



ÁLLAMI
SZÁMVEVŐSZÉK

SUMMARY
of the Audit on the Operation And Financial
Management of the Hungarian Competition
Authority (14001)

Objectives and scope of the audit

The task of the Hungarian Competition Authority (HCA) is to contribute to the protection of a free and clear market competition through its competition monitoring proceedings, competition advocacy activities impacting governmental decisions, and other activities implemented in order to develop competition culture.

In the course of auditing HCA, the State Audit Office of Hungary (SAO) assessed for the period 2008-2012 whether operations, financial management and task performance of HCA were regular and well-regulated. Furthermore, the SAO also assessed the implementation of the recommendations from its audit carried on the operations of HCA in 2004. The audit activity on HCA's task performance addressed the compliance of its procedures and actions with legislations and internal regulation, not HCA's independence as a body in charge of monitoring competition.

Main findings

The SAO's audit found that in the audited period HCA did not have a corporate strategy setting long- and mid-term objectives, the activities necessary for the fulfilment thereof, and the deadlines of the individual tasks. It did not specify in every case the activities to be implemented, as well as the deadlines and responsible officers of the implementation in its annual plans on activities, either.

The quality of the regulations on HCA's operations was deficient. The changes in the legislation concerning the tasks and the organisation of the financial management were not taken into consideration and tracked entirely, respectively by the legally required deadline in the Deed of Foundation and the Operational and Organisation Rules.

In the course of its operations, HCA performed its tasks stipulated in the Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (Competition Act). However, when implementing the procedures, HCA did not fully comply with the deadlines set in the Competition Act and the relevant requirements of its internal regulations.

In the audited period, the HCA implemented 652 competition monitoring proceedings. Regarding the regularity thereof, the SAO found that 43% of the cases reviewed were in compliance with the Competition Act and HCA's internal regulations, due to the fact that in many cases deadlines were not met and the HCA did not develop an examination concept substantiating procedures on its own initiatives. 25% of HCA's resolutions were appealed against by the clients through submitting 'requests for revision'. Based on these requests, in the different legal cases the first-instance courts ruled that HCA is to repay to the clients a total of HUF 4.9 billion from the fines it collected. However, the second-instance court rulings stated that the clients are yet to pay from the aforementioned sum a total of 4.1 billion to HCA. Owing to the differences of the jurisdictional practices and the delays in the court proceedings, in average it took 2 years until fines repaid to clients but charged on them according to the second-instance ruling were transferred by clients to the national accounts.

In the course of its competition advocacy activities, HCA performed the tasks stipulated for it in the Competition Act, through assessing and providing opinion on legal drafts and technical concepts.

The tasks to develop competition culture were performed by the Centre for Competition Culture (CCC), an organisational unit of HCA, partly by supporting competition culture development activities of other bodies through awarding competitive grants. CCC provided to 84 applicants a total financial assistance of HUF 572.1 million. 13% of the applicants received 51% of the total financial assistance granted. HCA failed to adopt an internal regulation on CCC's activities to award the competitive grants. During the competitive process CCC committed numerous irregularities by not observing the content of the calls for application and the stipulations of the grant contracts. Regarding the competitive applications' entry into CCC's records system, it was not reliably documented at CCC when the applications were received, whether the applications were assessed as to the fulfilment of the formal requirements and what was the assessment of those judging the application. Decisions to award a grant were usually adopted later than it should have been according to the respective calls for application. In several cases the grant contracts were concluded beyond the deadline set out in the competitive information. Funds were provided also for expenses that were not directly related to the implementation of the goal stated in the competitive information. Accounting source documents not complying with the accounting requirements were also accepted when examining the beneficiaries' cost statements. In cases when the beneficiaries reported too late or in an unsatisfactory way on the finances or on the technical details of implementation, CCC applied no sanctions.

Out of CCC's disbursements, HUF 693 million were the expenditures of the Regional Education Center (REC), i.e. a unit operating inside CCC. 93% of this

sum was due to the obligations assumed in the cooperation agreements HCA concluded with OECD (Organization for Economic Cooperation and Development). These obligations imposed a disproportionate financing burden on HCA, since OECD contributed only by HUF 24.1 million to REC's expenditures in the same period.

As a result of implemented reorganisation measures, a separate Client Service Bureau was set up inside HCA, and in 2012 the technical offices were restructured to fit to the procedure types. The reorganisations were well-based, and with their implementation HCA could reach the goals set. The processing time has reduced, and the staff occupied with professional work wasted less time for purely administrative activities.

In the audited period HCA concluded 'contracts of agency' with 49 individuals, leading to the disbursement by HCA, of HUF 73 million (incl. social insurance contributions). In three cases, the contracts of agency addressed the conduct of HCA's official duties, which is contrary to the relevant act. In one case HCA concluded a contract without implementing a public procurement procedure, which was legally required, since the contract value was above the public procurement value threshold of HUF 8 million.

Prior to 2011, HCA did not have a single regulation practice on tasks connected with the management of receivables. With changes in managerial positions, progress was made in this field. However, the IT system, which was originally developed for office management, but is also being used for receivables management, has the shortcoming that data on the past of the individual receivables can be obtained only through a complicated screening system. This practice implies the possibility of errors.

Receivables arising from the HCA's exercise of its official powers (from fines, litigation expenses, penalties for delay) are presented in the balance sheet of the Ministry of National Economy. Regarding these receivables related to the exercise of official powers, HCA functions as a body to which such funds can be assigned in the detailed records system of the accounting system. In addition, the Competition Act imposes on HCA some obligations regarding the enforcement of receivables. During the audited period, in several cases HCA was late in taking action to enforce receivables owed to the public.

Not enforceable receivables amounted to HUF 1,270.7 million, 94.3% of which arose from evaluation of the total year-end receivables of 2010 and 2011, which were written off in 2011. More than a third of this sum write-off in 2011 (HUF 448.3 million) originated from such receivables of the former years, where the debtor organisation was subjected to windup procedure in the period lapsed. Due to HCA reporting its financial claims beyond the deadline, the respective organizations in charge of the windups did keep record of HCA's claims.

Accordingly, HCA lost the possibility of even partially enforce its respective financial claims.

Recommendation

Based on the audit findings the SAO recommended to the President of the HCA to take actions to ensure that the HCA develop its long-term and mid-term strategies, assign responsible officers, implementation deadlines and maximized allocations to the individual tasks stipulated in HCA's annual technical plans and CCC's working plans with the aim to ensure accountability and the efficient use of resources. Furthermore, HCA should take action for amending its Deed of Foundation as well as Operational and Organisation Rules so that they include all statutory tasks of HCA and the way of their implementation. Further actions for the HCA to be implemented: to provide for a complete regulation of the competitive process, activities carried out by CCC and put in place controls for the enforcement of the regulation; to review the circumstances of the irregularities detected in relation to CCC's competitive process and take action, if appropriate, for holding to account those responsible for the irregularities; to ensure that the internal audit service examine the full competitive process of each grant contract falling under the audited period.

Other recommendations to HCA addressed the necessity to take action for the establishment of controls in the field of management of receivables; to set down deadlines in the regulations on the competition supervision procedures; to keep exact records on and track the deadlines in the IT system for office management activities and specify the officers in charge; take action for the examination of the circumstances of beyond-deadline reporting of financial claims in regard of the write-off of receivables and the conclusion of contracts of agency. In the case that the result of such examination justifies that, it shall take the necessary labour-law measures. Furthermore, we recommended that it shall consider the initiation of the review and renegotiation of the cooperation agreement concluded with OECD in order to modify and reduce the financial burdens on HCA which are disproportionately high and one-sided.