

Decision of the Competition Council

DECISION No. 9 of 21.01.2005

concerning the notification of the Ministry of Public Finance regarding the financial support for S.C. ELECTROCENTRALE BUCURESTI S.A.

THE COMPETITION COUNCIL,

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

Based on the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, 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. 109501/02.12.2004, registered at the Competition Council with the no. RS-AS 102/04.12.2004, 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. Electrocentrale Bucuresti S.A.

(2) The notification became effective on the date the information were complete, namely on 30.12.2004.

2. DESCRIPTION OF THE FINANCIAL SUPPORT

2.1. The beneficiary of the state support measure

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

(4) S.C. Electrocentrale Bucuresti S.A. was established in accordance with the Romanian law, as a local interest commercial company, based on the GD no. 1524/2003, as a result of restructuring S.C. TERMOELECTRICA S.A.

(5) The shreholders' equity of S.C. Electrocentrale Bucuresti S.A. in total amount of ROL 3,090,077,300 thousand is entirely held by the Romanian State, represented by The Ministry of Economy and Commerce, being divided in a number of 30,900,773 shares, with a par value of ROL 100,000/share.

(6) The company is headquartered in Bucharest and registered with the Trade Registry under no J40/1696/2003, with the unique registering number R15189596.

(7) The company's financial and economic results, based on the balance sheets from the last 2 years, are presented in Table no. 1.

Table no. 1 – Financial and economic situation of the company in the period 2003-2004

-thousand ROL-

Indexes	2003	2004 (preliminary at 31.12)
Total turnover	22,578,934,656	18,121,544,000
Profit/loss	19,842,848	1,350,000,000

Source: Notification form and supplementary information

From the data presented in the table above it results that between 2003-2004 the financial and economic results are registering an ascending evolution. Although, during the assessed period the company registers a profit which does not exceed 10% from its total turnover.

(8) The main activity of the undertaking, according to art. 5 from the Company's Statutes, is the production and supplying of electric energy, the production, dispatch, distribution and supplying of the heating energy. The heating energy produced by S.C. Electrocentrale Bucuresti S.A. is introduced in RADET Bucuresti transport network, for Bucharest, and it is transported to the thermal points belonging to RADET Constanta, for

Constanta. Also, the company includes Electrocentrale Mures branch, only for the production of electric energy. S.C. Electrocentrale Bucuresti S.A., through its facilities, owns a part of the centralized heating systems it implicitly performs a service of general public interest. By 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 production, transport, distribution and supply of electric and caloric energy 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”. These services cannot be delivered under normal market conditions because the undertakings are imposed certain conditions related to the delivery of the service.

(9) S.C. Electrocentrale Bucuresti S.A.’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) Considering the above mentioned, the public interest services entrusted to the company are the following:

- production, transport, distribution and supply of the caloric energy;
- production and supply of electricity.

(11) The production and transport of caloric represents 35% of the total activity. Electricity is produced in co-generation and it is supplied in the National Energetic System, being subject to a market regulated by ANRE.

(12) S.C. Electrocentrale Bucuresti S.A. does not perform any secondary activities.

(13) The products delivered by the company are:

- caloric energy as hot water, for insuring the consumption for the population, budgetary institutions and undertakings;
- electricity through the National Energetical System.

(14) S.C. Electrocentrale Bucuresti S.A.’s products are: caloric energy, supplied in Bucharest through RADET Bucuresti transport network, for Bucharest, and transported to the thermal points belonging to RADET Constanta, for Constanta and electric energy supplied by the company to regional subsidiaries of Electrica: Oltenia, Dobrogea,

Transilvania Nord, Transilvania Sud, Muntenia Nord, Muntenia Sud, Banat and Moldova.

(15) In order to carry out its activity, S.C. Electrocentrale Bucuresti S.A. owns the following production capacities:

- **Cogeneration (simultaneous production of caloric and electric energy):**
 - existing capacities: CET BUCURESTI SUD, CET BUCURESTI VEST, CET PROGRESU, CET GROZAVESTI, CET PALAS, CET TITAN with a total installed power of 2,262 Gcal/h, respectively 1,208 MW;
 -
- **Condensation (production of electric energy):**
 - CET Iernut with an installed power of 800 MW;
- **Thermo capacities (production of caloric energy):**

The capacities from CET BUCURESTI SUD, CET BUCURESTI VEST, CET PROGRESU, CET GROZAVESTI, CET PALAS, CET TITAN, with an installed power of 4,120 Gcal/h

2.2. The market affected by the financial support granted

(16) S.C. Electrocentrale Bucuresti S.A. activates on the market of production and supply of electric energy and the market for the production, dispatch, distribution and supply of caloric energy.

(17) The market affected by the aid measures analysed by the present decision is the market of caloric energy production, dispatch, distribution and supply, generally named energetical services of local interest. These services represent 35% of the company's total activities. The financial support notified by the Ministry of Public Finances have the purpose of assuring the necessary fuel for the production, transport, distribution and supply of the caloric energy designated for heating and hot water preparation for the population and undertakings. The geographical market is represented by the area of Bucharest Municipality and the city of Constanta, therefore a market of local interest.

(18) This is a regulated market, because S.C. Electrocentrale S.A. Bucuresti sells caloric energy at prices established by ANRE both for the household consumers as well as for the undertakings and it is obliged to supply heating energy to all consumers connected to the network, without discrimination. Therefore, all these consumers are captive consumers as they don't have the possibility to choose their heating energy supplier.

(19) S.C. Electrocentrale Bucuresti S.A. owns in Bucharest a market share of 68% for the production of caloric energy, while in Constanta the company has capacities providing 85.8% of the required caloric energy.

In Bucharest, the main competitors for caloric energy are CET Pipera, CET Griro and CET Vest Energo, the remainder being supplied by neighborhood and individual heating devices. The evolution of the sales of caloric and electric energy, is presented in Table no. 2:

Table no.2: *The structure of the sales of caloric and electric energy*

Services	2003	2004	2005
Electricity	71.39%	62.71%	57.16%
Caloric energy	28.61%	37.29%	42.84%

Source: Supplemenatry information

It can be noticed that in the last years the company has increased the weight of the caloric energy within its total activity, while the electricity is registering a decreasing trend.

2.3. Ways of granting the financial support

(20) The financial support measure notified by the Ministry of Public Finance resides in the sovereign guarantee of some external loans designated to complete the financing for the purchase of fuel for the winter of 2004-2005, as well as for the project for the extension C.E.T. Bucuresti Vest with new cogeneration capacities in modern technology.

(21) Based on G.D no. 1367/2004, the Ministry of Public Finance guarantees 100% an external loan from Alpha Bank (AE) and Bank Austria Creditanstalt amounting USD 60 million, equivalent of ROL 1,732,320,000 thousand¹. The credit shall be reimbursed in 7 equal installments, with a 6 months grace period from the signing of the loan agreement. The annual interest rate is Libor at 6 months + 0.6%. S.C. Electrocentrale Oradea shall pay to the Ministry of Public Finance, a risk premium of 1% from the value of the loan, respectively of USD 600 thousand.

(22) Based on G.D. no. 1312/2003 the Ministry of Public Finance guarantees 100% an external loan Societe Generale amounting to EURO 122 million, equivalent of ROL 4,716,398,000 thousand² to finance the extension project for C.E.T. Bucuresti Vest with new cogeneration capacities in modern technology. The loan will be reimbursed in 27 semiannual installments, with a 36 month grace period from the signing of the loan agreement. The annual interest rate is Euribor at 6 months + 0,20%, for the buyer credit in amount of EUR 103.7 million, and Euribor at 6 months + 0,70% for the commercial loan in amount of EURO 18.3 million.

¹ The loan has been contracted in USD, the amount in ROL is calculated at the rate of NBR ROL/USD on 15.12.2004, respectively 27,872 ROL/USD

² The loan has been contracted in EURO, the amount in ROL is calculated at the rate of NBR ROL/EURO on 15.12.2004, respectively 38,659 ROL/EURO

(23) According to data from the notification form, S.C. Electrocentrale Bucuresti S.A. has not benefited of other financial support measures.

2.4. The evaluation of the financial support measure

(24) The *Guidelines on the state aid granted under the form of guarantees* establish the criteria for the evaluation of the state aid under the form of guarantees.

(25) According to point 4.2. of the *Guidelines on the state aid granted under the form of guarantees*, an individual state guarantee does not constitute state aid if the following conditions are simultaneously fulfilled:

- a) the debtor is not in a difficult situation;
- b) the debtor is, in principle, able to contract a loan under market conditions, without the State intervention;
- c) the granted guarantee is related to a certain financial operation, a certain amount, does not cover more than 80% from the loan or other financial obligation, except for bonds or other similar instruments, not unlimited in time;
- d) the guarantee implies the payment of a prime at market price.

(26) Analysing the economical-financial situation of S.C. Electrocentrale Bucuresti S.A it can be concluded that the company is not in difficulty. From the information provided by the beneficiary, it results that the company could contract loans from a commercial bank, under market conditions, without the State intervention. Thus, the Competition Council considers that the conditions from point 4.2. letters a) and b) from the *Guidelines on the state aid granted under the form of guarantees* are fulfilled.

(27) Although, in the situation when the guarantee covers more than 80% of the loan, the condition in point 4.2. letter c) from the *Guidelines on the state aid granted under the form of guarantees* is not fulfilled and thus, there is no doubt that there is state aid involved in the guarantee granted to S.C. Electrocentrale Bucuresti S.A.

(28) According to point 3.2. from the *Guidelines on the state aid granted under the form of guarantees*, the state aid under the form of guarantees can be calculated “in the same way as the net grant-equivalent of a loan granted in preferential conditions, the interest bonus representing the difference between the market interest rate and the interest rate obtained with State guarantee, after any premiums have been paid.”

(29) [...] ³

(30) In these conditions, the total financial support granted by the state under the form of guarantee amounts to ROL 1,573,399,215 thousand, respectively USD 1,143,020 and EURO 38,095,922.

The financial support under the form of guarantee is equal to the net grant equivalent⁴ of the USD 60 million thousand loan, calculated as follows: the net present value of the

³ Confidential data

difference between the market interest rate and the interest rate obtained due to the state guarantee minus the risk premium paid by the company to the Ministry of Public Finance, respectively: USD 2,343,020.337 – USD 600,000 = USD 1,743,020 equivalent of ROL 50,324,483 thousand.⁵

The financial support under the form of guarantee is equal to the net grant equivalent⁶ of the EURO 122 million thousand loan, calculated as follows: the net present value of the difference between the market interest rate and the interest rate obtained due to the state guarantee, respectively: EURO 38,095,922 EURO equivalent of ROL 1,523,074,732 thousand.⁷

(31) Point 2.1.1. 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 a loan it would not have obtained in the absence of such a guarantee.

(32) 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 maybe 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.

(33) The guarantees granted by the Ministry of Public Finances 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 these were issued by the state.

(34) The Government Decisions approving the state guarantees for external credits which are to be contracted by the company, establish the maximum credit values which are to be guaranteed (together with the interests and related 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 prime international banks.

(35) 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

⁴ The net grant equivalent has been calculated according to Annex 2 point 3 of the Guidelines on regional aid, taking into account the terms of the loan, the reimbursement graphics as well as a reference rate (inflation rate) of the USD of 3% between 2005-2008.

⁵ when calculating, an exchange rate of USD 1 = ROL 28,872 from NBR on 15.12.2004 was used

⁶ The net grant equivalent has been calculated according to Annex 2 point 3 of the Guidelines on regional aid, taking into account the terms of the loan, the reimbursement graphics as well as a reference rate (inflation rate) of the USD of 3% between 2005-2020.

⁷ when calculating, an exchange rate of EURO 1 = ROL 38,659 from NBR on 15.12.2004 was used.

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.

(36) 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).

(37) 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. Electrocentrale Bucuresti S.A..

(38) The total amount of the financial aid for S.C. Electrocentrale Bucuresti S.A. is of ROL 1,573,399,215 thousand represented by the financial support under the form of guarantees.

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

(39) The public service of production and transport of caloric energy to the captive consumers, entrusted to the company, is regulated by A.N.R.E. In order to perform the public service, the company registers costs with raw materials (fuels), materials, personnel, environmental, repairing and investments, contouring costs and others.

(40) S.C. Electrocentrale Bucuresti S.A. keeps a management accounting where the company's activities are registered separately. The activity of caloric energy production, transport, delivery and supply towards the captive consumers, which represents the public service obligation, is presented separately from its other activities. The separation of the financial records for the activities representing the service of general economic interest is a compulsory condition imposed to the undertaking by the license entrusting the discharge of the service.

(41) The company has the obligation to submit to A.N.R.E., at the end of each year, the justifying documents for showing the real costs related to the public service performed in that year and the quantities of caloric energy produced and sold in each month. Starting with the input data, the standard methodology is applied to determine the costs for the caloric energy production, transport, delivery and supply activity. Therefore, at the beginning of each financial exercise S.C. Electrocentrale Oradea S.A. is drafting its revenues and expenditure budget. In the same time, the justification of the prices to be used is submitted for approval by A.N.R.E., which establishes the national reference price and the local delivery price.

2.5.1 Costs required by investments in order to perform the service of general economic interest

(42) The company is benefiting from the state guarantee in order to contract an external loan in amount of EURO 122 million, to finance investment objectives for the extension of CET Bucuresti Vest with new cogeneration capacities in modern technology, with an impact on the safe, continuous operation of the service of general economic interest.

(43) The project is realized according to the „*Roadmap in the energy sector in Romania*” from July 2003 establishing the Development programme of the production capacities in 2004-2015, approved by G.D. no.890/2003.

(44) [...] ⁸

(45) A feasibility study was drafted analyzing the economically and financially the implementation of a combined cycle with gas turbines from E technological class, with a power of de 125 MW, and recuperating boiler and turbine of 55 MW with socket and counterpressure.

(46) By implementing at CET Bucuresti Vest a new unit for cogeneration, in line with the most recent international standards, the following objectives are to be achieved:

- providing heating energy, at appropriate parameters, to consumers within the area of the plant;
- increasing the safety in supplying the consumers with heating energy;
- increasing efficiency of the plant by reducing specific consumptions by increasing the cogeneration delivery capacity from the plant;
- improving the impact on the environment by reducing emissions, in order to comply with the legislation in force.

2.6 Difference between the national reference price and the local delivery price of caloric energy

2.6.1. The national reference price

(47) The national reference price for heating energy supplied to the population through centralized systems with the purpose of heating and to preparing hot water was instituted by GEO no. 162/1999.

(48) The national reference price is set in order to achieve equilibrium between the affordability degree for the population and the state budget subsidizing possibilities. Regarding the social dimension, this price is determined considering the weight of thermal energy cost in the budget of an average income family.

(49) The level of the national reference price of the thermal energy is set in advance through Government decision, proposed by A.N.R.E., as an average of the local prices of the producers using the same type of fuel, added with the related distribution tariffs, taking into account subsidizing possibilities from the state budget. The standard

⁸ Confidential data

methodology of calculating this price is established through an order of A.N.R.E., the factors influencing the modification of the national reference price being: the fuel price, the price of electric energy, consumer price index, the exchange rate (ROL/USD or ROL/EURO, as the case may be). The national reference price for 2002-2004 was regulated by the following administrative decisions, as shown in Table no. 3 below:

Table no. 3 - *Administrative decisions establishing the level of the national reference price for heating energy*

	2003	2004
The legal act establishing the national reference price	- Government Decision no. 686/03.07.2002	Government Decision no. 1155/23.07.2004
National reference price (ROL/GCAL)	800,000	896,000

Source: National legislation in force

2.6.2. THE LOCAL DELIVERY PRICE

(50) The local delivery price for the heating energy is established by A.N.R.E., both for the population as well as for the undertakings. The methodology of establishing the local delivery price is being applied by A.N.R.E. to all thermal energy co-generation producers. Thus, the undertaking has the obligation to submit to A.N.R.E., at the end of each fiscal year, justifying documentation outlining the costs related to the discharged public service in the respective year and the quantities of thermal energy which were produced and sold in each month of the year.

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

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

- identification of regulated activities and services;
- identification of production sources for caloric energy (separate sources and/or cogeneration);
- estimation of quantities delivered to final consumers based on the undertaking's previous year figures, taking into account the losses in the transport networks and of produced quantities, taking into account the own consumptions of the power plant;
- assignment of technological fuel expenses;
- allocation of direct expenses, excluding fuel expenses, broken down by activities/services and producing sources;
- allocation of indirect, general and administration expenses by services, on a pro rata basis with the value of direct expenses, excluding fuel;
- determining total expenses with the production of thermal energy;

- determining unit costs;
- redistributing by activities of expenses related to own consumptions;
- allocation of financial expenses by regulated services;
- determining total expenses for the regulated services.

2.6.3. Conclusions

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

(54) If the local price of the gig calorie (Gcal) is higher than the national reference price, the difference incurred by the supplier is subsidized as follows, according to the GEO no. 162/1999:

- a) by the state budget, up to the ceilings approved through the budget law, allocated for this purpose;
- b) by the local budgets, for the part left uncovered through the state budget.

2.6.4. Costs in excess of the local delivery price

(55) When analyzing the measures of support for S.C. Electrocentrale Bucuresti S.A. one must consider that, for the services of production, transport, delivery and supply of heating energy, the company registers costs higher than the local price for supplying heating energy established by A.N.R.E., this situation resulting from the management accounting of the undertaking, in which expenses are separately recorded.

(56) The unit operating cost of the service was calculated based on effective expenses recorded by the company in each year of the analyzed period, respectively expenses for raw materials, materials, personnel, environment, repairs, investments, metering of the real production of thermal energy delivered in the respective year.

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

(58) The high operating costs of S.C. Electrocentrale Bucuresti S.A. are due mainly to the following causes:

- the natural gas, raw materials and materials are bought at prices comparable with the international ones. Contrary, heating energy is sold on local market at a price established by ANRE lower than the medium international price ;

- proposals of price increasing are submitted to local authorities and to A.N.R.E. after the sub suppliers already increased their product prices and considering that until the company gets the A.N.R.E. certifying documents and decision uncovered costs shall be record;
- A.N.R.E. agreed technological loss are lower as the real loss which are higher because of old transport and distribution pipe line networks which require high maintenance costs. Those costs are not considered when the reference price is estimated by A.N.R.E;
- the population pays a national reference price for the caloric energy, approved by Government Decision and established mainly according to the purchasing power of the population, the difference between this and the production and distribution costs of thermal energy being subsidized. 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. As a result of the delays in providing the subsidies, the financial costs of the company increase because the real value of the subsidies is significantly diminished by the inflation rate; thus, a part of the real costs remains not covered.

(59) In Table no. 5 [...] ⁹ presented in the Annex, the evolution of the local delivery price for caloric energy as hot water and the real costs of production and transport of it during 2003-2004 are shown, as well as the forecast for the year 2005. As it may be noticed, during analyzed period, most of the times, the operating cost for producing, transporting, delivering and supplying heating energy - hot water - is higher than the local delivery price, both for the population and for the undertakings.

(60) The differences between the local delivery price and the real cost of production, transport, distribution, delivery and supply of caloric energy lead to company losses from operating the service, losses which are shown in Table no. 4 [...] ¹⁰.

Table no. 4 – *The evolution of the difference between the local delivery price established by ANRE and the real production and supply cost and of the losses caused by these differences for hot water*

3. ANALYSIS OF THE STATE MEASURE OF SUPPORT

3.1. Object of the decision

(61) On the basis of the notification to the Competition Council by the Ministry of Public Finances, the object of the present decision consists of the financial support measure in form of state guarantee in total amount of ROL 1,573,399,215 thousand. These measures of the financial support are analyzed by S.C. Electrocentrale Bucuresti S.A. in the context of meeting the public service requests during 2003-2005. ¹¹

⁹ Confidential data

¹⁰ Confidential data

¹¹ It was considered including the year 2005 because the loan is contracted at the beginning of 2005 and is designated for covering costs for the public services in this year.

3.2. Obligation of service of general economic interest

(62) 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):

(63) S.C. Electrocentrale Bucuresti S.A. is entrusted with the production, transport, distribution and supply of heating energy for the population, institutions and undertakings, under the ANRE licenses no., 511/2002, 512/2002, 576/2003. In the licenses are mentioned, among other things, the obligations specific for the undertakings performing a service of general economic interest, namely: continuity in supplying heating energy, ensuring access to heating networks for new customers, achieving performance standards. Also, by EGO no.162/1999, producers and suppliers of thermal energy are under the obligation to sell thermal energy to the population at a fixed price which regularly is lower than the costs incurred by the discharge of the service (national reference price).

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

(65) 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.

(66) 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,.

(67) 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.

(68) The management of the centralized heating systems in Bucharest and Constanta, required by the service of general economic interest, was entrusted to the company through G.D. no. 1524/2003.

(69) Regarding the above presented facts, S.C. Electrocentrale Bucuresti S.A. 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 from Bucharest and Constanta. 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. Electrocentrale Bucuresti S.A. by licenses, is entrusted with the discharging of a service of general economic interest.

3.4. The condition from par. 3.2. b):

(70) 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.

(71) 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.

(72) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph (71) is carried out based on the criteria of *ex-ante* calculation, the parameters based on which the compensation for the service of general economic interest is established are usually set up in advance.

3.5. Condition in 3.2. c):

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

(74) From Table no. 4 it can be seen that during the analyzed period S.C. Electrocentrale Bucuresti S.A. has recorded losses of ROL 1,612,607,107 thousand caused by the negative difference between the national reference price and the local delivery price for the heating energy.

(75) The financial support measures from which the company benefits in the period 2003-2005 is in amount of ROL 1,573,399,215 thousand granted under the form of state guarantee.

(76) The value of the fuel required for the winter 2004-2005 for the performance of the service of general economic interest established by GD no. 1240/2004 is of USD 272.9 million, respectively USD 128.87 million for electric energy and USD 144.03 million, for caloric energy.

(77) Taking into account the losses of ROL 1,612,607,107 thousand that the company incurred due to the performing of the service of general economic interest of production and transport of caloric energy, it can be seen that the facilities granted to the company under the form of guarantees amounting to ROL 1,573,399,215 thousand do not fully cover the company losses. Thus, the financial support granted to the company does not exceed the total costs incurred from the performing of the public service.

(78) Under these circumstances it is considered that the state aid granted to S.C. Electrocentrale Bucuresti S.A. during 2003-2005 represents only a compensation for the costs related to the performing of the public service of general economic interest for the production, transport, delivery and supply of heating energy in the city of Bucharest and Constanta.

3.6. Condition in 3.2. d):

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

(80) The public service of production and transport of caloric energy was entrusted to S.C. Electrocentrale Bucuresti S.A. by a license from ANRE. Thus, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have had, in providing the same service.

On the Romanian heating energy market there are acting other producers and suppliers as well (e.g, Termoelectrica, CET Govora, CET Bacau, Electrocentrale Oradea, etc.). Still, a comparison with these companies would not be relevant, as they are also public undertakings receiving aid from the state for discharging the public service obligation. However, making a comparative analysis with other undertakings producing and supplying heating energy, it can be noticed that their situation is similar to the situation of 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.

(81) 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. Electrocentrale Bucuresti S.A., notified by the

Ministry of Public Finance, constitute state aid for the purposes of *art. 2 of Law 143/1999 on State aid, with subsequent modifications and completions* and of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.

(82) The total value of the state aid granted to S.C. Electrocentrale Bucuresti S.A., between 2003 – 2005 is of ROL **1,573,399,215** thousand.

4. Compatibility of the Aid

(83) 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

(84) 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.

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

(86) S.C. Electrocentrale Bucuresti S.A. operates its service is under the public ANRE licenses no. 558/2003, for electric energy, and no. 559/2003 for caloric energy. 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. Electrocentrale Bucuresti S.A. has been officially entrusted with the public service that it discharges.

(87) 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.

(88) Therefore, one can conclude that the state aid granted to S.C. Electrocentrale Bucuresti S.A does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort the public service of production and transport of caloric energy within the cities of Bucharest and Constanta.

(89) Without granting this compensation its activity would be blocked, therefore it could not deliver the service anymore This could have serious consequences on population and undertakings of the cities of Bucharest and Constanta, who would be lacking caloric energy, especially in the cold season.

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

(90) It needs to be noted that the activity of the company is restricted to a limited geographical area, represented only by the cities of Bucharest and Constanta. S.C. Electrocentrale Bucuresti S.A. is the only operator. The company is not involved in export activities. Under these circumstances it is considered that the commerce with the Member States in not unduly affected.

4.3. There is no over-compensation

(91) The state aid granted to S.C. Electrocentrale Bucuresti S.A. under the form of a guarantee granted by the state for an external loan 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. Taking into consideration that the company keeps separate accounting records for the activity representing the service of general economic interest, respectively the production, distribution and supply of heating energy as hot water, the cross subsidization possibility is being ruled out.

(92) Thus, the two conditions provided at point (83), conditions provided in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* are cumulatively met, for appreciating that the support measures for S.C. Electrocentrale Bucuresti S.A., representing compensations for performing the service of general economic interest, is state aid compatible with the normal competitive environment.

(93) The state aid granted to S.C. Electrocentrale Bucuresti S.A. in total amount of ROL 1,573,399,215 thousand is compatible with a normal competition environment.

DECIDES

Art. 1. The measures of financial support granted during 2003-2005 to S.C. Electrocentrale Bucuresti S.A. constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid, published in the Official Monitor, Part I, no. 370 on August the 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*, we authorize the state aid for to S.C. Electrocentrale Bucuresti S.A. as aid to achieve under conditions of safety and continuity the service of general economic interest.

Art. 4. Pursuant to Art. 24 of *Law 143/1999 with subsequent modifications and completions*, suppliers shall annually convey to the Competition Council information regarding the state aid granted to S.C. Electrocentrale Bucuresti S.A. in view of monitoring the aid.

Art. 5. This decision is applicable as of its date of communication.

Art.6. Pursuant to Art. 29 of *Law 143/1999 regarding state aid with subsequent modifications and completions*, this decision may be appealed by 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. Electrocentrale Bucuresti S.A., Splaiul Independentei 202 E, 060021, Bucuresti.

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**