

DECISION No 3

Of 14.01.2005

concerning the notification of the Ministry of Public Finance regarding the financial support for S.C. TERMICA SA TARGOVISTE

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. TERMICA S.A. TARGOVISTE

(2) The notification became effective on the date the information were complete, namely on 21.12.2004.

2. DESCRIPTION OF THE FINANCIAL SUPPORT

2.1. The beneficiary of state support measure

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

(4) The company was established based on the GD no. 105/1998, as a result of the unpaid transfer of Heating Plant Targoviste Sud from the patrimonium of Authonomous Unit of Electriciry RENEL - (subsidy Electrocentrale Doicesti) into the administration of Local Council of Targoviste City.

(5) The registered capital of the S.C. TERMICA S.A. TARGOVISTE is ROL 7,633,025 thousand and it is owned in totality by the Local Council of Targoviste City.

(6) The company is headquartered in Targoviste and registered at the Trade Registry under no. J15/141/1998

(7) Data analyse from the accounting registers, untill the notification of the financial aid by the Ministry of Public Finances reveals the following:

- total revenues ROL 164,205,952 thousand;
- total expenses ROL 196,967,067 thousand;
- loss ROL 32, 761,115 thousand.

(8) According to the GD no. 105/1998 on S.C. TERMICA S.A. TARGOVISTE 's establishment, the company's main line of business is the production, transport and distribution of heating energy for the preparation of hot water and for heating. According to art. 2 from the Law on public services of town management nr. 326/2001 establishing the juridical framework for setting up, organization, monitoring and control of functioning of the public services for city administration in counties and cities, the public services for city administration represent the activities and utility and local interest actions, under the local public administration tuthority, with the purpose of delivering public utility services. By the licenses granted by the National Agency for Regulation of the Citiy Services Sector (named from now on ANRSC) the company was entrusted with the performance of production, transport, distribution and suply of teh heating energy designated for the population, institutions and undertakings. According to art 16 align. (1) in the Law of

(9) The obligations of S.C. TERMICA SA TARGOVISTE S.A as an operator which deliver a public service for city 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.
- (10) The company supplies caloric energy as hot water for the preparation of hot water and heating, in view of ensuring the consumption of the population, budgetary institutions and undertakings. The company does not have among its consumers industrial undertakings.
- (11) The supply of urban heating energy for the heating and hot water preparation is achieved through the urban thermal system of the city of Targoviste, entrusted for management to the undertaking by the Local Council of Targoviste, by concession agreement.
- (12) In order to carry on its activity, S.C. TERMICA SA TARGOVISTE S.A owns the following equipments and installations:

- **For the production of heating energy:**

This is achieved through with the use of the following equipments:

- for hot water: boilers of different types and dimensions.

- **For the transport of heating energy:**

- A thermo network is operated and maintained covering the way from the heating-plant to neighborhood heating-units and undertakings.

- **For the distribution of heating energy:**

It is achieved through the thermal units and the secondary networks.

- 13) S.C. TERMICA S.A. TARGOVISTE S.A. has the following production capacities for heating energy: hot water boilers with an installed power of 29 MW, boilers with an installed heating capacity of 58MW and boilers with an installed heating capacity of 8MW.

- (14) Taking into account those mentioned in paragraphs 8 and 9, the company discharges a service of general economic interest residing in the production, transport and distribution of heating energy as hot water. This service has certain characteristics implying the operation of the company in a state regulated framework, from this deriving certain obligations which, if considering only its own interests, the company would not assume in normal market conditions.

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

- (15) S.C. TERMICA S.A. TARGOVISTE activates on the market of heating energy production and supply and on on the market of electricity production and supply. 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 heating energy for heating and hot water preparation designated to the population and undertakings, because

the financial support measures notified by the Ministry of Public Finance aim to insure the fuel necessary for discharging this service.

- (16) 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 100% from the company's total activity, and the financial support measures granted by the State and notified by the Ministry of Public Finance aim to insure the fuel necessary for discharging this service.
- (17) The heating energy market is a regulated market, the prices for heating 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 heating energy supplier.
- (18) The services of heating energy production 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.
- (19) The geographical market is represented only by the area of Tragoviste city, therefore is a market of local interest.
- (20) S.C. TERMICA SA TARGOVISTE 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, 86% is sold to the population and 14% is sold to undertakings and budgetary institutions.

2.3. Financial support measures to be granted to S.C. TERMICA SA TARGOVISTE S.A

- (21) 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 1,500,000, respectively ROL 43,308,000 thousand;
 - the subsidy to be granted by the state in 2004, through the local budget of the Targoviste Local Council, in amount of ROL 73,056,380 thousand;
 - the subsidy to be granted by the state in 2005, through the local budget of the Targoviste Local Council, in amount of ROL 51,000,000 thousand.

2.4. The financial support measures previously granted by the State

- (22) According to the data presented in the notification, S.C. TERMICA SA TARGOVISTE S.A benefited until now by financial support measures, as it follows:

Table no. 2 – Financial support received by the company during 2001 – 2003

-ROL thousand -

The type of financial support		2002	2003	Total
Subsidies granted to the company	14,594,350	34,288,000	99,771,182	148,653,532

Source: Notification form

The subsidies the company benefited of during 2001 - 2003 were granted for the coverage of tariff differences for the heating energy delivered to the population.

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

(23) The public service of heating 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, environment, repairing and investments, contoring costs and others.

(24) According to provisions of art.20 para.5 from the Law no. 326/2001 regarding public services of town management, companies discharging public services must keep separate books of their activities, with separate accounting for each kind of service, as such as their activities are easy to assess, monitor and supervise. S.C. TERMICA SA TARGOVISTE S.A. carries out only heating energy production and supply to captice consumers, which represents the public service obligation; this is why the company's books exclusively reflect the activity related to the discharge of this service of general economic interest.

(25) The company, during 2002 – 2005, has the following economic-financial results resulted to the discharge of the service of general economis interest:

Table no.3 Main economic – financial indicators of S.C. TERMICA S.A. TARGOVISTE
-ROL thousand-

Indicators	2001	2002	2003	2004	2005	Total period
Revenues	96,811,358	127,567,085	161,501,297	164,205,952	186,060,321	736,146,013
Expenses	120,816,999	137,664,779	159,950,274	196,967,067	250,425,250	865,824,369
Profit (Losses)	- 24,005,641	- 10,097,694	1,551,023	- 32,761,115	- 64,364,929	- 129,678,356

Source: Supplemental information

Data presented in the table above shows the undertaking incurred losses except for the year of 2003.

2.6. The difference between the national reference price and the local delivery price for the heating energy

2.6.1. The national reference price

- (26) The national reference price was established by EGO no.162/1999 for heating energy supplied to the population in centralized systems, aiming to provide heating of dwellings and for hot water preparation.
- (27) The level of the national reference price for heating 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.
- (28) The national reference price is established in order to achieve an equilibrium between the population's 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 of the heating energy cost in the budget of a family with an average income.
- 29) 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 electricity's price, the consumer price index variation, the exchange rate variation (ROL/USD or, after case, ROL/EURO).
- (30) The national reference price during 2001 - 2004 was the following:

Tabelul nr. 4 Evolutia pretului national de referinta a energiei termice

	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/.03.04.2002 - 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: Legislation in force

The information shown in the table above demonstrate that the national reference price is established in advance, on a regular basis, by government decisions.

2.6.2. The local delivery price for the heating energy

- (31) The local delivery price for heating energy is established by ANRE, both 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 heating 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 delivered in that year and the quantities of heating energy produced and sold each month.

- (32) Justification of the prices is made separately for each activity/service, the local delivery price being the result of adding the price for the production activity to the tariff for the transport service and the price for the service of delivery and supply.
- (33) 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 heating 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 heating energy under the form of hot water and steam;
 - establishing the total 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.

2.6.3. Conclusions

- (34) The national reference price, calculated in advance and regulated by Government decision, is set according to the degree of affordability of the population due to social protection reasons. Therefore, if the local price for heating energy production and delivery is higher than the national reference price, the population will pay only this last price.
- (35) In the event where the local price of the Gcal is higher than the national reference price, according to EGO no.162/1999, the difference is subsidized:
- a) from the state budget, within the limit of the amounts approved by the state budget law;
 - b) from the local budgets, for the portion uncovered by the state budget.
- (36) During 2002-2005, the national reference price was lower then the heating energy's local delivery price established for S.C. TERMICA SA TARGOVISTE S.A.. In order to cover the difference between them, the company receives, in accordance with EGO no.162/1999, subsidies in amount of ROL 272,709,912 thousand (see table no.5).

Table no. 5 *The evolution of the local delivery price, the reference price and of the subsidy granted for covering the difference between them during 2002-2005*

Period	The difference between the local delivery	Legal ground for the reference price	Quantity delivered to the population	Total difference between the local delivery price with	Subsidy's value
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	price with VAT and the reference price			VAT and the reference price	
	ROL/Gcal		Gcal	Thousand ROL	Thousand ROL
1	4=3-2	5	6	7=4*6	8
total 2001	253.227	GD 756/2000	175,962	44,558,329	14,594,350
total 2002	362.143	GD 1303/2001	144,888	52,470,132	34,288,000
total 2003	469.287	GD 686/2002	131,191	61,566,254	99,771,182
total 2004	677.309		109,028	73,845,664	73,056,380
total forecast for 2005	848.03		110,000	93,283,300	51,000,000
Total				325,723,679	272,709,912

Source: supplementary information

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

2.7 Costs higher than the local delivery price for the heating energy

(37) When analyzing the measures of support for S.C. TERMICA SA TARGOVISTE S.A., one must also consider that, for the services of production and supply of heating energy, the company registers costs higher than the local price for supplying heating energy established by ANRE, this situation arising from the company's financial records, where revenues and expenses are separately kept (see table no.3).

(38) 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 increasing in a chain effect. This increase is not considered when adjusting it, but only when prices are reviewed once a year. Thus, there is a gap during the year between the costs of the operator and the local delivery price.

39) The high operating costs of S.C. TERMICA S.A. TARGOVISTE are due mainly to the following causes:

- technological fuel, raw materials and materials are purchased at comparable with those in the European Union. In turn, heating energy is sold on the local market at a price agreed by ANRE which is lower than the average price in the European Union;
- in the price structure approved by ANRE isn't enclosed the development quota for upgrading the technological equipments the company works with. This way, the

- company makes investments, repairs and other upgrades in the energetic system, but these expenses are not always reflected in the local delivery price of heating energy;
- the proportion of technological fuel's costs in the price structure is very high (approx. 63 %), while changes to the fuel price were made on a quarterly basis, only if higher than 5% on a quarterly basis;
 - 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 price 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 and an important part of the cost cannot be covered by the subsidy initially granted.

40) The differences between the local delivery price established by ANRE and the real cost of heating energy production are shown in table no. 6.

Table no. 6 – *Losses/profit from the delivery of public interest service*

Ratio	2001	2002	2003	2004	2005	Total period
Profit (Loss)	- 24,005,641	- 10,097,694	1,551,023	- 32,761,115	- 64,364,929	- 129,678,356

Source: supplemental information

As it can be seen, during the assessed period, the operating costs for the service of producing and delivering caloric energy is higher than its local delivery price, established by ANRE. As a result of delivering a service of general public interest, the company confronts with losses in all years, except for 2003.

3. ANALYSIS OF THE STATE SUPPORT MEASURES

3.1. Object of the decision

(41) 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 (21) and (22), amounting ROL 316,017,912 thousand. These measures are analyzed in the context of meeting the obligations of public service of general economic interest by S.C. TERMICA SA TARGOVISTE S.A

3.2. Obligation of service of general economic interest

(42) 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 para. 3.2. a)

(43) S.C. TERMICA SA TARGOVISTE S.A AT is entrusted with the production, transport, distribution and supply of heating energy for the population, institutions and undertakings, under the ANRE licenses no. 28/2000, 29/2000, 30/2000 and 31/2000. 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 heating energy are under the obligation to sell heating 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).

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

(45) 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.

(46) 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.

(47) 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.

(48) The supply of town heating energy for heating and preparing hot water for consumption is made through the heating energy system of the Targoviste City which is part of the technical infrastructure of the town. The administration of the heating system needed for accomplishing services of general economic interest is entrusted to the company through concession contract by the Local Council of Targoviste City.

(49) Regarding the above presented facts, S.C. TERMICA SA TARGOVISTE S.A is under the obligation to ensure the effective functioning of services relating to the production, transport, distribution and supply of heating energy that are essential for the population, institutions and undertakings of Targoviste 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. TERMICA SA TARGOVISTE S.A. is entrusted, by licenses, with the discharging of a service of general economic interest.

3.4. The condition from par. 3.2. b)

(50) 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.

(51) 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.

(52) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph 51 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 being set in advance.

3.5. Condition in 3.2. c)

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

(54) From Table no. 5 it can be seen that the amounts received by S.C. TERMICA S.A. TARGOVISTE as subsidies, in amount of ROL 272,709,912 thousand, do not cover the difference between the national reference price and the local delivery price for the heating energy.

(55) Furthermore, from the data in Table no.6 it can be seen that during the analyzed period S.C. TERMICA S.A. TARGOVISTE registered a total loss of ROL 129,678,356 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.

(56) The financial support measures from which the company benefits in the period 2002-2005 is in amount of ROL 316,017,912 thousand, from which:

- ROL 272,709,912 thousand were exclusively used to cover the difference between the national reference price and the local delivery price (table no.5);
- ROL 43,308,000 thousand the value of the credits contracted with the state's guarantee.

(57) Taking into account the losses of ROL 129,678,356 thousand that the company incurred due to the performing of the service of general economic interest, it can be seen that the facilities granted to the company do not fully cover the company losses. The subsidies granted

to the company amount ROL 272,709,912 thousand cover the difference between the national reference price and the local delivery price, and the credits guaranteed by the State in amount of ROL 43,308,000 thousand cover only a part of the losses registered by the company amounting ROL 129,678,356.

(58) The Competition Council considers that the state aid granted to S.C. TERMICA S.A. TARGOVISTE during 2001-2005 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 heating energy in the city of Targoviste.

3.6. Condition in 3.2. d)

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

(61) The public service to produce heating energy was entrusted to S.C. TERMICA S.A. TARGOVISTE by a license from ANRE. Thus, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have had, in providing the same service. On the Romanian heating energy market there are acting other producers and suppliers as well (e.g. Termoelectrica, CET Govora, CET Bacau, Electrocentrale etc.). Still, a comparison with these companies would not be relevant, as they are also public undertakings receiving aid from the state for discharging the public service obligation. However, making a comparative analysis with other undertakings producing and supplying heating energy, it can be noticed that their situation is similar to the situation of the analyzed undertaking, respectively the real costs of the service exceed local delivery prices set by ANRE and the causes leading to this situation are in fact similar.

(62) 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. TERMICA S.A. TARGOVISTE, 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*.

(63) The facilities granted to the company during 2002-2003 were notified after their granting so they represent unlawful state aid, according to the art. 3¹ in the Law no. 143/1999 on the state aid, with the subsequent amendments and completions (see para. no.22).

3.7. Assessment of the state aid

(64) The state aid for S.C. TERMICA S.A. TARGOVISTE 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 credits contracted by the company, for the period 2001 – 2005.

(65) The state aid under the form of subsidies, for the period 2001-2005, amounts ROL 272,709,912 thousand ROL. As the credits are obtained 100% with the State's guarantee and the company registers losses, for the assessed period, no bank would grant guarantees for the

contracted credits. This way, according to art.3.2.2 in the Guidelines on the state aid under the form of guarantees, the value of the state aid under the form of guarantees, for 2004, is equal to the value of the external credit contracted, respectively ROL 43,308,000 thousand.

(66) Point 1.1. in the Guidelines on the state aid under the form of guarantees stipulates that usually the beneficiary of such assistance is the borrower because it enables the latter – as has been demonstrated above – to obtain better financial terms than those normally available on the market.

(67) 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 if a guarantee is given ex-post related to a loan, in this case the guarantee can be a state aid for the lender.

(68) The guarantee granted by the Ministry of Public Finances, for 2004, for the contracted credit, represent an ex-ante condition for entering into force of this credit. The guarantee was issued before using any money from this credit. The guarantee was not granted for an existing loan before the issuance of the guarantee.

(69) The Government Decisions approving the state guarantee for external credit which is to be contracted by the company, are established the maximum credit value which is to be guaranteed (together with the interests and afferent commissions), the purpose of the credit and the guarantant (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 external first rank banks.

(70) 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.

(71) 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 credit (interest and the corresponding fees).

(72) 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 does not give any advantage to the lender but only to the borrower, respectively S.C. TERMICA S.A. TARGOVISTE .

(73) Thus, the total value of the state aid granted to S.C. TERMICA S.A. TARGOVISTE during 2001 – 2005 amounts ROL 316,017,912 thousand, according to Table no. 7.

Table no.7 – The state aid received by the company during 2002 – 2005

-ROL thousand-

Type of state aid	2001	2002	2003	2004	2005	Total
Subsidy granted to the company	14,594,350	34,288,000	99,771,182	73,056,380	51,000,000	272,709,912
Credits contracted with the state's guarantee				43,308,000		43,308,000
Total	14,594,350	34,288,000	99,771,182	116,364,380	51,000,000	316,017,912

Source: Supplemental information

4. Compatibility of the Aid

(74) 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

(75) 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.

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

(77) S.C. TERMICA S.A. TARGOVISTE operates its service is under the public ANRE licenses no. 28/2000, 29/2000, 30/2000 and 31/2000. 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. UZINA TERMICA S.A. TARGOVISTE. has been officially entrusted with the public service that it discharges.

(78) 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 registers annual losses. Furthermore, the compensation granted to the company does not fully cover all the costs that are currently being incurred by the delivering of the public service.

(79) Therefore, one can conclude that the state aid granted S.C. UZINA TERMICA S.A. TARGOVISTE, for the period 2001-2005, 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 Targoviste.

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

(80) It needs to be noted that the activity of the company is restricted to a limited geographical area, represented only by the city of Targoviste. S.C. UZINA TERMICA S.A. TARGOVISTE. is the only operator on this market. The company is not involved in import-export activities. Under these circumstances it is considered that the commerce with the Member States is not unduly affected.

4.3. There is no over-compensation

(81) The state aid granted to S.C. TERMICA S.A. TARGOVISTE 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 contracted by the company for the 2004, 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. 57).

(82) Thus, the two conditions provided at point (74), 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 S.C. UZINA TERMICA S.A. TARGOVISTE, representing compensations for the performance of the service of general economic interest, are state aid compatible with the normal competitive environment.

(83) The total amount of state aid granted to S.C. TERMICA S.A. TARGOVISTE amounting to ROL 316,017,912 thousand, from which ROL 148,653,532 thousand is state aids received in the period 2001- 2003, and ROL 167,364,380 thousand is state aid notified by the Ministry of Public Finance, which is to be granted in 2004 is compatible with normal competition environment.

DECIDES

Art. 1. The measures of financial support granted during 2002-2005 to S.C. TERMICA S.A. TARGOVISTE 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 amended and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures, approved with amendments 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 amendments and completions*, is authorized the state aid for S.C. TERMICA S.A. TARGOVISTE 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 amendments and completions*, suppliers shall annually convey to the Competition Council information regarding the state aid granted to S.C. UZINA TERMICA S.A. TARGOVISTE., 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 amendments and completions*, this decision may be appealed by he interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

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

- The Ministry of Public Finance, Apolodor Street, no.17, sect. 5, Bucuresti;
- S.C. UZINA TERMICA S.A. TARGOVISTE, Ion C. Bratianu Street, no. 50, Targoviste, jud. Dambovita.
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Art. 8. The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.

PRESEDINTE

MIHAI BERINDE