

**DECISION No. 5**

**Of 14.01.2005**

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

**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**

- (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. UZINA TERMICA S.A. Calafat.
- (2) The notification became effective on the date the information were complete, namely on 21.12.2004.

## 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. UZINA TERMICA S.A. CALAFAT
- (4) The company was established based on the GD no. 1088/2001, as a result of the re-organizing of SC Termoelectrica SA, namely by spinning off Uzina Electrice Zalau from the Subsidiary Electrocentrale Oradea (which is subsidiary of SC Termoelectrica SA).
- (5) The shareholders' equity of S.C. UZINA TERMICA S.A. CALAFAT is ROL 105,735,283,000 entirely held by Calafat Local Council.
- (6) The company is headquartered in Calafat and registered at the Trade Registry under no. J16/18/2002.
- (7) The financial and economic results based on the balance sheets of the last 3 years are presented in table no. 1.

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

-ROL thousand -

| Indicators  | 2001        | 2002        | 2003        |
|-------------|-------------|-------------|-------------|
| Turnover    | 10,178,116  | 33,202,378  | 40,398,693  |
| Profit/loss | -96,854,363 | -40,679,137 | -31,207,506 |

Source: Notification form

Data presented in the table above shows the undertaking incurred losses in 2001 – 2003.

(8) According to GD no. 1088/2001 on S.C. UZINA TERMICA S.A. CALAFAT S.A. establishment, the company's main line of business is the production, transport and distribution of caloric energy as hot water for the preparation of domestic hot water and for heating. In accordance with art. 2 from the Law of public services for communal management no. 326/2001 establishing the legal framework regarding the establishment, organization, monitoring and supervision of the functioning of public services for communal management in counties, towns and villages, the public services of of communal management represent all activities and utility actions of local interest carried out under the authority of the local public administration having as purpose the supply of public utility services.

By licenses granted by the National Regulatory Agency in the field of Communal Services (from now on, ANRSC) the company was entrusted with the performance of public services of caloric energy production, transport, distribution and supply, designated for the population, institutions and undertakings.

- (9) The obligations of S.C. UZINA TERMICA S.A. CALAFAT S.A as 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.
- (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 caloric energy for the heating and consumer hot water preparation is achieved through the urban thermal system of the city of Calafat, entrusted for management to the undertaking by the Local Council of Calafat, by concession agreement.
- (12) In order to carry out its activity, S.C. UZINA TERMICA S.A. CALAFAT owns of the following equipments and installations:
- **For the production of caloric energy:**
- This is achieved through the use of the following equipments:
- for hot water: boilers of different types and dimensions.
- **For the transport of caloric energy:**
- A thermo network is operated and maintained covering the way from the thermo-plant to neighborhood thermo-units and undertakings.
- **For the distribution of caloric energy:**
- It is achieved through the thermal units and related secondary networks.
- (13) S.C. UZINA TERMICA S.A. CALAFAT S.A. has the following production capabilities for caloric energy: hot water boilers with a power of 50 GCal/h, turbines with a power of 30To/h, heating boilers with a power of 4To/h.
- (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 caloric energy as hot water. This service has certain characteristics implying the operation of the company in a state regulated framework, from this deriving certain obligations which, 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. UZINA TERMICA S.A. CALAFAT activates on the market of caloric energy production and supply, being designed only for the supply of caloric energy, without

producing electric energy in cogeneration. The company produces and supplies caloric energy aimed at heating and ensuring of hot water for household consumers as well as undertakings.

- (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, mainly for the winter periods.
- (17) The caloric energy market is a regulated market, the prices for caloric energy being set by ANRE, both for household consumers as well as industrial consumers, by Government decisions. These consumers are captive consumers as they don't have the possibility to choose their caloric energy supplier.
- (18) The services of caloric 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 Calafat city, therefore is a market of local interest.
- (20) S.C. UZINA TERMICA S.A. CALAFAT is the sole producer and supplier of caloric energy in the area it serves. From the total caloric energy produced by the company, 80% is sold to the population and 20% is sold to undertakings and budgetary institutions.

### **2.3. Financial support measures to be granted to S.C. UZINA TERMICA S.A. CALAFAT**

- (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 500,000, respectively ROL 14,436,000 thousand;
  - the subsidy to be granted by the state in 2004, through the local budget of the Calafat Local Council, in amount of ROL 25,188,423 thousand;
  - the subsidy to be granted by the state in 2005, through the local budget of the Calafat Local Council, in amount of ROL 43,274,140 thousand.

### **2.4. The financial support measures previously granted by the State**

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

*Table no. 2 – Financial support received by the company during 2002 – 2003*

| -ROL thousand -               |      |      |       |
|-------------------------------|------|------|-------|
| The type of financial support | 2002 | 2003 | Total |

|   |                   |                   |                    |
|---|-------------------|-------------------|--------------------|
| Subsidies granted to the company        | 18,241,950        | 24,910,922        | <b>43,152,872</b>  |
| Credits contracted with State guarantee | 57,144,000        | -                 | <b>57,144,000</b>  |
| <b>Total</b>                            | <b>75,385,950</b> | <b>24,910,922</b> | <b>100,296,872</b> |

Source: Notification form

The subsidies the company benefited of during 2002 - 2003 were granted for the coverage of tariff differences for the caloric energy delivered to the population.

The guarantees granted by the State, through the Ministry of Public Finance were designed to finance the credits necessary for financing crude oil, black oil, natural gas and energetical coal imports, for the winter period, based on the GD no. 1006/2002 for the winter 2002-2003.

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

(23) The public service of caloric energy production and delivery to the captive consumers, entrusted to the company, is regulated by ANRE. In order to perform the public service, the company registers costs with raw materials (fuels), materials, personnel, environmental, repairing and investments, 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. UZINA TERMICA S.A. CALAFAT carries out only caloric 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 – 2003, had the following economic-financial results derived from discharging the service of general economic interest:

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

| Indicators         | 2002       | 2003       | 2004 (first half) |
|--------------------|------------|------------|-------------------|
| Operating revenues | 33,227,137 | 21,559,518 | 34,342,061        |
| Operating expenses | 73,873,849 | 42,578,815 | 53,969,038        |

|        |            |            |            |
|--------|------------|------------|------------|
| Losses | 40,646,712 | 21,019,297 | 19,626,977 |
|--------|------------|------------|------------|

Source: Supplemental information

It is to be noted that during the entire analyzed period the undertaking incurred losses from discharging the service of general economic interest.

## 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

(26) The national reference price was established by EGO no.162/1999 for caloric 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 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.

(28) The national reference price is established to realize the equilibrium between the population's buying power and the State budget's possibility to grant subsidies. As far as the social dimension is concerned, the justification of this price takes into account the proportion held by the caloric energy cost within 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 electric energy's price, the modifying of the consumer price index, the modification of the exchange rate (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;<br>- GD no. 340/.03.04.2002<br>- 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<br>600,000<br>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 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. This way, the undertaking has the obligation to present to ANRE, at the end of each year, the justifying documents from which to come forth the real costs related to the public service performed in that year and the quantities of caloric energy produced and sold each month.
- (32) The 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 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;
  - 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 caloric 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 than the caloric energy's local delivery price established for S.C. UZINA TERMICA S.A. CALAFAT. In order to cover the difference between them, the company receives, in accordance with EGO no.162/1999, subsidies in amount of ROL 111,615,435 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                  | Local delivery price with VAT for the population | Reference price with VAT | The difference between the local delivery price with VAT and the reference price | Legal ground for the reference price | Quantity delivered to the population | Total difference between the local delivery price with VAT and the reference price | Subsidy's value    |
|-------------------------|--|--------------------------|--|--------------------------------------|--------------------------------------|--|--------------------|
|                         | ROL/Gcal   | ROL/Gcal                 | ROL/Gcal   |                                      | Gcal                                 | Thousand ROL   | Thousand ROL       |
| 1                       | 2  | 3                        | 4=3-2  | 5                                    | 6                                    | 7=4*6  | 8                  |
| total 2002              | 2,291,940  | 800,000                  | 1,491,940  | GD686/2002                           | 12,227                               | 18,241,950   | 18,241,950         |
| total 2003              | 2,291,940  | 800,000                  | 1,491,940  | GD686/2002                           | 16,697                               | 24,910,922   | 24,910,922         |
| total 2004              | 2,291,940  | 800,000                  | 1,491,940  | GD1155/2004                          | 16,883                               | 25,188,423   | 25,188,423         |
| total forecast for 2005 | 2,291,940  | 896,000                  | 1,395,940  | GD1155/2004                          | 31,000                               | 43,274,140   | 43,274,140         |
| <b>Total</b>            |  |                          |  |                                      | <b>78,798</b>                        | <b>111,615,435</b>   | <b>111,615,435</b> |

*Souce: supplemental information*

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

### 2.5.2 Costs higher than the local delivery price for caloric energy

(37) When analyzing the measures of support for S.C. UZINA TERMICA S.A. CALAFAT, 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 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%. This increase is considered when adjusting 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. UZINA TERMICA S.A. CALAFAT are due mainly to the following causes:

- the supply of caloric energy takes place only in the cold season which is why the fixed costs have a negative influence in the total cost of the Gcal;
- technological fuel, raw materials and materials are purchased at comparable with those operated with in the European Union. In turn, caloric energy is sold on the local market at a price agreed by ANRE which is lower than the average price operated with in the European Union;.
- in the price structure approved by ANRE isn't enclosed the development quota for modernizing the technological equipments the company works with. This way, the company makes investments, repairs and other upgrades in the energetic system which it operates, but these expenses are not always reflected in the local delivery price of caloric energy;
- the proportion of technological fuel's costs in the price structure is very high (approx. 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 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;

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

Table no. 6 – *Evolution of the difference between the local delivery price established by ANRE and the cost of the caloric energy and of the losses caused by this difference for hot water*

| PERIOD | Difference between the price settled by ANRE and cost |              | QUANTITY DELIVERED |            |  | LOSSES CAUSED BY FAILURE TO COVER THE COST |
|--------|---|--------------|--------------------|------------|--|--|
|        | POPULATION  | UNDERTAKINGS | TOTAL              | Of which:  |  |  |
|        |   |              |                    | POPULATION |  |  |

|              | ROL/Gcal  | ROL/Gcal  | Gcal   | Gcal   | Gcal  | Thousand ROL       |
|--------------|-----------|-----------|--------|--------|-------|--------------------|
| 1            | 2         | 3         | 4      | 5      | 6     | 7                  |
| 2001         | 3,500,130 | 3,500,130 | 27,673 | 22,169 | 5,504 | 96,859,144         |
| 2002         | 1,814,890 | 1,814,890 | 14,861 | 12,227 | 2,634 | 40,646,712         |
| 2003         | 1,574,940 | 1,574,940 | 19,815 | 16,697 | 3,118 | 21,019,297         |
| 2004         | 120,000   | 120,000   | 19,043 | 16,883 | 2,160 | 30,000,000         |
| 2005         | 60,600    | 60,600    | 33,000 | 30,000 | 3,000 | 20,000,000         |
| <b>Total</b> |           |           |        |        |       | <b>208,525,153</b> |

*Source:supplemental information*

As it can be seen, during the assessed period, the exploiting costs for the service of producing and delivering caloric energy is higher than its local delivery price, established by ANRE. As a result, the difference between the real cost of the service of general public interest and the local delivery price of the caloric energy leads to a loss of ROL 208,525,153 thousand, related to the activity of performing the service.

### **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 183,195,435 thousand. These measures are analyzed in the context of meeting the obligations of public service of general economic interest by S.C. UZINA TERMICA S.A. CALAFAT

#### **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 par. 3.2. a)**

**(43)** S.C. UZINA TERMICA S.A. CALAFAT is entrusted with the production, transport, distribution and supply of caloric energy for the population, institutions and undertakings, under the ANRE licenses no. 540/2002, 541/2002 and 542/2002. 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 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 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 caloric energy which is produced in a centralized system is a public utility service.

**(45)** 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.

**(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 caloric energy for heating and preparing hot water for consumption is made through the caloric energy system of the Municipality of Calafat which is part of the technical- municipal infrastructure of the town. The City Council of Calafat 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. UZINA TERMICA S.A. CALAFAT 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 Calafat 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. UZINA TERMICA S.A. CALAFAT, by licenses, is entrusted 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. UZINA TERMICA S.A. CALAFAT as subsidies, in amount of ROL 111,615,435 thousand, do not cover the difference between the national reference price and the local delivery price for the caloric energy.

(55) Furthermore, from the data in Table no.6 it can be seen that during the analyzed period S.C. UZINA TERMICA S.A. CALAFAT registered a total loss of ROL 208,525,153 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 183,195,435 thousand, from which:

- ROL 111,615,435 thousand were exclusively used to cover the difference between the national reference price and the local delivery price (table no.5);
- ROL 71,580,000 thousand the value of the credits contracted with the state's guarantee;

(57) Taking into account the losses of ROL 208,525,153 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 111,615,435 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 71.580.000 thousand cover only a part of the losses registered by the company amounting ROL 208,525,153.

(58) The Competition Council finds out that the financial support granted to the company does not exceed the total costs incurred from the performing of the public service.

(59) The Competition Council considers that the state aid granted to S.C. UZINA TERMICA S.A. CALAFAT during 2002-2005 represents a compensation for the costs related to the performing of the public service of general economic interest for the production, transport, delivery and supply of caloric energy in the city of Calafat.

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

(60) S.C. UZINA ELECTRICA ZALAU S.A 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. UZINA TERMICA S.A. CALAFAT 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. UZINA TERMICA S.A. CALAFAT, 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 being granted so they represent unlawful 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 para. no.22).

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

(64) The state aid for S.C. UZINA TERMICA S.A. CALAFAT 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 2002 – 2005.

(65) The state aid under the form of subsidies, for the period 2002-2005, amounts ROL 111.615.435 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 the period 2002 – 2005, is equal to the value of the external credits contracted, respectively ROL 71,580,000 thousand.

(66) Point 1.1. in the Guidelines on the state aid under the form of guarantees stipulates that usually the beneficiary of a 100% guarantee is the borrower because it enables the latter – as

has been demonstrated above – to obtain 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 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 before the issuance of the guarantees.

(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 guarantor (Ministry of Public Finances). Based on these G.D.s, the company established in advance with Ministry of Public Finances the credit parameters (the granting period/maturity, the grace period, withdrawal period and the way of reimbursement). Thereafter, standard offer requests were issued addressed to 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. UZINA TERMICA S.A. CALAFAT.

(73) Thus, the total value of the state aid granted to S.C. UZINA TERMICA S.A. CALAFAT during 2002 – 2005 amounts ROL 183,195,435 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              | 2002       | 2003       | 2004       | 2005       | Total              |
| Subsidy granted to the company | 18,241,950 | 24,910,922 | 25,188,423 | 43,274,140 | <b>111,615,435</b> |
| Credits contracted with        | 57,144,000 | -          | 14,436,000 | -          | <b>71,580,000</b>  |

|                       |                   |                   |                   |                   |                    |
|-----------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| the state's guarantee |                   |                   |                   |                   |                    |
| <b>Total</b>          | <b>75,385,950</b> | <b>24,910,922</b> | <b>39,624,423</b> | <b>43,274,140</b> | <b>183,195,435</b> |

Source: Supplemental information

#### 4. Compatibility of the State 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. UZINA TERMICA S.A. CALAFAT 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. UZINA TERMICA S.A. CALAFAT operates its service is under the public ANRE licenses no. 540/2002, 541/2002, 542/2002. 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. UZINA TERMICA S.A. CALAFAT. has been officially entrusted with the public service that it discharges.

(78) Also, from the assessment under point 3.5. above, 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.

(79) Therefore, one can conclude that the state aid granted S.C. UZINA TERMICA S.A. CALAFAT, for the period 2002-2005, 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 caloric energy within the city of Calafat.

##### 4.2. No unduly affect of trade between Romania and 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 Calafat. S.C. UZINA TERMICA S.A. CALAFAT. 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. UZINA TERMICA S.A. CALAFAT under the form of subsidies for covering 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 2002- 2005, 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. CALAFAT, 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. UZINA TERMICA S.A. CALAFAT amounting to ROL 183,195,435 thousand, from which ROL 100,296,872 thousand is state aids received in the period 2002- 2003, and ROL 82,898,563 thousand is state aid to be granted in 2004-2005 by the Ministry of Public Finance, is compatible with the normal competition environment.

### **DECIDES**

**Art. 1.** The measures of financial support granted during 2002-2005 to S.C. UZINA TERMICA S.A. CALAFAT 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*, is authorized the state aid for S.C. UZINA TERMICA S.A. CALAFAT 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. UZINA TERMICA S.A. CALAFAT., 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. UZINA TERMICA S.A. CALAFAT, Strada Termocentralei, nr. 1, Calafat, jud. Dolj.

**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**