

Decision of the Competition Council

DECISION No. 8

Of 21.01.2005

concerning the notification of the Ministry of Public Finance regarding the financial support for S.C. TERMON S.R.L. ONESTI

THE COMPETITION COUNCIL,

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

Based on the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, amended and completed by Emergency Government Ordinance no. 121/2003 approved by the Law no. 184/2004;

Based on the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3rd August 1999, amended and completed by Law no. 603/2003 and by Government Ordinance no. 94/2004 on regulating some financial measures, approved with amendments and completions by the Law no. 507/2004,

Taking into account the provisions of European Agreement establishing an association between Romania, and European Communities on one side and the Member States of those, on the other side, approved by Law no. 20/1993, published in Official Journal of Romania, Part I, no. 73 on 12 April 1993;

Taking into account the provisions of the Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest.

On the following grounds,

1. PROCEDURE

- (1) By the note no. 109528/08.12.2004 registered at the Competition Council with the no. RS-AS 105/13.12.2004, the Ministry of Public Finance notified to the Competition

Council under Art. 6 of *Law 143/1999 on state aid, with subsequent amendments and completions*, the financial support for S.C. TERMON S.R.L. ONESTI .

- (2) The notification became effective on the date the information were complete, namely on 07.01.2005.

2. DESCRIPTION OF THE FINANCIAL SUPPORT

2.1. The beneficiary of state support measure

- (3) The beneficiary of the notified state measure of support is S.C. TERMON S.R.L. ONESTI.

- (4) The company was established in 2002, according to the Local Council's Decision no. 34/2002, issued in order to enforce the GD no. 104/2002.

- (5) The company is headquartered in Onesti and registered at the Trade Registry under no. J/04/507/2002.

- (6) The registered capital of the S.C. TERMON S.R.L. ONESTI is ROL 45,860,900 is owned in totality by the Local Council of Onesti City.

- (7) The financial and economic results, based on the balance sheets of the last 2 years are presented in table no. 1.

Table no. 1 – *Financial and economic situation of the company in the period 2002-2003*

Indexes	-thousand ROL-	
	2002	2003
Total turnover	211,247,533	406,542,212
Profit/loss	-34,838,805	-37,039,018

Source: Notification form

Data presented in the table above shows the undertaking incurred losses in 2002 – 2003.

- (8) According to the GD no. 104/2002 on S.C. TERMON S.R.L. ONESTI's establishment, the company's main line of business are the production, transport and distribution of heating and electricity. 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 Energy field (named from now on ANRE) the company was entrusted with the performance of public services of caloric and electricity production, transport, distribution and supply of the electricity and heating,

designated for the population, institutions and undertakings. According to art 16 align. (1) in the Law of Electricity 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) S.C. TERMON S.R.L. ONESTI’s obligations as heating and electricity producer are, according to art. 30 in the Law of Electricity no. 318/2003, the following:

- To insure the electricity deliveries, respectively heating produced in co-generation and the system technological services, with the fulfillment of the criteria imposed by licenses, contract clauses and regulations in force;
- To offer in indiscriminating conditions the whole available electrical power, as well as system technological services;
- To maintain a stock of fuel at a sufficient level or, after case, a sufficient water supply, in order to carry on the obligations to continuously produce and supply electrical and heating as provisioned by the regulations in force;
- To comply from an operational point of view with the transport and system operator’s demands and to establish, after case, its own operative management positions.

(10) The production of energy represents 55% of the total activity of the company, the difference being the production and supply of the electricity. The delivered products are the following:

- Heating as hot water for the warm water for domestic use and for heating, designated for the population, institutions and undertakings;
- Technological steam;
- Electricity of low voltage;
- Electricity of medium voltage.

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

(12) In order to carry on its activity, S.C. TERMON S.R.L. ONESTI owns of the following equipments and installations:

- **For the production of heating:**

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

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

- **For the transport of heating:**

- 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:**

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

(13) S.C. TERMON S.R.L. ONESTI has the following production capabilities for heating: hot water boilers with a power between 15 and 50 Gcal/h, turbines with a power between 50 and 60 MW. These installations as well as the related transport and distribution network have a high usage degree, which generates losses in the network.

(14) Taking into consideration the above mentioned in para. 8 and 9, the company delivers two services of public interest, respectively the production, transport and distribution of the heating in the form of hot water and the production, transport and distribution of electricity. These two services have some characteristics which implies the functioning of the company in a state regulated framework; the obligations resulting from this system could not otherwise be undertaken by the company in normal market conditions, with regard to its own interest.

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

(15) The company operates on the market of caloric energy production and supply and on the market of electrical energy production and supply. The market affected by the financial support's granting, assessed in the present decision, is the market of the production, delivery, transport and supply services for the heating and hot water designated to the population and undertakings, as the and notified measure by the Ministry of Public Finance aims to insure the fuel necessary for the production and supply of heating designated for heating and insuring the hot water for the population and the undertakings. These services represent 55% from S.C. TERMON S.R.L. ONESTI's total activity.

(16) The market of the production, delivery, transport and supply services for the heating and hot water designated to the population and undertakings is a regulated market the prices for heating being set by ANRE, both for household consumers as well as undertakings and the company is obliged to supply heating to all the consumers connected to the network, without discrimination. Therefore, these consumers are all captive consumers as they don't have the possibility to choose their heating supplier.

(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 undertakings, by Government decisions.

(18) The services of caloric energy production and supply function in a 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 Onesti city, therefore is a market of local interest.

(20) S.C. TERMON S.R.L. ONESTI is the sole producer and supplier of heating in the area it serves. From the total heating energy produced, 99% represents heating energy sold to the population and 1% to the undertakings.

2.3. Financial support measures to be granted to S.C. TERMON S.R.L. ONESTI

(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 5,000,000, respectively ROL 144,360,000 thousand;
- the subsidy to be granted by the state in 2004, through the local budget of the Resita County, in amount of ROL 41,767,855 thousand;
- the subsidy to be granted by the state in 2005, through the local budget of the Resita County, in amount of ROL 42,293,664 thousand.

2.4. The financial support measures previously granted by the State

(22) According to the data presented in the notification, S.C. TERMON S.R.L. ONESTI benefited until now by financial support measures, as it follows:

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

-thousand ROL-			
The type of financial support	2002	2003	Total
Subsidies granted to the company	11,477,285	40,158,772	51,636,057
Credits contracted with State guarantee	230,976,000	144,360,000	375,336,000
Total	242,453,285	184,518,772	426,972,057

Source: the notification form

The subsidies the company benefited of during 2002 - 2003 were granted for the coverage of tariff differences for the heating delivered to the population. The guarantees granted by the State, through the Ministry of Public Finance were designated for the contracting of credits necessary for financing crude oil, black oil, natural gases and energetical coal imports, for the winter period, based on the GD no. 1006/2002 for the winter 2002-2003, respectively GD no. 1145/2003 for the winter 2003-2004.

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

(23) The public service of heating production and delivery to the captive consumers, entrusted to the company, is regulated by ANRE. In order to perform the public service, the company registers costs with raw materials (fuels), materials, personnel, environment, repairing and investments, contouring costs and others.

(24) According to the provisions of art. 20 para 5 of the Law no. 326/2001 on public services for communal husbandry the undertakings which deliver services of public interest must keep control accountability where the company's activities are being registered separately, so as their activities are easily evaluated, monitored and controlled. S.C. TERMON S.R.L. ONESTI keeps a management accounting (as base for the management decisions) where the company's activities registered separately. Thus, the activity of heating production and supply towards the captive consumers, which represents the public service obligation, is presented separately from its other activities.

(25) Between 2002 – 2003, the economical-financial result of public interest service of S.C. TERMON S.R.L. ONESTI are the following:

Table no.3 *The main economical-financial indicators for the delivering of public interest service of S.C. TERMON S.R.L. ONESTI*

-ROL thousand

Ratios	2002	2003	2004	2005
Incomes	266,756,763	127,891,329	114,406,705	132,845,840
Expenses	90,232,244	143,662,541	743,468,763	220,196,053
Profit/Loses	176,524,519	-15,771,212	-629,062,058	-87,350,213

Source: supplementary information

It can be noticed that the company is registering loses from the delivery of public interest service.

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

2.6.1. The national reference price

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

(27) The level of the national reference price for heating 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 populations is buying power and the State budget's possibility to grant subsidies. As far as the social dimension is concerned, in funding this price is taken into account the proportion held by the heating 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 2002 - 2004 was the following:

Table no. 4 *The evolution of the national reference price for the heating*

	2002	2003	2004
The normative act for establishing the national reference price	- 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)	575,000 600,000 800,000	800,000	896,000

Source: The national legislation in force

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

2.6.2. The local delivery price for the heating

(31) The local delivery price for heating 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 heating 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 heating 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 heating (separate sources and/or co-generation);
- estimating the quantities delivered to the final customers, based on the undertaking's accomplishments in the previous year, taking into account the losses in the transport network and the quantities produced as well as the power plants' own consumption;
- allocating the costs with technological fuel;
- allocation of direct costs, exclusively those with the fuel, on activities/services and production sources;
- allocating the indirect costs and the general management costs, on services, proportionally with the value of the direct costs, exclusively the fuel;
- establishing the total costs for producing heating under the form of hot water;
- 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) 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 2002-2005, the national reference price was lower then the heading's local delivery price established for S.C. TERMON S.R.L. ONESTI. In order to cover the difference between them, the company receives, in accordance with EGO no..162/1999, subsidies in amount of ROL 135,697,576 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
1	2	3	4=3-2	5	6	7=4*6	8
2002	1,091,825	800,000	291,825	HG 686/2002	39,329.342	11,477,285	11,477,285
2003	1,091,825	800,000	291,825	HG 686/2002	64,561.469	18,840,651	40,158,772
	1,154,181	800,000	354,181	HG 686/2002	14,602.792	5,172,031	
	1,304,240	800,000	504,240	HG 686/2002	32,020.895	16,146,216	
2004	1,304,240	800,000	504,240	HG 686/2002	64,072.521	32,307,928	41,767,855
	1,304,240	896,000	408,240	HG 1155/2004	23,172.464	9,459,927	
total forecast for 2005	1,304,240	896,000	408,240	HG 1155/2004	103,600.000	42,293,664	42,293,664
Total general					341,359.483	135,697,702	135,697,576

Source: Supplementary information

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

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

(37) When analyzing the measures of support for S.C. TERMON S.R.L. ONESTI, one must also consider that, for the services of production and supply of heating, the company registers costs higher than the local price for supplying heating 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 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 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. TERMON S.R.L. ONESTI are due mainly to the following causes:

- technological fuel, raw materials and materials are purchased at comparable with those operated with in the European Union. In turn, heating 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 heating;
- the proportion of technological fuel's costs in the price structure is very high and changes to the fuel price were made on a quarterly basis, in a 5% quota/quarter;
- the population pays a national reference price, approved by Government Decision and established mainly according to the purchasing power of the population, the difference between this and the production and distribution costs of thermal energy being subsidized. This subsidy hardly reaches the producer, because the Local Council budget which ensures a significant percentage of it 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. Thus, a proportion of the cost cannot be covered by subsidy.

(40) The losses due to the differences between the local delivery price established by ANRE and the real cost of heating production –for the hot water- are shown in table no. 6.

Table no. 6 – *The losses due to the delivery of public interest service*

ROL thousand					
Ratio	2002	2003	2004	2005	TOTAL
Profit/Loses	176,524,519	-15,771,212	-629,062,058	-87,350,213	-555,658,964

Source: Supplementary information

As it can be seen, during the assessed period, due to the fact that the exploiting costs for the service of producing and delivering heating is higher than its local delivery price, established by ANRE, the company register loses. In addition, in 2004, the state imposed the company the obligation to continuously supply caloric energy to the population, even the company partially collected from the population the countervalue of performed public service. Consequently, the total sum of the company's losses related to the activity of performing the public service is in amount of ROL 555,658,964 thousands.

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 (22) and (22), amounting ROL 655,393,576 thousand. These measures are analyzed in the context of meeting the obligations of public service of general economic interest by S.C. TERMON S.R.L. ONESTI.

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. TERMON S.R.L. ONESTI is entrusted with the production, transport, distribution and supply of heating for the population, institutions and undertakings, under

the ANRE licenses no. 1541/2002, 1542/2002 and 1543/2002. In the licenses are mentioned, among other things, the obligations specific for the undertakings performing a service of general economic interest, namely: continuity in supplying heating, ensuring access to heating networks for new customers, achieving performance standards. Also, by EGO no.162/1999, producers and suppliers of thermal energy are under the obligation to sell thermal energy to the population at a fixed price which regularly is lower than the costs incurred by the discharge of the service (national reference price).

(44) According to the *Law on town management no. 326/2001*, the supply of heating which is centralized produced is a public use 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 heating for heating and preparing hot water for consumption is made through the heating system of the Municipality of Onesti which is part of the technical- municipal infrastructure of the town. The City Council of Onesti 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. TERMON S.R.L. ONESTI is under the obligation to ensure the effective functioning of services relating to the production,

transport, distribution and supply of heating that are essential for the population, institutions and undertakings of Onesti 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. TERMON S.R.L. ONESTI, 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. TERMON S.R.L. ONESTI as subsidies, in amount of ROL 135,697,576 thousand, covers the

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

(55) Furthermore, from the data in Table no.6 it can be seen that during the analyzed period S.C. TERMON S.R.L. ONESTI registered a total loss of ROL 555,658,964 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 to ROL 655,393,576 thousand, from which:

- ROL 135,697,576 thousand were exclusively used to cover the difference between the national reference price and the local delivery price (table no.5);
- ROL 519,696,000 thousand - the value of the credits contracted with the state's guarantee.

(57) The subsidies granted to the company amount ROL 135,697,576 thousand, cover the difference between the national reference price and the local delivery price, both established by ANRE, and the credits guaranteed by the State, in amount of ROL 519,696,000 thousand, cover only a part of the losses registered by the company due to the cost higher than the local delivery price, amounting to ROL 555,658,964 thousand (see table 5 and 6).

(58) The Competition Council finds out that the financial support granted to the company doesn't 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. TERMON S.R.L. ONESTI 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 heating in the city of Onesti.

3.6. Condition in 3.2. d) :

(60) S.C. TERMON S.R.L. ONESTI 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. TERMON S.R.L. ONESTI 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 is 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. TERMON S.R.L. ONESTI, notified by the Ministry of Public Finance, constitute state aid for the purposes of *art. 2 of Law 143/1999 on State aid, with subsequent modifications and completions* and of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.

(63) The facilities granted to the company during 2002-2003 were notified after their granting so they represent illegal state aid, according to the art. 3¹ in the Law no. 143/1999 on the state aid, with the subsequent modifications and completions (see para. no.23).

3.7. Assessment of the state aid

(64) The state aid for S.C. TERMON S.R.L. ONESTI 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 in the form of exemption from payment of interests and penalties for the fiscal obligations.

(65) The state aid under the form of subsidies, for the period 2002-2005, amounts ROL 135,697,576 thousand. As the credits are obtained 100% with the State's guarantee and the company registers losses, 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 519,696,000 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 to obtain a loan that would not otherwise obtain without this guarantee.

(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 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.

(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 guarantant (Ministry of Public Finances). Based on this GD'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 concludes that the state guarantees do not give any advantage to the lender but only to the borrower, S.C. TERMON S.R.L. ONESTI.

(73) The total amount of the state aid granted to S.C. TERMON S.R.L. ONESTI during 2002- 2005, is of ROL 655,393,576 thousand, according to Table no. 7.

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

-thousand ROL-

Type of state aid	2002	2003	2004	2005	Total
Subsidy granted to the company	11,477,285	40,158,772	41,767,855	42,293,664	135,697,576
Credits	230,976,000	144,360,000	144,360,000	-	519,696,000

contracted with the state's guarantee					
Total	242,453,285	184,518,772	186,127,855	42,293,664	655,393,576

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 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. TERMON S.R.L. ONESTI 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. TERMON S.R.L. ONESTI operates its service is under the public ANRE licenses no. 1541/2002, 1542/2002 and 1543/2002. 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. TERMON S.R.L. ONESTI 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. TERMON S.R.L. ONESTI, 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 heating energy within the city of Onesti.

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 Onesti Country territory S.C. TERMON S.R.L. ONESTI is the only operator. 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. TERMON S.R.L. ONESTI 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 (68), 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. TERMON S.R.L. ONESTI, 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. TERMON S.R.L. ONESTI amounting to ROL de 655,393,576 thousand, from which ROL 426,972,057 thousand is state aids received in the period 2002- 2003, and ROL 228,421,519 thousand is state aid will be granted between 2004-2005 by the Ministry of Public Finance, is compatible with normal competition environment.

DECIDES

Art. 1. The measures of financial support granted during 2002-2005 to S.C. TERMON S.R.L. ONESTI constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid, published in the Official Monitor, Part I, no. 370 on August the 3rd 1999, modified*

and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures, approved with modifications and completions by the Law no.507/2004.

Art. 2. The notified state aid represents a necessary compensation to achieve, under normal conditions of safety and continuity the service of general economic interest to produce, transport, distribute and supply heating energy, and this compensation does not affect the trade between Romania and the EU Member States in an unjustified way.

Art. 3. Pursuant to Art. 12 art. 2 (b) corroborated with Art. 14 par. 1 (j) of *Law 143/1999 regarding state aid with subsequent modifications and completions*, is authorized the state aid for S.C. TERMON S.R.L. ONESTI 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. TERMON S.R.L. ONESTI, 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 he interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

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

- The Ministry of Public Finance, Apolodor Street, no.17, sect. 5, Bucuresti;
- S.C. TERMON S.R.L. ONESTI, Fantanele Street, no. 16, Onesti, jud. Bacau.
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Art. 8 The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.

**MIHAI BERINDE
PRESIDENT**