

Decision of the Competition Council

No. 22 Of 14.02.2005

concerning the notification of the Ministry of Public Finance regarding the financial support for S.C. CET Govora S.A.

THE COMPETITION COUNCIL,

Based on the provisions of the Decree no. 57/2004 for the appointment of the Competition Council members,

Based on 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,

Based on 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, approved with amendments and completions by the Law no. 507/2004,

Taking into account 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,

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 no. 109528/08.12.2004, registered at the Competition Council with the no. RS-AS 105/13.12.2004, the Ministry of Public Finance notified to the Competition Council under Art. 6 of *Law 143/1999 on state aid, with subsequent amendments and completions*, the financial support for S.C. CET Govora S.A.
- (2) The notification became effective on the date the information were complete, namely on 10.01.2005.

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. CET Govora S.A.
- (4) The company was set up under the Romanian law, as stock company, based on GD no. 759/21.11.1997 by entirely taking over the patrimony of Electrocentrale Govora Subsidiary. By GD no. 1005/10.09.2002 the free transfer of ownership of the shares in the private ownership and management of the County of Valcea was approved.
- (5) The company is headquartered in Ramnicu Valcea and is incorporated at the Trade Registrar under J38/683/1997; its fiscal registration code is R10102377.
- (6) The shareholders' equity of SC CET Govora SA is ROL 186,094,375 thousand and entirely held by the Valcea County Council, divided in 7,443,775 shares of ROL 25,000 par value /share.
- (7) The financial and economic results, based on the balance sheets of the last 3 years 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 (estimated)
Total turnover	2,085,559,420	1,825,374,698	2,358,646,900
Profit/loss	-182,678,231	3,314,137	14,820,500

Source: Notification form

Data presented in Table 1 show that the company registered profit, on the whole activities, in the last 2 years.

- (8) According to its establishing legal act, the company's main line of business is the production, transport, distribution and supply of caloric and electric energy. In accordance with its Status, the purpose of the undertaking is, according to the Romanian law, the performance of services for accomplishing its activity object. By the licenses granted by the National Agency for Regulation in the Energetic field (named from now on ANRE) the company was entrusted with the performance of public services of caloric energy production, transport, distribution and supply, and electrical energy production designated for the population, institutions and undertakings. According to art 16 align. (1) in the Law of Electrical Energy no. 318/2003 „the activities and services for which the licenses are being granted are of public interest, excepting those exclusively designated for the consumption of the license or authorization's owner”. These services can not be

delivered by undertakings in normal market conditions because the rendering companies are being imposed certain compulsory conditions related to the discharge of the services.

(9) SC CET Govora SA.'s obligations as caloric and electrical energy producer are, according to art. 30 in the Law of Electrical Energy no. 318/2003, the following:

- To insure the electrical energy deliveries, respectively caloric energy produced in co-generation and the system technological services, with the fulfillment of the criteria imposed by licenses, contract clauses and regulations in force;
- To offer in undiscriminating conditions the whole available electrical 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 electrical and caloric 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.

(10) Taking into account the above mentioned, the services of public interest entrusted to the company are:

- The production, transport, delivery and supply of caloric energy;
- The production of electrical energy.

(11) The service of caloric energy production represents 60.9 % from the company's total activity.

(12) The company delivers the following products:

- thermo energy as hot water for the preparation of warm water for domestic use and for heating, for the consumption for the population, budgetary institutions and undertakings;
- technological steam;
- electrical energy.

(13) Supply of urban heating for the heating and preparation of consumption warm water is accomplished through the urban heating production system of the city of Ramnicu Valcea, which is entrusted by company under management contract by the Valcea County Council.

(14)) In order to carry out its core business S.C. CET Govora S.A. has the following production capacities:

- for thermal power as hot water: 270 Gcal/h installed thermal power at source and 205 Gcal/h transport capacity;
- for thermal power as steam: 485 t/h industrial steam at 13 bar, deliverable in heating regime and 75 t/h steam of 30 and 35 ata;

- for electrical power: 200 MW installed power.
- de-mineralized water for delivery livrare non-returnable condensate: 400 t/h;
- de-mineralized water to be added in the heating network: 200 t/h.

SC CET Govora S.A. is a classical thermal and electric cogeneration plant which holds an installed power of 200 MW consisting of the following equipment:

- 2 hydrocarbons (fuel oil and natural gas) 420 t/h boilers;
- 3 coal 420t/h boilers;
- 2 turbines in condensation with adjustable intakes: 50 MW;
- 2 turbines in counterpressure with adjustable intake: 50 MW.

(15) The thermo-power station is part of the company's patrimony assets, as well as the industrial power plant system from the area and the urban power production system belonging to the city of Ramnicu Valcea. The heating energy system consists mainly of :

- Primary grid for hot water transport – 58 km;
- 37 thermal units concessioned from the Ramnicu Valcea City Hall;
- Secondary distribution grids of hot water – approx. 182 km.

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

(16) The company activates on the market of caloric energy production, delivery, transport and supply and on the market of electrical energy production and supply.

(17) The market affected by the financial support's granting, assessed in the present decision, is the market of the production, delivery, transport and supply services for the caloric energy. These services represent 60.9 % from S.C. CET Govora S.A.'s total activity, and the financial support measure granted by the State and notified by the Ministry of Public Finance aims to insure the fuel necessary for the production and supply of caloric energy designated for heating and insuring the hot water for the population and the undertakings.

(18) The caloric energy market is a regulated market, the prices for caloric energy being set by ANRE, both for household consumers as well as industrial consumers, by Government decisions. These consumers are captive consumers as they don't have the possibility to choose their caloric energy supplier.

(19) The services of caloric energy production, delivery, transport 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.

(20) The geographical market is represented only by the area of Ramnicu Valcea city, therefore is a market of local interest.

- (21) S.C. CET Govora S.A is the sole producer and supplier of heating energy in the area it serves. From the total heating energy produced by the company, 77.5% is sold to the population and 22.5% to the undertakings and budgetary institutions.

2.3. Financial support measures to be granted to S.C. CET Govora S.A

- (22) The financial support measures notified by the Ministry of Public Finance consist in:

- the guarantee granted by the State in 2004, based on G.D no. 1367/2004 for obtaining an external credit necessary for financing the fuel imports for insuring the energetical resources for the winter 2004 – 2005. The value of the contracted credit is of USD 5,000 thousand, respectively ROL 144,360,000 thousand¹. The credit shall be reimbursed in 9 equal installments, with a 2 years grace period; the interest will be paid each semester being equal to Libor + 1%/year. S.C. CET Govora S.A. shall pay on the account of the state guarantee, to the Ministry of Public Finance, a risk premium of 1.5% from the value of the loan, respectively of USD 75 thousand.
- the subsidy to be granted by the state in 2005, in amount of ROL 105,319,608 thousand, designed to cover the difference between the national reference price² and the local delivery price³ for heating energy.

2.4. The financial support measures previously granted by the State

- (23) The financial support measures granted to S.C. CET Govora S.A during 2001 – 2004 made the object of another Competition Council's decision.

2.5. The evaluation of the financial aid mentioned in point (22)

- (24) The *Guidelines on the state aid granted under the form of guarantees* establish the criteria for the evaluation of the state aid under the form of guarantees.

- (25) According to point 4.2. of the *Guidelines on the state aid granted under the form of guarantees*, an individual state guarantee does not constitute state aid if the following conditions are simultaneously fulfilled:

- a) the debtor is not in a difficult situation;
- b) the debtor is, in principle, able to contract a loan under market conditions, without the State intervention;

¹ The credit was contracted in USD, the exchanging rate ROL/USD was 28,872 ROL/USD

² The national reference price is further defined in 2.7.1.

³ The local delivery price is further defined in 2.7.2.

- c) the granted guarantee is related to a certain financial operation, a certain amount, does not cover more than 80% from the loan or other financial obligation, except for bonds or other similar instruments, not unlimited in time;
- d) the guarantee implies the payment of a prime at market price.

(26) Analysing the economical-financial situation of S.C. CET Govora S.A it can be concluded that the company is not in difficulty. From the information provided by the beneficiary, it results that the company can contract credits from Romanian Comercial Bank, under market conditions, without State intervention. Thus, the Competition Council considers that the conditions from point 4.2. letters a) and b) from the *Guidelines on the state aid granted under the form of guarantees* are fulfilled.

(27) Although, in the situation when the guarantee covers more than 80% of the loan, the condition in point 4.2. letter c) from the *Guidelines on the state aid granted under the form of guarantees* is not fulfilled and thus, there is nodoubt that there is state aid involved.

(28) According to point 3.2. from the *Guidelines on the state aid granted under the form of guarantees*, the state aid under the form of guarantees can be calculated “in the same way as the net grant-equivalent of a loan granted in preferential conditions, the interest bonus representing the difference between the interest market and the interest with State guarantee, after any primes have been paid.”

(29) As the Romanian Comercial Bank would have granted SC CET Govora SA as mimilar credit without the State guarantee with a annual interest rate of 12%, the Competition Council considers that this rate can be taken as reference when calculating the financial support under the form of guarantee.

(30) In these conditions, the financial support under the form of guarantee is equal to the net grant equivalent⁴ of the USD 5,000 thousand credit, guaranteed by the State, calculated as follows:

- the net present value of the difference between the market interest rate and the interest rate obtained due to the state guarantee – the risk premium paid by the company to the Ministry of Public Finance, respectively: USD 1,569,989– USD 75,000 = USD 1,494,989 equivalent of ROL 43,163,322.4 thousand.⁵

(31) 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.

⁴ The net grant equivalent has been calculated according to Annex 2 point 3 of the *Guidelines on regional aid*, taking into account the terms of the loan, the reimbursement graphics as well as a reference rate (inflation rate) of the USD of 3% between 2004-2010.

⁵ For calculation was used the exchanging rate ROL/USD was 28,872 ROL/USD.

(32) 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 maybe 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.

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

(34) The Government Decision approving the state guarantee for external credit which is 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.

(35) 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.

(36) 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).

(37) 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 guarantee do not give any advantage to the lender but only to the borrower, S.C. CET Govora S.A.

(38) The total amount of the financial aid for S.C. CET Govora S.A. is of ROL 148,482,930.4 thousand, out of which ROL 43,163,322.4 thousand represent financial support under the form of guarantee, ROL 105,319,608 thousand represent subventions.

2.6. Costs arising from the operation of the public service of general economic interest

(39) The public service of caloric energy production and delivery to the captive consumers, entrusted to the company, is regulated by ANRE. In order to perform the

public service, the company registers costs with raw materials (fuels), materials, personnel, environmental, repairing and investments, contouring costs and others.

(40) According to the provisions of art. 20 para 5 of the *Law no. 326/2001 on public services for communal management*, the undertakings which deliver services of public interest must keep control accountability where the company's activities are being registered separately, so as their activities are easily evaluated, monitored and controlled. S.C. CET Govora S.A. keeps management accounting (as base for the management decisions) where the company's activities registered separately. Thus, the activity of heating production, transport, delivery and supply in form of hot water towards the captive consumers, which represents the public service obligation, is presented separately from its other activities.

(41) The company has the obligation to submit to ANRE, 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 caloric energy produced and sold in each month. Starting with the entering data, the standard methodology applies and the costs for the caloric energy production, transport, delivery and supply activity are found. Therefore, at the beginning of each financial exercise S.C. CET Govora S.A. S.A. founds its income and costs budget. In the same time, funding the prices to be used is submitted to be approved by ANRE, which establishes the national reference price and the local delivery price.

2.7. The difference between the national reference price and the local delivery price for the caloric energy

2.7.1. The national reference price

(42) The national reference price was stipulated in EGO no. 162/1999 for caloric energy supplied to the population in centralized system, for house heating and preparing hot water.

(43) The level of the national reference price for caloric energy is established in advance, by Government decision, at ANRE's proposal, as an average between the local prices of the producers using the same type of fuel, added to the related delivery tariffs. In the same time, the national reference price takes into account the possibility to be subsidized from the State's budget.

(44) The national reference price is established to realize the equilibrium between the populations' buying power and the State budget's possibility to grant subsidies. As far as the social dimension is concerned, in funding this price is taken into account the proportion held by the caloric energy cost within the budget of a family with an average income.

(45) The standard methodology to calculate this price is established by ANRE order. The factors influencing the national reference price modification are: the fuel's price, the

electric energy's price, the modifying of the consumer price index, the modification of the exchange rate (ROL/USD or, after case, ROL/EURO).

(46) The national reference price during 2001 - 2004 was the following:

Table no. 2 *The evolution of the national reference price for the caloric energy*

	2001	2002	2003	2004
The normative act for establishing the national reference price	- GD no. 724/26.07.2001	- GD no.1303/27.12.2001; - GD no. 340/0.04.2002 - GD no. 686/03.07.2002;	GD no.686/03.07.2002	GD no.1155/23.07.2004
The national reference price (ROL/GCAL)	550,000	575,000 600,000 800,000	800,000	896,000

Source: The national legislation in force

The data from the table lead to the conclusion that the national reference price is established in advance, periodically, through GDs.

2.7.2. The local delivery price for the caloric energy

(47) The local delivery price for caloric energy is established by ANRE for the population as well as for the undertakings. The methodology for establishing the local delivery price is applied by ANRE to all producers of caloric energy in co-generation. This way, the undertaking has the obligation to present to ANRE, at the end of each year, the justifying documents from which to come forth the real costs related to the public service performed in that year and the quantities of caloric energy produced and sold each month.

(48) Funding 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.

(49) The local delivery prices are established at the beginning of each year and adjusted at the beginning of the second semester of the year. The steps are the following:

- identifying the regulating activities and services;
- identifying the sources for producing caloric energy (separate sources and/or co-generation);
- estimating the quantities delivered to the final customers, based on the undertaking's accomplishments in the previous year, taking into account the losses in the transport network and the quantities produced as well as the power plants' own consumption;
- allocating the costs with technological fuel;
- allocation of direct costs, exclusively those with the fuel, on activities/services and production sources;

- allocating the indirect costs and the general management costs, on services, proportionally with the value of the direct costs, exclusively the fuel;
- establishing the total costs for producing caloric energy under the form of hot water;
- establishing the unit costs;
- re-distribution on activities of the costs related to the own consumption;
- allocation of the financial costs on regulated services;
- establishing the total costs for regulated services.

2.7.3. Conclusions

- (50) The national reference price is regulated first of all due to the social protection reasons. Therefore, if the local price for caloric energy production and delivery is higher than the national reference price, the population will pay only the last price.
- (51) When the local price for GCAL is higher than the national reference price, in accordance with EGO no.162/1999, the difference is subsidized as it follows:
- a) from the state budget, within the limit of the sums approved by the state budget law;
 - b) from the local budgets, for that part uncovered from the state budget.
- (52) In the 2005 year, the national reference price will be lower then the caloric energy's local delivery price in form of hot water established for S.C. CET Govora S.A. In order to cover the difference between them, the company will receives, in accordance with EGO no.162/1999, subsidies in amount of ROL 105,319,608 thousand (see table no.3).

Table no. 3 *The local delivery price, the national reference price and the subsidy granted for covering the difference between in the 2005 year*

Period	Local delivery price with VAT for the population	Reference price with VAT	The difference between the local delivery price with VAT and the reference price	Quantity delivered to the population	Total difference between the local delivery price with VAT and the reference price	Subsidy's value
	ROL/Gcal	ROL/Gcal	ROL/Gcal	Gcal	Thousand ROL	Thousand ROL
1	2	3	4=3-2	5	6=4*5	7
Year 2005	1,325,184	896,000	429,184	245,395	105,319,608	105,319,608

Source: Supplementary information

According to the data from the above table, the value of subsidies that will be grant S.C. CET Govora S.A in the year 2005 will cover exclusively the difference between local delivery price and the national reference price of heating energy in form of hot water.

2.8. Costs higher than the local delivery price for the caloric energy

(53) When analyzing the measures of support for S.C. CET Govora S.A, one must also consider that, for the services of production, transport, delivery and supply of caloric energy, the company registers costs higher than the local price for supplying caloric energy established by ANRE.

(54) Actually, the local delivery price established by ANRE 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, ANRE 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.

(55) The high operating costs of S.C. CET Govora S.A. are due mainly to the following causes:

- technological fuel, raw materials and materials are purchased at comparable with those operated at the international level. In turn, caloric energy is sold on the local market at a price agreed by ANRE which is lower than the average price operated at the international level;
- in the price structure approved by ANRE isn't enclosed the development quota for modernizing the technological equipments the company works with. This way, 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 caloric energy;
- the proportion of technological fuel's costs in the price structure is very high (approx. 70 %), and changes to the fuel price were made on a quarterly basis, in a 5% quota/quarter;
 - the population pays a national reference price, 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. In this way the real value of the subsidies is strongly diminished by the inflation rate;
 - another cause of the gap between the local delivery price and the real cost is represented by the obligation of S.C. CET Govora S.A, as operator of the public service, of not interrupting the supply of caloric energy to companies located on the area of Ramnicu Valcea. Thus, the company's activity incurs big losses because the network is oversized while costs related to this activity are considerable.

(56) Taking into account the above mentioned, is estimated that in the year 2005, the real exploiting costs for the service of production, transport, delivery and supply caloric energy in form of hot water will be higher than its local delivery price, established by ANRE. We mention that in the costs' previsions for 2005 was taken into account the costs from year 2004, taking into account the following facts:

- the 5% increase on the natural gas's price starting with 01.01.2005 (for domestic natural gas as well as the imported one) as well as the intention of the National Regulation Authority in the Natural Gas Field to increase the price of this fuel every three months;
- the increase of the price of the electricity took over from the national system, with approx. 5% starting with 01.01.2005;
- the increase of expenses with the transport of the coal with 15%;
- the increase of the other raw materials and materials with 7%.

The differences between the local delivery price established by ANRE and the real estimated cost of caloric energy production and supply are shown in table no. 4.

Table no. 4– *Evolution of the difference between the local delivery price established by ANRE and the cost of the caloric energy and of the losses caused by this difference for **hot water***

As it can be seen, the difference between the real cost of the service of general economic interest and the local delivery price of caloric energy will cause a total loss amounting ROL 52,642,351.9 thousand, related to the activity of performing the public service of production, transport, delivery and supply of caloric energy in form of hot water in 2005.

3. ANALYSIS OF THE STATE SUPPORT MEASURES

3.1. Object of the decision

(57) On the basis of the notification to the Competition Council by the Ministry of Public Finance, the object of the present decision is the financial support measures granted by the State, mentioned in paragraphs (22), amounting ROL 148,482,930.4 thousand. These measures are analyzed in the context of meeting the obligations of public service of general economic interest by S.C. CET Govora S.A. in during 2005 year.

3.2. Obligation of service of general economic interest

(58) 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 normative/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):

(59) S.C. CET Govora S.A. is entrusted with the production, transport, distribution and supply of caloric energy for the population, institutions and undertakings, under the ANRE licenses no.345/2001, 346/2001 and 347/2001. In the licenses are mentioned, among other things, the obligations specific for the undertakings performing a service of general economic interest, namely: continuity in supplying caloric energy, ensuring access to heating networks for new customers, achieving performance standards. Also, by EGO 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).

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

(61) According to Law no. 326/2001, public services must fulfill the following conditions:

- Continuity both in quality and quantity, according to the conditions stipulated in the contract;
- Adaptability to consumers' requests;
- Equal access to the public service, in the conditions stipulated in the contract;
- Ensuring the public health and life quality.

(62) 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.

(63) 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 ANRE;

- 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.
- (64) The supply of town caloric energy for heating and preparing hot water for consumption is made through the caloric energy system of the Municipality of Ramnicu Valcea which is part of the technical- municipal infrastructure of the town. The County Council of Valcea provides to the Company the heating system needed for accomplishing services of general economic interest through management contract.
- (65) Regarding the above presented facts, S.C. CET Govora S.A. is under the obligation to ensure the effective functioning of services relating to the production, transport, distribution and supply of caloric energy that are essential for the population, institutions and undertakings of Ramnicu Valcea city. In addition, the company is 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. CET Govora S.A, by licenses, is entrusted with the discharging of a service of general economic interest.

3.4. The condition from par. 3.2. b):

- (66) According to this criterion the compensation of the public service obligation must be calculated on pre-established objectives and based on transparent parameters and may not grant an economic advantage to the beneficiary.
- (67) The two parameters based on which the level of the compensation is calculated are the national reference price, established by ANRE, and the local delivery price established by ANRE. These parameters are set in advance by Government decision, at the proposal of ANRE. 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.
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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 ANRE. 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.

(68) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph 67 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) :

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

(70) From Table no. 3 it can be seen that the amounts that will be receive in 2005 by S.C. CET Govora S.A. as subsidies, in amount of ROL 105,319,608 thousand, will cover only the difference between the national reference price and the local delivery price for the caloric energy.

(71) Furthermore, from the data in Table no. 4 it can be seen that during 2005 year S.C. CET Govora S.A. will register a total loss of ROL 52,642,351.9 thousand caused by the difference between the local delivery price established by ANRE for the heating energy supplied and the real cost for its production and delivery.

(72) The financial support measures from which the company benefits in the year 2005 is in amount to ROL 148,482,930.4 thousand, from which:

- ROL 105,319,608 thousand will be exclusively used to cover the difference between the national reference price and the local delivery price (table no.3);
- ROL 43,163,322.4 thousand represents the value of the financial support granted in form of state guarantee.

(73) Taking into account the losses of ROL 52,642,351.9 thousand that the company estimated that may be incurred due to the performing of the service of general economic interest, it can be seen that the facilities granted to the company will not fully cover the company losses. The subsidies that will be grant to the company amount ROL 105,319,608 thousand, will cover the difference between the national reference price and the local delivery price, and the support granted by the State in form of guarantee, in amount of ROL 43,163,322.4 thousand will cover only a part of the difference between the local delivery price established by ANRE for the heating energy supplied and the real cost for its production and delivery.

(74) The Competition Council finds out that the financial support that will be grant to the company doesn't exceed the total costs incurred from the performing of the public service of general economic interest.

(75) The Competition Council considers that the financial support that will be grant to S.C. CET Govora S.A. in 2005 represents a compensation for the costs related to the performing of the public service of general economic interest for the production, transport, delivery and supply of caloric energy in the city of Ramnicu Valcea, as its level

doesn't exceed the total costs resulted from the obligation of service of general economic interest.

3.6. Condition in 3.2. d) :

(76) S.C. CET Govora S.A. was not entrusted with the service of general economic interest to produce heating energy following a public tender procedure.

(77) The public service to produce, transport, delivery and supply heating energy was entrusted to S.C. CET Govora S.A. 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, Uzina Electrica Zalau, 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 ANRE and the causes leading to this situation are in fact similar.

(78) 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 state support measures for S.C. CET Govora S.A., 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*.

4. Compatibility of the Aid

(79) 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

(80) 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; and
- the compensation level should not exceed what is necessary to discharge the service of general economic interest, taking into account the revenues arising from its performance.

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

(82) S.C. CET Govora S.A.. operates its service is under the public ANRE licenses no.345/2001, 346/2001 and 347/2001. 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. CET Govora S.A.. has been officially entrusted with the public service that it discharges.

(83) 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.

(84) Therefore, one can conclude that the state aid that will be grant to S.C. CET Govora S.A., for the year 2005, does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort the public service of production, transport, distribution and supply of heating energy within the city of Focsani.

(85) 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 Ramnicu Valcea city 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

(86) It needs to be noted that the activity of the company is restricted to a limited geographical area, represented only by the Ramnicu Valcea city territory. S.C. CET Govora S.A. 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 in not unduly affected.

4.3. There is no over-compensation

(87) The state aid granted to S.C. CET Govora S.A.. under the form of subsidies for covering the difference between the national reference price and the local delivery price

and under the form of guarantee granted by the state for external credit, does 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 (see par. 73).

(88) Thus, the two conditions provided at point (79), 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. This gives the basis to conclude that the support measures for S.C. CET Govora S.A., representing compensations for the performance of the service of general economic interest, are state aid compatible with the normal competitive environment.

(89) The total amount of state aid granted to S.C. CET Govora S.A.. amounting to ROL 148,482,930.4 thousand, is compatible with normal competition environment.

DECIDES

Art. 1. The measures of financial support, notified by the Ministry of Public Finance and granted to S.C. CET Govora S.A. for the year 2005, constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid, published in the Official Monitor, Part I, no. 370 on August the 3rd 1999, modified and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures, approved with modifications and completions by the Law no.507/2004.*

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) corroborated with Art. 14 par. 1 (j) of *Law 143/1999 regarding state aid with subsequent modifications and completions*, is authorized the state aid for S.C. CET Govora S.A. as aid to achieve under conditions of safety and continuity the service of general economic interest.

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

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

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

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

- The Ministry of Public Finance, Apolodor Street, no.17, sect. 5, Bucuresti;
- S.C. CET Govora S.A., Uzinei Street no. 2, Ramnicu Valcea.

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

PRESIDENT

MIHAI BERINDE