

0114 Summary of auditing the concession bound activities by the State in the field of telecommunications and public roads

A possible way of operating property and assets in exclusive state ownership is through contracts for concession.

On the legal ground of concession, the state relinquishes its specific rights to the winner of a concession bid, on the basis of an onerous contract, for a specific time and under specific terms, while providing partial monopoly in the market for the winner. The activities subject to a contract like this can be the operation of certain assets (transport and utility infrastructure), on the one hand, and those, on the other, related to public services of strategic significance in terms of the national economy or those which can produce extra profit for the businesses state (telecommunications services, gambling casinos). The first concession contracts were made in 1992, therefore, the experience of the 9 years since then can be a sound basis of evaluating this legal institution.

The aim of the audit was to find out if the legal institution of concession makes it possible to perform those activities successfully that are specified in the Law on Concession. We have surveyed all the concession contracts made by the central budget organisations since the enactment of the law. The public road and telecommunications concessions have been examined with great care and in detail, with special attention to the obligations of the State and the period of the exclusive right specified in the concession contracts.

The considerations of increasing the income of the State and performing the activity the State is obliged to do are to be weighed together. Therefore, we considered the income of the State and the performance of the tasks simultaneously. The above considerations have measurable and not measurable factors. Evaluation is hindered by the lack of parameters. In our audit report, the analysis of concession activity is based on measurable parameters.

When defining the fields of concession and during the process of relinquishment of concession right, priorities were not specified, therefore, neither the national economic policy considerations nor the interests of the State Budget prevailed. The decisions had been influenced by external economic policy pressures (telecommunications network development, motorway building) and budget positioning problems (lack of resources, resource distribution) that prevented making sound decisions in the first place. Our audit has found that, under the present conditions, the legal institution of concession right does not promote sufficiently the original aims of the State.

The Concession Law, in 1991, pointed out the requirement of a flexible framework regulation that can be adapted to the specific features of the various branches to operate the assets in exclusive state ownership. The application of this regulation, however, shows us a mixed picture. The originally set goals of involving private capital, enough to restructure the market, and to develop several players in a competitive market have not been achieved, or only in part.

The concession policy of the Governments in power has kept changing since 1991, which can be seen from the amendment of the Concession Law. In the course of the 12 amendments, the scope of activities subject to concession has decreased gradually with narrowing down the assets in exclusive State ownership, and its monopolistic activities. Certain activities, gov

erned initially by the Law, were freed from its rule, even if a concession contract was still valid in the given field.

Between 1991 and 2000, of the listed 17 possible activities, only in 8 fields were concession contracts made and valid. The legal institution of concession right is applied in a different way in the ministries, and a procedure following uniform principles has not yet been developed with the organisations in charge of managing the assets that can be subject to concession.

The concession contracts included the terms of the concession activity on the basis of the Government objectives laid down in the invitation to application. The concession companies have performed their obligations undertaken in the contracts. Hungarian and foreign private capital has been involved in performing functions of the State. Market competition prevailed to a limited extent with the temporary relinquishment of the exclusive rights related to the activities specified in the concession contracts. The development projects included in the contracts have been carried out according to the schedule. Service provision undertaken through the concession contracts has been continuous.

In the audited period 81 concession contracts were made, of which 63 were still valid when the audit was closed (March 30, 2001). There were three contracts which are not justifiable by the Concession Law, nonetheless, they did not breach that.

From the concession contracts made between the audited period of 1991-2000, a total of about 394 billion HUF Budget income was generated at current price, with an expenditure amounting to 40 billion HUF. In two cases, obligations were undertaken by the State, one in the railway electrification concession, in a value of 325 million DEM, and another in the M1/M15 motorway concession in a value of 52 billion HUF.

Having a look at the EU practice, the differences in the application of the scheme are particularly apparent. The involvement of private capital in performing State functions is on the increase internationally. The developed countries, on the basis of the concession contracts, favoured the Hungarian business organisations, which had a good effect on the internal labour market, too.

We have recommended to make the process of relinquishing the concession right transparent, and to take separate records of the Budget expenditure and income related to the concession, as well as to work out a uniform procedure to collect interest originating from overdue performance. In addition, we have recommended to regulate clearly the distribution of work between the Ministry of Finance and the Gambling Supervision, under its authority, for the procedure of concession. To amend and check the observance of the regulations of handling documents at the Ministry of Finance so that the documents of concession contracts for the gambling casinos made by the Minister could be found and revised.

The ownership right of the research findings of concession mining has to be settled, the supervisory organisation of road concession activities has to be appointed with the duty of making comprehensive reports on a yearly basis about the activity of the concession companies. In the case of the telecommunications concessions, the VAT content of the concession fee has to be revised in accordance with the standpoint of the Tax and Financial Control Office in all those contracts which do not make clear provisions about the relationship between the VAT and the concession fee.