

**DECISION of the COMPETITION COUNCIL**  
**No 31 of 16.02.2006**

**concerning the notification of the Ministry Of Public Finances regarding the financial support in favor of S.C. Termoficare 2000 S.A. Pitesti**

**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, republished in Official Journal of Romania, Part I, no. 88 on 30 April 1996,

Based on the provisions of Law no. 143/1999 on state aid republished in the Official Journal of Romania, Part I, no. 370 on 3 August 1999,

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 Regulation on form, content and other details of the notification, published in Official Journal of Romania, Part I, no. 82 on 25 January 2005,

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, published in Official Journal of Romania, Part I, no. 1048 on 12 November 2004,

Taking into account the provisions of the Instructions on state aid under the form of guarantees, published in Official Journal of Romania, Part I, no. 165 on 17 March 2003,

**On the following grounds,**

**1. PROCEDURE**

(1) By address 107064/25.01.2006, registered at the Competition Council with the no. RS-AS 21/30.01.2006, the Ministry of Public Finances notified to the Competition Council under Art. 15 of *Law 143/1999 on state aid, republished*, the financial support for S.C. Termoficare 2000 S.A. Pitesti (hereinafter Termoficare) on the basis of GD no. 1320/2005<sup>1</sup> and EGO no 37/2004<sup>2</sup>.

(2) For completing the notification, supplementary information were requested by address no. DAAS/203/07.02.2006. The Ministry of Public Finances sent the requested information by the address registered at the Competition Council with no.

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<sup>1</sup> GD no. 1320/2005 for amending and completing GD no. 763/2005 for approving the Winter Program in the energy field for the period October 2005 – March 2006.

<sup>2</sup> EGO no. 37/2004 for diminishing the arrears in economy.

DAAS/229/09.02.2006. The notification became effective on the date the information were complete, namely on 09.02.2006.

## II. DESCRIPTION OF THE FINANCIAL SUPPORT

### 2.1. The beneficiary

(3) The beneficiary of the notified support measures is Termoficare. The company was set up according to the Decision of Pitesti City Local Council no. 28/2000 following the reorganization of R.A. REGOTRANS Pitesti.

(4) The registered capital of the Termoficare is RON 745,000 totality owned by the Local Council of Pitesti City and divided into 74,500 shares with a face value of 10 RON/share. The company is headquartered in Pitesti and registered at the Trade Registry under no. J03/186/2000, its unique registration code is R13008987.

(5) The company's main line of business is discharging the following public services of general economic interest: the production, transport, distribution, and supply of heating energy for the population, institutions, and undertakings from the Pitesti City. Also the company produces and supplies in cogeneration electricity. Termoficare is involved in repairing and intervention activities at third party's request as secondary activities.

(6) The company delivers the following products:

- heating energy for heating and preparation of hot water for population, budgetary institutions and undertakings;
- electricity.

(7) The financial and economic results, based on the balance sheets for 2003-2005 are presented in table no. 1.

**Table No. 1 – Financial and economic situation of the company between 2003-2005**  
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Indexes	2003	2004	2005
Total turnover	126,424,916	134,132,541	159,211,328
Profit/loss	- 13,159,620	-15,605,441	-27,010,171

*Source: Notification form*

From the data presented in the above table, it can be concluded that, between 2003-2005, the financial result was negative; this is due mainly to the losses of the company related to the delivery of the public service of general economic interest of production, transport, distribution and supply of heating energy, under the conditions of regulated prices (these losses will be presented in detail in chapter 2.4.2. of this draft decision).

(8) The company is entrusted with the delivery of public services of production, transport and distribution of heating energy and electricity to population, institutions and undertakings through the licenses granted by the National Agency for Regulation in the Field of Energy (following named A.N.R.E.). This service cannot be supplied by undertakings under normal market conditions because the companies are imposed certain mandatory conditions related to the supply of such services.

(9) According to art. 16 (1) from the *Energy Law 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”.

(10) According to the provisions of the *Law on public services for communal husbandry no. 326/2001*, public services must fulfill the following conditions:

- continuity both in quality and quantity, according to the conditions stipulated in the contract;
- adaptability to consumers’ requests;
- equal access to the public service, in the conditions stipulated in the contract;
- ensuring the public health and life quality.

(11) TERMOFICARE’s obligations as heating and electricity producer, according to art. 30 from the *Law no. 318/2003*, are as follows:

- to ensure the delivery of electricity, respectively heating energy, produced in co-generation and the system technological services, fulfilling the criteria imposed by licenses, contractual clauses and regulations in force;
- to offer under undiscriminating conditions the whole available electricity, as well as system technological services;
- to maintain a stock of fuel at a sufficient level or, by case, a sufficient water supply, in order to carry out the obligations of continuously production and supply of electricity and heating energy as provided for in the regulations in force;
- to comply, from an operational point of view, with the transport and system operator’s demands and to establish, by case, its own operative management positions.

(12) The supply of urban heating energy for the heating and preparation of consumption hot water is accomplished through the urban heating system of the city of Pitesti, which is entrusted for administration by concession contract to the company by the local City Council of Pitesti.

(13) In order to carry out its main activity, Termoficare owns the following equipments and installations:

- CET Sud I comprises: 2 steam boilers of 420t/h and 4 of 120 t/h, steam turbines 3x12MW and 2x50MW, generators, heating switches, pumping stations for heating, stations and electrical lines;
- CET Gavana comprises: 3 steam boilers of 50t/h, steam turbine of 6 MW, generator, heating switches, hot water boilers 4x100Gcal/h and 1x50Gcal/h, pumping stations for heating;
- Thermal networks for transport – with a length of 123 Km, which transports the primary heating from sources to some consumers (that are connected to the net) and to the heating plants;
- Heating plants – 81 – 78 in Pitesti, 2 in Bascov and 1 in Maracineni;
- Thermal distribution networks – with a lenght of 350 Km, which transports the secondary heating from sources to consumers connected to those nets (mainly population).

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

(14) The relevant market is the market of the production, transport and supply of heating energy, generally named energy services of local interest. These services function in

centralized system and are organized under the management of the local public administration authorities' control, based on the local autonomy principle. The geographical market is represented only by the area of Pitesti city (Pitesti city and the neighbouring localities Stefanesti, Maracineni and Brasov), therefore is a market of local interest. From the point of view of prices and tariffs it is a regulated market because the company sells the heating energy at regulated prices by the A.N.R.E, both for domestic consumers, as well as for the industrial ones. The producer is also obliged to supply heating energy to all those connected to the network, without discrimination. These consumers are captive consumers as they don't have the possibility to choose their heating energy supplier.

(15) Termoficare ensures 80% of the heating energy needs of the city; the rest is ensured by other heating sources, e.g. individual heating plant, convectors, stoves, pipes, etc. The supply of heating energy is accomplished through a centralized system in the city of Pitesti to a number of 1049 apartments and 463 undertakings.

### **2.3. Financial support measures**

(16) The financial support measure notified by the Ministry of Public Finance consists of a State guarantee of 80% for an internal credit necessary for financing the acquisition and transport of heating energy for the winter 2005 – 2006. The value of the contracted credit is of 12,000,000 RON; the State will guarantee 80% of this value, respectively 9,600,000 RON. [...] <sup>3</sup>

(17) Also, from the data provided by the Ministry of Public Finances, the company benefit of write off to the overdue payments toward S.C. Distrigaz Sud S.A in amount of RON 9,083,943 and subsidies in the amount of RON 59,033,754, exclusively granted for covering the difference between the national reference price and the local delivery price for heating energy, reported to the total quantity supplied to population in 2006.

(18) The notified support measures envisage ensuring the necessary quantity of fuels for the production and supply of heating energy for heating and preparation of hot water for population and undertakings.

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

(19) The public service of heating energy production, distribution and supply towards 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, environment, repairing and investments, contouring costs and others.

(20) At the beginning of each financial year, Termoficare establishes an expenditures and incomes budget. The company has the obligation to present to A.N.R.E., at the end of each year, justifying documents for the effective costs incurred in supplying the public service and the quantities of sold heating energy in each month. Starting from the entry data, the standard methodology is applied in order to determine the costs for the production, transport, distribution and supply of heating energy.

(21) Termoficare keeps a management accounting (as base for the management decisions) where the company's activities are registered separately. The activity of heating energy

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<sup>3</sup> Confidential data.

production and supply towards the captive consumers under the form of hot water, which represents the public service obligation, is presented separately from its other activities.

(22) Splitting the accounting for the activities which represent public services of general economic interest is a mandatory condition imposed to the company by the license for entrusting the service. The results of the service' delivery, respectively production, transport, distribution and supply of heating energy under the form of hot water consist of losses, as can be seen from table no. 3.

(23) These losses are mainly due to the difference between the real costs for delivering the service and selling at a regulated price of heating energy. The main cause of the high current costs is the losses of the transport system, due to the improper state of the transport and distribution network.

#### **2.4.1. The difference between the national reference price and the local delivery price for the heating energy**

(24) As mentioned at point (14), the heating energy market is a regulated one. On this market, there are two regulated prices, respectively the national reference price and the local delivery price.

##### *2.4.1.1. The national reference price*

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

(26) This price is regulated for social reasons. Thus, if the local production and supply price of heating energy (see subchapter 2.4.1.2.) is higher than the national reference price, the population will pay the latest.

(27) Thus, the national reference price is established in order to realize the equilibrium between the populations's buying power and the State budget's possibility to grant subsidies. As far as the social dimension is concerned, in funding this price, it is taken into account the proportion of the heating energy cost within the budget of a family with an average income.

(28) The level of the national reference price for heating energy is established in advance, by Government decision, at A.N.R.E.'s proposal, as an average between the local prices of the producers using the same type of fuel, added to the related delivery tariffs. In the same time, the national reference price takes into account the possibility to be subsidized from the State's budget.

(29) The standard methodology to calculate this price is established by A.N.R.E. order. The factors influencing the national reference price modification are: the fuel's price, the electricity'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 for 2006 was established by G.D. no. 1254/2005 at 107.5 RON/Gcal. It can be concluded that the national reference price was established in advance.

#### 2.4.1.2. The local delivery price

(31) The local delivery price for heating energy is established by A.N.R.E. for the population as well as for the undertakings. The methodology for establishing the local delivery price is applied by ANRE to all producers of heating energy in co-generation. As mentioned at point (20), the undertaking has the obligation to present to A.N.R.E., 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 energy produced and sold each month.

(32) Starting from these entry data, the standard methodology is applied in order to determine the costs for the production, transport, distribution and supply of heating energy. 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 energy (separate sources and/or co-generation);
- estimating the quantities delivered to the final customers, based on the undertaking's accomplishments in the previous year, taking into account the losses in the transport network and the quantities produced as well as the power plants' own consumption;
- allocating the costs with technological fuel;
- allocation of direct costs, exclusively those with the fuel, on activities/services and production sources;
- allocating the indirect costs and the general management costs, on services, proportionally with the value of the direct costs, exclusively the fuel;
- establishing the total costs for producing heating energy under the form of hot water and steam;
- establishing the total costs;
- re-distribution on activities of the costs related to the own consumption;
- allocation of the financial costs on regulated services;
- establishing the total costs for regulated services.

(34) 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.

(35) In 2006 the national reference price is lower then the heating energy's local delivery price established for Termoficare. In order to cover the difference, the company receives subsidies in amount of RON 59.033.754 (see table no.2).

**Table no. 2 – Delivered quantity to population and subsidies in 2006**

Period	Local delivery price for the population	Reference price	Total difference between the local delivery price and the reference price	Quantity delivered to the population	Subsidies
	RON/Gcal	RON/Gcal	RON/Gcal	Gcal	RON
Year 2006	246.68	107.50	139.18	424,154	59,033,754

*Source: Supplementary information*

The subsidy of RON 59,033,754 covers exclusively the losses of the company due to the difference between local delivery price and the reference price reported to the total delivered quantity to population in the year 2006.

#### **2.4.2. Costs higher than the local delivery price for the heating energy**

(36) When analyzing the measures of support for Termoficare, one must also consider that, for the services of production, transport, distribution and supply of heating energy, the company registers costs higher than the local price established by A.N.R.E. This can be seen in the company's accounts, where the costs for the public service are separately registered.

(37) The operating cost for production, transport, distribution and supply of heating energy under the form of hot water was calculated on the basis of real cost registered by the company each year (respectively cost with raw materials, materials, employment, environment, repairing and investments, contouring costs) and the real production of the heating energy delivered in that year.

(38) Actually, the local delivery price established by A.N.R.E. does not cover all costs due to the fact that fuel price increase forecasts 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, without taking into account the raw materials and materials' prices increase with a chain effect. This increase is not considered when adjusting but only when prices are reviewed, once a year. Thus, there is a gap during the year between the costs of the energy operator and the local delivery price.

(39) The high operating costs of Termoficare are due mainly to the following causes:

- technological fuel, raw materials and materials are purchased at prices comparable with those operated on international markets. In turn, heating energy is sold on the local market at a price agreed by A.N.R.E. which is lower than the average price operated on international markets;
- the increase proposals are submitted to local authorities and A.N.R.E. after other suppliers have already increased the prices and, until their approval and A.N.R.E. decision, the company registers uncovered costs;
- the sold quantities have decreased, due to population disbranching and production decrease of undertakings; in the same time, A.N.R.E. has maintained the same production for which the tariffs are funded;
- the technological losses accepted by A.N.R.E. in the delivery prices are lower than the real ones, which have increased due to the fact that the heating transport and distribution networks are worn out and the cost of repairing and investments for their upgrading are not always reflected in the local delivery prices;
- the 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, part of the real costs remain uncovered.

(40) The operating cost of the production and supply of the heating energy is higher than the local delivery price, established by A.N.R.E., both for population and undertakings. Table no. 3 reflects the losses which is the result of the uncovered production cost in 2006.

**Table no. 3** – Forecast loss due to the difference between the local delivery price and the real cost of the heating energy under the form of hot water

	Difference between the local delivery price and the producing costs		Quantity delivered			Losses caused by failure to cover the cost
	Population	Undertakings	Population	Undertakings	Total	
	RON/Gcal	RON/Gcal	Gcal	Gcal	Gcal	
2006(forecast)	24.58	18.35	424,154	79,207	503,361	11,879,154

Source: The notification form

(41) The difference between the real cost of the service of general economic interest and the local delivery price of heating energy resulted in a total loss amounting RON 11,879,154, related to the activity of performing the service.

### 3. ANALYSIS OF THE STATE SUPPORT MEASURES

#### 3.1. Object of the decision

(42) As mentioned in subchapter 2.3, the company benefits from state aid under the form of subsidies to cover the price difference for the heating energy supplied to population and the state guarantee of 80% for a credit necessary for financing the buying of energetic resources for the winter 2005 – 2006.

(43) The *Guidelines on the state aid under the form of guarantees* establishes the criteria for evaluating the state aid under the form of guarantees.

(44) According to point 4.2. from *Guidelines on the state aid under the form of guarantees*, an individual state guarantee do not constitutes state aid if all of the following conditions are met:

- a) the borrower is not in a difficult situation;
- b) the borrower is, in principle, able to contract a loan under market conditions, on without any state intervention;
- c) the guarantee is granted for a precise financial operation, for a maximum established sum, does not cover more than 80% from the loan or from another financial obligation, except for bonds and other similar instruments, and it is limited in time;
- d) the guarantee supposes the payment of a prime at market price.

(45) The Ministry of Public Finances could not establish the prime that the company was supposed to pay for the guarantee. This prime shall be established after the issuing of the Competition Council's decision. Therefore, the conditions stipulated at point 4.2. from *Guidelines* are not cumulatively met, so the guarantee in favor of the company constitutes state aid.

(46) According to point 3.2. letter a) from the *Guidelines on the state aid under the form of guarantees*, the state aid under the form of guarantees can be calculated “in the same way as the grant equivalent of a loan granted in preferential conditions; the interest bonus represents the difference between the market interest and the interest with the state guarantee, after deducting any paid primes”.



(47) For determining the state aid under the form of guarantee, the Competition Council has considered that the reference rate is of [...] <sup>4</sup>; this is the interest rate that the company can obtain under normal market conditions, without any state intervention, for a credit of RON 12,000,000.

(48) Under these conditions, the financial aid granted under the form of guarantee <sup>5</sup> is equal to the grant equivalent of the credit with the state guarantee, respectively RON 2,328,688.

(49) In conclusion, in 2006, Termoficare will benefit of state aid of a total value of 70,446,385 RON, as follows:

- subsidies for covering the price difference for the heating energy supplied to the population, in amount of 59,033,754 RON;
- write off of overdue payments towards SC Distrigaz Sud SA, in amount of RON 9,083,943;
- state guarantee for the contracted loan for financing the buying of heating energy resources for the winter 2005-2006, respectively 2,328,688 RON.

#### **4. THE ASSESSMENT OF THE SUPPORT MEASURE GRANTED BY THE STATE**

(50) The support granted to Termoficare through the resources transfer from the state confers to it an economic advantage which may affect the trade between Romania and Member States; therefore it may constitute state aid in favor of Termoficare.

(51) The financial measures mentioned at point 2.3. notified to the Competition Council by the Ministry of Public Finance represents the object of this decision. As the objective for which the guarantee is granted is the assurance of a part of financial resources for the financing the current consumptions of the population and undertakings in the cold seasons, under the conditions imposed by the State for the National Energetic System Security, and the subsidies are granted for covering the difference between the two regulated prices, the financial aid measures will be analyzed in the context of fulfillment by Termoficare of the obligation to discharge a service of economic general interest.

##### **4.1. Obligation of service of general economic interest**

(52) 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 align.1 of *Law 143/1999 on state aid, republished*, 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;

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<sup>4</sup> Confidential data.

<sup>5</sup> The grant equivalent has been calculated according to Annex 2 point 3 of the Regional aid Regulation. Thus, for the guaranteed credit, for each year from the reimbursing schedule it has been calculated an interest bonus, which was capitalized with a 5% rate for the period 2006-2011.

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.

#### *4.1.1. Entrusting the obligation to perform the public service of general economic interest*

**(53)** The Competition Council notes that the producing, delivering and supplying heating energy are vital both for the undertakings, as well as for population of Pitesti area. Any interruption in the supply and distribution of heating energy has a major negative impact. Assuring the continuity and security in supplying hot water represents a public interest necessity.

**(54)** Termoficare is entrusted with the production, transport, distribution and supply of heating energy for the population, institutions and undertakings, under the A.N.R.E. licenses no. 521/2002, 1500/2000, 151/2000. In the licenses are mentioned, among other things, the obligations regarding: continuity in supplying heating energy, ensuring access to heating networks for new customers, achieving performance standards. Also, by GEO no. 162/1999, producers and suppliers of heating energy are under the obligation to sell heating energy to the population at a regulated price which is lower than the costs incurred by the discharge of the service (national reference price).

**(55)** According to *Law on public services for communal husbandry no 326/2001*, supplying with heating energy public services must fulfill the following main conditions:

- meeting the quantity and quality demands of users, according to the contract provisions;
- 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;
- protecting the public estate and environment by observing the legal provisions;
- informing and consultation the citizens with the purpose of protecting the health of the population benefiting from these services.

**(56)** The supply of town heating energy for heating and preparing hot water for consumption is made through the heating energy system of the Municipality of Pitesti and is part of the technical- municipal infrastructure of the town. The City Council of Pitesti Municipality provides to the company the heating system needed for accomplishing services of general economic interest through concession contract.

**(57)** Termoficare is under the obligation to perform the public service, ensuring the effective functioning of services relating to the production, transport, distribution and supply of heating energy that are essential for the population, institutions and undertakings of Pitesti city. Furthermore, it is required to provide these services at a regulated price that is intended to ensure the affordability for the consumer.

**(58)** Given the above data, the Competition Council concludes that the condition stipulated at point (52) letter a) is fulfilled, condition saying that the obligation to perform a service of

general economic interest must be entrusted through a normative/administrative act and to be clearly defined.

#### *4.1.2. The ex-ante calculation based on which the compensation is calculated*

**(59)** The compensation of the public service obligation must be calculated on pre-established parameters, in an objective and transparent manner and may not grant an economic advantage to the beneficiary, against its competitors.

**(60)** The two parameters based on which the level of the compensation is calculated are the national reference price and the local delivery price established by A.N.R.E. These parameters are established in advance by Government decision on the proposal of A.N.R.E. The methodology used to establish the national reference price is based on the following:

- price of fuel used for the production of heating 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 heating energy issued by A.N.R.E. The producers of heating 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 heating energy, losses of heating energy in the transport and distribution networks), as well as fixed costs and approves the local delivery price of the heating energy, resulting different local delivery prices specific to each company.

**(61)** As it was also mentioned at point (20), at the beginning of each financial year, Termoficare funds a income-costs budget. This way, based on the previous year's data it is forecast that the quantities of heating energy (due to the number of consumers and the average yearly consumption per person- at hot water- and per apartment – at heating), the subsidies to be received as well as a volume of the credits necessary for performing the public service in safety conditions. Also, are forecast the expenses incurred by the performance of the public service (with raw materials, the personnel, financial costs).

**(62)** The information submitted to the Competition Council prove the fact that the procedure mentioned at point (60) is developed based on the ex-ante calculation criterion, the parameters according to which the compensation for the performance of the service of general economic interest is established being also established in advance.

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

**(63)** The compensation shouldn't exceed the costs related to the service of general economic interest.

**(64)** As mentioned at point (49) in the year 2006 the activity of delivering the general public service by Termoficare is supported in the following way:

- subsidies, in total amount of RON 59,033,754 exclusively used for covering the difference between the national reference price and the local delivery price of the heating energy;

- write off of overdue payments towards SC Distrigaz Sud SA, in amount of RON 9,083,943;
- the state guarantee granted for credit aimed to complete the financing of the acquisition of the heating resources necessary for the winter 2005-2006, in total amount of RON 2,328,688.

(65) From table no. 3 it results that in the year 2006 Termoficare registered losses due to the difference between the local delivery price established by A.N.R.E. for the heating energy under the form of hot water and the real delivery cost.

(66) Taking into account the losses of RON 11,879,154 estimated by the undertaking due to the delivery of the service of general economic interest in 2006, it can be seen that the facilities under the form of guarantees, in amount of RON 11,412,631 do not cover the company's losses. Thus, the compensation from State resources for the performance of public service is smaller than the costs related to this activity. Therefore, it can be concluded that this compensation doesn't exceed the necessary for performing the service of general economic interest of delivering and supplying heating energy.

#### *4.1.4. Entrusting the service through public tender or efficient performance of the service*

(67) Entrusting the service of general economic interest of heating energy production to Termoficare was not achieved through a public tender.

(68) The service of heating energy production was entrusted to Termoficare by A.N.R.E. license. This way, in order to establish the level of the compensation it is necessary an analysis of the costs that another undertaking, well managed and delivering the same service, would have had. On the Romanian heating energy market also act other suppliers and producers, but a comparison with these undertakings wouldn't be relevant as they are all public undertakings, receiving support from the State in order to perform their obligation of public service of general economic interest. However, making a comparative analysis with other undertakings producing and supplying heating energy, it can be noticed that their situation is similar to the situation of the analyzed undertaking. The real costs of the service exceed local delivery prices set by A.N.R.E. and the causes leading to this situation are in fact similar.

(69) As the four conditions mentioned at point (52) are not cumulatively met, respectively the condition provisioned at point (52) letter d) couldn't be proved, the support measures for Termoficare, notified by the Ministry of Public Finance represents state aid, within the meaning of art. 2 in the *Law no. 143/1999 on the state aid, republished*, and those of the *Regulation on the state aid under the form of compensations granted to certain undertakings entrusted with the performance of a service of general economic interest*.

## **4.2. Compatibility of the Aid**

(70) 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 for delivering 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 delivering a service of general economic interest;

b) the state aid does not unduly affect the trade between Romania and the EU Member States.

#### *4.2.1. State aid necessary for delivering a service of general economic interest*

(71) 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.

(72) As discussed under point 4.1.1. above, Termoficare is delivering a service of general economic essential for the population, institutions and undertakings in Pitesti City and that obligation is clearly defined by license.

(73) Termoficare operates its service under the public A.N.R.E. licenses no. 521/2002, 1500/2000, 151/2000. The licenses, in conjunction with the relevant law, clearly define the obligations of the service that the company is supposed to discharge. Therefore, it can be concluded that Termoficare has been officially entrusted with the public service that it discharges.

(74) Also, from the evaluation from subchapter 4.1.3., it results 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 incurs annual losses. Furthermore, the compensation granted to the company does not fully cover all the costs that are currently being incurred by the delivering of the public service.

(75) Therefore, it can be considered that the state aid for Termoficare 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 Pitesti city.

(76) Therefore, one can conclude that the state aid for Termoficare under the form of subsidies and state guarantee are not an over-compensation, as they do not exceed the costs related to the obligation of public service of general interest.

(77) Not granting this state aid would lead to the blocking of the company's activity as it does not have the funds necessary for the acquisition of fuel and, consequently, to the stoppage of the performance of the service of general economic interest. This fact would have serious repercussions on the population and undertakings within Pitesti city, which are left without the heating energy, necessary especially during the cold periods of the year.

#### *4.2.2. The state aid doesn't unduly affect the trade between Romania and the EU Member States*

(78) It needs to be noted that the activity of the company is restricted to a limited geographical area, represented only by the Pitesti city. Termoficare is the only operator on this market. The company is not involved in import-export activities. Under these circumstances it is considered that the trade with Member States is not unduly affected.

(79) Thus, the two conditions mentioned at point (71), 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.

(80) The state aid that will be granted to Termoficare in amount of RON 70.446.385 is compatible with the normal competitive environment.

## **DECIDES**

**Art. 1.** The measures of financial support granted that will be granted to Termoficare in 2006 constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid, republished*.

**Art.2.** The notified state aid represents a necessary compensation for the delivery, under normal conditions of safety and continuity, of the service of general economic interest of production, transport, distribution and supply of heating energy, which does not unduly affect the trade between Romania and the EU Member States.

**Art.3.** Pursuant to Art. 21 art. 2 (b) corroborated with Art. 23 par. 1 (j) of *Law 143/1999 on state aid, republished*, it is authorized the state aid for Termoficare, as aid to achieve under conditions of safety and continuity the service of general economic interest.

**Art.4.** Pursuant to Art. 32 of *Law 143/1999 on state aid, republished*, the suppliers will annually submit to the Competition Council information regarding the state aid granted to Termoficare, in view of its monitoring.

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

**Art.6.** Pursuant to Art. 46 of *Law 143/1999 on state aid, republished*, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

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

- The Ministry of Public Finance, Apolodor Street, no.17, sect. 5, Bucuresti;
- Local Council of Pitesti City, Str. Victoriei nr. 24, Pitești, Județul Argeș, cod 110017;
- S.C. Termoficare 2000 S.A. Pitesti, str. Calea Bucuresti, Bl. U4, Pitesti, jud. Arges.

**Art. 8.** The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.