



R O M A N I A

CONSILIUL CONCURENTEI

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DECISION OF THE COMPETITION COUNCIL

no. 315 of 26.11.2004

**Concerning the notification of the Mairry of Suceava on financial measures
of support for S.C. TERMICA S.A. Suceava**

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 and by the GO no. 94/2004 regarding the regulation of certain financial measures;

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 33368/07.10.2004, registered at Competition Council with the no. RS-AS 87/12.10.2004, the Mairy of Suceava submitted to the Competition Council, under Art. 6 of Law 143/1999 on State aid, with subsequent modifications and completions, the notification of the measure of financial support granted to S.C. TERMICA S.A. Suceava. The state aid is granted based on the EGO no.37/2004 regarding the measures of diminishing the arrears from economy, approved by the Law no. 358/2004, and of the GD no.1367/2004 regarding the guarantee by the Ministry of Public Finance of certain external loans in total amount of maximum USD 215 mill. following to be contracted by SC Natural Gas Distributor “Distrigaz Sud” – SA Bucharest, SC Natural Gas Distributor “Distrigaz North” –SA Targu Mures, SC Electrocentrale – SA Bucharest and the undertakings belonging to the local public administration authority, producers of caloric energy.

(2) Since the data submitted in the notification were not complete, by note DAAS/821/25.10.2004., supplementary information were requested to which S.C. TERMICA S.A. Suceava answered by the address registered at the Competition Council with the no. DAAS/834/27.10.2004. The notification became effective on the date the information were complete, mainly on 29.10.2004.

2. DESCRIPTION OF THE MEASURE OF FINANCIAL SUPPORT

2.1. The form of the state aid

(3) The notified measures consist in:

- The state guarantee for an external credit in amount of USD 3.5 mill., the equivalent of ROL **112,199,500,000¹**, in accordance with the GD no.1006/2004;
- deferrals in view of exemption from payment of fiscal obligations in amount of ROL **67,810,448,599**, representing state social contributions amounting at ROL 15,272,194,619, due by the company on December 31, 2003, including interest rates and penalties related to them, calculated until 28.05.2004, amounting at ROL 52,538,253,980;

¹ The credit was contracted in USD, the amount in ROL being calculated at the exchange rate ROL/ USD of 29.10.2004, namely 32,057 ROL/USD

- deferrals in view of exemption from payment of the interests to the budget of the social contribution for unemployment related to the contribution of the employer, in amount of ROL **1,573,544,344;**
 - exemption from the payment of the Social Security Contribution interests calculated in the basis of the GD no. 670/1999 and rescheduled according to the annex to the GD no. 1171/2001, in amount of ROL **4,702,639,278;**
 - the annulment of delay penalties and majorities owed to the water and natural gas suppliers, in amount of ROL **3,861,920,771,** respectively:
 - towards S.C. ACET S.A. Suceava ROL 3,497,438,299;
 - towards S.C. DISTRIGAZ NORD S.A. ROL 364,482,472.
- (4) The amounts, object to the payment deferrals, are established through the certificate of fiscal obligations no. 39129 of 17.09.2004 issued by the Public Finance Administration of the Suceava County. These amounts are free of interests and penalties of any kind from 28.05.2004.
- (5) The obligations are exempted from the payment at the date of the transfer of ownership right in case of privatization, within the law, or at the date of December the 31st, 2006, if the undertaking pays monthly its current fiscal obligations with payment time limits starting with January the 1st, 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 measure of state support is S.C. TERMICA S.A. Suceava. The company was set up under the Romanian law, as stock company, with a single shareholder as the local City Council of the city of Suceava, on 06.06.2002, under the *GO 104/2002 regarding the taking over of certain electrical and caloric power plants from the private domain of the State and from the patrimony of the SC Termoelectrica SA into the public domain of certain administrative- territorial units and their local councils' administration* and *GEO 78/2002 regarding the insuring of the functioning conditions of the electrical and caloric power plants from the local and county councils' administration* approved by the Law no. 643/2002 and of the Local Council's Decision no. 64/2002 *regarding the taking over of the Electrical and Caloric power plant (CET) Suceava into the private domain of the Suceava County and the establishment of the stock company „TERMICA” S.A. Suceava.*

- (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 Suceava thermo-power stations was transferred without payment in the public domain of the city of Suceava.
- (9) The Suceava Local City Council started proceedings, under EGO 78/2002 *to provide operating conditions for heating and electric power plants administered by local and county councils*, of registering the Suceava thermo-power station as trading company, under the name of SC TERMICA SA Suceava. The assets and liabilities of the thermo-power station were taken over in SC TERMICA SA Suceava's accounting records.
- (10) The company is headquartered in Suceava and is registered at the Trade Registrar under J33/310/2002; its single registration code is 14682110. The registered capital of the company is ROL 1,453,310,000,000.
- (11) The company's main line of business is the production, transport and distribution of electrical energy within the National Energetic System, the production of caloric energy for insuring the caloric energy necessary as demanded by the city consumers (hot water and steam) and the industrial consumers (hot water and steam), the production of treated, de-hardened and demineralized water, the transport and distribution of caloric energy as hot water necessary for the heating and making of domestic hot water for the whole county - activity concessioned by the Local Council in 2000.
- (12) S.C. TERMICA S.A. has in its organizational and functioning structure two production capacities, namely:
- a) *The electrical calorific power plant, functioning on coal with electrical functioning power of 100 MW and a caloric functioning power of 520 Mwe (CET).*
- The main energetically installations in the accountability of the *Electrical and Caloric Power plant* are :
- 2 industrial vapour boilers type CR-1244 de 420 t/h ; 13.7 MPa ; 813.15⁰K – on brown coal;
 - 2 turbo-machine with condensing and adjustable plugs type DSL - 50 – 1;
 - 2 base boilers of 97.11 MWe;
 - 3 top boilers of 46.5 Mwe.
- b) *The Caloric Power plant on hydrocarbons with functioning power of 366 MWe (CT)*

The main energetically installations in the accountability of the *Caloric Power plant* are :

- 2 industrial vapour boilers of 105 t/h ; 1.7 MPa ; 523.15 °K;
- 1 hot water boiler of 58.15 MWe;
- 1 hot water boiler of 116.30 Mwe;
- a top boiler of 21 Mwe.

(13) The Electrical and Caloric Power plant is a co- generation power plant, with an essential contribution in insuring the caloric energy necessary under the form of technological steam and boiled water, together with the Caloric Power plant on hydrocarbons.

(14) Domestic hot water and the city heating, in winter, for the 27,000 apartments (approx. 75,000 inhabitants) linked to the calorific network, is insured in the following manner:

- ⇒ from CET with 2 base boilers and 3 top boilers; installed capacity – 287 Gcal/h;
- ⇒ from CT with the 2 hot water boiler; installed capacity – 150 Gcal/h of from the boiler of 18 Gcal/h.

(15) The steam necessary for the industrial consumers is insured from:

- ⇒ CET – through the plugs of 13 ATA ; nominal flow– 230 t/h
- ⇒ CT – through the 2 industrial vapour boilers ; nominal flow – 210 t/h.

(16) The supply of caloric city energy for heating and preparing the hot water is made by the city calorific system of the Suceava Municipality, *system entrusted based on a management contract to the undertaking by the Local Council of the Suceava County.*

(17) The installations in exploiting in the transport and delivery network enclose the following:

- 50 caloric terminals;
- 46.6 km primarily calorific networks, between 50 and 800 mm;
- 455 km secondary calorific networks, between 20 and 250 mm.

(18) SC TERMICA SA Suceava is the supplier of caloric energy for the next type of consumers:

- 26,644 apartments with approx. 69,135 inhabitants in 102 owner/ lender associations;
- 172 private houses;
- 780 undertakings;
- 40 budgetary units.

- (19) The relevant product market is the market for the production, distribution and supply of heating energy. The relevant geographic market consists of the city of Suceava territory.
- (20) SC TERMICA SA Suceava is the only producer and supplier of heating energy from the area it operates in. The company ensures 80% of the necessary urban heating energy.
- (21) The economical and financial results based on the balance sheet of the past 3 years are the following:

Table no. 1 - The economical and financial results of SC TERMICA SA Suceava
- ROL thousand -

Indicators	2001	2002	2003
Total turnover	389,435,269	628,513,102	782,935,198
Profit/loss	-463,108,129	-517,055,830	-90,266,627

Source: The state aid's notification

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. The main cause of the high value registered by the exploiting costs is the losses within the transport and delivery system, due to the improper technical situation of the transport and delivery network - very old (approx. 35 years of utilization).

2.3. State aids received by the company in the last three years

- (22) According to the data submitted in the notification, S.C. TERMICA S.A. Suceava benefited in the past three years from state aid, as shown below:
- Relief from the payment of penalties for late payments related to the unemployment securities, based on the EGO no. 43/2001, and GO no. 198/2001 amounting at ROL 1,049,036,000;
 - Relief from payment of increases and penalties for late payments related to the social securities, pursuant to GD nr. 1171/2001, amounting at ROL 45,511,200,000;
 - Relief from payment of increases and penalties owed to SC DISTRIGAZ NORD SA –Suceava brunch, pursuant to EGO no. 57/2002 amounting at ROL 2,790,959,000;
 - Subsidies for covering the difference between the national reference price and the local delivery price for the caloric energy, in amount of ROL 729,249,575,299, as follows:
 - 2001: ROL 60,244,079,811;
 - 2002: ROL 115,986,267,658;
 - 2003: ROL 240,795,770,172;

- 2004: ROL 312,223,457,638.

(23) In the same time, SC TERMICA SA Suceava also benefited by the guarantee by the State of two external credits contracted for completing the financing of the acquisition of energetic resources for the winter 2002 – 2003, respectively for the winter 2003 – 2004, as it follows:

- The guaranteeing by the State of an external credit in amount of USD 6 mill, respectively ROL 192,342,000,000² in accordance with GD no. 1006/2002, modified by the GD no. 1140/2002;
- The guaranteeing by the State of an external credit in amount of USD 8 mill, respectively ROL 256,456,000,000³ in accordance with GD no. 1045/2003.

(24) The company benefited in 2002 and 2003 of amounts allocated from Special fund for the development of the national energetic system according to the State budget law for the years of 2002 and 2003, amounting to a total of ROL 3,185,939,000 as follows:

- Year of 2002 – ROL 1,863,402,000;
- Year of 2003 – ROL 1,322,537,000.

(25) These budgetary allocations have been utilized for the roll out of investments badly required for the operation in safety conditions of the public service of general economic interest, having in view the high worn out ratio of the equipments and installations employed.

3. ANALYSIS OF THE MEASURE OF FINANCIAL SUPPORT

3.1. The assessment of the financial support from which SC TERMICA SA Suceava benefits of for performing the service of production, delivery and supply of caloric energy

(26) The total amount of the notified tax facilities granted in the basis of EGO no. 37/2004 approved by the Law no.358/2004 is of ROL 77,948,552,992. In the same time, the company also benefits of the State guarantee of an external credit contracted for completing the acquisitions of energetically resources for the winter 2004- 2005 in amount of ROL 112,199,500,000.

² The credit was contracted in USD, the amount in ROL being calculated at the exchange rate ROL/ USD of 29.10.2004, namely 32,057 ROL/USD

³The credit was contracted in USD, the amount in ROL being calculated at the exchange rate ROL/ USD of 29.10.2004, namely 32,057 ROL/USD

- (27) In the last 3 years, the company benefited of :
- tax facilities (exemptions from payment) in amount of ROL 49,351,195,000;
 - subsidies in amount of ROL 729,249,575,299;
 - the State guarantee of two external credits contracted for completing the financing of the acquisitions for the winter 2003 - 2004, in total amount of ROL 448,798,000,000;
 - budgetary allocations in amount of ROL 3,185,939,000.
- (28) Therefore, the total value of the financial support from which SC TERMICA SA Suceava is benefiting of between 2001-2004 is ROL 1,420,732,762,291, respectively:
- tax facilities in amount of ROL 127,299,747,992;
 - subsidies in amount of ROL 729,249,575,299;
 - guarantees in amount of ROL 560,997,500,000;
 - budgetary allocations in amount of ROL 3,185,939,000.
- (29) We mention that in quantifying the financial support for the company under the form of State guarantees to the contracting of external credit, having as purpose the completion of the financing the acquisitions of energetical resources for winter, it was taken into account the total value of the credits, due to the difficult economical-financial situation of SC TERMICA SA Suceava at the moment when the guarantees were given.

3.2. Obligation of service of general economic interest

- (30) 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 a 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.

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

- (31) S.C. TERMICA S.A. Suceava. is entrusted to perform services of production, distribution and supplying of caloric energy for the population, institutions and undertakings, by the licences ANRE no. 1506/2002 for the production of caloric energy, no. 1507/2002 for caloric energy delivery, and respectively nr. 1508/2002 for supplying with caloric energy. 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.
- (32) According to the *Law on town management no. 326/2001*, the supply of heating energy which is produced centralized is a public use service.
- (33) According to art.11 align.(1) in the *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.
- (34) 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.
- (35) 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.
- (36) The supply of town heating energy for preparing hot water for consumption is made through the heating energy system of town Suceava, 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 Suceava.

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

- (37) 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.
- (38) 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.
- (39) 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 din 03.07.2002	Government Decision no.1155 of 23.07.2004

			-Government Decision no.686 of 03.07.2002		
National reference price (ROL/GCAL)	273,700 350,000	550,000	575,000 600,000 800,000	800,000	896,000

Source: National legislation in force

- (40) 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.
- (41) 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.
- (42) 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.
- (43) Before the start of the financial exercise, S.C. TERMICA S.A. Suceava 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.
- (44) 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.

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

- (45) 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. TERMICA S.A. Suceava. In accordance with EGO no. 162/1999, the undertaking benefited by subsidies for covering these differences in amount of ROL 729,249,575,299 as it

can be seen in the „Definitive expense accounts regarding the subsidy from the budget for covering the price difference for the caloric energy delivered to the population”, established each year of the assessed period, in the following manner:

Tabelul nr. 3 – The evolution of the local delivery price, of the national reference price and of the subsidy granted for covering 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	Difference to cover	Subsidy value (without TVA)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)=(7)*(9)	(11)
	ROL Gcal	ROL /Gcal	ROL/Gcal	ROL /Gcal	ROL/ Gcal	ROL /Gcal		Gcal	ROL Gcal	thousand ROL
ian.01	513,045		294,118		218,927		HG 756/ 31.08.2000	46,335	10,144,074	10,144,074
feb.01	513,045		294,118		218,927			42,835	9,377,644	9,377,644
mar.01	513,045		294,118		218,927			33,607	7,357,533	7,357,533
apr.01	513,045		294,118		218,927			24,453	5,353,487	5,353,487
mai.01	513,045		294,118		218,927			5,670	1,241,422	1,241,422
iun.01	513,045		294,118		218,927			4,776	1,045,572	1,045,572
iul.01	576,008		294,118		281,890			6,394	1,802,531	1,802,531
aug.01	683,488		294,118		389,370			1,920	747,485	747,485
sep.01	710,368		462,185		248,183		HG 724/ 26.07.2001	3,097	768,547	768,547
oct.01	721,682		462,185		259,497			6,687	1,735,373	1,735,373
nov.01	728,828		462,185		266,643			27,913	7,442,897	7,442,897
dec.01	728,828		462,185		266,643			49,608	13,227,515	13,227,515
TOTAL YEAR 2001	589,887		352,046		237,841			253,296	60,244,080	60,244,080

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	Difference to cover	Subsidy value (without TVA)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)=(7)*(9)	(11)
	ROL Gcal	ROL /Gcal	ROL/Gcal	ROL /Gcal	ROL/ Gcal	ROL /Gcal		Gcal	ROL Gcal	thousand ROL
ian.02	744,136		483,193		260,943		HG 1303/ 29.12.2001	48,008	12,527,430	12,527,430
feb.02	744,136		483,193		260,943			32,206	8,403,944	8,403,944
mar.02	812,059		483,193		328,866			31,621	10,399,139	10,399,139
apr.02	840,948		483,193		357,755			23,297	8,334,455	8,334,455
mai.02	840,948		504,202		336,746		HG 340/ 22.04.2002	6,588	2,218,362	2,218,362
iun.02	840,948	1,000,728	504,202	600,000	336,746	400,728		6,108	2,056,930	2,056,930
iul.02	1,173,518	1,396,486	504,202	600,000	669,316	796,486		4,077	2,728,606	2,728,606
aug.02	1,415,800	1,684,802	672,269	800,000	743,531	884,802	HG 686/ 03.07.2002	2,244	1,668,635	1,668,635
sep.02	1,415,800	1,684,802	672,269	800,000	743,531	884,802		4,290	3,190,004	3,190,004
oct.02	1,415,800	1,684,802	672,269	800,000	743,531	884,802		14,219	10,572,509	10,572,509
nov.02	1,415,800	1,684,802	672,269	800,000	743,531	884,802		29,204	21,714,394	21,714,394
dec.02	1,415,800	1,684,802	672,269	800,000	743,531	884,802		43,269	32,171,860	32,171,860
TOTAL YEAR 2002	1,029,697		556,539		473,158			245,132	115,986,268	115,986,268

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	Difference to cover	Subsidy value (without TVA)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)=(7)*(9)	(11)
	ROL Gcal	ROL /Gcal	ROL/Gcal	ROL /Gcal	ROL/ Gcal	ROL /Gcal		Gcal	ROL Gcal	thousand ROL
ian.03	1,415,800	1,684,802	672,269	800,000	743,531	884,802	HG 686/ 03.07.2002	41,540.37	36,754,998	36,754,998
feb.03	1,415,800	1,684,802	672,269	800,000	743,531	884,802		40,638.876	35,957,354	35,957,354
mar.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		36,294.359	40,867,989	40,867,989
apr.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		24,634.224	27,738,503	27,738,503
mai.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		5,482.159	6,172,993	6,172,993
iun.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		4,984.104	5,612,175	5,612,175
iul.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		3,058.63	3,444,063	3,444,063
aug.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		2,238.024	2,520,048	2,520,048
sep.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		3,748.971	4,221,397	4,221,397
oct.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		16,015.356	18,033,529	18,033,529
nov.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		22,706.864	25,568,267	25,568,267
dec.03	1,618,500	1,926,015	672,269	800,000	946,231	1,126,015		30,110.129	33,904,454	33,904,454
TOTAL YEAR 2003	19,016,600	22,629,754	8,067,228	9,600,000	10,949,372	13,029,754		231,452.066	240,795,770	240,795,770

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	Difference to cover	Subsidy value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)=(7)*(9)	(11)
	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal		Gcal	ROL Thousand	mii lei
ian.04	1,729,694	2,058,336	672,269	800,000	1,057,425	1,258,336	HG 686/ 03.07.2002	42,732	53,771,403	53,771,403
feb.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		40,899	55,373,760	55,373,760
mar.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		33,941	45,952,334	45,952,334
apr.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		22,196	30,050,627	30,050,627
mai.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		4,709	6,374,854	6,374,854
iun.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		4,682	6,338,881	6,338,881
iul.04	1,810,000	2,153,900	672,269	800,000	1,137,731	1,353,900		3,382	4,578,290	4,578,290
aug.04	1,810,000	2,153,900	752,941	896,000	1,057,059	1,257,900	HG 1155/ 23.07.2004	4,024	5,061,237	5,061,237
sep.04	1,810,000	2,153,900	752,941	896,000	1,057,059	1,257,900		4,252	5,347,972	5,347,972
oct.04	1,810,000	2,153,900	752,941	896,000	1,057,059	1,257,900		15,000	18,868,500	18,868,500
nov.04	1,810,000	2,153,900	752,941	896,000	1,057,059	1,257,900		29,000	36,479,100	36,479,100
dec.04	1,810,000	2,153,900	752,941	896,000	1,057,059	1,257,900		35,000	44,026,500	44,026,500
TOTAL YEAR 2004	1,788,661	2,128,506	676,420	804,939	1,112,241	1,323,567		239,815	312,223,458	312,223,458

Source: Supplementary information from the beneficiary

Note: the data related to October, November, December 2004 are estimated based on the average of the consumption registered in the same months of the period 2001- 2003, the price being the regulated one.

(46) Table 3 shows that, during 2001- 2004, the amounts received by S.C. TERMICA S.A. Suceava as subsidy, in amount of ROL 729,249,575,299, cover exclusively the **difference between the national reference price and the local delivery price**, in amount of ROL 729,249,575,299.

(47) When analyzing the measures of support for S.C. TERMICA S.A. Suceava, one must consider that, for performing services of caloric energy production and supplying, the undertaking 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. TERMICA SUCEAVA S.A.*

Period	Delivery prive without TVA			Legal terms	Delivered quantity				Unit Cost
	Population	Ag. D.P.	undertakings.		TOTAL	From which :			
						Population	Ag. D.P.	undertakings.	ROL/Gcal
	ROL/Gcal	ROL/Gcal	ROL/Gcal		Gcal	Gcal	Gcal	Gcal	
ian.01	513,045	394,360	512,860	Dec. ANRE 100/ 06.06.2000 Dec. ANRE 857/ 19.12.2000	62,141	46,335	6,326	9,480	1,445,884
feb.01	513,045	394,360	512,860		54,123	42,835	3,597	7,691	
mar.01	513,045	394,360	512,860		42,530	33,607	3,338	5,585	
apr.01	513,045	394,360	512,860		29,642	24,453	1,076	4,113	
mai.01	513,045	394,360	512,860		6,726	5,670	568	488	
iun.01	513,045	394,360	512,860		5,722	4,776	490	456	
iul.01	513,045	394,360	512,860	Dec ANRE 13/ 12.07.2001	7,185	6,394	322	469	
	643,168	524,390	642,890						
aug.01	643,168	524,390	642,890	Dec. ANRE 753/ 03.08.2001	2,139	1,920	85	134	
	710,368	556,090	710,090						
sep.01	710,368	556,090	710,090		3,853	3,097	394	362	
oct.01	721,682	567,396	721,396	Dec ANRE 22/ 08.10.2001	8,920	6,687	1,282	950	
nov.01	728,828	574,537	728,537		36,204	27,913	2,678	5,613	
dec.01	728,828	574,537	728,537		62,986	49,608	3,986	9,392	
TOTAL YEAR 2001	589,887	457,289	592,401		322,170	253,296	24,141	44,733	1,445,884

Period	Delivery prive without TVA			Leagl terms	Delivered quantity				Unit Cost
					TOTAL	From which :			
	Population	Ag. D.P.	undertakings.			Populat ion	Ag. D.P.	undertaki ngs.	
	ROL/Gcal	ROL/Gcal	ROL/Gcal		Gcal	Gcal	Gcal	Gcal	ROL/Gcal
ian.02	744,136	589,835	743,835	Order ANRE 35/21.12.2001	60,418	48,008	3,902	8,507	
feb.02	744,136	589,835	743,835		40,726	32,206	3,043	5,477	
mar.02	812,059	605,009	811,758	Dec. ANRE 6/22.03.2002	38,717	31,621	1,927	5,168	
apr.02	840,948	628,231	840,631		28,675	23,297	1,952	3,426	
mai.02	840,948	628,231	840,631		7,372	6,588	340	445	
iun.02	840,948	628,231	840,631		7,155	6,108	413	634	
iul.02	1,173,518	941,746	1,173,269	Order ANRE 16/19.06.2002 Dec. ANRE 577/19.07.2002	4,781	4,077	367	337	
aug.02	1,415,800	1,157,800	1,415,800		2,539	2,244	108	187	
sep.02	1,415,800	1,157,800	1,415,800		4,909	4,290	209	410	
oct.02	1,415,800	1,157,800	1,415,800		18,056	14,219	1,628	2,209	
nov.02	1,415,800	1,157,800	1,415,800		36,376	29,204	3,127	4,045	
dec.02	1,415,800	1,157,800	1,415,800		52,757	43,269	3,595	5,893	
TOTAL YEAR 2002	1,029,697	841,357	1,002,288		302,481	245,132	20,610	36,739	1,690,819
ian.03	1,415,800	1,157,800	1,415,800	Dec. ANRE 577/19.07.2002	52,609	41,664	4,960	5,985	
feb.03	1,415,800	1,157,800	1,415,800		49,723	40,639	3,866	5,218	
mar.03	1,618,500	1,370,000	1,656,000	Dec. ANRE 87/28.02.2003	43,595	36,294	2,940	4,361	
apr.03	1,618,500	1,370,000	1,656,000		29,642	24,634	2,147	2,861	
mai.03	1,618,500	1,370,000	1,656,000		6,232	5,482	392	358	
iun.03	1,618,500	1,370,000	1,656,000		5,755	4,984	498	273	
iul.03	1,618,500	1,370,000	1,656,000		3,608	3,059	155	395	
aug.03	1,618,500	1,370,000	1,656,000		2,526	2,238	115	174	
sep.03	1,618,500	1,370,000	1,656,000		4,701	3,749	611	342	
oct.03	1,618,500	1,370,000	1,656,000		18,929	16,015	1,112	1,801	
nov.03	1,618,500	1,370,000	1,656,000		27,956	22,707	2,597	2,652	
dec.03	1,618,500	1,370,000	1,656,000		36,161	30,110	2,456	3,595	
TOTAL YEAR 2003	1,546,460	1,286,313	1,555,884		281,438	231,576	21,847	28,015	1,909,748
ian.04	1,729,694	1,484,619	1,788,097	Dec. ANRE 87/28.02.2003	51,761	42,732	3,727	5,302	
feb.04	1,810,000	1,567,400	1,883,500	Dec. ANRE 8/14.01.2004	49,007	40,899	3,313	4,794	
mar.04	1,810,000	1,567,400	1,883,500		39,515	33,941	1,989	3,585	
apr.04	1,810,000	1,567,400	1,883,500		25,381	22,196	913	2,273	
mai.04	1,810,000	1,567,400	1,883,500		5,318	4,709	277	332	
iun.04	1,810,000	1,567,400	1,883,500		5,348	4,682	348	318	

iul.04	1,810,000	1,567,400	1,883,500		3,773	3,382	191	200	
aug.04	1,810,000	1,567,400	1,883,500		4,511	4,024	225	263	
sep.04	1,810,000	1,567,400	1,883,500		4,855	4,252	325	278	
oct.04	1,810,000	1,567,400	1,883,500		16,863	15,000	1,005	858	
nov.04	1,810,000	1,567,400	1,883,500		32,596	29,000	1,943	1,653	
dec.04	1,810,000	1,567,400	1,883,500		39,655	35,000	2,747	2,337	
TOTAL 2004	1,788,661	1,540,117	1,854,340		278,583	239,815	16,601	22,167	2,183,340

Source: Supplementary information from the beneficiary

(48) As it may be noticed, in each year of the period under assessment, the operating cost for producing, distribution 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.

(49) 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 during 2001- 2004

Period	Difference between the price settled by ANRE and cost		Delivered quantity			losses caused by failure to cover the cost population
			TOTAL	From which :		
	Population	undertakings.		Population	undertakings	
	lei/Gcal	lei/Gcal		Gcal	Gcal	
(1)	(2)	(3)	(4)	(5)	(6)	7=2*5+3*6
TOTAL YEAR 2001	-855,997	-900,841	322,170	253,296	68,874	-278,865,139,146
TOTAL YEAR 2002	-661,121	-746,370	302,481	245,132	57,349	-204,865,486,102
TOTAL YEAR 2003	-363,289	-471,976	281,438	231,576	49,862	-107,662,680,776
TOTAL YEAR 2004	-394,679	-452,980	278,583	239,815	38,768	-112,211,073,025

SOURCE: supplementary information from the beneficiary

(50) From Table no. 5 it turns out that during the assessed period SC TERMICA SA Suceava registers a loss of ROL 703,604,379,049, 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.

(51) Observing the figures presented in the paragraphs no.45 and 49 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 729,249,575,299-subsidy;
- ROL 703,604,379,049 -loss.

(52) If the company shouldn't 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 ROL 1,432,853,954,348 respectively ROL 729,249,575,299 + ROL 703,604,379,049.

(53) It can be seen that, the state aid in amount of ROL 1,420,732,762,291 covers only partially the company's losses in amount of ROL 1,432,853,954,348, resulted from performing the service under the conditions of a national reference price.

(54) 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, distribution and supplying of heating energy in Suceava.

3.2.4. Condition in 3.2. d) is not fulfilled because:

(55) The entrustment of the service of general economic interest of caloric energy production to S.C TERMICA S.A. Suceava was not made by a bidding procedure.

(56) The provision of the public service to produce caloric energy was entrusted to S.C. TERMICA 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.

(57) Since the four conditions under par. 3.2. are not met cumulatively, mainly the condition under par. 3.2. (d) was not proved, the measures of support for S.C. TERMICA S.A. Suceava, notified by the Mairry of Suceava, constitute state aid for the purposes of art.2 in the 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.

(58) 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.

3.3. Necessity to grant state aid

(59) The state aid granted to S.C. TERMICA Suceava S.A 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.

(60) 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 Suceava, who would be deprived of the indispensable heating energy, especially in the cold season.

3.4 The state aid does not unduly affect trade between Romania and the Member States in an unjustified way

(61) As shown under par. 3.2.3. above, the state aid granted to S.C. TERMICA Suceava S.A. represents just a compensation for the discharging under the optimal conditions of the service of general economic interest of producing,

distributing and supplying heating energy. The geographic market affected by the state aid consists only in the territory of the city of Suceava. Under these circumstances it is considered that the commerce with the Member States is not unduly affected.

3.5. There is no over-compensation

- (62) The state aid granted to S.C. TERMICA Suceava S.A in the form of exemptions from payments of budget obligations and subsidies, budgetary allocations and guarantees 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.
- (63) Thus, the two conditions under par. 58 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. TERMICA S.A. Suceava, standing for compensations for the discharge of the service of general economic interest, constitutes compatible state aid in a normal competition environment.

DECIDES

Art. 1 The measures of financial support granted during 2001-2004 to **S.C. TERMICA Suceava S.A.** 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, distribute and supply caloric energy, and this compensation does not unduly affect the trade between Romania and the EU Member States.

Art.3 Pursuant to Art. 12 align. 2 (b) corroborated 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. TERMICA Suceava S.A as aid to achieve under conditions of safety and continuity the service of general economic interest.

Art. 4. The value of the state aid granted to S.C. TERMICA S.A. Suceava is in amount of ROL 1,420,732,762,291.

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 he 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 Mairy of Suceava County, B-dul 1 Mai, nr. 5A, Suceava;
- S.C. TERMICA S.A. Suceava, Str. Energeticianului nr. 1, county of Suceava.

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