

**Decision of the Competition Council**  
**DECISION No. 19**  
**Of 10.02.2005**  
**Regarding the notification of the Ministry of Public Finance on financial measures of**  
**support for S.C. ACVACALOR SA Brad**

**THE COMPETITION COUNCIL,**

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

Having regard to the provisions of Competition Law no. 21/1996, published in Official Gazette of Romania, Part I, no. 88 on 30 of 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 Gazette of Romania, Part I, no. 370 on 3<sup>rd</sup> August 1999, amended and completed by Law no. 603/2003 and by Government Ordinance no. 94/2004 regarding the settlement of some financial measures,

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

Taking into account 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 109.528/08.12.2004, registered with the Competition Council under no. RS-AS 105/13.12.2004, the Ministry of Public Finances notified the state aid granted to S.C. AVACALOR S.A. Brad to the Competition Council under Art. 6 of *Law 143/1999 on state aid, with subsequent amendments and completions*,
- (2) Since data submitted in the notification were not complete, by note DAAS/1049.15.12.2004 were requested supplementary information to which there were answered with note DAAS/1071/21.12.2004. The notification became effective at the date when information sent was completed, respectively 22.12.2004.

## 2. 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. ACVACALOR S.A. Brad.
- (4) The company was set up under the Romanian law, as local interest undertaking, based on the Government Decision no. 1092/25.10.2001, modified by G.D. No. 638/20.06.2002, as results of the reorganization procedure of the *Regie Autonome of Communal Administration of Brad*.
- (5) The registered capital of the S.C. ACVACALOR S.A. Brad is ROL 3,983,075 thousands owned in totality by the Local Council of Brad City and divided into 159,323 shares with a face value of ROL 25,000/share.
- (6) The company is headquartered in Brad and registered with the Trade Registry under no. J39/93/1996; its unique registration code is R7784533.
- (7) The financial and economic results, based on the balance sheets of 2001-2004 are presented in table no. 1.

Table no. 1 – *Financial and economic situation of the company in the period 2001-2004*

- thousand ROL -

Indexes	2001	2002	2003	2004 (on 30 of June 2004)
Total turnover	56,304,940	66,863,522	73,564,884	34,122,886
Profit/loss	-778,840	-5,856,136	-48,034,456	-24,341,821

*Source: Notification form*

From data presented in the table above results that during 2001-June 30th, 2004 the financial result of the company is negative, this situation being generated mainly by the losses the company incurred due to the discharge of the general economic interest service to produce, distribute and supply caloric energy in conditions of regulated prices (these losses will be presented in detail in chapter 2.4.3 of the present draft decision). With regard to the large loss recorded by the company in 2003 amounting to ROL 48,034,456 thousands we notice that such loss was determined also by the merger by absorption of the thermal energy producer: SC Uzina Termica Gurabarza SA into the distributor and thermal supplier, respectively SC Aquacalor SA; both company are undertakings of local interest under the administration of Local Council of Brad municipality. This merger was made on the basis of the Brad Local Council Decision no. 26/2003, in order to ensure the integrity of public producing, distribution and supply of the thermal energy, to increase the efficiency of payments from the consumers to the producer and to decrease the management expenses, avoiding the double of specific costs.

(8) According to its statutes, the company's main line of business is discharging of the following public services for communal management: the production, distribution and supply of caloric as hot water for the preparation of domestic warm water and for heating

to the population, institutions and undertakings in the city of Brad. In accordance with art. 2 from the *Law of public services for communal management no. 326/2001* establishing the legal framework regarding the establishment, organization, monitoring and supervision of the functioning of public services for communal management in counties, towns and villages, the public services of communal management represent all activities and utility actions of local interest carried out under the authority of the local public administration having as purpose the supply of public utility services.

By licenses granted by the National Regulatory Agency in the field of Energy (ANRE) the company was entrusted with the performance of public services of caloric energy production, distribution and supply, designated for the population, institutions and undertakings.

(9) The secondary activities developed by S.C. ACVACALOR S.A. Brad are services of drinking water distribution and sewerage.

(10) The obligations of S.C. ACVACALOR S.A. BRAD as operator of public services for communal management 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;
- 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 operating contract.

(11) The undertaking supplies caloric energy as hot water for the preparation of warm water and heating, in view of ensuring the consumption of the population, budgetary institutions and undertakings. The company does not have among its consumers industrial undertakings.

(12) The supply of urban thermal energy for the heating and preparation of consumption warm water is made through the urban heating system of the city of Brad, a system entrusted to the company under concession contract by the Brad County Council.

(13) In order to carry on its activity, S.C. ACVACALOR SA Brad owns of the following equipments and installations: 3 CAF of 7 GCCAL/h each + 1 steam boiler of 1t/hour.

(14) Taking into account those mentioned in paragraphs 8 and 10, the company discharges a service of general economic interest residing in the production, distribution and supply of caloric energy as hot water. This service has certain characteristics implying the operation of the company in a state regulated framework, from this deriving certain obligations which, the company would not assume in normal market conditions.

## **2.2. THE MARKET AFFECTED BY THE FINANCIAL SUPPORT GRANTED TO THE COMPANY**

(15) The market affected by the financial support's granting, is the market of the production, delivery, and supply services for the caloric energy. These services represent

92% from the company's total activity. The financial support measures granted by the State and notified by the Ministry of Public Finance aim to insure the fuel necessary for discharging this service, mainly for the winter periods.

(16) The caloric energy market is a regulated market, the prices for caloric energy being set by ANRE/ANRSC, both for household consumers as well as undertakings. SC ACVACALOR SA Brad must assure the supply of caloric energy to all the connected consumers to the network, without discrimination.. These consumers are captive consumers as they don't have the possibility to choose their caloric energy supplier.

(17) The services of caloric energy production, distribution 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.

(18) The relevant geographical market is represented only by the area of Brad city and of Criscior village, therefore is a market of local interest.

(19) S.C. ACVACALOR S.A. Brad is the sole producer and supplier of thermal energy in the area it serves. From the total thermal energy produced by the company, 82 % is sold to the population and 18 % to the undertakings and budgetary institutions.

### **2.3. Financial support measures for S.C. ACVACALOR S.A. Brad**

(20) The notified financial support measures consist in guaranteeing by the state, through the Ministry of Public Finance, of two external loans in order to complete the financing of the energetic resources acquisitions for the 2002-2003 winter and 2004-2005 winter.

(21) The legal ground of this financial support is GD no. 1006/2002 and G.D. 1367/2004.

(22) The loan guaranteed by the state in the year 2002 is amounting to USD 1,500 thousands. The Credit shall be reimbursed in 7 equal installments, on semester basis, the grace period being of 2 years. The interest rate for this loan is Libor +3.75% per year, the interest payment is also made on semester basis.

(23) The credit intended to be guaranteed by the state for the 2004-2005 winter is amounting to USD 1,500 thousands. The credit shall be reimbursed in 4.5 years, the grace period being of 2 years. The interest rate of this loan is Libor +1% per year.

(24) As the company found itself in a difficult financial situation, recording for each year of 2001-2004 losses, it was considered that the value of the financial support, granted as guarantees, is equal with the value of the two loans guaranteed, respectively USD 3,000 thousands, the equivalent value of ROL 86,616,000 thousand<sup>1</sup>.

(25) According to the data presented in the supplementary information, S.C. ACVACALOR S.A. Brad has received/will receive other financial support measures, as follows:

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<sup>1</sup> The credit was contracted in USD, the exchanging rate ROL/USD on 15.12.2004 was 28,872 ROL/USD

Table no. 2 –*Other financial support measures granted to the company between 2001- 2005*  
- thousand ROL -

Type of financial support	2001	2002	2003	2004	2005	Total
Budgetary allowances for investments				30,000,000		<b>30,000,000</b>
Subsidies for covering the difference between the national reference price <sup>2</sup> and the local delivery price <sup>3</sup> for thermal energy	7,003,600	24,527,188	26,544,000	38,551,289	46,167,737	<b>142,793,814</b>
<b>TOTAL</b>	7,003,600	24,527,188	26,544,000	68,551,289	<b>46,167,737</b>	<b>172,793,814</b>

Source: supplementary information

As it can be noticed from Table no. 2, the company receives during 2001-2005 subsidies totaling ROL **142,793,814** thousand and budgetary allowances in amount of ROL 30,000,000 thousand.

(26) The total amount of financial support granted to S.C. ACVACALOR S.A. Brad during the period 2001-2005 is ROL 259,409,814 thousand, of which ROL 86,616,000 thousand is the financial support intended to be granted to the company which was notified by the Ministry of Public Finance (see § 24), and ROL 172,793,814 thousand is the financial support received/to be received by the company as budgetary allowances for investments and subsidies to cover the price difference (see § 25).

#### **2.4. Costs arising from the performing of the service of general economic interest**

(27) The public service of caloric energy production, delivery and supply to the captive consumers, entrusted to the company, is regulated by National Regulatory Agency in the field of Services for Communal Management (A.N.R.S.C.). In order to perform the public service, the company registers costs with raw materials (fuels), materials, personnel, environmental, repairing and investments, monitoring costs and others.

(28) According to provisions of art.20 para.5 from the Law no. 326/2001 regarding public services of town management, companies discharging public services must keep separate books of their activities, with separate accounting for each kind of service, as such as that their activities are easy to assess, monitor and supervise. S.C. ACVACALOR S.A. Brad maintains management accounting in which activities are separately accounted for. The caloric energy production, distribution and supply activity to captive consumers, which

<sup>2</sup> The national reference price is further defined in 2.4.2.1.

<sup>3</sup> The local delivery price is further defined in 2.4.2.2.

represents the public service obligation is in this way distinctly presented, apart from the remainder of the company's activities.

Table no. 3 shows the economic and financial results of the company related to the delivery of the public service of production, delivery and supply of caloric energy under the form of hot water:

***Table no. 3 – Economic and financial results of the company related to the delivery of the public service of production, delivery and supply of caloric energy during 2001-2004***

[...] <sup>4</sup>

Data presented in table no. 3 shows that in every years of the analyzed period, the company registers losses related to the discharge of the public service of general economic interest to produce, delivery and supply of caloric energy as hot water.

#### **2.4.1. Investment expenses**

(29) We notice that the budgetary allowances the company is benefiting are destined for purposes of financing some investments needed for the proper operating, under safe conditions, of the public service of general economic interest of production, delivery and supply of heating energy, considering the use and state of decay of the equipments and installations. All the productions capacities for thermal energy were ancient, being imputed in 1939, considering this issue an amount of ROL 30,000,000 thousand (EURO 750,000) from the budget of the Brad city was allocated for the acquisition of energetic equipments. These investments were absolutely required for the proper operating in accordance with the normal parameters of the public service of distribution and supply of thermal energy, contributing to the reduction of the energy losses.

(30) The energetic equipments purchased are the following:

***Table no. 4 – Costs of energetic equipments purchased by the company from the budgetary allowances***

Criteria no.	Name of the energetic equipment	Price (EURO)
1	Steam boiler – 3 units	349,500
2	Smoke horn – 3 units	16,800
3	Steam boiler – 1 piece	21,750
4	Circulating water pump – 3 pieces	8,850
5	Mixture cylinder – 1 piece	4,950
6	Expansion system – 1 set	15,750
7	Daily reservoir – 5 pieces	66,250
8	Pre-warm installation – 1 set	19,310

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<sup>4</sup> confidential data

9	Treated water tank – 1 piece	4,225
10	Daily tank – 1 piece	3,910
11	Manufacture	238,705
	<b>TOTAL</b>	<b>750,000</b>

*Source: Supplementary information to the notification form*

## **2.4.2. The difference between the national reference price and the local delivery price for the caloric energy**

### **2.4.2.1. The national reference price**

**(31)** The national reference price for thermal energy supplied to the population through centralized systems with the purpose of thermal and to preparing hot water was instituted by GEO no. 162/1999.

**(32)** 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 percentage of thermal energy cost in the budget of an average income family.

**(33)** The level of the national reference price of the thermal energy is set in advance through Government decision, proposed by ANRE, as an average of the local prices of the producers using natural gas, added with the related distribution tariffs, taking into account subsidizing possibilities from the state budget.

**(34)** The standard methodology of calculating this price is established through an order of ANRE. Among the factors influencing the modification of the national reference price are the price of natural gas, 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 2001-2004 was regulated by the following administrative decisions:

**Table no. 5** - *Administrative decisions establishing the level of the national reference price for 2001-2004*

	2001	2002	2003	2004
The legal act establishing the national reference price	GD no. 724/26.07.2001	GD. No. 1303/27.12.2001; GD no. 340/0.04.2002; GD 986/03.07.2002	GD no. 686/03.07.2002	GD no. 1155/23.07.2004
National reference price	550,000	575,000  600,000  800,000	800,000	896,000

*Source: National legislation in force*

Data presented in the table above lead to the conclusion that the national reference price is set in advance, on a timely basis by government decisions.

#### **2.4.2.2. The local delivery price for the caloric energy**

(35) The local delivery price for the thermal energy is established by ANRSC, both for the population as well as for corporations. The methodology of establishing the local delivery price is being applied by ANRSC to the undertakings which do not produce thermal energy in co-generation system. Thus, the undertaking has the obligation to submit to ANRSC, at the end of each fiscal year, justifying documentation outlining the costs related to the discharged public service in the respective year and the quantities of thermal energy which were produced and sold in each month of the year.

(36) Justification of the prices is made separately for each activity/service, the local delivery price being the result of adding the price for the production activity to the tariff for the transport service and the price for the service of delivery and supply.

(37) 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 sources to produce thermal energy, steam, hot water (separate sources and/or cogeneration);
- 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 thermal 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.

#### **2.4.2.3. Conclusions**

(38) The national reference price calculated in advance and regulated by government decision was set on grounds related to social protection. Thus, if the local price for producing and supplying the thermal energy is higher than the national reference price, the population will only pay the latter.



**(39)** 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.

**(40)** During 2001-2004, the national reference price was lower than the local delivery price for the thermal energy, settled for S.C. ACVACALOR S.A. Brad. It is estimated that even in the next year 2005 will be the same situation. For covering this difference, the company benefits, according to G.E.O no. 162/1999, from subsidies in amount of ROL 142,793,814 thousand (see paragraph 25).

Table no. 6 - *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 in 2001-2005*

Period	Volume delivered to the population	Subsidy value
	<b>Gcal</b>	<b>thousand ROL</b>
total year 2001	<b>25,139.5</b>	<b>7,003,600</b>
total year 2002	<b>18,595.2</b>	<b>24,527,188</b>
total year 2003	<b>21,412.3</b>	<b>26,544,000</b>
total year 2004	<b>23,592.6</b>	<b>38,551,289</b>
total year 2005	<b>30,575</b>	<b>46,167.737</b>
<b>General total</b>	<b>119,314.6</b>	<b>142,793,814</b>

*Source: Supplementary information*

The ROL 142,793,814 thousand subsidies cover exclusively the company losses determined by the difference between the national reference price and the local delivery price of the caloric energy in relation to the total quantity of caloric energy delivered to the population. The calculation of the subsidy is provided in Table no. 8 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.

### 2.4.3. Costs exceeding the local delivery price

(41) When analyzing the measures of support for S.C. ACVACALOR S.A. Brad, one must consider that, for the services of production, delivery and supply of thermal energy, the company registers costs higher than the local price for supplying thermal energy established by ANRSC, this situation arising from the company's records where revenues and expenses are separately recorded.

(42) Practically the delivery local price established by ANRSC does not cover all involved costs because:

- technological fuel, raw materials and materials are purchased at comparable prices with those operated with internationally. In turn, the caloric energy is sold on the local market at a price agreed by ANRSC., which is lower than the average price operated with internationally;
- no prognosis concerning fuel price increasing are considered. After price increasing during one year, the regulatory authority adjust the price only if it exceeds with 5% and this refers strictly to fuel; however, it is common knowledge that as a chain effect, the raw materials and materials prices increase also.
- although all company technologies are old, the price structure approved by ANRSC does not comprise the development quota for upgrading these technologies. Thus, the company makes investments, repairs and other upgrades in the energetic system which it operates but these expenses are not always reflected in the local delivery price of thermal energy;
- the population pays a national reference price for the caloric 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 thermal energy being subsidized. This subsidy hardly reaches the producer, because the Local Council budget which ensures a significant percentage of it (55%) 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.

(43) In table no.9 presented in the Annex of this draft decision is presented the evolution of the local delivery price for heating energy and the real cost of production and supply for the period 2001-2005. As it may be noticed, during analyzed period the operating cost for producing, delivery and supplying heating energy is higher than the local price of delivery, both for the population and for the undertakings.

(44) The differences between the local delivery price and the real cost of production and supply of caloric energy lead to company losses from operating the service, losses which are shown in Table no. 7.

*Table no. 7 – Losses incurred by the company in 2001-2005 as a result of the difference between the local delivery price and the real cost of production and supply of caloric energy as hot water*

[...] <sup>5</sup>

From Table no. 7 results that the difference between the real cost of the service of general public interest and the local delivery price of caloric energy leads to a company loss of [...] <sup>6</sup>, related to the activity of performing the public service of production, delivery and supply of heating energy in form of hot water. We mention that the calculation of these losses is presented in Table no. 10 from the Annex presenting in detail in each month the evolution of the difference between the local delivery price and the real cost of production and supply of caloric energy separately for population and undertakings.

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

#### **3.1. Object of the decision**

(45) On the basis of the notification to the Competition Council by the Ministry of Public Finance, the object of the present decision refers to state aids mentioned at par.(20)-(25). Because the objective for which the state guarantees are granted is to secure a part of the financial resources required to finance the current consumption of the population and undertakings during the cold season, the budgetary allocations were designed to finance investment objectives related to the discharge of the public service, the subsidies being granted to cover the difference between the two regulated prices, measures of the financial support are analyzed by S.C. ACVACALOR S.A. Brad in the context of meeting the public service requests during 2001-2005. <sup>7</sup>

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

(46) 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

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<sup>5</sup> confidential data

<sup>6</sup> confidential data

<sup>7</sup> It was considered including the year 2005 because the credit contracted at the beginig of 2005 is designated for covering costs for the public services in this year.

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):**

(47) S.C. ACVACALOR S.A. Brad is entrusted with the production, delivery and supply of heating energy for the population, institutions and heating agents, under the ANRE licenses no.350/2001 and 351/2001. In the licenses are mentioned, among other things, the obligations regarding: continuity in supplying heating energy, ensuring access to heating networks for new customers, achieving performance standards. Also, by GEO no.162/1999, producers and suppliers of thermal energy are under the obligation to sell thermal energy to the population at a fixed price which regularly is lower than the costs incurred by the discharge of the service (national reference price).

(48) According to the *Law on town management no. 326/2001*, the supply of heating energy which is centralized produced is a public use service.

(49) 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.

(50) 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.

(51) 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 national regulated authority;
- 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 operating contract.

(52) The supply of town heating energy for heating and preparing hot water for consumption is made through the heating energy system of the Municipality of Brad and is part of the technical - municipal infrastructure of the town. The City Council of Brad Municipality provides to the Company the heating system needed for accomplishing services of general economic interest through concession contract.

(53) Thus, to summarize, S.C. ACVACALOR S.A. Brad by these provisions is under the obligation to ensure the effective functioning of services relating to the production, delivery and supply of heating energy that are essential for the population, institutions and undertakings of Brad and Criscior village. It is furthermore required to provide these services at a regulated price that is intended to ensure the affordability for the consumer. Consequently one can conclude that S.C. ACVACALOR S.A. Brad by licenses is entrusted with the discharging of a service of general economic interest.

#### **3.4. Condition from point 3.2. b):**

(54) According to this criteria, the compensation of the public service obligation must be calculated on pre-established objective and transparent parameters and may not grant an economic advantage to the beneficiary.

(55) 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, at the proposal of national regulatory authority. The methodology used to establish the national reference price is based on the following:

- price of fuel used for the production of caloric energy;
- the electric energy price;
- the consumer price index;
- the USD/ROL exchange rate.

The local delivery price is set based on the methodology of establishing regulated prices for purchase/sale, transport and distribution tariffs for caloric energy issued by national regulatory authority.

The producers of caloric energy submit to the regulatory authority the own price calculation; this contains the costs incurred in the previous 12 months, fixed and variable, as well as estimated costs for the following 12 months of operation.

The regulatory authority analyses the variable costs (price of fuel, specific consumptions related to the production of caloric energy, losses of caloric energy in the transport and distribution networks), as well as fixed costs and approves the local delivery price of the caloric energy, resulting different local delivery prices specific to each company.

(56) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph 55 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):**

(57) Condition 3.2.c) requires in essence that the compensation must not exceed the costs incurred through the service of general economic interest.

(58) First of all we have to mention that S.C. ACVACALOR S.A. Brad received subsidies of total amount of ROL 30,000,000 thousand, which exclusively cover essential investments of the energy supplying system of Brad city.

(59) According the table no. 8 from Annex, the amounts received as subsidies by S.C. ACVACALOR S.A. BRAD are of **ROL 142,793,814** thousand, and cover exclusively the difference between the reference national price and the local delivery price for energy.

(60) Furthermore, from Tables no.7, it turns out that during the analyzed period S.C. ACVACALOR S.A. Brad registered a loss of ROL 123,517,111 thousand, caused by the difference between the price for the heating energy supplied and the real cost of production and delivery.

(61) The financial support measures of which the company benefits during the period 2001-2005 amounts ROL 259,409,814 thousand, of which:

- ROL 142,793,814 thousand were exclusively used to cover the difference between the national reference price and the local delivery price;
- ROL 116,616,000 thousand representing the financial support granted to the company as state guarantee (in amount of ROL 86,616,000 thousand) and budgetary allocations (in amount of ROL 30,000,000).

(62) Taking into account the losses of ROL 123,517,111 thousand that the company incurred due to the performing of the service of general economic interest, it can be seen that the facilities granted to the company (in form of guarantees and budgetary allowances) amounting ROL 116,616,000 thousand do not fully cover the company losses; in conclusion the financial support for the company does not exceed the total costs induced by the performance of the public service.

(63) Under these circumstances, it is considered that the financial support granted to S.C. ACVACALOR S.A. Brad in the period 2001-2005 represents only a compensation for the costs related to performing the service of general economic interest of producing, distributing, and delivering heating energy in the town of Brad.

### **3.6. Condition in 3.2. d):**

(64) Entrusting of public interest service to S.C. ACVACALOR S.A. Brad for thermal energy production, delivery and supply was not done by public auction.

(65) The public service to produce heating energy was entrusted to S.C. ACVACALOR S.A. Brad by a license from ANRE. 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 are acting other producers and suppliers as well (e.g. Termoelectrica, CET Govora, CET Bacau, Electrocentrale etc.). 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.

However, making a comparative analysis with other undertakings producing and supplying heating energy, it can be noticed that their situation is similar to the situation of the analyzed undertaking, respectively the real costs of the service exceed local delivery prices set by ANRSC, and causes leading to this are in fact similar.

(66) Considering the above, one can conclude that the four conditions under point 3.2. are not met cumulatively, mainly the condition under par. 3.2. (d) was not proved. Therefore, the measures of state support for S.C. ACVACALOR S.A. Brad notified by the Ministry of Public Finance, 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*.

### **3.7. Assessment of the state aid**

(67) The state aid for S.C. ACVACALOR S.A. Brad during 2001-2005 is granted under the form of subsidies to cover the difference between the national reference price and the local delivery price, under the form of guarantees granted by the State for external credits contracted by the company and as budgetary allowances for investments.

(68) The state aid under the form of subsidies, for the period 2001-2005, amounts ROL 142,793,814 thousand. The state aid under the form of budgetary allowances for investments required for the performance of the service of general economic interest is in amount of ROL 30.000.000 thousand. The state aid under the form of guarantees amounts ROL 86,616,000 thousand. The quantifying of the aid under the form of guarantees took into consideration the fact that, as the credits are obtained 100% with the State's guarantee and the company registers losses, for the assessed period, no bank would have granted guarantees for the contracted credits. This way, according to art.3.2.2 in the Guidelines on the state aid under the form of guarantees, the value of the state aid under the form of guarantees is equal to the value of the external credits contracted.

(69) Point 1.1. in the Guidelines on the state aid under the form of guarantees stipulates that usually the beneficiary of a 100% guarantee is the borrower because it enables the latter – as has been demonstrated above – to obtain a loan it would not have obtained in the absence of such a guarantee.

(70) According to point 2.2. of the *Guidelines on the state aid granted under the form of guarantees*, in certain circumstances also the lender will benefit from the guarantee granted by the State, for example may be the case where the guarantee is given ex-post related to a loan, in this case the guarantee can be a state aid for the lender.

(71) The guarantees granted by the Ministry of Public Finances for the contracted credits, represent a ex-ante condition for entering into force of these credits. The guarantees were issued before using any money from this credit. The guarantees were not granted for an existing loan before these were issued by the state.

(72) The Government Decisions approving the state guarantees for external credits which are to be contracted by the company, establish the maximum credit values which are to be guaranteed (together with the interests and related commissions), the purpose of the credit and the guarantor (Ministry of Public Finances). Based on these G.D.s, the company established in advance with Ministry of Public Finances the credit parameters (the granting period/maturity, the grace period, withdrawal period and the way of reimbursement). Thereafter, standard offer requests were issued addressed to prime international banks.

(73) The offer request contained the necessary information so that the interested banks could create a competitive price structure: the type of the loan, the beneficiary of the loan, the 100% state guarantee (by mentioning the GD's number), the credit value, the maturity of the loan, withdrawal period, the grace period, the way of reimbursement, the reply form, the deadline for the offers and any other data necessary to make a pertinent offer. As the offer is standard, all banks received the same information, being equally treated, in conditions of transparency and free access for transmitting the offers.

(74) After analyzing all offers received until the date mentioned in the offer request, the best offer was chosen. As all the banks are first rank banks and the criteria of the credit being the same, the main criterion for choosing was the cost of the credits (interest and the corresponding fees).

(75) Taking into account all the above, it is considered that the financing banks have offered their facilities at competitive pricing conditions thereby excluding any potential advantage deriving from the state guarantee. Consequently, the Competition Council comes to the conclusion that the state guarantees do not give any advantage to the lender but only to the borrower, S.C. ACVACALOR S.A. Brad.

(76) The total value of the state aid granted to S.C. ACVACALOR S.A. Brad. for 2001 – 2005 is of ROL 259,409,814 thousand.

#### 4. **Compatibility Of The State Aid**

(77) 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 met:

- 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 necessary for discharging a service of general economic interest**

(78) In order to be able to assess the necessity of the aid with respect to the discharging of the service the following conditions should be observed:

- the beneficiary needs to be officially entrusted with discharging a clearly defined service of general economic interest;
- the compensation should not exceed what is necessary to discharge the service of general economic interest, taking into account the revenues arising from its performance.



(79) As discussed under point 3.3. above, S.C. ACVACALOR S.A. Brad is exercising a service of general economic essential for the population, institutions and undertakings of interest that is clearly defined by license.

(80) S.C. ACVACALOR S.A. Brad is operating according to its A.N.R.E. license No. 350/2001 and 351/2001. The licenses in conjunction with the relevant law clearly define the obligations of the service that the company is supposed to discharge. Therefore it can be concluded that S.C. ACVACALOR S.A. Brad has been officially entrusted with the public service that it performs.

(81) It follows, from the assessment under point 3.5. above, that under the conditions of a regulated market for discharging this service the company can not impose on its consumers a price that is sufficient to cover its operating costs. This is the main cause for which the company has annual losses. Furthermore, the compensation granted to the company does not fully cover all the costs that are currently being incurred by the provision of the public service.

(82) Therefore, one can conclude that the state aid granted to S.C. ACVACALOR S.A. Brad does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort the public service of production and supply of heating energy within the city of Brad and Criscior village.

(83) Without the compensation the company would have to cease its activity which would consequently lead to the termination of the public service. This fact would have serious repercussions on the population and the undertakings from the Brad city and Criscior, who would be deprived of the indispensable heating energy, especially in the cold season.

#### **4.2. No undue affect the trade between Romania and the EU Member States**

(84) It needs to be noted that the activity of the company is restricted to a limited geographical area and to S.C. ACVACALOR S.A. Brad is the only operator. The company is not involved in export activities. Under these circumstances it is considered that the commerce with the Member States is not unduly affected.

#### **4.3 There is no over-compensation**

(85) The state aid granted to S.C. ACVACALOR S.A. Brad in the form of guarantees, budgetary allowances and subsidies (see para. 68) 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.

(86) Thus, the two 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.

(87) The total amount of state aid granted to S.C. ACVACALOR S.A. Brad amounting to ROL 259,409,814 thousands is compatible to the competition environment.

## DECIDES

**Art. 1.** The measures of financial support granted during 2001-2004 to S.C. ACVACALOR S.A. Brad 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 affect the trade between Romania and the EU Member States in an unjustified way.

**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 to S.C. ACVACALOR S.A. Brad 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. ACVACALOR S.A. Brad 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 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:

- The Ministry of Public Financial Strada Apolodor, Nr. 17, sector 1, Bucuresti;
- S.C. ACVACALOR S.A. Brad, Strada Vanatorilor nr. 49, Brad jud. Hunedoara.

**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**

## APPENDIX

**Table no. 8** –*Evolution of the local delivery price, of the reference price and of the subsidy granted in order to cover the difference between them, during 2001-2005*

Period	Local delivery price to the population without VAT	Local delivery to the population with VAT	Reference price without VAT	Reference price with VAT	Difference between reference price and local delivery price without VAT	Difference between reference price and the local delivery price with VAT	Volume delivered to the population	Subsidy value
	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal	ROL/Gcal	Gcal	Thousands ROL
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6=4-2</b>	<b>7=3-5</b>	<b>9</b>	<b>10=7*9</b>
Jan.01	386245	459632	294118	350000	-92127	109631	5858.900	642318
Feb.01	546245	650032	294118	350000	-252127	300031	4954.879	1486618
Mar.01	546245	650032	294118	350000	-252127	300031	4166.737	1250151
Apr..01	546245	650032	294118	350000	-252127	300031	1271.934	381620
MaY.01		0		0	0	0		0
June. 01		0		0	0	0		0
July.01		0		0	0	0		0
Aug.01		0		0	0	0		0
Sept.01		0		0	0	0		0
Oct.01		0		0	0	0		0
Nov.01	768826	914903	462185	550000	-306641	364903	2619.314	955795
Dec.01	768826	914903	462185	550000	-306641	364903	6267.6936	2287099
total year 2001							25,139.4576	7,003,600
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6=4-2</b>	<b>7=3-5</b>	<b>9</b>	<b>10=7*9</b>

Jan.02	1460000	1737400	483193	575000	-976807	1162400	4712.935	5478317
Feb.02	1714000	2039660	483193	575000	-1230807	1464660	4239.79	6209852
Mart.02	1714000	2039660	483193	575000	-1230807	1464660	2197.7518	3218960
Apr..02	1714000	2039660	504202	600000	-1209798	1439660	1955.587	2815380
May.02		0		0	0	0		0
June. 02		0		0	0	0		0
July.02		0		0	0	0		0
Aug.02		0		0	0	0		0
Sept.02		0		0	0	0		0
Oct.02		0		0	0	0		0
Nov.02	1714000	2039660	672269	800000	-1041731	1239660	1315.265	1630481
Dec.02	1714000	2039660	672269	800000	-1041731	1239660	4173.885	5174198
Total year 2002							18,595.2138	24,527,188
Jan.03	1714000	2039660	672269	800000	-1041731	1239660	3863.554	4789493
Feb.03	1714000	2039660	672269	800000	-1041731	1239660	4338.877	5378732
Mart.03	1714000	2039660	672269	800000	-1041731	1239660	4021.193	4984912
Apr..03	1714000	2039660	672269	800000	-1041731	1239660	1916.442	2375736
May.03		0		0	0	0		0
June. 03		0		0	0	0		0
July.03		0		0	0	0		0
Aug.03		0		0.0	0	0		0
Sept.03		0		0.0	0	0		0
Oct.03		0		0.0	0	0		0
Nov.03	1714000	2039660	672269	800000	-1041731	1239660	3495.782	4333581
Dec.03	1714000	2039660	672269	800000	-1041731	1239660	3776.476	4681546
total year 2003							21,412.32487	26,544,000
1	2	3	4	5	6=4-2	7=3-5	9	10=7*9

Jan.04	1714000	2039660	672269	800000	-1041731	1239660	4053.8433	5025387
Feb.04	1714000	2039660	672269	800000	-1041731	1239660	3761.7813	4663329
Mar.04	2270305	2701663	672269	800000	-1598036	1901663	2334.101	4438673
Apr..04	2270305	2701663	672269	800000	-1598036	1901663	1567.9171	2981650
May.04		0		0	0	0		0
June. 04		0		0	0	0		0
July.04		0		0	0	0		0
Aug.04		0		0	0	0		0
Sept.04		0		0	0	0		0
Oct.04		0		0	0	0		0
Nov.04	2270305	2701663	752941	896000	-1517364	1805663	5225	9434590
Dec.04	2270305	2701663	752941	896000	-1517364	1805663	6650	12007660
total year 2004							23,592.64258	38,551,289
Jan-05	2270305	2701663	1001412	1191680	-1268893	1509983	5800	8757903
Feb-05	2270305	2701663	1001412	1191680	-1268893	1509983	5400	8153909
Mar-05	2270305	2701663	1001412	1191680	-1268893	1509983	5000	7549916
Apr-05	2270305	2701663	1001412	1191680	-1268893	1509983	2500	3774958
May-05								0
Jun-05								0
Jul-05								0
Aug-05								0
Sep-05								0
Oct-05								0
Nov.05	2270305	2701663	1001412	1191680	-1268893	1509983	5225	7889662
Dec-05	2270305	2701663	1001412	1191680	-1268893	1509983	6650	10041388
total year 2005							30,575.00	46,167,737
<b>General Total</b>							119,314.6388	<b>142,793,814</b>

Source: supplementary information

**Table no. 9** – *Evolution of local delivery price, of the heating energy cost and of the volume of **hot water** sold by S.C. ACVACALOR S.A. Brad*

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

**Table no. 10**– *Evolution of the difference between the local delivery price and the cost of the heating energy and of the losses caused by this difference for hot water*

[...]<sup>9</sup>

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<sup>8</sup> confidential data

<sup>9</sup> confidential data

