

## **DECISION No. 4**

**Of 14.01.2005**

**concerning the notification of the Ministry of Public Finance regarding the financial support for S.C. COLTERM S.A. TIMISOARA.**

### **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 3<sup>rd</sup> 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**

2. **(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 S.C. COLTERM S.A. TIMISOARA.
- (2) The notification became effective on the date the information were complete, namely on 31.12.2004.

## **II. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURE**

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

- (3) The beneficiary of the notified state measure of support is S.C. COLTERM S.A. TIMISOARA .
- (4) The company was established based on the GD no. 313/2003, on the establishment of the local Company Colterm by the merger between SC Termocet 2002 SA and SC Calor SA Timisoara.
- (5) The company is headquartered in Timisoara and registered at the Trade Registry under no. J35/185/2004.
- (6) The shareholders' equity of S.C. COLTERM S.A. TIMISOARA is ROL 1,022,599,000 thousand, entirely held by Timisoara Local Council.
- (7) The financial-economic results of the undertaking formed after the merger between SC Termocet 2002 SA and SC Calor SA Timisoara, based on the balance sheets of the last 2 years are presented in table no. 1.

**Table no.1** – Financial-economic situation of the company in the period 2001-2003

Year	-ROL billion -		
	Loss /profit S.C.TERMOCET 2002 S.A.	Profit/loss SC Calor SA Timisoara	Compensated result
2001	-259.888	2.000	-257.888
2002	-444.000	2.000	-442.000
2003	-127.000	3.500	-125.500

Source: Notification form

Data presented in the table above shows that the undertaking established after the merger between SC Termocet 2002 SA and SC Calor SA Timisoara incurred losses.

- (8) According to GD no. 313/2003 on S.C. COLTERM S.A. TIMISOARA 's establishment, the company's main line of business is the production, transport, distribution and supply of heating energy and electric energy production. In accordance with its Status, annex to the establishment decision, 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 and electrical energy production, transport, distribution and supply, 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”.
- (9) The obligations of S.C. COLTERM S.A. TIMISOARA as producer of electrical and heating energy, in accordance with art.30 in the Law of the electrical energy no. 318/2003, are mainly the following:
  - to insure the electrical energy deliveries, respectively heating energy produced in cogeneration and the system technological services, with the fulfilment of the criteria imposed by licenses, contracts and regulations in force;

- to deliver in indiscriminating conditions the whole electrical power as well as the system technological services;
- to maintain a stock of fuel at a level sufficient, or as the case may be, a sufficient water stock, for performing the obligations of continuously producing and delivering electrical and heating energy, as provisioned in the regulations in force;
- to comply, from an operative point of view, with the demands of the transport and system operators and to establish, after case, its own operative management positions.

(10) The service of heating energy production represents 98% from the company's whole activities, the difference being held by the production of electricity. The products delivered by the undertaking are:

- heating energy as hot water for the hot non-drinking water and heating, for insuring the consumption of the population, budgetary institutions and undertakings;
- electricity.

(11) 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 Timisoara, which is entrusted for administration by concession contract to the company by the local City Council of Timisoara.

(12) In order to carry on its activity, S.C. COLTERM S.A. TIMISOARA owns of 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 thermo-plant to neighborhood thermo-units and the consuming undertakings.

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

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

(13) S.C. COLTERM S.A. TIMISOARA. has the following production capacities: hot water boilers with nominal powers between 50 and 100 GCal/h, heating boilers with nominal powers between 20 and 50t/h, turbines with a power of 12 MW, heating boilers with a power of 50 Gcal/h, functioning with coal, gas and black oil. These installations have a high usage degree, generating losses in the network.

(14) Taking into account the facts mentioned at paragraphs 8 and 9, the undertaking performs two services of general economic interest, respectively the production, transport and delivery of heating energy as hot water and the production of electricity. These services have certain characteristics implying the undertaking functioning within a State regulated

framework, imposing certain obligations which, the undertaking wouldn't assume under normal market conditions, if to follow only its own interest.

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

(15) The company activates on the market of heating energy production and supply and on the electricity production market. The market affected by the financial support's granting is the market of the production, delivery, transport and supply services of heating energy, designated for the heating and insuring the hot water for population and undertakings, as the financial support measures granted by the State and notified by the Ministry of Public Finance have as purpose the insurance of the fuel necessary for the production and supply of heating energy for insuring the heating and hot water at population and undertakings. These services represent 98% from S.C. COLTERM S.A. TIMISOARA 's total activity.

(16) The market of the production, delivery, transport and supply services for the caloric energy is a regulated market, the prices for heating energy being set by ANRE, both for household consumers as well as industrial consumers. These consumers are captive consumers as they don't have the possibility to choose their heating energy supplier.

(17) The caloric energy market is a regulated market, the prices for caloric energy being set by ANRE, by Government decisions.

(18) The services of caloric energy production, distribution, transport and supply meant to heat and to provide the hot water for household consumers and undertakings 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 relevant market is represented by the area of Timisoara city, so it represents a market of local interest.

(20) S.C. COLTERM S.A. TIMISOARA is the sole producer and supplier of caloric energy in the area it serves. From the whole caloric energy produced by the company 85% represents caloric energy sold to the individual consumer, 15% represents caloric energy sold to the budgetary institutions and undertakings.

## **2.3. Financial support measures to be granted to S.C. COLTERM S.A. TIMISOARA.**

(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 8,000,000, respectively ROL 230,976,000 thousand;
- the budgetary allocations for 2004, in amount of ROL 4,870,000 thousands;

- the subsidy granted by the state in 2004, through the local budget of the Timisoara City, in amount of ROL 787,667,457 thousand;
- the subsidy to be granted by the state in 2005, through the local budget of the Timisoara City, in amount of ROL 703,172,380 thousand.

## 2.4. Support measures granted prior by the state

- (22) According to the information mentioned in notification, S.C. COLTERM S.A. TIMISOARA has beneficiated until now of financial support, as follows:

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

-ROL thousand-

<b>The type of financial support</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Overall</b>
Subsidy granted to the company	161,745,572	272,447,880	610,686,741	<b>1,044,880,193</b>
Loans contracted with state guarantee <sup>1</sup>	-	404,208,000	-	<b>404,208,000</b>
Budgetary allocations		18,400,000		<b>18,400,000</b>
<b>Overall</b>	<b>161,747,572</b>	<b>695,055,880</b>	<b>610,686,741</b>	<b>1,467,488,193</b>

The subsidies the company benefited of during 2001 - 2003 were granted for the coverage of tariff differences for the caloric energy delivered to the population. The guarantee granted by the State, through the Ministry of Public Finance was designated for the contracting of the credit necessary for financing crude oil, fuel oil, natural gases and energetically coal imports, for the winter period, based on the GD no. 1006/2002 for the winter 2002-2003. The budgetary allocations have been granted with the view of financing some investments to rehabilitate the city caloric system.

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

- (23) The public service of caloric energy production, transport, delivery and supply 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.
- (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. COLTERM S.A. TIMISOARA 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 towards the captive consumers, which represents the public service obligation, is presented separately from its other activities.

<sup>1</sup> The ROL value of the contracted loans have been calculated at ROL/USD exchange rate from 15.12.2004, respectively 28.872 ROL for 1 USD.

- (25) 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 and supply activity are found. Therefore, at the beginning of each financial exercise S.C. COLTERM S.A. TIMISOARA 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. During 2001 – 2004, the company registers the following economic and financial results related to the rendering of service of general economic interest.

Table no 3: *The main economic - financial indicators of S.C. COLTERM S.A. TIMISOARA resulting from discharge of the service of general economic interest*

- thousand ROL -

Indicators	2001	2002	2003	2004	Overall
Incomes	413,238,000	634,793,000	1,004,540,000	1,546,043,000	3,598,614,000
Charges	798,175,000	958,142,000	1,118,428,000	1,549,257,000	4,424,002,000
Losses	<b>384,937,000</b>	<b>323,349,000</b>	<b>113,888,000</b>	<b>3,214,000</b>	<b>825,388,000</b>

Source: supplementary information

Over the analyzed period, the company registers losses of rendering the service of general economic interest.

### **2.5.1 Costs generated by the investments required by the operation of service of general economic interest**

(26) During 2002-2004, the company has beneficiated of budgetary allocation amounted of ROL 23,270,000 thousand, in order to finance some objectives of investments indispensable for operating under safety, continuity and comfort conditions of the service of general economic interest. Considering the high wear degree of equipments and installations used by the company, the investments realized through budgetary allocations have had an overriding importance for rehabilitating the caloric network system, system whose operation is carried out in order to perform the public service.

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

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

(27) 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.

(28) 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.

(29) The national reference price is established to realize the equilibrium between the populations's affordability 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.

(30) 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).

The normative documents through which is established the level of the national reference price during 2001 – 2004 are presented in table no 4.

Table no 4 – The normative documents and the level of national reference price between 2001-2004

	2001	2002	2003	2004
The normative document establishing the national reference price	- GD no 724/ 26.07. 2001	- GD no 1303/ 2001; - GD no 340/2002 - GD no 686/ 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 information displayed into the table converges to the conclusion that the national reference price is set out ex ante, periodically, through government decisions.

## 2.6.2. The local delivery price for the caloric energy

(31) 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. Thus, 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.

(32) 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.

(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 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.

### **2.6.3. Conclusions**

(34) The national reference price, calculated in advance and regulated through Government Decision, it is established depending on affordability of the population, 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.

(35) 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.

(36) During 2001-2005, the national reference price was lower then the caloric energy's local delivery price established for S.C. COLTERM S.A. TIMISOARA. In order to cover the difference between them, the company receives, in accordance with EGO no.162/1999, subsidies in amount of ROL 2,535,720,030 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 2001-2005*

*-ROL thousand-*



Period	Difference between local delivery price including VAT and national reference price	Legal basis for the reference price	The quantity supplied to population	The total difference between the local delivery price with VAT and the national reference price	The value of subsidies
	<b>ROL/ Gcal</b>		<b>Gcal</b>	<b>ROL thousand</b>	<b>ROL thousand</b>
<b>1</b>	<b>4=3-2</b>	<b>5</b>	<b>6</b>	<b>7=4*6</b>	<b>8</b>
total 2001	171,890	GD 756/2000	940,983	<b>161,745,572</b>	<b>161,745,572</b>
total 2002	322,785	GD 1303/2001	844,053	<b>272,447,880</b>	<b>272,447,880</b>
total 2003	683,317	GD686/2002	893,708	<b>610,686,741</b>	<b>610,686,741</b>
total 2004	957,766	GD115 5/2004	822,400	<b>787,667,457</b>	<b>787,667,457</b>
total 2005	856,766	GD115 5/2004	820,728	<b>703,172,380</b>	<b>703,172,380</b>
<b>Overall</b>			<b>4,309,877</b>	<b>2,534,329,862</b>	<b>2,535,720,030</b>

*Source: Supplementary information*

According to the data from the above table, the value of subsidies granted from the local budget cover exclusively the difference between local delivery price and the reference price.

## **2.7. Costs higher than the local delivery price for the caloric energy**

(37) When analyzing the measures of support for S.C. COLTERM S.A. TIMISOARA, one must also consider that, for the services of production and supply of caloric energy, the company registers costs higher than the local price for supplying caloric energy established by ANRE, this situation coming from the company's management accounting, where the costs are separately kept (see table no.3).

(38) Actually, the local delivery price established by ANRE does not cover all costs because 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%. This increase is 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.

(39) The high operating costs of S.C. COLTERM S.A. TIMISOARA are due mainly to the following causes:

- 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, taking into account that the fuel price is updated by ANRE if this price grows more than 5% quarterly;
- 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 caloric energy being subsidized. This subsidy hardly reaches the producer, because the Local Council budget which ensures a significant percentage of it 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 losses resulted from the uncovered differences between the local delivery price established by ANRE and the real cost of caloric energy production –for hot water- are shown in table no. 6.

Table no. 6 – The losses/ profit resulted by the rendering of service of general economic interest

*ROL Thousand*

Indicators	2001	2002	2003	2004	2005 foreseen	Total
Losses	384,937,000	323,349,000	113,888,000	3,214,000	2,068,000	827,456,000

*Source: Supplementary information*

As it can be seen, during the assessed period, because the exploiting costs for the service of producing and delivering caloric energy is higher than its local delivery price, established by ANRE, the company registers losses amounted for ROL 827,456,000 thousand, related to performing of the public services.

### 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 3,194,174,030 thousand. These measures are analyzed in the context of meeting the obligations of public service of general economic interest by S.C. COLTERM S.A. TIMISOARA during 2001-2005.

### **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 a 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. COLTERM S.A. TIMISOARA is entrusted with the public services of production, transport, distribution and supply of caloric energy for the population, institutions and undertakings, under the ANRE licenses no. 597/2004, 598/2004 and 599/2004. 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 caloric energy are under the obligation to sell caloric energy to the householder consumers 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 caloric energy which is centralized produced is a public use service.

**(45)** According to Law no, 326/2001, public services must fulfil 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.

**(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 safe conditions, profitability and economic efficiency 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 view to 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 caloric energy for heating and preparing hot water for consumption is made through the caloric energy system of the Municipality of Timisoara which is part of the technical- municipal infrastructure of the town, The City Council of Timisoara Municipality provides to the Company the heating system needed for accomplishing services of general economic interest through concession contract.

**(49)** Regarding the above presented facts, S.C. COLTERM S.A. TIMISOARA 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 Timisoara 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. COLTERM S.A. TIMISOARA, , is entrusted by licenses with the discharging of a service of general economic interest.

#### **3.4. The condition from para. 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 are usually set up in advance.

#### **3.5. The condition 3.2. c):**

(53) The condition 3.2. c) stipulates that the compensation's level shouldn't exceed the costs enforced by the performance of the service of general economic interest.

(54) On Table no.5 it can be noticed that the sums received by S.C. COLTERM S.A. TIMISOARA representing subventions, with a total amount of ROL 2,535,720,030 thousands, did not cover the entire difference between the national reference price and the local price for delivering the thermal energy.

(55) Moreover, from the information on Table no. 6 it arises that, during the analyzed period, S.C. COLTERM S.A. TIMISOARA registered losses in total amount of ROL 827,456,000 thousands, caused by the difference existing between the local delivery price set by ANRE for thermal energy and the real cost for its producing and delivery.

(56) The measures of financial support from which the company benefits between 2001-2005, are in a total amount of ROL 3,194,174,030 thousands , out of which:

- ROL 2,535,720,030 thousands had been used exclusively in order to cover the difference between the reference national price and the local price for delivering thermal energy, both set by ANRE (table no. 5);
- ROL 635,184,000 thousands represent the total amount of the loans guaranteed by the state;
- ROL 23,270,000 thousands represent the value of the budgetary allocations for investments.

(57) The subventions granted to the company in amount of ROL 2,535,720,030 thousands cover the difference between the reference national price and the local delivery price, both of them regulated by ANRE, and the loans guaranteed by the state and the budgetary allocations in a total amount of ROL 658,454,000 thousands, cover partially the losses resulted from costs higher than the local delivery price, amount of ROL 827,456,000 thousands (see tables no.5 and no.6).

(58) The Competition Council found out that the financial support granted to the company did not surpass the total costs enforced by the performance of the public service.

(59) The Competition Council considers that the financial support granted to S.C. COLTERM S.A. TIMISOARA, during 2001-2005, represents a compensation for the costs related to the performance of the public service of general economic interest for the production, transport, distribution and supplying of the thermal energy in Timisoara city.

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

(60) The entrusting of the public service of general economic interest of producing thermal energy to S.C. COLTERM S.A. TIMISOARA was not realised by public tender.

(61) The public service to produce heating energy was entrusted to S.C. COLTERM S.A. TIMISOARA 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 to 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. COLTERM S.A. TIMISOARA, 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 2001-2003 were notified after their granting so they represent illegal state aid, according to the art. 3<sup>1</sup> in the Law no. 143/1999 on the state aid, with the subsequent modifications and completions (see par. no. 22).

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

(64) The state aid for S.C. COLTERM S.A. TIMISOARA 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, as well as the budgetary allocations.

(65) The state aid under the form of subsidies, for the period 2001-2005, amounts of ROL 2,535,720,030 thousand and state aid as budgetary allocations represents ROL 23,270,000 thousands. 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 the period 2002 – 2005, is equal to the value of the external credits contracted, respectively ROL 635,184,000 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 may be the case where the guarantee is given ex-post related to a loan, in this case the guarantee can be a state aid for the lender.

(68) The guarantees granted by the Ministry of Public Finances, for 2002- 2005, for the contracted credits, represent an ex-ante condition for entering into force of these credits, The guarantees were issued before using any money from this credit. The guarantees were not granted for an existing loan. The guarantees have not been granted for an existent loan before its granting by the state.

(69) The Government Decisions approving the state guarantees for external credits which are to be contracted by the company, are established the maximum credit values which are to be guaranteed (together with the interests and afferent commissions), the purpose of the credit and the guarant (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 credits (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 guarantees do not give any advantage to the lender but only to the borrower S.C. COLTERM S.A. TIMISOARA.

(73) The total amount of the state aid granted to S.C. COLTERM S.A. TIMISOARA during 2001- 2005, is of ROL 3,184,174,030 thousand, according to Table no. 7.

**Table no 7 –The state aid received by the company during 2001-2005**

-ROL thousands-

<b>The nature of state aid</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Total</b>
Subsidy granted to the company	161,745,572	272,447,880	610,686,741	787,667,457	703,172,380	<b>2,535,720,030</b>
the state guarantees	-	404,208,000	-	230,976,000	-	<b>635,184,000</b>
Budgetary allocations	-	18,400,000	-	4,870,000		<b>23,270,000</b>
<b>Total</b>	<b>161,745,572</b>	<b>695,055,880</b>	<b>610,686,741</b>	<b>1,023,513,457</b>	<b>703,172,380</b>	<b>3,194,174,030</b>

Source: Supplementary 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 service of general economic interest and this to be clearly defined;
- the compensation level should not exceed what is necessary to discharge the service of general economic interest, taking into account the relevant revenues arising from its performance and a reasonable profit which outcomes from the operation of these obligations.

(76) As the conditions provided by point 3.3. S.C. COLTERM S.A. TIMISOARA operates a service of general economic essential for the population, institutions and undertakings and that is clearly defined by license.

(77) S.C. COLTERM S.A. TIMISOARA operates its production, distribution and supplying services on the basis of ANRE licenses no. 597/2004, 598/2004, 599/2004. The licenses, together 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. COLTERM S.A. TIMISOARA 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 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.

(79) Therefore, one can conclude that the state aid granted to S.C. COLTERM S.A. TIMISOARA, for the period 2001- 2005, does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort of the public service of production, transport, distribution and supply of heating energy within Timisoara city.

#### **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 Timisoara city area, S.C. COLTERM S.A. TIMISOARA is the only operator on the market. The company is not involved in export activities. Under these circumstances, it is considered that the trade with the Member States is not unduly affected.

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

(81) The state aid granted to S.C. COLTERM S.A. TIMISOARA under the form of subsidies for covering the difference between the national reference price and the local delivery price, under the form of guarantees granted by the state for external credits contracted by the company as well as under the form of budgetary allocations 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 para. 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.C. COLTERM S.A. TIMISOARA, 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. COLTERM S.A. TIMISOARA amounting to ROL 3,194,174,030 thousand, from which ROL 1,467,488,193 thousand is state aids received in the period 2001- 2003, and ROL 1,726,685,837 thousand represents state aid to be granted in the period 2004 – 2005 by the Ministry of Public Finance, is compatible with normal competition environment.

### **DECIDES**

**Art.1.** The measures of financial support granted during 2001-2005 to S.C. COLTERM S.A. TIMISOARA constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid, published in the Official Gazette, 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 par. 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. COLTERM S.A. TIMISOARA 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. COLTERM S.A. TIMISOARA 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. COLTERM S.A. TIMISOARA, Episcop Joseph Lonovici Street no.4, Timisoara, cod 300092, jud Timis.

**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**