

**DECISION no. 31/22.02.2005**

**concerning the notification of the Ministry of Public Finance**

**regarding the financial support for S.C. CET ARAD 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, with amendments and completions;

Based on the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3<sup>rd</sup> August 1999, with amendments and completions,

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 published in the Official Gazette of Romania, part I, no. 1048 from 12.12.2004.

**On the following grounds,**

**I.PROCEDURE**

(1) By the note no. 109.528/08.12.2004, 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 ARAD S.A.**

(2) Since the data presented in the notification submitted was not complete, supplementary information was requested by the note addressed under no. DAAS 59/19.01.2005, at which it was responded by the note no. 736/07.02.2005.

(3) The notification became effective on the date the information were complete, namely on 07.02.2005.

## II. DESCRIPTION OF THE FINANCIAL SUPPORT

### 2.1. The beneficiary of the state support measure

(4) The beneficiary of the notified state measure of support is S.C. CET ARAD S.A.

(5) S.C. CET ARAD S.A. was established in accordance with the Romanian law, as a local interest commercial company, based on GD no. 105/2002 being spun off from Termoelectrica S.A. and the private domain of the state to the public domain of the Arad Local Council based on GD no. 163/2002. Arad Local Council has a stake of 99.67% in S.C. CET ARAD S.A.

(6) The shareholders' equity of S.C. CET ARAD S.A. is in total amount of ROL 423,511,300,000 thousand, being divided in a number of 4,235,113 shares with a par value of ROL 100,000/share.

(7) The company is headquartered in Arad and is registered with the Trade Registry under no J02/336/2003 with the unique registering number R14593668.

(8) The company's financial and economic results, based on the balance sheet data are presented in Table no. 1.

**Table no. 1** – *Financial and economic situation of the company between 2002-2004*

- ROL thousand –

Indices	2002	2003	2004
Total turnover	459,264,486	1,049,958,812	1,121,592,886
Profit/loss	-81,157,644	14,559,861	-96,361,022

*Source: Notification form and supplementary information*

The company posted losses of ROL 81,157,644 thousand in 2002, a profit of ROL 14,559,861 thousand and is estimating a loss of ROL 96,361,022 thousand for 2004. The loss has been determined by the lower sales of electric and heating energy due to a lider winter in 2004.

(9) According to the company's articles of association, S.C. CET ARAD S.A.'s objective is the production and supply of electric energy, production, dispatch, transport, distribution and supply of thermal power, by performing trade acts, under the laws in force, according to their line of business as approved, through the company's articles of association. By licenses granted by the National Agency for the Regulation of Energy (ANRE henceforth) the company is entrusted with the discharge of public services for the production, transport and distribution of heating and electric energy designed for population, institutions and undertakings. In accordance with Art. 16 par.1 of the Law on electrical energy 318/2003, *"the activities and services for which licenses are being*

*granted are of public interest, except for those dedicated especially for the satisfaction of the holder's of the license or authorization own consumption."* These services can not be offered by undertakings in normal market conditions because suppliers are imposed certain binding conditions related to their provision.

(10) S.C. CET ARAD S.A.'s obligations as an electrical and thermal power producer, under art. 30 of the Law on electrical power are:

- to insure supply of electricity and heating power produced in cogeneration and system technological services, and to observe the licensing criteria, the contract clauses and the regulations in force;
- to maintain a reserve of fuel in sufficient amount or, as the case may be, a sufficient water reserve to meet the continuous production and supply of electricity and heating power as provided in the regulations in force;
- to observe the operational requests of the transport and system operator;
- to insure heating supplies, at a uniform quality and quantity level, under the contract terms.

(11) Given the above, the services of general interest entrusted to the company are:

- heating power production;
- electric power production.

(12) The heating power production service represents 50% from the total activity of S.C. CET ARAD S.A. The heating and electric energy are produced in cogeneration and fed into the National Grid System and are subject to a market regulated by ANRE.

(13) S.C. CET ARAD S.A. does not carry out ancillary activities.

(14) The products delivered by the company are:

- heating energy under the form of hot water for the preparation of consumption hot water and for heating, in order to ensure the consumption of the population, public institutions and undertakings;
- electric energy through the National Grid System.

The company's products are supplied directly by the company without resorting to any intermediaries.

(15) In order to carry out its core business S.C. CET ARAD S.A. has two power stations working on lignite and heating fuel.

The lignite power station has a 420t/h boiler and a 50MW turbine and two 100t/h boilers and lignite rolling feeders.

The heating fuel power station has two boilers of 75t/h, a 12MW turbine and 6 hot water boilers and a heating fuel storage facility.

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

(16) The company is active on the market for the production and supply of electrical power, the production, dispatch, transport, distribution and supply of heating power.

(17) The market affected by the financial support analyzed in this decision is the market for the services of production, distribution, transport and supply of heating power. These services stand for 50% of the total business of S.C. CET ARAD S.A., and the measures of financial support granted by the state and notified by the Ministry of Public Finances aim at ensuring the necessary fuel for the production and supply of heating power dedicated to the heating and ensuring the hot water for the population and undertakings.

(18) The market for heating power is a regulated market, the prices being set by ANRE, both for household consumers and industrial ones, by government decisions. These consumers are captive consumers, since they cannot choose their supplier of heating power.

(19) The services for the production and supply of heating energy function in a centralized system being organized and under the supervision and control of the local public authorities, based on the local autonomy principle.

(20) The geographical market is represented by the city of Arad therefore it is a market of local interest.

(21) S.C. CET ARAD S.A. is the only producer and supplier of thermal energy locally. The evolution of the thermal and electric energy sales, in structure, is presented in Tabel no. 2

***Tabel no. 2: Structure of electric and thermal energy sales***

<b>HEATING ENERGY (%)</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Undertakings	21.12	26.97	31.34
Population	78.8	73.03	68.66

*Source: Supplemental information*

Tabel no. 2 shows that most of the heating energy is delivered to the population.

### **2.3. Measures of financial support for S.C.CET IASI S.A.**

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

- the guarantee granted by the state based on GD no. 1006/2002 and GD no. 1140/2002 to obtain a foreign loan required to finance fuel imports required to purchase the energy resources for the winter of 2002–2003. The value of the loan is USD 6,000,000 respectively ROL 173,232,000 thousand;
- the guarantee granted by the state based on GD no. 1045/2003 to obtain a foreign loan required to finance fuel imports required to purchase the energy resources for the winter of 2003–2004. The value of the loan is USD 6,000,000 respectively ROL 173,232,000 thousand;
- subsidies granted to cover the price differences for the heating energy delivered for the population in amount of ROL 89,317,958 thousand.

- allocations from the state budget (The Special Fund for the Development of the Energetical System) in amount of ROL 56,186,343 thousand.

#### **2.4. Measures of financial support granted previously by the state**

(23) According to data in the notification and supplemental information S.C. CET ARAD S.A. has benefited from the following financial support:

**Table no. 3 – Financial support received by the company in 2002 – 2004**

ROL thousand				
<b>Description of the measure</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
Loans with state guarantee <sup>1</sup> in amount of USD 6,000,000	173,232,000	-	173,232,000	346,464,000
Subsidies granted		-	89,317,958	89,317,958
State budget allocations	-	56,186,343	-	56,186,343
<b>Total</b>	<b>173,232,000</b>	<b>56,186,343</b>	<b>262,549,958</b>	<b>491,968,301</b>

*Source: Supplemental information*

Subsidies that the company has benefited from in 2002-2004 have been granted to cover the price differences for the heating energy delivered to the population. The state guarantees issued by the Ministry of Public Finance have been granted in order to obtain loans required to purchase the fuel imports for the winter season based on GD no. 1006/2002, GD no.1140/2002 and GD no.1145/2003.

#### **2.5. Costs resulting from providing the public service of general economic interest**

(24) The public service to produce, transport, distribute and supply thermal energy to captive consumers, entrusted to the company, is regulated by ANRE. In order to perform the public service, the company incurs costs for raw material (fuel), materials, staff expenses, environment protection expenses, repairs and investment costs, metering costs and others.

(25) According to provisions of art. 20 par. 5 from Law no. 326/2001 on public services of town management, companies discharging public services must keep separate bookkeeping of their activities with segregated accounts for each type of service in such a way that their activities are easy to assess, monitor and control. S.C. CET ARAD S.A. maintains performs management accounting (as a basis for the management decisions) where the company activities of being separately treated. Production, transport,

<sup>1</sup> The ROL value of the loans has been calculated with a ROL/USD rate from 15.12.2004, respectively ROL 28,872 for USD 1.

distribution and supply of thermal energy to captive consumers, which is the public service obligation, is thus presented separately from the other activities of the company.

(26) At the end of each year, the company is bound to submit to ANRE, justifying documents showing the effective costs related to the public services provided during the year and the volume of thermal energy produced and sold each month. This input data is then fed into a standard methodology applied in order to determine the costs to produce, transport, distribute and supply the thermal energy. Thus, at the beginning of each fiscal year, S.C. CET ARAD S.A. calculates a budget of revenues and expenses. Also, a calculation of prices to be charged is sent for approval to ANRE, who sets the national base price and the local delivery price.

## **2.6. The difference between the national reference price and the local delivery price of thermal energy**

### **2.6.1 The national reference price**

(27) The national reference price was established by the GEO no. 162/1999 for thermal energy supplied to the population in centralized systems, for home heating and hot water preparation.

(28) The level of the national reference price for thermal energy is established in advance by Government decision at the proposal of ANRE as an average of the local prices of the producers using the same fuel type, to which the related distribution tariffs are added. Also, the national reference takes into consideration the subsidization possibilities from the state budget.

(29) By establishing a national reference price the aim is to obtain a balance between the affordability degree of the population and the state budget subsidization. As for the social dimension, the weight of this price in the budget of an average income family and the cost of thermal energy are considered when justifying this price.

(30) The standard methodology of this price is established by order of ANRE. Factors influencing the modification of the national reference price are: the price of the fuel, price of electric energy, the consumer price index, exchange rate (ROL/USD or ROL/EURO).

(31) The national reference price in 2002-2004 was regulated by the following administrative acts, as resulting from Tabel no. 4 below:

**Table no. 4** *The evolution of the national reference price of thermal energy*

	<b>2002</b>	<b>2003</b>	<b>2004</b>
Normative act to establish the national reference price	- GD no.1303/ 27.12.2001; - GD no. 340/.30.04.2002 - GD no. 686/ 03.07.2002;	GD no. 686/ 03.07.2002	GD no. 1155/ 23.07.2004

National reference price (ROL/Gcal)	575,000 600,000 800,000	800,000	896,000
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*Source: National legislation in force*

Information presented in the table above show that the national reference price is set in advance, periodically, by government decisions.

## **2.6.2 The local delivery price of thermal energy**

(32) The local delivery price for the heating energy is established by A.N.R.E., both for the population as well as for the undertakings. The methodology of establishing the local delivery price is being applied by A.N.R.E. to all thermal energy co-generation producers. Thus, the undertaking has the obligation to submit to A.N.R.E., 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.

(33) Prices are set separately for each activity/service, the local delivery price resulting from adding the production price, the transport service tariff and the tariff for the distribution and supply of the service.

(34) Local delivery prices are set at the beginning of each year and adjusted at the beginning of each second half of the year. The following stages are pursued:

- identification of regulated activities and services;
- identification of production sources for caloric energy (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;
- 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.

## **2.6.3 Conclusions**

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

(36) If the local price of the giga-calory (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.

(37) In 2002-2004, the national reference price was lower than the local delivery price of the heating energy set for S.C. CET Iasi S.A. To cover the difference between the two, the company receives according to EGO no.162/1999 subsidies in amount of ROL 89,317,958 thousand (see Table no. 5).

**Table no. 5** *The evolution of the local delivery price, of the reference price and of the subsidies granted to cover the differences diferitei dintre ele in perioada 2001-2004*

September 2004	1,669,470	896,000	773,470	HG 1155/2004	6,138	4,747,181	4,747,181
October 2004	1,669,470	896,000	Difference between the local delivery price and 773,470 reference price (VAT included)	HG 1155/2004	18,779	Total difference between the local delivery price and the reference price (VAT included) 14,525,176	14,525,176
November 2004	Local delivery price to the population (VAT included)	Reference price (VAT included)	and 773,470 reference price (VAT included)	HG 1155/2004	Quantity delivered to the population 37,188	28,763,784	28,763,784
December 2004	1,669,470	896,000	773,470	Legal basis for the reference price HG 1155/2004	53,372	41,281,816	Subsidies value 25,465,847
	<b>ROL/Gcal</b>	<b>ROL/Gcal</b>	<b>ROL/Gcal</b>		<b>Gcal</b>	<b>ROL thousand</b>	<b>ROL thousand</b>
<b>Total</b>	<b>1</b>	<b>2</b>	<b>4=3-2</b>	<b>5</b>	<b>6</b>	<b>7=4*6</b>	<b>8</b>
					115,477	89,317,957	73,501,988



*Source: Supplemental information*

According to data presented in the table above the value of the subsidies granted from the local budget do not cover the difference between the local delivery price and the reference price.

## **2.7. Costs in excess of the local delivery price of the heating energy**

(38) When analyzing the measures of support for S.C. CET ARAD S.A. one must consider that, for the services of production, transport, delivery and supply of heating energy, the company registers costs higher than the local price for supplying heating energy established by A.N.R.E., this situation resulting from the management accounting of the undertaking, in which expenses are separately recorded (see Table no. 6).

(39) In reality the local delivery price established by A.N.R.E. does not cover all costs due to the fact that fuel price increase estimates are not considered. Subsequent to the fuel price increase during the year A.N.R.E. is adjusting the energy price only when the increase is more than 5% and the adjustment refers only to the fuel; however, it is common knowledge that as a chain effect, the raw materials and materials prices increase also. This increase is taken into account is not considered when adjusting but only when prices are reviewed, once a year. Thus, there is a gap (lag) during the year between the costs of the energy operator and the local delivery price.

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

- the natural gas, raw materials and materials are bought at prices comparable with the international ones. Contrary, heating energy is sold on local market at a price established by ANRE lower than the medium international price;
- the price structure approved by ANRE does not include allowances for development of the equipment operated by the company; thus, the company makes investments, repairs and rehabilitations of the energetic system operated but these expenses are not reflected in the local delivery price of the heating energy;
- the weight of the fuel expenses in the cost structure is significant (63%) while the fuel price increases by 5% on a quarterly basis;
- 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. These subsidies hardly reach 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;
- the gap between the local delivery price and the real cost is generated by the obligation of S.C. CET ARAD S.A., as a public service operator, of not interrupting the supply of heating energy to undertakings in the city of Arad. In these circumstances the company has significant losses due to the oversized network and the related maintenance costs.

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

*Tabel no. 6 – The evolution of the difference between the local delivery price set by ANRE and the real cost of production and supply of heating energy and of the losses caused by this difference for hot water*

PERIOD	Difference between the cost and the local price set by ANRE		Delivered quantity			Losses from the failure to cover the costs
	POPULATION	UNDERTAKINGS	TOTAL	Of which:		
				POPULATION	UNDERTAKINGS	
	ROL/Gcal	ROL/Gcal	Gcal	Gcal	Gcal	ROL thousand
1	2	3	4	5	6	7
2002	1,030,308	1,030,270	245,323	194,514	50,809	138,239,093
2003	885,774	867,938	581,172	424,172	157,000	54,478,023
2004	1,286,907	1,263,020	501,079	365,974	135,105	260,087,990
Total	-	-	1,327,574	984,660	342,914	452,805,106

*Source: Supplemental information*

As it can be noticed, in the analyzed period the operating costs of the service of production and supply of heating energy is higher than the local delivery price set by ANRE. As a result, this difference leads to a loss of ROL 452,805,106 thousand related to the discharge of the service.

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

#### 3.1. Object of the decision

(42) On the basis of the notification to the Competition Council by the Ministry of Public Finances, the object of the present decision consists in the financial support measures granted by the state as stated in (22) and (23) in total amount of ROL 491,968,106 thousand. These measures of financial support are analyzed by in the context of S.C. CET ARAD S.A. meeting its obligation of public service of general economic interest.

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

(43) 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):**

(44) S.C. CET ARAD S.A. is entrusted with the production, transport, distribution and supply of heating energy for the population, institutions and undertakings, under the ANRE licenses no.1492/2002, 1510/2002, 1493/2002 and 1494/2002. 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 heating 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).

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

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

(47) 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.

(48) 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.

(49) The supply of thermal energy for heating and the preparation of consumption hot water is realized through the thermal system of the city of Arad, part of the city infrastructure. The management of the system required for the discharge of services is entrusted to the company by the Arad Local Council based on a concession agreement.

(50) Given the above, we note that S.C. CET ARAD S.A. has the obligation to ensure the effective functioning of the production, transport, distribution and supply of thermal energy, essential for the population, institutions and undertaking in the city of Arad. More than that, the company is obliged to supply these services at a regulated price, taking into account the affordability degree of the consumer. Consequently, one can conclude that S.C. CET ARAD 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):**

(51) 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.

(52) 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.

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.

(53) 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. The condition from par. 3.2. c):**

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

(55) From Table no. 5 it can be seen that the subsidies received by S.C. CET ARAD S.A. in amount of ROL 73,501,988 thousand do not fully cover the difference between the national reference price and the local delivery price for the heating energy, in amount of ROL 89,317,957.

(56) In addition, from data presented in Table no. 6 results that in the analyzed period S.C. CET ARAD S.A. had losses of ROL 452,805,106 thousand caused by the difference between the local delivery price set by ANRE for heating energy and the real cost of its production and supply.

(57) The financial support measures from which the company benefits in 2002-2004 total ROL 491,968,301 thousand of which:

- ROL 89,317,958 thousand exclusively used to cover the difference between the national reference price and the local delivery price (Table no. 5);

- state budget allocations to repay the technology rehabilitation loan in amount of ROL 56,186,343 thousand;

- ROL 346,464,000 thousand representing the value of the loans obtained with the state guarantee.

(58) Taking into account the losses of ROL 452,805,106 thousand which the company incurred due to the performing of the service of general economic interest of production and transport of caloric energy it can be seen that the facilities granted to the company do not fully cover the company's losses. The subsidies granted to the company in amount of ROL 73,501,988 thousand do not fully cover the difference between the national reference price and the local delivery price in amount of ROL 89,317,957 thousand and the loans guaranteed by the state in amount of ROL 346,464,000 thousand cover only a part of the company's losses.

(59) The Competition Council notes that the financial support granted to the company does not exceed the total costs incurred by the discharge of the public service.

(60) The Competition Council considers that the state aid granted to S.C. CET ARAD S.A. during 2002-2004 represents only 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 heating energy in the city of Arad because its level does not exceed the total costs resulted from the obligation to discharge the service of general economic interest.

### **3.6. The condition from par. 3.2. d):**

(61) S.C. CET ARAD S.A. was not entrusted with the service of general economic interest of production and transport of caloric energy following a public tender procedure.

(62) The public service of production and transport of caloric energy was entrusted to S.C. CET ARAD 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, CET Govora, CET Bacau, Electrocentrale Oradea, 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.

(63) 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 ARAD 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.*

(64) The facilities granted to S.C. CET ARAD S.A. in 2002-2004 were notified after being granted.

### **3.7. The assessment of the state aid**

(65) The state aid for S.C. CET ARAD S.A. is granted under the form of subsidies to cover the difference between the national reference price and the local delivery price and under the form of guarantees granted by the state for external loans contracted by the company during 2002-2004.

(66) The state aid under the form of subsidies during 2002-2004 in amount of ROL 89,317,958 thousand. Because loans are obtained with a 100% state guarantee and the company makes losses in the analyzed period, no bank would have granted guarantees for the contracted loans. Thus, according to art. 3.2.2 from the *Guidelines on state aid in the form of guarantees*, the value of the state aid under the form of guarantees during 2002–2004 equals to the value of the foreign loans, respectively ROL 346,464,000 thousand.

(67) Paragraph 1.1. of the *Guidelines on state aid in the form of guarantees* stipulates that, usually, the beneficiary of such a support of 100% is the borrower, since it gets the possibility - as shown above – to obtain a loan which was not possible in the absence of a guarantee.

(68) Under par. 2.2. of the *Guidelines on state aid in the form of guarantees*, under specific circumstances, the lender may also become beneficiary of the state guarantee, mainly if a guarantee is granted ex-post for a loan – in this case the guarantee may be aid for the lender.

(69) The guarantees granted by the Ministry of Public Finances for the loans between 2002-2004 are an ex-ante condition for these credits to enter into force. The guarantees were issued before any withdrawal/usage of any amount of money from the loan. The guarantees were not issued for an existing loan before their granting by the state.

(70) In the government decision to approve the state guarantees of the external credits to be contracted by the company, the maximum values of the credits to be guaranteed are set (and the interest rates and the related commissions), the aim of the credit and the guarantor (the Ministry of Public Finances). Based on these government decisions, the company sets the credit parameters by mutual agreement with the Ministry of Public Finances (granting period/maturity, grace period, drawings schedule, reimbursement method). Eventually, the standard bid solicitation are drafted for the external banks of first rank.

(71) The bid solicitation consists in information needed by the interested banks so that they may structure a competitive price bid: the type of loan, the borrower, the 100% state

guarantee (by indicating the government decision), the value of the loan, the credit maturity, drawing schedule, grace period, the reimbursement method, the deadline for submittal of bids and any other data that may be necessary to draft a proper bid. Since there is a standard bid solicitation, all banks receive the same information and benefit from equal treatment, under transparent and free access terms for bid submittal.

(72) After the analysis of the bid received upon the date mentioned in the bid solicitation, the bank with the most advantageous terms is chosen. Since all the banks are of first rank, the main parameters of the credit are the same, and the main criteria to adjudicate among them is the cost of the credit (related interest rate and commissions).

(73) Given the above factors, no financing bank can be judged at the detriment of another bidding bank. Consequently, the Competition Council ascertains that the state guarantee does not grant any advantage to the lender, but only to the borrower, namely S.C. CET ARAD S.A.

(74) The total value of the state aid granted to S.C. CET ARAD S.A. during 2002–2004 is in amount of ROL 402,650,343 thousand, according to Table no. 7.

**Table no. 7 – State aid received by the company during 2002 – 2004**  
- ROL thousand -

Description of the measure	2002	2003	2004	Total
Loans with state guarantee <sup>2</sup> in amount of USD 14,000,000	173,232,000	-	173,232,000	346,464,000
State budget allocations	-	56,186,343	-	56,186,343
<b>Total</b>	<b>173,232,000</b>	<b>56,186,343</b>	<b>173,232,000</b>	<b>402,650,343</b>

Source: Supplemental information

#### 4. Compatibility of state aid

(75) 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.

<sup>2</sup> The ROL value of the loans has been calculated with a ROL/USD rate from 15.12.2004, respectively ROL 28,872 for USD 1.



#### **4.1. State aid necessary for discharging the service of general economic interest**

(76) 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.

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

(78) S.C. CET ARAD S.A. operates its service is under the public ANRE licenses no. 1492/2002, no.1493/2002, no.1494/2002. 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 ARAD S.A. has been officially entrusted with the public service that it discharges.

(79) It follows, 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.

(80) Therefore, one can conclude that the state aid granted to S.C. CET ARAD S.A. during 2002-2004 does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort the public service of production and transport of caloric energy within the city of Arad.

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

(81) It needs to be noted that the activity of the company is restricted to a limited geographical area, represented only by the city of Arad S.C. CET ARAD 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**

(82) The state aid granted to S.C. CET ARAD S.A. under the form of subsidies during 2002-2004 and guarantees granted by the state for external loans 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 paragraph 58).

(83) Thus, the two conditions provided at point (75), 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, for appreciating that the support measures for S.C. CET ARAD S.A., representing compensations for performing the service of general economic interest, is state aid compatible with the normal competitive environment.

(84) The state aid granted to S.C. CET ARAD S.A. in total amount of ROL 402,650,343 thousand during 2002-2004 is compatible with a normal competition environment.

## DECIDE

**Art. 1.** The measures of financial support granted during 2001-2004 to S.C. CET ARAD S.A. 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 3<sup>rd</sup> 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*, we authorize the state aid for to S.C. CET ARAD 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 ARAD 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 interested parties 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 ARAD S.A., Arad, Calea 6Vanatori FN, judetul Arad.

**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**