2002	0	0
Oct.02	1,025,800	1,220,702	672,269	800,000		-420,702	GO 686/03.0 7.2002	11,480	4,829,658
Nnov. 02	1,025,800	1,220,702	672,269	800,000		-420,702	GO 686/03.0 7.2002	26,954	11,339,599
dec.02	1,025,800	1,220,702	672,269	800,000		-420,702	GO	47,522	19,992,595

							686/03.0 7.2002		
TOTAL L YR 2002								208,466	51,016,491
Jan.03	1,025,800	1,220,702	672,269	800,000		-420,702	GO 686/03.0 7.2002	44,604	18,764,987
Feb.03	1,025,800	1,220,702	672,269	800,000		-420,702	GO 686/03.0 7.2002	44,448	18,699,358
Mar.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	41,547	24,039,713
Apr.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	17,892	10,352,578
May.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	7,760	4,490,052
Jun.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	7,363	4,260,341
Jul.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	5,702	3,299,262
Aug.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	3,164	1,830,738
Sep.03	1,158,500	1,378,615	672,269	800,000		-578,615	GO 686/03.0 7.2002	4,473	2,588,144
Oct.03	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	16,038	11,667,387
Nov.03	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	34,868	25,365,908
Dec.03	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	39,398	28,661,410
TOTAL L YR 2003								267,257	154,019,877
Jan.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	35,426	25,771,844
Feb.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	43,801	31,864,522
Mar.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	34,688	25,234,961

Apr.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	21,321	15,510,684
May.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	5,669	4,124,106
Jun.04	1,283,600	1,527,484	672,269	800,000		-727,484	GO 686/03.0 7.2002	5,344	3,887,674
<b>TOTAL YR 2004</b>								146,249	106,393,791
<b>TOTAL GENERAL</b>								<b>851,354</b>	<b>322,969,947</b>

*Source: Supplementary information from the beneficiary*

(40) Table 3 shows that the amounts received by S.C. CET S.A. Bacau as subsidy, in amount of ROL 322,969,947.000, cover exclusively the negative difference between the national reference price established for population and the local delivery price of heating energy, in amount of ROL 322,969,947.000.

(41) When analyzing the measures of support for S.C. CET S.A. Bacau, one must consider that, for performing services of caloric energy production and supplying, S.C.CET Bacau S.A. annually registered costs higher than the local delivery price for the caloric energy established by ANRE. In the table below are indicated the local delivery price for heating energy and the real cost of production and supply for the period 2001-2004.

Table no. 4 – *Evolution of local delivery price, of the heating energy cost and of the volume sold by S.C. CET BACAU S.A.*

PERIOD	DELIVERY PRICE WITHOUT V.A.T.		LEGAL GROUNDS	QUANTITY SUPPLIED			UNIT COST
	POPULATION	UNDERTAKINGS		TOTAL	Of which: POPULATION	UNDERTAKINGS	
	ROL/Gcal	ROL/Gcal		Gcal	Gcal	Gcal	ROL/Gcal
Jan.01	298,370	309,562	Dec. ANRE 100/13.06. 00	46,334	43,365	2,969	699,568
Feb.01	298,370	309,562	Dec. ANRE 100/13.06. 00	49,185	45,754	3,431	699,568
Mar.01	298,370	309,562	Dec. ANRE 100/13.06.	37,155	34,900	2,255	699,568

			00				
Apr.01	298,370	309,562	Dec. ANRE 100/13.06. 00	13,796	12,700	1,096	699,568
May.01	298,370	309,562	Dec. ANRE 100/13.06. 00	0	0	0	699,568
Jun.01	298,370	309,562	Dec. ANRE 100/13.06. 00	0	0	0	699,568
Jul.01	298,370	309,562	Dec.ANRE 100/13.06. 00	0	0	0	699,568
Aug.01	298,370	309,562	Dec. ANRE 100/13.06. 00	0	0	0	699,568
Sep.01	586,720	486,302	Dec. ANRE 22/20.09.0 1	0	0	0	699,568
Oct.01	586,720	486,302	Dec. NRE 22/20.09.0 1	3,110	2,947	163	699,568
Nov.01	586,720	486,302	Dec. ANRE 22/20.09.0 1	37,498	34,680	2,818	699,568
Dec.01	586,720	486,302	Dec. ANRE 22/20.09.0 1	60,755	55,036	5,719	699,568
TOTAL AN 2001				247,833	229,382	18,451	699,568
Jan.02	604,271	622,511	Dec. ANRE 35/21.12.0 1	49,999	45,587	4,412	1,291,871
Feb.02	604,271	622,511	Dec ANRE 35/21.12.0 1	28,833	25,891	2,942	1,291,871
Mar.02	604,271	622,511	Dec ANRE 35/21.12.0 1	31,600	28,853	2,747	1,291,871
Apr.02	604,271	622,511	Dec ANRE 35/21.12.0 1	17,623	16,508	1,115	1,291,871
May.02	629,049	648,219	Dec ANRE 6/22.03.02	5,682	5,671	11	1,291,871
Jun.02	629,049	648,219	Dec ANRE 6/22.03.03	0	0	0	1,291,871

Jul.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	0	0	0	1,291,871
Aug.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	0	0	0	1,291,871
Sep.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	0	0	0	1,291,871
Oct.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	12,398	11,480	918	1,291,871
Nov.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	29,877	26,954	2,923	1,291,871
Dec.02	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	53,510	47,522	5,988	1,291,871
<b>TOTAL AN 2002</b>				<b>229,522</b>	<b>208,466</b>	<b>21,056</b>	<b>1,291,871</b>
Jan.03	1,025,800	1,025,800	Dec ANRE 534/4.07.0 2	50,198	44,604	5,594	1,385,351
Feb.03	1,158,500	1,216,000	Dec ANRE 64/14.02.2 003	49,312	44,448	4,864	1,385,351
Mar.03	1,158,500	1,216,000	Dec ANRE 64/14.02.2 003	46,197	41,547	4,650	1,385,351
Apr.03	1,158,500	1,216,000	Dec ANRE 64/14.02.2 003	19,580	17,892	1,688	1,385,351
May.03	1,158,500	1,216,000	Dec. ANRE 64/14.02.2 003	8,059	7,760	299	1,385,351
Jun.03	1,158,500	1,216,000	Dec. ANRE 64/14.02.2 003	7,556	7,363	193	1,385,351
Jul.03	1,158,500	1,216,000	Dec ANRE 64/14.02.2 003	5,868	5,702	166	1,385,351
Aug.03	1,158,500	1,216,000	Dec ANRE 64/14.02.2 003	3,242	3,164	78	1,385,351
Sep.03	1,158,500	1,216,000	Dec. ANRE 64/14.02.2 003	4,668	4,473	195	1,385,351
Oct.03	1,283,600	1,347,000	Dec ANRE 64/14.02.2 003	17,363	16,038	1,325	1,385,351
Nov.03	1,283,600	1,347,000	Dec.	38,163	34,868	3,295	1,385,351

			ANRE 64/14.02.2 003				
Dec.03	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	43,105	39,398	3,707	1,385,351
<b>TOTAL AN 2003</b>				<b>293,311</b>	<b>267,257</b>	<b>26,054</b>	<b>1,385,351</b>
Jan.04	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	40,085	35,426	4,659	1,581,843
Feb.04	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	48,227	43,801	4,426	1,581,843
Mar.04	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	38,475	34,688	3,787	1,581,843
Apr.04	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	23,357	21,321	2,036	1,581,843
May.04	1,283,600	1,347,000	Dec. ANRE 64/14.02.2 003	5,998	5,669	329	1,581,843
Jun.04	1,283,600	1,347,000	Dec. ANRE 205/25.06. 2004	5,624	5,344	280	1,581,843
<b>TOTAL AN 2004</b>				<b>161,766</b>	<b>146,249</b>	<b>15,517</b>	<b>1,581,843</b>

*Source: Supplementary information from the beneficiary*

(42) As it may be noticed, in each year of the period under assessment, the operating cost for producing and supplying heating energy is higher than the local price of delivery settled by A.N.R.E., both for the population and for the undertakings.

(43) The negative differences between the local delivery price and the real cost of production are shown in the table below:

*Table no. 5 – Evolution of the difference between the local delivery price and the cost of the heating energy and of the losses caused by this difference*

<b>PERIOD</b>	<b>Difference between the price settled by ANRE and cost</b>	<b>QUANTITY DELIVERED</b>	<b>LOSSES CAUSED BY FAILURE TO</b>
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	POPULATION	UNDERTAKINGS	TOTAL	OF WHICH:		COVER THE COST
				POPULATION	UNDERTAKINGS	
	ROL/Gcal	ROL/Gcal	Gcal	Gcal	Gcal	Thousands ROL
Jan.01	-401,198	-390,006	46,334	43,365	2,969	-18555879
Feb.01	-401,198	-390,006	49,185	45,754	3,431	- 19,694,524
Mar.01	-401,198	-390,006	37,155	34,900	2,255	-14,881,274
Apr.01	-401,198	-390,006	13,796	12,700	1,096	-5,522,661
May.01	-401,198	-390,006	0	0	0	0
Jun.01	-401,198	-390,006	0	0	0	0
Jul.01	-112,848	-213,266	0	0	0	0
Aug.01	-112,848	-213,266	0	0	0	0
Sep.01	-112,848	-213,266	0	0	0	0
Oct.01	-112,848	-213,266	3,110	2,947	163	-367,325
Nov.01	-112,848	-213,266	37,498	34,680	2,818	-4,514,552
Dec.01	-112,848	-213,266	60,755	55,036	5,719	-7,430,371
<b>TOTAL YEAR 2001</b>			<b>247,833</b>	<b>229,382</b>	<b>18,451</b>	<b>-70,966,527</b>
Jan.02	-687,600	-669,360	49,999	45,587	4,412	-34,298,838
Feb.02	-687,600	-669,360	28,833	25,891	2,942	-19,771,909
Mar.02	-687,600	-669,360	31,600	28,853	2,747	-21,678,055
Apr.02	-687,600	-669,360	17,623	16,508	1,115	-12,097,237
May.02	-662,822	-643,652	5,682	5,671	11	-3,765,944
Jun.02	-662,822	-643,652	0	0	0	0
Jul.02	-266,071	-266,071	0	0	0	0
Aug.02	-266,071	-266,071	0	0	0	0
Sep.02	-266,071	-266,071	0	0	0	0
Oct.02	-266,071	-266,071	12,398	11,480	918	-3,298,748
Nov.02	-266,071	-266,071	29,877	26,954	2,923	-7,949,403
Dec.02	-266,071	-266,071	53,510	47,522	5,988	-14,237,459
<b>TOTAL YEAR 2002</b>			<b>229,522</b>	<b>208,466</b>	<b>21,056</b>	<b>-117,097,593</b>
Jan.03	-359551	-359551	50,198	44,604	5,594	-18,048,741
Feb.03	-226,851	-169,351	49,312	44,448	4,864	-10,906,797
Mar.03	-226,851	-169,351	46,197	41,547	4,650	-10,212,461
Apr.03	-226,851	-169,351	19,580	17,892	1,688	-4,344,683
May.03	-226,851	-169,351	8,059	7,760	299	-1,811,000
Jun.03	-226,851	-169,351	7,556	7,363	193	-1,702,989

Jul.03	-226,851	-169,351	5,868	5,702	166	-1,321,617
Aug.03	-226,851	-169,351	3,242	3,164	78	-730,966
Sep.03	-226,851	-169,351	4,668	4,473	195	-1,047,728
Oct.03	-101,751	- 38351	17,363	16,038	1,325	-1,682,698
Nov.03	-101,751	- 38351	38,163	34,868	3,295	-3,674,220
Dec.03	-101,751	- 38351	43,105	39,398	3,707	-4,150,953
<b>TOTAL YEAR 2003</b>			<b>293,311</b>	<b>267,257</b>	<b>26,054</b>	<b>-59,634,851</b>
Jan.04	-298,243	-234,843	40,085	35,426	4,659	-11,659,690
Feb.04	-298,243	-234,843	48,227	43,801	4,426	-14,102,757
Mar.04	-298,243	-234,843	38,475	34,688	3,787	-11,234,804
Apr.04	-298,243	-234,843	23,357	21,321	2,036	-6,836,979
May.04	-298,243	-234,843	5,998	5,669	329	-1,768,003
Jun.04	-298,243	-234,843	5,624	5,344	280	-1,659,567
<b>TOTAL YEAR 2004</b>			<b>161,766</b>	<b>146,249</b>	<b>15,517</b>	<b>-47,261,791</b>
<b>TOTAL LOSS</b>						<b>-294,960,770</b>

*SOURCE: the notification form*

(44) From Table no. 5 it turns out that during the assessed period SC CET SA Bacau registers a loss of ROL 294,960,770,000, caused by the difference between the local delivery price established by ANRE for the heating energy supplied and the real cost of production and delivery.

(45) Observing the figures from Table no. 3 (the last line- GENERAL TOTAL) and the figures from Table no. 5 (the last line- GENERAL TOTAL), results that, the negative difference between the national reference price paid by the population and the real cost of the service, as well as, the difference between the price paid by the undertakings (local price) and the real cost of the service, per total sold production, during 2001- 2004, is showed in the following manner:

- ROL 322,969,946,000 -subsidy;
- ROL 294,960,770,000 -loss.

(46)The state aid granted to the society during the analyzed period, in total amount of ROL 429.276.873.454, is composed by:

- ROL 322,969,946,000 representing subsidies;
- ROL 106.306.927.454 representing exemption from the payment of the budgetary obligations (see points (3) and (21)).



(47) If the company should'n have received subsidies to cover the difference between the national reference price and the local delivery price established by ANRE, the company's losses would have been in the amount of:

$$322,969,946,000+294,960,770,000=\text{ROL } 617,930,716,000$$

(48) It can be seen that, the state aid in amount of ROL 429.276.873.454 covers only partially the company's losses in amount of ROL 617,930,716,000, resulted from performing the service under the conditions of a national reference price.

(49) In these conditions, we considered that the state aid granted to the undertaking during 2001-2004, represents only a partial compensation of the costs resulting from performing the service of general economic interest of production and supply of heating energy in Bacau.

### **3.6. Condition in 3.2. d) is not fulfilled because:**

(50) S.C CET BACAU S.A was not entrusted with the service of general economic interest to produce electricity by a bidding procedure.

(51) The provision of the public service to produce electricity was entrusted to S.C. CET S.A. by an ANRE licence. Thus, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have borne, in providing the same service. On the Romanian heating market other producers and suppliers are also acting (e.g. Termoelectrica, CET Govora, Electrocentrale etc.). still, a comparison with these companies would not be relevant, as they are also public undertakings receiving aid from the state for performing the public service obligation.

(52) Since the four conditions under par. 3.1. are not met cumulatively, mainly the condition under par. 3.1. (d) was not proved, the measures of support for S.C. CET S.A. Bacau, notified by the City Council of Bacau, constitute state aid for the purposes of Law 143/1999 on State aid, with subsequent modifications and completions and of the Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest.

(53) Compensations granted in view of discharging the service of general economic interest constitute state aid compatible with normal competition environment if the following conditions are met :

- A. The state aid is necessary to discharge a service of general economic interest obligation ;
- B. The state aid does not unduly affect trade between Romania and the EU Member States.

#### **A. Necessity to grant state aid**

- (54) The state aid granted to S.C. CET S.A. Bacau is strictly necessary to operate under normal conditions of continuity, safety and comfort the public service of production and supply of heating energy. Under the conditions of a regulated market, for the discharging of this service, the company may not levy a price able to cover its operating costs and which may also include a reasonable profit. This is the main cause for which the company registers annual losses, and is not able to pay his outstanding debts. The low rate of debt collection from the population also adds to this situation.
- (55) The compulsory levy of these obligations would block the company's activity and consequently would lead to the termination of the public service. This fact would have serious repercussions on the population and the undertakings from the city of Bacau, who would be deprived of the indispensable heating energy, especially in the cold season.

#### **B. The state aid does not unduly affect trade between Romania and the Member States in an unjustified way**

- (56) As shown under par. 3.4. above, the state aid granted to S.C. CET S.A. Bacau represents just a compensation for the discharging under the optimal conditions of the service of general economic interest of producing and supplying heating energy. The geographic market affected by the state aid consists only in the territory of the city of Bacau. Under these circumstances it is considered that the commerce with the Member States is not unduly affected.

#### **3.7. There is no over-compensation**

- (57) The state aid granted to S.C. CET S.A. Bacau in the form of exemptions from payments of budget obligations and subsidies (see pars. 3 and 21) do not represent an over-compensation because it does not exceed the costs which are absolutely necessary in order to discharge the service of general economic interest obligation.

(58) Thus, the two conditions under par. 52 are cumulatively met; these conditions are provided in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* in order to state that the measures of support for S.C. CET S.A. Bacau, standing for compensations for the discharge of the service of general economic interest, constitutes compatible state aid a normal competition environment.

(59) The total amount of state aid granted to S.C. CET S.A. Bacau is ROL 429.276.873.454 , from which ROL 337.733.085.916 is state aids received in the past three years, and ROL 91.543.787.538 is state aid notified by the City Council of Bacau.

## **DECIDES**

**Art. 1** The measures of financial support granted during 2001-2004 to S.C. CET S.A. Bacau constitute state aid for the purposes of Art. 2 of Law 143/1999 on State aid modified and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures.

**Art. 2** The notified state aid represents a necessary compensation to achieve, under normal conditions of safety and continuity the service of general economic interest to produce and supply heating energy, and this compensation does not unduly affect the trade between Romania and the EU Member States.

**Art.3** Pursuant to Art. 12 art. 2 (b) read in conjunction with Art. 14 par. 1 (j) of Law 143/1999 regarding state aid with subsequent modifications and completions, we authorize the state aid for S.C. CET S.A. Bacau as aid to achieve under conditions of safety and continuity the service of general economic interest.

**Art. 4** Pursuant to Art. 24 of Law 143/1999 with subsequent modifications and completions, suppliers shall annually convey to the Competition Council information regarding the state aid granted to S.C. CET S.A. Bacau in view of monitoring the aid.

**Art.5** This decision is applicable as of its date of communication.

**Art.6** Pursuant to Art. 29 of Law 143/1999 regarding state aid with subsequent modifications and completions, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

**Art. 7** This Decision shall be communicated by the General Secretariate of the Competition Council to:

- The Ministry of Public Finances, Strada Apolodor nr. 17, sector 5, Bucuresti;
- The Bacau Local City Council, Strada Marasesti nr.6, Bacau ;
- SC CET SA Bacau, Str. Chimiei nr. 6, municipiul Bacau.

**Art. 8** The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfilment of the present Decision.

**PRESIDENT**

**MIHAI BERINDE**