

DECISION of the COMPETITION COUNCIL
No. 148 /03.08.2005
concerning the notification of Medgidia City Hall
on the financial support for S.C. EDILMED S.A. Medgidia

THE COMPETITION COUNCIL,

Having regard to the provisions of European Agreement establishing an association between Romania, and European Communities on one side and the Member States of those, on the other side, approved by Law no. 20/1993, published in Official Journal of Romania, Part I, no. 73 on 12 April 1993;

Having regard to the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, amended and completed by Emergency Government Ordinance no. 121/2003 approved by the Law no. 184/2004;

Having regard to the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3rd August 1999, amended and completed by Law no. 603/2003 and by Government Ordinance no. 94/2004 on regulating some financial measures,

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.

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

On the following grounds,

1. PROCEDURE

(1) By the letter on 09.06.2005, registered at the Competition Council with the no. RS-AS 34/09.06.2005, Medgidia City Hall notified to the Competition Council under Art. 6 of the *Law no. 143/1999 on state aid, with subsequent amendments and completions*, the financial support for S.C. EDILMED S.A. Medgidia.

(2) The notification became effective on the date the information were complete, namely on 13.07.2005.

II. DESCRIPTION OF THE FINANCIAL SUPPORT

2.1. The beneficiary of state support measure

(3) The beneficiary of the notified state measure of support is S.C. EDILMED S.A. Medgidia.

(4) The company was set up under the Decision of Medgidia Local Council No. 41/15.04.1998. According to this Decision, S.C. EDILMED S.A. Medgidia functions under the authority of the Medgidia Local Council, who is the only shareholder and acts according to the rights and obligations incurred by its position.

(5) The registered capital of the S.C. EDILMED S.A. Medgidia is ROL 2,726,003 thousands, owned in totality by the Local Council of Medgidia City and divided into 109,040 shares with a face value of 25,000 ROL/share.

(6) The company is headquartered in Medgidia and registered at the Trade Registry under No. J13/1454/1998, its unique registration code is R10613940.

(7) The financial and economic results, based on the balance sheets related to the period 2002- 2004 are presented in table no. 1.

Table no.1 – Financial and economic situation of the company in the period 2002-2004

-thousand ROL-			
Indexes	2002	2003	2004 (06/30/2004)
Total turnover	72,086,417	76,547,219	88,319,911
Profit/loss	16,000	- 9,214,439	- 38,430,155

Source: The Company's Profit and Loss accounts

The data presented in the table above shows that within the last two years, the company registered losses due to its high costs compared to the selling price at the consumers (price established by ANRSC¹), due to the low utilization degree of its production capacities and the high level of losses within the transport and delivery system.

(8) The company's main line of business is the production, transportation, distribution and supply of heating energy for the population, institutions, and undertakings of the Medgidia City. Secondary activities include the collection, treatment and delivery of drinking water, sewage and the domestic waists' collection. S.C. EDILMED S.A. Medgidia performs the activity of production and delivery of heating energy based on the A.N.R.S.C licenses no. 206/15.11.2001 and 207/15.11.2001.

(9) S.C. EDILMED S.A. Medgidia's obligations as heating energy producer are, according to art. 30 in the Law of Electrical Energy no. 318/2003, the following:

- to ensure the delivery of heating energy, with the fulfillment of the criteria imposed by licenses, contract clauses and regulations in force;
- to offer in undiscriminating conditions the whole available heating power, as well as system technological services;
- to maintain a stock of fuel at a sufficient level or, after case, a sufficient water supply, in order to carry on the obligations to continuously produce and supply heating energy as provisioned by the regulations in force;
- to comply from an operational point of view with the transport and system operator's demands and to establish, after case, its own operative management positions.

¹ The National Regulatory Authority for Town Management Public Services

(10) The service of heating energy production represents 40% from the company's total activity, the difference coming from the activity of collecting, treating and delivering the water, collecting and transporting the domestic garbage.

(11) The supply of heating energy is accomplished by means of the urban heating system of Medgidia City, which is entrusted for administration to the company by a concession contract issued by the Local Council of Medgidia City.

(12) S.C. EDILMED S.A. Medgidia owns the following capacities for production and delivery of heating energy:

- hot water boilers with powers between 0.6 – 2 Gcal/h using C.L.U. (light liquid fuel) type III;

- heat alternators with power peaces of 2850 kw/h functioning on gas.

The 8 thermo- power plants functioning on light liquid fuel are between 24 and 35 years old, are endowed with PAL 25 boilers and have an efficiency of 50-60% leading to heat losses, high costs with the maintenance and repairing of the thermo-energetically equipment and, not in the end, a high consumption of fuel.

(13) The heating energy's supply system in Medgidia includes 18 thermo - power plants for squares, from which 5 are functioning on natural gas, 8 on C.L.U. and 5 thermo- power plants are in conservation due to the fact that many connected apartments disconnect themselves in 2001.

The delivery system is accomplished by a network of 11.3 km. The thermo- networks used for the delivery of heat to all the 18 thermo- power plants have between 24 and 40 years old and a high usage degree, generating heat losses.

2.2. The market affected by the financial support granted to the company

(14) The market affected by the granting of the financial support assessed in the present decision is the market of the production, delivery, transport and supply services for the heating energy. The financial support measures granted by the State and notified by Medgidia City Hall aim to ensure the fuel necessary for the production and supply of heating energy designated for heating and ensuring the hot water for the population and the undertakings.

(15) The market of heating energy production and delivery designated to ensure the heating and hot water for population and undertakings is a regulated market, the prices for heating energy being set by A.N.R.S.C, both for household consumers as well as industrial consumers, and the company has to ensure the heating energy to all those connected to the network without discrimination. At the same time, all consumers connected to the network are captive consumers as they don't have the possibility to choose their heating energy supplier.

(16) The services of heating energy production, transport, delivery and supply function in centralized system and are organized under the management of the local public administration authorities' control, based on the local autonomy principle.

(17) The relevant geographical market is represented only by the area of Medgidia city, the Constantza County, therefore is a market of local interest.

(18) S.C. EDILMED S.A. Medgidia is the sole producer and supplier of heating energy in the area of Medgidia city, Constantza County. From the total heating energy produced by the company, 95.38% is sold to the population and 4.62% to the undertakings and budgetary institutions.

2.3. The financial support

(19) The financial support measures notified by Medgidia City Hall represent debt rescheduling, to be exempted at a future date, representing interests, delay majorities and penalties owed towards S.C. ELECTRICA DOBROGEA S.A. until 28.06.2004, in total amount of ROL 12,820,684.1 thousands. The payment facilities to be granted to the company are stipulated by art.6 align. (5) in the EGO no. 37/2004 on certain measures for decreasing the budgetary arrears.

(20) According to the received data, during 2002 – April 2005, S.C. EDILMED S.A. Medgidia benefited of support from the Local Council of Medgidia, i.e. to cover the difference between the national reference price² and the local delivery price for heating energy³, as follows:

Table no.2 State aids received during 2002- April 2005 -thousand ROL-

State aid type	2002	2003	2004	April 2005	Total
Subsidies to cover the difference between the local delivery price for heating energy and the reference price	23,295,945	19,590,736	21,066,130	15,012,633	78,965,444

Source: Supplementary information submitted by S.C. EDILMED S.A.

(21) The total amount of the financial support granted to S.C. EDILMED S.A. Medgidia granted during 2002- April 2005 is ROL 91,786,128.1 thousands, i.e. exemptions from the payment of certain debts + subsidies.

2.4. Costs arising from the operation of the service of general economic interest

(22) The market represented by the service of heating energy production, transport, delivery and supply is a regulated market. The National Regulatory Authority for Town Management Public Services (A.N.R.S.C) periodically assesses and approves the heating energy delivery prices for the population and the undertakings, prices situated under S.C. EDILMED S.A Medgidia's real costs, even if subsidizing part of the costs for the population due to social protection reasons.

(23) S.C. EDILMED S.A. Medgidia keeps management accounting where the company's activities are registered separately. The activity of heating energy production, transport, delivery and supply towards the captive consumers, is presented separately from its other

² The national reference price is defined in sub-chapter 2.4.1.1.

³ The local delivery price for heating energy is defined in sub-chapter 2.4.1.2.

activities. The separation of the financial records for the activities representing the service of general economic interest is a compulsory condition imposed to the undertaking by the license entrusting the discharge of the service.

The situation of the incomes and costs as well as the result relating to the performance of the service of heating energy production, transport, delivery and supply registered by the company during 2002 – 2004 are as follows:

Table no. 3 – The results related to the service of heating energy production, transport, delivery and supply

- ROL thousand -			
Indicators	2002	2003	2004
Incomes form exploiting	28,814,380	24,122,092	35,982,531
Expenses form exploiting	35,701,402	41,106,047	62,438,652
Financial result form exploiting	-6,887,022	-16,983,955	-26,456,121

Source: supplementary information S.C. EDILMED S.A. Medgidia

From the data presented in the above tables it can be seen that the loss related to the performance of the service of general economic interest of heating energy production, transport, delivery and supply presents an increasing trend.

(24) The company has the obligation to submit to A.N.R.S.C (the National Regulatory Authority for the Town Management Public Services), at the end of each year, the justifying documents for showing the real costs related to the public service performed in that year and the quantities of heating energy produced and sold in each month. Starting with the input data, the standard methodology is applied to determine the costs for the heating energy production, transport, delivery and supply activity. Therefore, at the beginning of each financial exercise S.C. EDILMED S.A Medgidia is drafting its revenues and expenditure budget. At the same time, the justification of the prices to be used is submitted for approval by A.N.R.S.C, which establishes the local delivery price.

2.4.1 Difference between national reference price and local delivery price of heating energy

2.4.1.1. THE NATIONAL REFERENCE PRICE

(25) The national reference price for heating energy supplied to the population through centralized systems, with the purpose of heating and preparing hot water, was established by GEO no. 162/1999.

(26) The national reference price is set in order to achieve equilibrium between the affordability degree for the population and the state budget subsidizing possibilities. Regarding the social dimension, this price is determined considering the weight of heating energy cost in the budget of an average income family.

(27) The level of the national reference price of the heating energy is set in advance through Government decision, at the proposal of the regulatory authority, as an average of the local prices of the producers using the same type of fuel, added with the related distribution tariffs, taking into account subsidizing possibilities from the state budget.

(28) The standard methodology of calculating this price is established through an order of the regulatory authority. Among the factors influencing the modification of the national reference price are the price of the fuel used to produce heating energy, the price of electric energy, consumer price index, the exchange rate (ROL/USD or ROL/EURO, as the case may be). The national reference price for 2002-2005 was regulated by the following administrative decisions:

Table no. 4 *Administrative decisions establishing the level of the national reference price for the period 2002-2005*

	2002	2003	2004	2005
The legal act establishing the national reference price	Government Decision no. 1303/27.12.2001 -Government Decision no. 340/04.04.2002 -Government Decision no. 686/03.07.2002	- Government Decision no. 686/03.07.2002	Government Decision no. 1155/23.07.2004	Government Decision no. 1155/23.07.2004
National reference price (ROL/GCAL)	575,000 600,000 800,000	800,000	896,000	896,000

Source: National legislation in force

The information presented in the table lead to the conclusion that the national reference price is pre- established by Government decision.

2.4.1.2. THE LOCAL DELIVERY PRICE

(29) The local delivery price for heating energy is established based on the *Methodology for establishing the regulating the sale/buying prices, the transport and delivery tariffs for the heating energy*, methodology issued by A.N.R.S.C. This way, the undertaking has the obligation to submit to A.N.R.S.C., at the end of each year, the justifying documents showing: the real costs related to the public service performed in that year and the quantities of heating energy produced and sold in each month.

(30) Local delivery prices are set at the beginning of each year and adjusted at the beginning of each second half of the year.

The following stages are pursued:

- identification of regulated activities and services;
- identification of production sources for heating energy;
- estimation of quantities delivered to final consumers based on the undertaking's previous year figures, taking into account the losses in the transport networks and of produced quantities, taking into account the own consumptions of the power plant;
- assignment of technological fuel expenses;
- allocation of direct expenses, excluding fuel expenses, broken down by activities/services and producing sources;

- allocation of indirect, general and administration expenses by services, on a pro rata basis with the value of direct expenses, excluding fuel;
- determining total expenses with the production of heating energy as hot water and steam;
- determining unit costs;
- redistributing by activities of expenses related to own consumptions;
- allocation of financial expenses by regulated services;
- determining total expenses for the regulated services.

2.4.1.3. CONCLUSIONS

(31) The national reference price is regulated on grounds related of social protection. Thus, if the local price for producing and supplying the heating energy is higher than the national reference price, the population will only pay the latter.

(32) If the local price of the gig calorie (Gcal) is higher than the national reference price, the difference incurred by the supplier is subsidized as follows, according to the GEO no. 162/1999:

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

(33) During 2002- April 2005, the national reference price was lower than the local delivery price for the heating energy settled for S.C. EDILMED S.A. Medgidia. To cover this difference, the company benefited, during 2002 – April 2005, of subsidies in amount of ROL 78,965,444 thousands (see paragraph 20).

Table no. 5 *Quantity delivered to the population and the value of the subsidies granted to the company to cover the difference between the national reference price and the local delivery price during 2002- April 2005*

Period	Volume delivered to the population	Difference between the national price and the local price	Subsidy value
	Gcal	thousand „ROL,,	thousand „ROL,,
total year 2002	21,705	23,295,945	23,295,945
total year 2003	18,075	19,590,735	19,590,735
total year 2004	23,072	21,066,130	21,066,130
Jan- April 2005	13,998	15,012,633	15,012,633
General total	76,850	78,965,443	78,965,444

Source: supplementary information

The ROL 78,965,444 thousands subsidy covers exclusively the company losses determined by the difference between the national reference price and the local delivery price of the heating energy in relation to the total quantity of heating energy delivered to the population. The calculation method for the subsidy is provided in Table no.7 from the Annex presenting in detail for each month the evolution of the national reference price, of the local delivery price, of the negative difference between these and the subsidies granted to cover these differences.

2.4.2. Costs in excess of the local delivery price

(34) When analyzing the measures of support for S.C. EDILMED S.A. Medgidia one must consider that, for the services of production, transport, distribution and supply of heating energy, the company registers costs higher than the local price for supplying heating energy established by A.N.R.S.C., this situation resulting from the management accounting of the undertaking, in which the costs related to the public service of supply with heating energy are separately recorded.

(35) The unit operating cost of the service of production, transport, distribution and supply of heating energy in the form of hot water was calculated based on effective expenses recorded by the company in each year of the analyzed period, respectively expenses for raw materials, materials, personnel, environment, repairs, investments, metering of the real production of heating energy delivered in the respective year.

(36) Actually, the local delivery price established by A.N.R.S.C does not cover all costs due to the fact that fuel price increase estimates are not considered. Subsequent to the fuel price increase during the year, A.N.R.S.C is adjusting the energy price only when the increase is more than 5% and the adjustment refers only to the fuel, without taking into account the raw materials and materials' prices that increase chain effect. This increase is not considered when adjusting but only when prices are reviewed, once a year. Thus, there is a gap during the year between the costs of the energy operator and the local delivery price.

(37) The high operating costs of S.C. EDILMED S.A. Medgidia are due mainly to the following causes:

- technological fuel, raw materials and materials are purchased at comparable prices with those operated with internationally. In turn, the heating energy is sold on the local market at a price agreed by A.N.R.S.C., which is lower than the average price operated with internationally;
- proposals of price increasing are submitted to local authorities and to A.N.R.S.C. after the sub suppliers already increased their product prices and considering that until the company gets the A.N.R.S.C. certifying documents and decision uncovered costs shall be record.
- because of disconnecting, the quantity of supplied energy decreased, and ANRSC maintained the production for which the tariffs are funded;
- A.N.R.S.C. agreed technological loss are lower as the real loss which are higher because of old transport and distribution pipe line networks which require high maintenance costs. Those costs are not considered when the reference price is estimated by A.N.R.S.C;
- the population pays a national reference price for the heating energy, approved by Government Decision and established mainly according to the purchasing power of the population, the difference between this and the production and distribution costs of heating energy being subsidized. This subsidy hardly reaches the producer, because the Local Council budget which ensures a percentage of it does not have the liquidities required to pay in due time. As a result of the delays in providing the subsidies, the financial costs of the company increase because the real value of the subsidies is significantly diminished by the inflation rate; thus, a part of the real costs remains not covered.

(38) In Table no. 8 presented in the Annex, is presented the evolution of the local delivery price for heating energy as hot water and its real costs of production and supply during

2002- April 2005. As it may be noticed, during analyzed period, most of the times, the operating cost for producing and supplying heating energy - hot water - is higher than the local delivery price settled by A.N.R.S.C., both for the population and for the undertakings.

(39) The differences between the local delivery price and the real cost of production and supply of heating energy lead to company losses from operating the service, losses which are shown in Table no. 6.

Table no.6: The evolution of the losses incurred by the company in 2002-April 2005 as a result of the difference between the local delivery price and the real cost of production and supply of heating energy

Period	Diff. between the local delivery price established by ANRSC and cost		Delivered quantity			Losses incurred by not covering the costs 7=(2X5)+(3X6) Thousand ROL
	Population (ROL/gcal)	Undertakings (ROL/gcal)	TOTAL Gcal	From which:		
				Population Gcal	Undertakings Gcal	
1	2	3	4	5	6	7
Total 2002 CLU	-311,492	-119,970	22,756	21,705	1,051	-6,887,022
CLU	-893,951	-72,274	16,726	15,691	1,035	-14,101,789
Total 2003 GAS	-1,317,398	-1,279,758	2,190	2,112	78	-2,882,166
CLU	-1, 814,213	-1,390,987	10,283	9,998	285	-18,534,933
Total 2004 GAS	-572,916	-549,447	13,858	13,079	779	-7,921,188
CLU	-196,209	-298,909	6,204	6,037	167	-1,234,431
Total Jan.-Apr. 2005 GAS	-196,209	-249,666	8,698	8,140	558	-1,736,455
Total losses CLU	x	x	55,969	53,431	2,538	-40,758,175
Total losses GAS	x	x	24,746	23,331	1,415	-12,539,809
Total	x	x	80,715	76,762	3,953	-53,297,984

Source: Supplementary information

From the data presented in Table no. 6 results that the difference between the real cost of the service of general public interest of production, transport, distribution and supply of heating energy in form of hot water and the local delivery price of heating energy leads to a company loss of ROL **53,297,984** thousands, related to the activity of performing the public service of heating energy supplying.

3. ANALYSIS OF THE STATE MEASURE OF SUPPORT

3.1. Object of the decision

(40) On the basis of the notification to the Competition Council by the Medgidia City Hall, the object of the present decision refers to state aids mentioned at chapter 2.3), amounting ROL **91,786,128.1 thousands**. These state aids are analyzed in the context of S.C. EDILMED S.A. Medgidia fulfilling the public service of general economic interest of heating energy production, transport, distribution and supply, during the period 2002- April 2005.

3.2. Obligation of service of general economic interest

(41) The financial support granted to a company entrusted with a service of general economic interest is not considered state aid for the purposes of Art. 2 of Law 143/1999 on state aid with subsequent amendments 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.

3.3. The condition from par. 3.2. a):

(42) S.C. EDILMED S.A. Medgidia is entrusted with the production, transport, distribution and supply of heating energy for the population, institutions and undertakings based on H.C.L.M. Medgidia no.41/15.04.1998. According to the law of the public management no.326/2001, the supply with heating energy represents a public service, with the fulfillment of some essential conditions, according to art.11 (1) in the Law no.326/2001:

- 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.

(43) Organization, 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, according to the projected technological parameters and in compliance with the requested conditions, operation guidelines and organization and functioning regulations;
- c) Protecting the public estate and environment by observing the legal provisions;
- d) Informing and consultation the citizens with the purpose of protecting the health of the population benefiting from these services.

(44) 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 regulatory authority, respectively A.N.R.S.C. and A.N.R.E;
- c) to supply the information requested by the local public administration and the national regulatory authority and to enable the access to the documentation of the respective utilities, according to the conditions of the operating contract.

(45) The heating energy supply system, necessary to perform the service of general economic interest, is entrusted based on administration contract to S.C. EDILMED S.A. Medgidia by the Medgidia County Local Council.

3.4. Condition from point 3.2. b):

(46) The parameters for calculating the compensation must be established beforehand in an objective and transparent manner, to avoid it conferring an economic advantage which may favor the recipient undertaking over competing undertakings.

(47) The two parameters based on which the level of the compensation is calculated are the national reference price proposed by A.N.R.E and the local delivery price established by ANRSC. These parameters are set in advance by Government decision and by ANRSC decision. The funding methodology for the national reference price is based on the following:

- the price of the fuel used for producing heating energy;
- the price for electricity;
- the consumption price index;
- the exchange rate ROL/ EURO, or ROL /USD.

The local delivery price is established based on the *Methodology for establishing the regulated sale/buying prices, the tariffs for the heating energy's transport and delivery* issued by A.N.R.S.C. the heating energy producers submit to the regulatory authority the base for the prices. This includes the fix and fluctuant costs paid within the last 12 months and the forecasted costs for the future 12 months of functioning. The regulatory authority assesses the fluctuant costs (the price of the fuel, the specific consumptions for producing heating energy, the heating energy losses within the transport and delivery networks) as well as the fix costs and approves the local price for heating energy, and this is how different prices result for each company.

(48) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph 47 is carried out based on the criteria of *ex-ante* calculation, the parameters based on which the compensation for the service of general economic interest is established are usually set up in advance.

3.5. Condition in 3.2. c):

(49) Condition 3.2.c) requires in essence that the compensation must not exceed what is necessary to cover all or part of the costs incurred through the service of general economic interest.

(50) From the Table no. 7 in the Annex, it can be seen that the amounts received as subsidies by S.C. EDILMED S.A. Medgidia are of **ROL 78,965,443 thousands**, and cover exclusively the difference between the reference national price and the local delivery price for energy.

(51) When assessing the support measures for S.C. EDILMED S.A. Medgidia we must take into account the fact that for performing the service of producing, delivering and supplying heating energy, the company annually registers costs higher than the local delivery price established by ANRSC.

(52) The financial support given to the company during 2002-2005 represents reschedules for a future exemption from the payment of the tax obligations representing interests, delay majorities and penalties owed by the company to S.C. ELECTRICA DOBROGEA S.A. until 28.06.2004, in amount of ROL 12,820,684 thousands.

(53) From the table no.6 it turns out that during the analyzed period S.C. EDILMED S.A. Medgidia registered a loss of ROL **53,297,984** thousands loss due to the difference between the local delivery price established by ANRSC for heating energy and the real costs with the production, delivery and supply of heating energy.

(54) Taking into account the losses of ROL **53,297,984** thousands that the company incurred by performing the service of general economic interest represented by the production and supply of heating energy, it can be seen that the facilities representing reschedules for a future exemption from the payment of the tax obligations representing interests, delay majorities and penalties granted to the company, amounting ROL 12,820,684,138, does not fully cover the company losses and it can therefore be concluded that the financial support the company received did not exceed the total costs incurred by the performance of the public service of production, transport, distribution and supply of heating energy in form of hot water.

(55) Under these circumstances, it is considered that the financial support granted to S.C. EDILMED S.A. Medgidia during 2002- April 2005 represents only a compensation for the costs related to performing the service of general economic interest of production, transport, distribution and supply of heating energy in form of hot water the town of Medgidia.

3.6. Condition in 3.2. d):

(56) Entrusting of public interest service to S.C. EDILMED S.A. Medgidia, for heating energy production, transport, delivery and supply, was not done by public auction.

(57) The public service to produce, transport, distribute and supply heating energy was entrusted to S.C. EDILMED S.A. Medgidia by the Decision of the Medgidia Local Council no. 41 on 15.04.1998. Thus, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have had, in providing the same service. On the Romanian heating energy market there is acting other producers and suppliers as well (one for every county or larger town). Still, a comparison with these companies would not be relevant, as they are also public undertakings receiving aid from the state for discharging the public service obligation.

(58) As the four conditions under point 3.2. are not met cumulatively, namely the condition under par. 3.2 (d) was not proved, the support measures for S.C. EDILMED S.A. Medgidia, notified by Medgidia City Hall, constitute state aid for the purposes of *art. 2 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.

4. Compatibility of The State Aid

(59) According to the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* compensations granted in view of discharging the service of general economic interest may constitute state aid compatible with a normal competition environment if the following conditions are fulfilled:

- a) the state aid is necessary for discharging a service of general economic interest;
- b) the state aid does not unduly affect the trade between Romania and the EU Member States.

4.1. State aid's necessary

(60) The state aid is necessary for performing the service of general economic interest.

(61) The state aid granted to S.C.EDILMED S.A. Medgidia is strictly necessary for the appropriate and continuous operation of the public service of heating energy production, delivery and supply. Where a regulated market exists, the company cannot ask for a price higher than the one necessary to cover the exploiting costs, including a reasonable profit. This is the main reason for which the company is registering losses every year, and cannot pay its obligations towards the budget and the suppliers. We can add to this the low rate of collecting the claims from the population.

4.2. No unduly affect the trade between Romania and the EU Member States

(62) The geographical market affected by the state aid is the Medgidia County. Therefore, being a local market, by granting a state aid there will be no unduly distortion on the trade between Romania and the EU Member States. Furthermore, the company is not involved in export operations.

4.3 There is no over-compensation

(63) The state aid granted in the form of exemptions from the payment of penalties owed towards S.C.D.F.E.E. ELECTRICA DOBROGEA S.A. do not represent an over-compensation because it does not exceed the costs which are absolutely necessary in order to perform the service of general economic interest.

(64) Thus, the two conditions mentioned at par. 59, conditions provided in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* are cumulatively met, so we can appreciate that the support measures for S.C. EDILMED S.A. Medgidia, representing compensations for performing the service of general economic interest, are state aid compatible with the normal competitive environment.

(65) The total amount of state aid granted to S.C. EDILMED S.A. Medgidia, of ROL **91,786,128.1 thousands**, representing the state aid notified by Medgidia City Hall is compatible to the competition environments.

DECIDES

Art. 1. The measures of financial support granted to S.C. EDILMED S.A. Medgidia 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, transport, distribute, 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 align. 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 to S.C. EDILMED S.A. Medgidia 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. EDILMED S.A. Medgidia in view of monitoring the aid.

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

Art. 6. Pursuant to Art. 20 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 Secretariat of the Competition Council to:

- S.C. DFEE ELECTRICA DOBROGEA S.A. Constanta, 89 A Nicolae Iorga street, Constanta, Constanta County;
- The Local County of Medgidia, 35 Decebal street, Medgidia, Constanta County;
- S.C. EDILMED S.A. Medgidia, 86 Republicii street, Medgidia, Constanta County.

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

ANNEX

TABLE NO. 7: EVOLUTION OF THE LOCAL DELIVERY PRICE, THE NATIONAL REFERENCE PRICE AND THE SUBSIDY GRANTED TO COVER THE DIFFERENCE BETWEEN THEM DURING 2002- APRIL 2005.

<i>Period</i>	DELIVERY PRICE Population ROL/Gcal	Reference price Lei/Gcal	Difference between the reference price and the local delivery price	Legal basis	Quantity delivered to the population Gcal	Difference to cover (4x6)	Subsidy
1	2	3	4=2-3	5	6	7	8
Ian.2002	1,776,670	575,000	1,201,670	Dec. 21/01.2002	7,763	9,328,564,210	9,328,564,210
Feb. 2002	1,776,670	575,000	1,201,670		6,150	7,390,270,500	7,390,270,500
Mar. 2002	1,226,160	600,000	626,160	Dec. 94/03.2002	1,279	800,858,640	800,858,640
Apr. 2002	1,226,160	600,000	626,160		250	156,540,000	156,540,000
Mai 2002	1,796,900	600,000	1,196,900		277	331,541,300	331,541,300
Iunie 2002	1,796,900	600,000	1,196,900		214	256,136,600	256,136,600
Iulie 2002	1,796,900	600,000	1,196,900		183	219,032,700	219,032,700
Aug. 2002	1,796,900	600,000	1,196,900		154	184,322,600	184,322,600
Sep. 2002	1,796,900	600,000	1,196,900		139	166,369,100	166,369,100
Oct. 2002	1,796,900	600,000	1,196,900		146	174,747,400	174,747,400
Nov. 2002	1,266,100	600,000	666,100	Dec. 838/11.2002	922	614,144,200	614,144,200
Dec. 2002	1,266,100	800,000	466,100		2,257	1,051,987,700	1,051,987,700
	2,130,000	800,000	1,330,000		1,971	2,621,430,000	2,621,430,000
TOTAL 2002					21,705	23,295,944,950	23,295,944,950
Ian.2003	1,476,780	800,000	676,780		3,389	2,293,607,420	2,293,607,420
	2,130,100	800,000	1,330,100		943	1,254,284,300	1,254,284,300
Feb. 2003	2,595,181	800,000	1,795,181	HCL 32/21.02.2003	1,377	2,471,964,237	2,471,964,237

		1,480,520	800,000	680,520		2,736	1,861,902,720	1,861,902,720
Mar. 2003.		2,796,784	800,000	1,996,784	HCL 63/01.03.2003	1,990	3,973,600,160	3,973,600,160
		1,480,520	800,000	680,520		1,324	901,008,480	901,008,480
Apr. 2003		2,796,784	800,000	1,996,784		285	569,083,440	569,083,440
Mai 2003		2,796,784	800,000	1,996,784		277	553,109,168	553,109,168
Iunie 2003		2,796,784	800,000	1,996,784	ANRSC 2382/ 06.2003	56	111,819,904	111,819,904
		1,844,959	800,000	1,044,959		167	174,508,153	174,508,153
Iulie 2003		1,844,959	800,000	1,044,959		203	212,126,677	212,126,677
Aug. 2003		1,844,959	800,000	1,044,959		193	201,677,087	201,677,087
Sep. 2003		1,844,959	800,000	1,044,959		67	70,012,253	70,012,253
Oct. 2003		1,844,959	800,000	1,044,959		99	103,450,941	103,450,941
Nov. 2003		2,108,064	800,000	1,308,064		951	1,243,968,864	1,243,968,864
Dec. 2003	CLU	2,108,064	800,000	1,308,064	ANRSC 389/04.11.2003	1,917	2,507,558,688	2,507,558,688
	GAS	1,317,398	800,000	517,398	ANRSC 445/02.11.2003	2,101	1,087,053,198	1,087,053,198
TOTAL 2003						18,075	19,590,735,690	19,590,735,690
Ian.2004	CLU	2,108,064	800,000	1,308,064		2,374	3,105,343,936	3,105,343,936
	GAS	1,317,398	800,000	517,398		2,561	1,325,056,278	1,325,056,278
Feb. 2004	CLU	2,108,064	800,000	1,308,064		2,057	2,690,687,648	2,690,687,648
	GAS	1,352,384	800,000	552,384		2,360	1,303,626,240	1,303,626,240
Mar. 2004	CLU	2,108,064	800,000	1,308,064		1,303	1,704,407,392	1,704,407,392
	GAS	1,352,384	800,000	552,384		1,740	961,148,160	961,148,160
Apr. 2004	CLU	2,108,064	800,000	1,308,064		134	175,280,576	175,280,576
	GAS	1,352,384	800,000	552,384		479	264,591,936	264,591,936
Mai 2004	CLU	2,108,064	800,000	1,308,064		109	142,578,976	142,578,976
	GAS	1,352,384	800,000	552,384		316	174,553,344	174,553,344
Iunie 2004	CLU	2,108,064	800,000	1,308,064		113	147,811,232	147,811,232
	GAS	1,352,384	800,000	552,384		295	162,953,280	162,953,280
Iulie 2004	CLU	2,108,064	800,000	1,308,064		108	141,270,912	141,270,912

	GAS	1,352,384	800,000	552,384		246	135,886,464	135,886,464
Aug. 2004	CLU	2,108,064	896,000	1,212,064	HCL 124/08.2004	102	123,630,528	123,630,528
	GAS	1,430,253	896,000	534,253		244	130,357,732	130,357,732
Sep. 2004	CLU	2,108,064	896,000	1,212,064		109	132,114,976	132,114,976
	GAS	1,430,253	896,000	534,253		209	111,658,877	111,658,877
Oct. 2004	CLU	2,108,064	896,000	1,212,064		88	106,661,632	106,661,632
	GAS	1,430,253	896,000	534,253		269	143,714,057	143,714,057
Nov. 2004	CLU	2,555,245	896,000	1,659,245	ANRSC 3482/22.11.2004	670	1,111,694,150	1,111,694,150
	GAS	2,108,064	896,000	1,212,064		587	711,481,568	711,481,568
		1,430,253	896,000	534,253		1,732	925,326,196	925,326,196
Dec. 2004	CLU	2,555,245	896,000	1,659,245		2,253	3,738,278,985	3,738,278,985
	GAS	1,430,053	896,000	534,053		2,614	1,396,014,542	1,396,014,542
TOTAL	AN					23,072	21,066,129,617	21,066,129,617
Ian. 2005	CLU	2,555,245	896,000	1,659,245		2,177	3,612,176,365	3,612,176,365
	GAS	1,430,053	896,000	534,053		2,541	1,357,028,673	1,357,028,673
Feb. 2005	CLU	2,555,245	896,000	1,659,245	HCL 657/17.02.2005	2,143	3,555,762,035	3,555,762,035
	GAS	1,430,253	896,000	534,053		1,430	763,981,790	763,981,790
		1,587,838	896,000	691,838		932	644,793,016	644,793,016
Mar. 2005	CLU	2,555,245	896,000	1,659,245		1,474	2,445,727,130	2,445,727,130
	GAS	1,587,838	896,000	691,838		2,376	1,643,807,088	1,643,807,088
Apr. 2005	CLU	4,642,822	896,000	3,746,822	HCL. 99/21.04.2005	65	243,543,430	243,543,430
	GAS	1,763,225	896,000	867,225	HCL. 99/21.04.2005	860	745,813,500	745,813,500
TOTAL	JAN- APR. 2005	X	X	X		13,998	15,012,633,027	15,012,633,027

TOTAL GENERAL	X	X	X		X	78,965,443,284	78,965,443,284
---------------	---	---	---	--	---	----------------	----------------

Source: Supplementary information S.C. EDILMED S.A.

TABLE NO. 8: EVOLUTION OF THE LOCAL DELIVERY PRICE AND THE COSTS FOR HEATING ENERGY AND THE QUANTITIES SOLD BY S.C.EDILMED S.A. MEDGIDIA DURING 2002 – APRIL 2005.

Per.	Delivery price		Legal basis	Delivered quantity			Unit cost Lei/gcal
	Population	Undertakings		Total Gcal	From which:		
	Lei/gcal	Lei/gcal			Population (gcal)	undertakings (gcal)	
0	1	2	3	4	5	6	7
Total year 2002	1,609,978	1,801,500	Dec 21/01.2002 Dec 194/2002 Dec 838/2002	22,756	21,705	1,051	1,921,470
CLU Total 2003 GAS	2,117,455	2,939,132	HCL 32/2003 HCL 63/2003 ANR 2382/2003 ANRSC 3897/2003	16,726	15,691	1,035	3,011,406 (AVERAGE)
	1,317,398	1,355,038	ANRSC 4452/2003	2,190	2,112	78	2,634,796 (AVERAGE)
CLU Total 2004 GAS	2,163,961	2,587,187	DEC 999/2004 HCL 124/2004 HCL – 11.04.2004 ANR 3422/2004	10,283	9,998	285	3,978,174 (AVERAGE)
	1,383,526	1,406,995		13,858	13,079	779	1,956,442 (AVERAGE)
CLU Total Jan- April 2005 GAS	3,007,139	2,974,439	HCL 99/2005	6,204	6,037	167	3,273,348 (AVERAGE)
	1,557,445	1,503,988		8,698	8,140	558	1,753,654 (AVERAGE)

Source: Supplementary information