

DECISION No. 40
Of 21.02.2006
concerning the notification of the Ministry of Administration and Internal Affairs
regarding the financial support for S.C. ENET S.A. Focsani

THE COMPETITION COUNCIL,

Having regard to the provisions of the Europe Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Official Monitor, no. 73 from 12 April 1993,

Having regard to the provisions of the Competition Law no. 21/1996, republished in the Official Monitor of Romania, Part I, no. 742 from 16 August 2005;

Having regard to the provisions of the Law no. 143/1999 on the state aid, republished in the Official Monitor of Romania, Part I, no. 744 from 16 August 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 the Official Monitor of Romania, Part I, no. 1048/12.11.2004;

Taking into account the provisions of the Guidelines on the state aid under the form of guarantees, published in the Official Monitor of Romania, Part I, no. 165 from 17.03.2003;

Having regard to the Decree no. 57/2004 regarding the appointment of the members of the Competition Council's Plenum,

Based on the following grounds,

1. PROCEDURE

(1) By the note no. 1288/25.01.2006, registered at the Competition Council with the no. RS-AS 14/26.01.2006, the Ministry of Administration and Internal Affairs, as initiator, notified to the Competition Council under Art. 15 of *Law 143/1999 on state aid, republished*, the financial support for S.C. ENET S.A. Focsani granted by the Ministry of Public Finance.

(2) The notification became effective on the date when information was complete, namely on 13.02.2006.

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. ENET S.A. Focsani.

- (4) The company was set up under the Romanian law, as local interest undertaking, based on the Focsani Local Council Decision no. 77/30.06.1995, amended by Local Council Decision no. 12/30.01.1996, as a result of transfer in the administration of the Local Council of Focsani City of the heating-power station (CET) Focsani.
- (5) The company is headquartered in Focsani and registered at the Trade Registry under no. J39/93/1996; its unique registration code is R8123890.
- (6) The registered capital of the S.C. ENET S.A. Focsani is RON 3,356,200, owned in totality by the Local Council of Focsani City and divided into 1,342,480 shares with a face value of 2.5 RON/share.
- (7) The financial and economic results, based on the balance sheets of the last 4 years are presented in table no. 1.

Table no. 1 – Financial and economic situation of the company in the period 2002-2005
- RON -

| Indicators | 2002 | 2003 | 2004 | 2005 (30.06.2005) |
|----------------|------------|------------|------------|----------------------|
| Total turnover | 30,101,612 | 36,903,310 | 36,724,118 | 43,952,003 |
| Profit/loss | -2,111,727 | 668,985 | -5,854,875 | -10,562,705 |

Source: Notification form

The data presented in the table above shows the undertaking registered losses during 2002–2005.

- (8) According to the Focsani Local Council Decision no. 77/30.06.1995 on SC ENET SA Focsani's establishment, the company's main line of business is the production, transport and distribution of caloric and electric energy. In accordance with its Status annex to the establishment decision, the purpose of the undertaking is, according to the Romanian law, the performance of services for accomplishing its activity object. By the licenses granted by the National Agency for Regulation in the Energetic field (named from now on ANRE) the company was entrusted with the performance of public services of caloric and electrical energy production, transport, distribution and supply, designated for the population, institutions and undertakings. According to art 16 align. (1) in the Law of Electrical Energy no. 318/2003 „the activities and services for which the licenses are being granted are of public interest, excepting those exclusively designated for the consumption of the license or authorization's owner”.
- (9) SC ENET SA Focsani's obligations as caloric and electrical energy producer are, according to art. 30 in the Law of Electrical Energy no. 318/2003, the following:
- To insure the electrical energy deliveries, respectively caloric energy 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 caloric energy 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) Taking into account the above mentioned, the services of public interest entrusted to the company are:
- The production, transport, delivery and supply of caloric energy;
 - The production, transport, delivery and supply of electrical energy.
- (11) The service of caloric energy production represents 90% from the company's total activity.
- (12) The company delivers the following products:
- thermo energy as hot water for the preparation of warm water for domestic use and for heating; for the consumption of the population, budgetary institutions and undertakings;
 - technological steam;
 - medium voltage energy;
 - low voltage energy.
- (13) 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 Focsani, which is entrusted for administration by concession contract to the company by the Local City Council of Focsani.
- (14) In order to carry out its core business SC ENET SA Focsani has the following equipment and installations:
- **The production of thermal energy:**
This is achieved through the use of the following equipment:
 - for the hot water: boilers of various types and sizes. The raw water is de-hardened or de-mineralized for the production of hot water, and for steam going to three processing units, and the resulting chemical parameters are verified in the chemical laboratory.
 - for the process steam: boilers of various types and sizes;
 - **For the transport of thermal energy:**
A heating network is operated and maintained to covers the distance from the heating-plant until neighbourhood heating-units and the consumer undertakings, as below:
 - the transport of hot water is done through four paths, of which three are for domestic consumption, and one for the industrial area, and has a total length of around 40 km.
 - the transport of steam to the undertakings is done through four paths toward third receivers, and has a total length of around 10 km;
 - **For the distribution of thermal energy:**
This service is achieved through 53 heating units and related secondary networks, on a total distance of 100.33 km onto three paths.
- (15) S.C. ENET S.A. FOCSANI has the following production capacities for heating energy:
- 3,311,061 MWH/year, for CAF, and 325 Gcal/hour;
 - 3,753,215 MWH/year, for CAF+ boilers, and 368.4 Gcal/hour;
 - 5,049,113 MWH/year, for CAF + boilers + steam, and 495.6 Gcal/hour.
- Almost all capacities function since 1980-1983 and thus many of the installations required recently significant investments in order to ensure the safety of their operation.

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

- (16) The company activates on the market of caloric energy production and supply and on the market of electrical energy production and supply.
- (17) The market affected by the financial support's granting, assessed in the present decision, is the market of the production, delivery, transport and supply services for the caloric energy addressed for the heating and assurance of warm water for the population and the undertakings because the measures of financial support granted by the State and notified by the Ministry of Administration and Internal Affairs aim to insure the fuel necessary for the production and supply of caloric energy designated for heating and insuring the hot water for the population and the undertakings. These services represents approx 90% of SC ENET SA Focsani's activity.
- (18) The caloric energy market is a regulated market, the prices for caloric energy being set by ANRE, both for household consumers as well as industrial consumers, by Government decisions. These consumers are captive consumers as they don't have the possibility to choose their caloric energy supplier.
- (19) The services of caloric energy production and supply function in centralized system and are organized under the management of the local public administration authorities' control, based on the local autonomy principle.
- (20) The geographical market is represented only by the area of Focsani city, therefore is a market of local interest.
- (21) SC ENET SA Focsani is the sole producer and supplier of caloric energy in the area it serves. From the whole energy produced by the company 80% is sold to the population and 20% is sold to the undertakings and public institutions.

2.3. Financial support measures to be granted to SC ENET SA Focsani

- (22) The financial support measures notified by the Ministry of Administration and Internal Affairs consist in:
- the 80% guarantee granted by the State in 2006, based on G.D no. 1320/2005 for the modification and completion of GD no. 763/2005 regarding the approval of the winter program in the energy field for October 2005- March 2006 to contract a domestic loan to complete the financing of the acquisition and transport of energetical resources required for the winter 2005 – 2006. The value of the contracted loan is RON 15,000,000 and the value of guarantee is RON 12,000,000;
 - the subsidy to be granted by the state in 2006, through the local budget of the city of Focsani, in amount of RON 26,189,575.

2.4. The financial support measures previously granted by the State

- (23) According to the data presented in the notification, SC ENET SA Focsani benefited until now by financial support measures, as follows¹:

¹ The state aid granted in 2002-2005 presented in table no. 2 were authorized by the Competition Council by Decision no.24/2005 and Decision no.49/2005.

Table no. 2 – Financial support received by the company during 2001 – 2005**- RON -**

| Financial measure description | 2001 | 2002 | 2003 | 2004 | 2005 | Total |
|--|--------------------|--------------------|---------------------|---------------------|---------------------|---------------------|
| Subsidies granted to the company | 2,124,113.8 | 6,580,980.7 | 10,038,990.6 | 13,382,920.2 | 19,847,392.6 | 51,974,397.9 |
| Budget allocations for investments and exemption from of penalties for late payment according to GEO 40/2002 | - | 210,767.7 | 3,280,000.0 | - | - | 3,490,767.7 |
| Loans contracted with State guarantee | - | - | - | - | 11,548,800.0 | 11,548,800.0 |
| Total | 2,124,113.8 | 6,791,748.4 | 13,318,990.6 | 13,382,920.2 | 31,396,192.6 | 67,013,965.6 |

Source: Notification form

The subsidies the company benefited of during 2001-2005 were granted for the coverage of the difference between the local delivery price and the national reference price for caloric energy delivered to the population. The guarantee granted by the State, through the Ministry of Public Finance was designated for the contracting of loan required for the financing of fuel acquisition for the winter period, according to GD no. 1367/2004 for the winter 2004-2005.

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

- (24) The public service of caloric energy production and delivery to the captive consumers, entrusted to the company, is regulated by ANRE. In order to perform the public service, the company registers costs with raw materials (fuels), materials, personnel, environmental, repairing and investments, metering costs and others.
- (25) 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. SC ENET SA Focsani keeps 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 population, which represents the public service obligation, is presented separately from its other activities.
- (26) The company has the obligation to submit to ANRE, at the end of each year, the justifying documents for showing the real costs related to the public service performed in that year and the quantities of caloric energy produced and sold in each month. Starting with the entering data, the standard methodology applies and the costs for the caloric energy production, transport and supply activity are found. Therefore, at the beginning of each financial exercise SC ENET SA Focsani founds its income and costs budget. In the same time, funding the prices to be used is submitted to be approved by ANRE, which establishes the national reference price and the local delivery price.

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

2.6.1. The national reference price

- (27) The national reference price was stipulated in EGO no. 162/1999 for caloric energy supplied to the population in centralized system, for house heating and preparing hot water.
- (28) The level of the national reference price for caloric energy is established in advance, by Government decision, at ANRE's proposal, as an average between the local prices of the producers using the same type of fuel, added to the related delivery tariffs. In the same time, the national reference price takes into account the possibility to be subsidized from the State's budget.
- (29) The national reference price is established to realize the equilibrium between the populations's 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 caloric energy cost within the budget of an average income family.
- (30) The standard methodology to calculate this price is established by ANRE order. The factors influencing the national reference price modification are: the fuel's price, the electric energy's price, the modifying of the consumer price index, the modification of the exchange rate (RON/USD or, after case, RON/EURO).
- (31) The evolution of the national reference price during 2005 - 2006 is shown in the table below:

Table no. 4 The evolution of the national reference price for the caloric energy in 2005-2006

| | 2005 | 2006 |
|---|---------------------------------------|-------------------|
| The normative act for establishing the national reference price | GD no. 1155/2004 GD no. 1254 /2005 | GD no. 1254 /2005 |
| The national reference price (RON/GCAL) | 89.6 107.5 | 107.5 |

Source: Notification form

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 caloric energy

- (32) The local delivery price for caloric energy is established by ANRE for the population as well as for the undertakings. The methodology for establishing the local delivery price is applied by ANRE to all producers of caloric energy in co-generation. This way, the undertaking has the obligation to present to ANRE, at the end of each year, the justifying documents from which to come forth the real costs related to the public service performed in that year and the quantities of caloric energy produced and sold each month.
- (33) 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.
- (34) The local delivery prices are established at the beginning of each year and adjusted at the beginning of the second semester of the year. The steps are the following:
- identifying the regulating activities and services;

- identifying the sources for producing caloric energy (separate sources and/or co-generation);
- estimating the quantities delivered to the final customers, based on the undertaking's accomplishments in the previous year, taking into account the losses in the transport network and the quantities produced as well as the power plants' own consumption;
- allocating the costs with technological fuel;
- allocation of direct costs, exclusively those with the fuel, on activities/services and production sources;
- allocating the indirect costs and the general management costs, on services, proportionally with the value of the direct costs, exclusively the fuel;
- determining the total costs for producing caloric energy 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

(35) The national reference price is regulated first of all due to the social protection reasons. Therefore, if the local price for caloric energy production and delivery is higher than the national reference price, the population will pay only the last price.

(36) 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.

(37) During 2005-2006, the national reference price was lower then the caloric energy's local delivery price established for SC ENET SA Focsani. In order to cover the difference between them the company will receive in 2006, according to EGO no. 162/1999, subsidies in maximum amount of RON 26,189,575 (see Table no. 4 below).

Table no. 4 The evolution of the local delivery price, the reference price and of the subsidy granted for covering the difference between them during 2006

| 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 with VAT | Legal ground for the reference price | Quantity delivered to the population | Total difference between the local delivery price with VAT and the reference price with VAT | Subsidy's value |
|---------------------|---|--------------------------|---|--------------------------------------|--------------------------------------|---|-----------------|
| | RON/Gcal | RON/Gcal | RON/Gcal | | Gcal | RON | RON |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Total estimates for | 225,0 | 107,5 | 117,5 | GD no. 1254/2005 | 222.890 | 26.189.575 | 26.189.575 |

| | | | | | | | |
|------|--|--|--|--|--|--|--|
| 2006 | | | | | | | |
|------|--|--|--|--|--|--|--|

Source: supplementary informations

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 caloric energy

(38) When analyzing the measures of support for SC ENET SA Focsani, one must also consider that, for the services of production and supply of caloric energy, the company registers costs higher than the local price for supplying caloric energy established by ANRE, this situation coming from the company's control accountability, where the costs are separately kept (see table no.5).

(39) 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% and the adjustment refers only to the fuel, without taking into account the raw materials and materials' prices that increase 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.

(40) The high operating costs of SC ENET SA Focsani 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, caloric energy is sold on the local market at a price agreed by ANRE which is lower than the average price operated with in the European Union;
- in the price structure approved by ANRE isn't enclosed the development quota for modernizing the technological equipments the company works with. This way, the company makes investments, repairs and other upgrades in the energetic system which it operates, but these expenses are not always reflected in the local delivery price of caloric energy;
- the proportion of technological fuel's costs in the price structure is very high (approx. 70 %), 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 (55%) does not have the liquidities required to pay in due time. In this way the real value of the subsidies is strongly diminished by the inflation rate;

(41) The differences between the local delivery price established by ANRE and the real cost of caloric energy under the form of hot water are shown in table no. 5.

Table no. 5 – Evolution of the difference between the local delivery price established by ANRE and the cost of the caloric energy and of the losses caused by this difference, for hot water

| PERIOD | Difference between the price settled by ANRE and cost | | QUANTITY DELIVERED | | | LOSSES CAUSED BY FAILURE TO COVER THE COST |
|-------------------|---|--------------|--------------------|------------|--------------|--|
| | POPULATION | UNDERTAKINGS | TOTAL | Of which: | | |
| | | | | POPULATION | UNDERTAKINGS | |
| | (RON/Gcal) | (RON/Gcal) | Gcal | Gcal | Gcal | RON |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Estimate for 2006 | 53.29 | 8.15 | 259,390 | 222,890 | 36,500 | 12,175,330 |

Source: notification form

As it can be seen, during the assessed period, the exploiting costs for the service of producing and delivering caloric energy is higher than its local delivery price, established by ANRE. Consequently, the difference between the real cost of the service of general economic interest and the local delivery price of caloric energy resulted in a total loss amounting RON 12,175,330 related to the activity of performing the service.

3. ANALYSIS OF THE STATE SUPPORT MEASURES

3.1. Object of the decision

(42) On the basis of the notification to the Competition Council by the Ministry of Administration and Internal Affairs, the object of the present decision is the financial support measures granted by the State, mentioned in paragraphs (22) amounting RON 38,189,575. These measures are analyzed in the context of meeting the obligation of public service of general economic interest by SC ENET SA Focsani.

3.2. Obligation of service of general economic interest

(43) 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, 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;
- 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):

- (44) SC ENET SA Focsani is entrusted with the production, transport, distribution and supply of caloric energy for the population, institutions and undertakings, under the ANRE licenses no. 19/2000, 20/2000, 21/2000 and 483/2002. In the licenses are mentioned, among other things, the obligations specific for the undertakings performing a service of general economic interest, namely: continuity in supplying caloric energy, ensuring access to heating networks for new customers, achieving performance standards. Also, by EGO no.162/1999, producers and suppliers of caloric energy are under the obligation to sell caloric energy to the population at a fixed price which regularly is lower than the costs incurred by the discharge of the service (national reference price).
- (45) According to the *Law on town management no. 326/2001*, the supply of caloric energy which is centralized produced is a public use service.
- (46) 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.
- (47) 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.
- (48) 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.
- (49) The supply of town caloric energy for heating and preparing hot water for consumption is made through the caloric energy system of the Municipality of Focsani which is part of the technical-municipal infrastructure of the town. The Local Council of Focsani Municipality provides to the Company the heating system needed for accomplishing services of general economic interest through administration contract.

(50) Regarding the above presented facts, SC ENET SA Focsani is under the obligation to ensure the effective functioning of services relating to the production, transport, distribution and supply of caloric energy that are essential for the population, institutions and undertakings of Focsani 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 SC ENET SA Focsani is entrusted with the discharging of a service of general economic interest through a normative act (license), observing the criterion from point 3.2. a).

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

(51) 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.

(52) 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. Their justification is based on the following objective criteria: the price of natural gas, the electric energy price, consumer price index, the exchange rate.

The local delivery price is established based on a *Methodology of setting regulatory prices for the sale/purchase, transport and distribution tariffs for heating energy* issued by ANRE. The caloric energy producers submit to the regulatory body the justification of their prices. This contains fixed and variable costs in the last 12 months and costs estimated for the next 12 months. The regulatory body performs an analysis of the variable costs (fuel price, specific production consumption, losses in the transport and distribution networks) as well as fixed costs and approves the local price of caloric energy, resulting in this way different local delivery prices for each company.

(53) The information submitted to the Competition Council prove the fact that the procedure mentioned at paragraph 52 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) :

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

(55) From Table no. 4 it can be seen that the amounts received by SC ENET SA Focsani as subsidies, in amount of RON 26,189,575 cover the difference between the national reference price and the local delivery price for caloric energy.

(56) Furthermore, from the data in Table no.5 it can be seen that during the analyzed period SC ENET SA Focsani registered a total loss of RON 12,175,330 caused by the difference between the local delivery price established by ANRE for the caloric energy supplied and the real cost for its production and delivery, resulted from the obligation to discharge the service of general economic interest.

(57) The financial support measures from which the company benefits in 2006 are in total amount of RON 38,189,575 of which:

- RON 26,189,575 to be exclusively used to cover the difference between the national reference price and the local delivery price (table no.4);
- RON 12,000,000 representing the 80% state guarantee of the loan contracted with the state's guarantee which cover a part of the losses resulted from the discharge of the service of general economic interest.

(58) The 80% state guarantee in amount of RON 12,000,000 covers just a part of the losses incurred by the company for the discharge of the service of general economic interest in amount of RON 12,175,330.

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

(60) The Competition Council considers that the state aid to be granted to SC ENET SA Focsani in 2006 represents a compensation for the costs related to the performing of the public service of general economic interest for the production, transport, delivery and supply of caloric energy in the city of Focsani, as its level doesn't exceed the total costs resulted from the obligation of service of general economic interest.

3.6. Condition in 3.2. d) :

(61) SC ENET SA Focsani was not entrusted with the service of general economic interest to produce caloric energy following a public tender procedure.

(62) The public service to produce heating energy was entrusted to SC ENET SA Focsani 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 caloric energy market there are acting other producers and suppliers but 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 caloric 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.

(63) 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 SC ENET SA Focsani, notified by the Ministry of Administration and Internal Affairs, constitute state aid for the purposes of *art. 2 of Law 143/1999 on State aid, republished* and of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.

3.7. Assessment of the state aid

(64) The state aid for SC ENET SA Focsani 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 guarantee granted by the State for internal credit contracted by the company.

(65) The state aid under the form of subsidies, to be granted in 2006 is in amount of RON 26,189,575. In 2005 the company has financial difficulties making losses. 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 is equal to 80% of the value of the loan contracted, respectively RON 12,000,000.

- (66) The guarantees granted by the Ministry of Public Finance cover 80% of the domestic loan represent a 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.
- (67) The Government Decision approving the state guarantee for the domestic loan contracted by the company, establishes the maximum loan amount to be guaranteed, the purpose of the loan and the guarantor (Ministry of Public Finance).
- (68) The total amount of state aid to be granted to SC ENET SA Focsani is of RON 38,189,575 according to data in Table no. 6.

Table no. 6 – State aid to be granted to the company in 2006

-RON -

| Type of state aid | 2006 | Total |
|--|-------------------|-------------------|
| Subsidy granted to the company | 26,189,575 | 26,189,575 |
| Loan contracted with the state's guarantee | 12,000,000 | 12,000,000 |
| Total | 38,189,575 | 38,189,575 |

Source: supplementary informations

4. Compatibility of the Aid

- (69) 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

- (70) 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.

- (71) As indicated under point 3.3. above, SC ENET SA Focsani discharges a public service of general economic interest and this obligation is clearly defined by license.

- (72) SC ENET SA Focsani operates its service under ANRE licenses no. 19/2000, 20/2000, 21/2000 and 483/2002. 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 SC ENET SA Focsani has been officially entrusted with the public service that it discharges.

(73) Also, from the assessment under point 3.5. above results that under 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.

(74) Therefore, one can conclude that the state aid to be granted to SC ENET SA Focsani, 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 Focsani.

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

(75) It has to be noted that the activity of the company is restricted to a limited geographical area, represented only by the Focsani County territory. SC ENET SA Focsani 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

(76) The state aid granted to SC ENET SA Focsani 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 the domestic loan contracted by the company in 2006, does not represent an over-compensation because it does not exceed the costs which are absolutely necessary in order to perform the public service obligation of general economic interest (see paragraphs 57 and 58).

(77) Thus, the conditions provided at paragraph 70, 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 SC ENET SA Focsani, representing compensations for the performance of the service of general economic interest, are state aid compatible with the normal competitive environment.

(78) The state aid to be granted to SC ENET SA Focsani by the Ministry of Public Finance, in amount of RON 38,189,575 in 2006 is compatible with a normal competitive environment.

DECIDE

Art. 1. The measures of financial support to be granted in 2006 to SC ENET SA Focsani represent state aid within the meaning of art. 2 of *Law no. 143/1999 on state aid, republished*.

- 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.** Based on art. 21 (2) b) and art. 23 (1) j) of *Law no. 143/1999 on state aid, republished* the aid for SC ENET SA Focsani is authorized as aid to achieve under conditions of safety and continuity the service of general economic interest.
- Art.4.** According to provisions of art. 32 of *Law no. 143/1999, republished*, the Ministry of Administration and Internal Affairs will submit on an annual basis to the Competition Council information regarding the state aid granted to SC ENET SA Focsani, in view of monitoring the aid.
- Art.5.** This decision is applicable as of its date of communication.
- Art.6.** According to provisions of art. 46 of *Law no. 143/1999 on state aid, republished*, this decision may be appealed by the interested parties to the Bucharest Court of Appeals, the Administrative Litigation section, within 30 days from its communication.
- Art.7.** This decision will be communicated by the Secretariat General of the Competition Council to:
- The Ministry of Public Finance, Apolodor Street, no.17, sect. 5, Bucuresti;
 - The Ministry of Administration and Internal Affairs, Piata Victoriei, no.1, sect.1, Bucuresti;
 - SC ENET SA Focsani, Bucuresti Street no. 4, Focsani, Vrancea County, postal code 620144.

PRESIDENT

MIHAI BERINDE