

COMPETITION COUNCIL DECISION
no.7 from 19.01.2006
regarding the notification of Focsani City Hall
concerning measures of financial support for the
Company of Public Utilities Focsani

COMPETITION COUNCIL,

Based on the provisions of the Decree no. 57/2004 for appointing the members of the Competition Council's Plenum,

Based on the provisions of the *Competition Law no. 21/1996*, republished in the Official Gazette of Romania, Part I, no. 742 from 16 august 2005,

Based on the provisions of the *Law no. 143/1999 on the state aid*, republished in the Official Gazette of Romania, Part I, no. 744 from 16 august 2005,

Based on the provisions of the *European 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 Gazette, Part I, no 73/12.04.1993,

Based on the *Regulation on state aid as compensations granted to undertakings entrusted with services of general economic interest*, published in the Official Gazette, Part I, no.1048 from 12 november 2004,

Based on the following considerations,

1. PROCEDURE

- (1) By address no.9844/15.06.2005, registered at the Competition Council with the no. RS-AS 36/15.08.2005, the City Hall of Focsani, based on the Art. 15 (1) of the *Law no. 143/1999 on the state aid*, republished, forwarded to the Competition Council the notification regarding the facilities from which the Company of Public Utilities R.A. Focsani is benefiting.
- (2) Since the data and information contained in the notification form were not complete, additional information was requested through the addresses DAAS no.1034/06.09.2005, DAAS no.1201/18.10.2005, respectively. The notification became effective on 07.12.2005.

2. DESCRIPTION OF THE FINACIAL SUPPORT MEASURES

2.1. Legal Basis

- (3) The legal basis for granting state aid is represented by *Emergency Government Ordinance no. 37/2004 regarding certain measures for reducing the arrears in the economy.*

2.2. Beneficiary of the financial support measure

- (4) The beneficiary of the financial support measure is the Company of Public Utilities R.A. Focsani (hereinafter C.U.P. R.A. Focsani).
- (5) C.U.P. R.A. Focsani was set up in 1998 according to the Romanian law, as “Regie” of local interest, on the basis of the Decision of the Local Council of Focsani no.70/1998.
- (6) “Regie” has its headquarters in Focsani and is registered with the Registry of Commerce under no. J39/364/1998 and has the fiscal registration code 1443170.
- (7) The social capital of C.U.P. R.A. Focsani, amounting to 4,008,000 RON, is totally owned by the Local Council of Focsani.
- (8) The regie’s main activity consists in transport and distribution of heating energy under the form of hot water to the population, institutions and companies in the city of Focsani. In addition to its main object of activity, C.U.P. R.A. Focsani is also delivering the following services: collection and storage of waste, supply of drinking water and sewerage.
- (9) The economic and financial results achieved by C.U.P. R.A. Focsani, on the basis of the data contained in the balance sheets for the period 1998-2001, are presented in tabel no.1:

Tabel no.1 – The economic-financial results of C.U.P. R.A.Focsani between 1998-2001
-RON-

Indicators	1998	1999	2000	2001
Total turnover, achieved entirely on the Romanian market	9,428,767	14,061,325	20,581,334	19,290,594
<i>Profit/loss</i>	<i>972,009</i>	<i>1,659,456</i>	<i>2,988,585</i>	<i>-3,735,926</i>

Source: Supplementary information

The data presented in the table above shows that the “regie” incurred losses in 2001.

- (10) The Regie is providing heating energy under the form of hot water for the preparation of hot water and for heating, in view of ensuring the consumption needs of the population, budgetary institutions and economic agents.
- (11) C.U.P. R.A. Focsani was entrusted with the performance of public services of transport and delivery of heating energy by licenses granted by the National Agency of Regulation in the Energy Field (hereinafter called A.N.R.E.). This service can not usually be provided by economic operators because the supplier undertakings must fulfill certain compulsory conditions related to the supply of these services.
- (12) In accordance with the provisions of the *Law on town management no. 326/2001*, public services must fulfill the following essential 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.
- (13) The supply of heating energy for heating and preparation of hot water is realised through the urban heating system of Focsani, a system entrusted to the company on the basis of a concession contract by the Local Council of Focsani.
- (14) For the distribution of heating energy, C.U.P. R.A. Focsani uses the following equipments and installations:
- ***For the transport of heating energy***
 - primary networks from the thoroughfare, 16 km long and secondary networks 35 km long;
 - general equipments: power pump, oxygen tubes, welding kits, water distillation device, technical balances, analitical balances, water gauges, thermometers, cloakrooms;
 - ***For the distribution of heating energy***
 - heating units and the respective secondary networks.

2.3. The market affected by the financial support granted to C.U.P. R.A. Focsani

- (15) C.U.P. R.A. Focsani action in the market of transport, distribution, and supply of heating energy.
- (16) The market affected by the financial support is the market of transport, distribution, and supply of heating energy used for heating and ensuring the warm water for the population and economic operators, because the financial support measures granted by the state and notified by Focsani City Hall aim at ensuring the transport, distribution and supply of heating energy. These services represent 50% from the overall activities of C.U.P. R.A. Focsani.

- (17) The market of heating energy is a regulated one because the “regie” is selling the heating energy at prices fixed by the National Agency of Regulation for Public Services of Town Management (A.N.R.S.C.) towards population and undertakings, through Government ordinances, and it is obliged to ensure the supply of heating energy to all those connected to the network, without discrimination. At the same time, all consumers within the network are captive consumers as they do not have the possibility to choose their heating energy supplier.
- (18) The services of distribution, transport and supply of heating energy used for heating and for ensuring the supply of hot water for the population and for the companies function in a centralised system and are coordinated and controlled by the public local administrative authorities, by virtue of the local autonomy principle.
- (19) The relevant geographical market on which the “regie” is acting, is represented by the area of Focsani city, and therefore it is a market of local interest.
- (20) C.U.P. R.A. Focsani is the sole transporter, distributor and supplier of heating energy in the area it services. From the overall activity of transport and distribution of the heating energy, is 84% for the population and 16% for the undertakings.

2.4. The financial support measures

- (21) The support measures notified by Focsani City Hall consist in the exemption from payment of penalties owed to S.C. ELECTRICA MUNTENIA Nord amounting to 3,794,383 RON, in accordance with *G.O. no.37/2004*.

2.5. The subsidies granted by the state

- (22) According to the data presented in the notification, C.U.P. R.A. Focsani benefited from subsidies between 1998-2001 as it follows:

Tabel no. 2 – Financial support received by the company between 1998-2001

- RON-

<i>Type of financial support</i>	1998	1999	2000	2001	Total
Subsidies	2,105	3,053	3,251	3,518	11,927

Source: Notification form

The subsidies from which the “regie” benefited in the period under analysis were granted in order to cover the price differences between the national reference price and the local delivery price of the heating energy delivered to the population.

2.6. Costs arising from the operation of the services of general economic interest

- (23) The public service of transport, distribution and supply of heating energy for captive consumers, entrusted to C.U.P. R.A. Focsani, is regulated by A.N.R.S.C. In order to deliver this public service, the “regie” incurs raw materials costs (fuels), personnel costs, environment, repairing and investments costs, metering and other costs.
- (24) According to art.20 par.5 from *Law no.326/2001 on town management*, the undertakings that perform public services must keep a separate accounting for all activities performed, with a distinct accountancy for each type of service, so that the activities could be easily assessed, monitored and controlled.
- (25) C.U.P. R.A. Focsani keeps an accountancy in which the company’s activities are indicated separately. Therefore, the activity of transport, distribution and supply of heating energy for the captive consumers, which represents the public service obligation, is indicated separately from the other activities performed by the company. Its results are presented in table no. 3:

Tabel no. 3- Evolution of the main economic and financial indicators - RON-

	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>TOTAL</i>
Revenues from transport, distribution and supply of heating energy under the form of hot water	6,262,377	8,892,615	12,284,732	12,446,062	39,885,787
Costs arising from transport, distribution and supply of heating energy under the form of hot water	6,592,329	9,376,203	12,475,925	16,706,186	45,150,644
Financial result from transport, distribution and supply of heating energy under the form of hot water	-329,952	-483,588	- 191,193	-4,260,124	-5,264,857

Source: Supplementary information

(26) From the data presented in table no. 3 it can be seen that between 1998-2001, the company registers losses out of the discharge of the public service that is due especially to the difference between the real costs entailed by this activity and the selling of the heating energy at a regulated price. The main cause of the high value registered by the exploitation costs is represented by the technological losses within the transport and distribution network as a result of the inappropriate technical status of the transport and distribution network.

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

2.7.1. The national reference price

(27) The national reference price was established by EGO no. 162/1999 for heating energy supplied to the population in centralized systems, aiming to provide house heating and for hot water preparation.

(28) This national reference price is a regulated one from social protection reasons. Thus, if the local delivery price is higher than the national reference price, the population will pay the last one.

(29) The national reference price is established, for achieving equilibrium between the degree in which the population can support it, and the subsidies possibilities from the state budget. As regard the social aspect, in establishing this price it is taken into account the proportion of the cost of heating energy from the budget of a family with medium income.

(30) The level of the national reference price for heating energy is established in advance, by ANRE, as an average between the local prices of the producers using the same type of fuel, added to the related delivery tariffs, taking into account the possibility to be subsidized from the State's budget.

(31) The standard methodology to calculate this price is established by ANRE' Order. The factors influencing the national reference price modification are: the natural gases price, the energy's price, the modifying of the consumer price index, the modification of the exchange rate (RON/USD or, after case, RON/EURO).

2.7.2. Local delivery price for heating energy

(32) The local delivery price for heating energy is established by A.N.R.S.C. both for population as well as for the undertakings. The methodology for establishing the local delivery price is applying to all producers of heating energy in co-generation. Thus, the economic operator has the obligation to submit to A.N.R.S.C., at the end of every year, relevant documents showing the effective costs related to the public service performed during the specific year and the quantities of heating energy produced and sold each month.

(33) Starting from these entering data the standard methodology is applied and the costs for the producing, transport, distribution and supplying heating energy is determined. 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, 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 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 years, 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 unit 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.

(35) When the giga-calory price is higher than the national reference price, then, according to *GEO no. 162/1999*, the difference is subsidized as follows:

- a) from the State budget, within the amounts approved by the State budget Law;
- b) from the local budgets, for the amount remained uncovered by the State budget.

(36) During 1998 – 2001, the national reference price was lower than the local delivery price for heating energy established for C.U.P. R.A. Focsani. In order to cover the difference between these, the Regie received subsidies in quantum of 11,926,636 RON (see Table 4).

Table no. 4 – Evolution of heating energy quantity delivered to population and of the subsidy granted to the Regie for covering the difference between the national reference price and the local delivery price during 1998-2001

Period	Quantity delivered to population (Gcal)	Subsidy (RON)
Total year 1998	342,032.51	2,104,767
Total year 1999	289,936.72	3,052,868
Total year 2000	269,230.82	3,250,896
Total year 2001	226,916.52	3,518,105
Total	1,128,116.57	11,926,636

Source: Supplementary information

The subsidy of 11,926,636 RON covers exclusively the difference between the national reference price and the local delivery price of heating energy destined to the population.

2.8. Costs higher than the local delivery price of heating energy, due to the obligation to perform public service

(37) When analyzing the support measures for C.U.P. R.A. Focsani, it must be taken into consideration the fact that, in order to perform the service of heating energy transport, distribution and supply, the Regie registers costs higher than the local delivery price established by A.N.R.S.C.

(38) The unitary operating cost of the service was calculated based on the effective expenditures recorded by the Regie in every year of the analyzed period, namely expenditures with raw materials, materials, personnel, environmental protection, repairs and investments, metering and others, and on the actual quantity of heating energy delivered in the respective year.

(39) In fact, the local delivery price established by A.N.R.S.C. is not covering all the costs because the forecast on fuel price increase is not taken into account. Following the fuel price increase made during the year, A.N.R.S.C. adjusts the energy price only if its increase exceeds 5%. This increase is taken into consideration only at price recalculation which take place once a year. Therefore, all over the year, there will be a gap between the costs of the energy operator and the local delivery price.

(40) The higher costs C.U.P. R.A. Focsani operates with are generated mainly by the following causes:

- high heating energy consumption costs of pumps obsolete;
- damages of heating isolations make the heat losses on the secondary circuit to be higher than 10% and the parameters of the heating agents to decrease below normal limits;
- quantity of heating energy delivered in the period 1998-2001 decreased with up to 17% per total and with 34% for the population following two events: reduction of areas to be heated through disconnections and high temperature of the air;
- the obligation of C.U.P. R.A. Focsani, as operator of public service, not to interrupt the supplying of heating energy in Focsani and its surrounding area. This situation generates high losses since the network is over-dimensioned and the costs related to this activity are very high.

(41) Table no. 5 shows the trends of the local delivery price of heating energy in the form of hot water and its actual supplying cost during 1998-2001.

Table no. 5 – Evolution of losses recorded by company during 1998-2001 following the difference between the local delivery price and the actual supplying cost of heating energy in the form of hot water

PERIOD	TOTAL DELIVERED QUANTITIES (Gcal)	Incomes (RON)	Costs (RON)	Uncovered losses (RON)
Total 1998	382,951.00	6,262,377	6,592,329	329,952
Total 1999	328,513.6	8,892,615	9,376,203	483,588
Total 2000	300,283.17	12,284,732	12,475,925	191,193
Total 2001	328,951.00	12,446,062	16,706,186	4,260,124
TOTAL	1,340,698.77	39,885,787	45,150,644	5,264,857

Source: supplementary information

As it can be seen, during the assessed period, the operating cost for the service of delivering heating energy is higher than the local delivery price established by A.N.R.S.C., both for population and undertakings.

(42) Consequently, the difference between the actual cost of the public service of general interest and the local delivery price of heating energy generates losses in amount of 5,264,857 RON, afferent to public service performance.

3. ANALYSIS OF THE STATE SUPPORT MEASURE

3.1. Object of decision

(43) Based on the notification submitted to the Competition Council by the City Hall of Focsani, the object of the present decision is the financial support measures granted as subsidies for covering price differences for heating energy delivered to population and as exemption from the payment of interests, supplementary charges and delay penalties owed by C.U.P. R.A Focsani to FDFEE Electrica Muntenia Nord SA.

(44) These measures are analyzed in the context of meeting the obligations of public service of general economic interest by C.U.P. R.A. Focsani.

3.2. Obligation of service of general economic interest

(45) The financial support granted to a company entrusted with a service of general economic interest is not considered State aid in the meaning of art. 2 of the Law *no. 143/1999 on State aid, republished*, if the following conditions are cumulatively met:

- a) the obligation to perform 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 by performing the service of general economic interest, taking into consideration the relevant incomes and a reasonable profit in meeting 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 offerer able to perform 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 with those of a well-managed and profitable enterprise which meets all the conditions set for the performance of the respective public service, given the relevant incomes and a reasonable profit from meeting the service of general economic interest obligations.

3.3. Condition from paragraph 3.2. letter a)

(46) C.U.P. R.A. Focsani is entrusted with the performance of the service for transporting, distributing and supplying the heating energy destined for the population, institutions and heating operators, through the license A.N.R.S.C. no. 1124/2000. The license provides, among other provisions, obligations regarding: the continuity in supplying heating energy, ensuring the access to the heating networks of the new consumers, fulfilling the performance standards. As well, by GEO no. 162/1999, the producers and suppliers of heating energy were obliged to sell the heating energy to the population at a fixed price, which usually is lower than the costs afferent to the service performance (national reference price).

(47) According to the *Law on public local administration no. 326/ 2001*, supplying with heating energy centralized produced represents a service of public utility. Organizing, exploiting and functioning of the public services must ensure:

- a) satisfying the quantitative and qualitative demands of the users, according to the contractual provisions;
- b) the optimum functioning, in safety conditions, profitability and economic efficiency of the constructions, equipments, installations and endowments, according to the designed technological parameters and to the technical specifications, to the exploitation instructions and regulations for organization and functioning;
- c) protecting the public domain and the environment by observing the legal regulations;
- d) informing and consulting the citizens in order to protect the health of population benefiting of the respective services.

(48) The obligations of the suppliers of public services are, mainly, the followings:

- a) to supply all users from the covered area, for which they were authorized/attested;
- b) to observe the performance parameters established by the local public authorities, respectively the regulatory national authority;
- c) to provide the local public administration, respectively the regulatory national authority, with the requested information and to ensure the access to the documentations of the respective utilities, in accordance with the provisions of the operating contract.

(49)The supply of the urban heating energy for heating and preparing the hot water for consumption is carried out through the urban heating system of Focsani, as part of the technical infrastructure of the city. The administration of the heating system, necessary for achieving the services of general interest, is entrusted by the Focsani Local Council to the regie.

(50)Taking into account all the above mentioned, the Competition Council concludes that it is fulfilled the condition provided at paragraph 3.2 letter a), according to which the obligation to perform a service of general economic interest must be entrusted through a normative/administrative act and be clear defined.

3.4. Condition from paragraph 3.2 letter b)

(51)According to this criterion, the compensation of the obligation to perform the public service must be settled based on certain prior established parameters, in an objective and transparent manner and may not grant an economic advantage to the beneficiary.

(52) The two parameters, based on which the compensation level is calculated, are the national reference price established by A.N.R.E. and the local delivery price established by A.N.R.S.C. These parameters are established in advance by Governmental Decision, on the A.N.R.E. proposal. The methodology for reasoning the national reference price is based on the followings:

- the price of the fuel used for producing the heating energy;
- the price of the electric energy;
- the index of the consumption prices;
- the rate of exchange RON/USD.

The local delivery price is settled based on the *Methodology for establishing the selling/buying regulated prices, the tariffs for transport and distribution for heating energy*, issued by A.N.R.S.C. The heating energy producers and suppliers submit the reasoning for prices settlement at the regulatory authority. This contains the fix and variable costs recorded in the last 12 months and forecast costs for the following 12 months. The regulatory authority analyzes the variable costs (fuel price, specific consumptions for producing heating energy, losses of heating energy in the transport and distribution networks) as well as the fix costs and approves the

local price of the heating energy, resulting thus local delivery prices for each company.

(53) At the beginning of each financial exercise, C.U.P. R.A. Focsani fundamentals a budget of incomes and expenditures. Thus, based on the prior year dates, there are forecast: the heating energy quantities (being known the number of consumers and the annual average consumption per person– hot water – and per apartment – heating), the subsidies that are to be received and a volume of loans necessary for carrying out the public service in safety conditions. As well, the expenditures generated by the performance of the public service are estimated (raw materials, human resources, financial expenditures).

(54) Thus, it can be concluded that this compensation for performing the public service is based on pre-established parameters.

3.5. Condition from paragraph 3.2 letter c)

(55) The condition from 3.2.c) provides that the level of the compensation should not exceed the costs imposed by the performance of the service of general economic interest.

(56) From Table no. 4, it can be noticed that the amounts received by C.U.P. R.A. Focsani as subsidies, in total amount of RON 11,926,636, covers exclusively the difference between the national reference price and the local delivery price of the heating energy.

(57) Moreover, from Table no .5 it results that during the analyzed period, C.U.P. R.A. Focsani recorded a loss of RON 5,264,857, caused by the difference between the local delivery price established by A.N.R.S.C. for the heating energy and its real delivery cost.

(58) Taking into consideration the losses of RON 5,264,857 which the regie autonomous records from performing the service of general economic interest, it can be observed that the facilities as exemption from penalties payment in amount of RON 3,794,383 do not cover entirely the losses of the regie. Thus, the compensation for maintaining the public service is lower than the costs of this activity. As a consequence, it can be concluded that this compensation does not exceed what is necessary for performing the public service for distributing, transporting and supplying the heating energy.

3.6. Condition from paragraph 3.2. letter d)

(59) Entrusting the C.U.P. R.A. Focsani with the performance of the service of general economic interest for transporting and distributing the heating energy was not achieved by public tender.

(60) The performance of the service of producing the heating energy was entrusted to C.U.P. R.A. Focsani by the A.N.R.E. license. Thus, in order to establish the

compensation level, it is necessary to analyze the costs that another economic operator would have recorded, in performing the same service. On the Romanian heating energy market other producers and suppliers operate, but a comparison with these companies would not be relevant because they are also public undertakings, receiving support from the State for fulfilling the obligation of performing the service for general interest. However, making a comparative analysis with other economic operators - producers and suppliers of heating energy - it was noticed that their situation is similar with the one of C.U.P. R.A. Focsani, respectively the real costs of the service exceed the local delivery prices established by A.N.R.E. and the causes leading to this situation are similar.

(61) Taking into account the upper stated elements, it is considered that the 4 conditions mentioned at paragraph 3.2. are not cumulatively fulfilled, respectively the condition provided at paragraph 3.2. letter d) could not have been proved. As a consequence, the support measures for C.U.P. R.A. Focsani, notified by the Focsani City Hall, constitute State aid in the meaning of Art. 2 of the *Law no.143/1999 on State aid*, republished and of the *Regulation regarding the State aid as compensations granted to certain undertakings entrusted with the performance of the services for general economic interest*.

4. State aid compatibility

(62) According to the *Regulation regarding the State aid as compensations granted to certain undertakings entrusted with the performance of the services for general economic interest*, the compensations granted to achieve the service of general economic interest can constitute State aid compatible with the normal competitive environment only if there are met cumulatively the following conditions:

- a) the State aid is necessary for the performance of the service of general economic interest;
- b) the State aid does not unduly affect the trade between Romania and the EU Member States.

4.1. The State aid is necessary in order to perform the service of general economic interest

(63) State aid granted to C.U.P. R.A. Focsani is strictly necessary for the functioning under normal conditions of continuity and safety of the public service for transporting, distributing and supplying the heating energy. Under the conditions of a regulated market, C.U.P. R.A. Focsani can not charge, for providing this service, a price that covers the exploitation costs and includes also a reasonable profit.

(64) This is the main cause for which C.U.P. R.A. Focsani recorded losses year by year, not being capable to fulfill its obligations to the budget and to the grantors. Moreover, it is added also the low rate of collecting the claims from the population.

(65) The force execution of these obligations would block the regie's activity and would have as consequence the cease of the public service performance, with severe consequences for the population and the undertakings from Focsani city.

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

(66) It must be underlined that the Regie's activity is limited to a local market, the one of Focsani. C.U.P. R.A. Focsani is the only operator on this market. The Regie is not involved in import-export activities. Under these circumstances, it can be considered the granting of the state aid does not unjustifiably affect the trade between Romania and EU Member States.

4.3. There is no overcompensation

(67) The State aid granted to C.U.P. R.A. Focsani under the form of exemption from payment of penalties owed to F.D.F.E Electrica Muntenia Nord and subsidies for covering the price difference does not represent an overcompensation, because it does not exceed the costs incurred by the obligation to perform service of general economic interest.

(68) Thus, the 2 conditions mentioned at para. (61) are cumulatively met, conditions provided in the Regulation on State aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest, so it can be appreciated that the support measures for C.U.P. R.A. Focsani, representing compensations for performing the service of general economic interest, are compatible State aid with the normal competitive environment.

(69) From the above mentioned facts it results that the state aid in amount of RON 15,721,019, from which RON 3,794,383 represents exemption from the payment of penalties due to the electric energy supplier and RON 11,926,636 represents subsidies, is compatible with the normal competitive environment.

DECIDES

Art. 1. The analyzed measures of financial support granted to C.U.P. R.A. Focsani constitute State aid for the purposes of Art. 2 of *Law 143/1999 on State aid*, republished.

Art.2. The notified State aid represents compensation, necessary to achieve, under normal conditions of safety and continuity of the service of general economic interest of distribution, transport 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 (2) (b) read in conjunction with Art. 23 (1) (j) of *Law 143/1999 on State aid* republished, it is authorized the State aid for C.U.P. R.A. Focsani, , in

quantum of 15,721,019 RON as State aid due to the delivery under safety and continuity conditions of the general economic interest service.

Art.4. Pursuant to Art. 32 of *Law 143/1999 on State aid*, republished, suppliers shall annually submit to the Competition Council information regarding the State aid granted to C.U.P. R.A. Focsani in view of its monitoring.

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

Art.6. According 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:

- C.U.P. R.A. Focsani (Company of Public Utilities), 9, Nicolae Titulescu Street, Vrancea County, Focsani;
- City Hall of Focsani, 1^o, Dimitrie Cantemir Blvd, Focsani, postal code 5300;
- SC Electrica Muntenia Nord SA Ploiesti, 44, Marasesti Street, Ploiesti, Prahova County.

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

PRESIDENT

MIHAI BERINDE