

Conclusions and recommendations of the National Audit Office

Implementation of the Competition Act

As from 1 January 2020, general government shall keep separate accounts for the economic activities they carry out in a competitive market environment and present the result of these activities in their final accounts. They are obliged to do so by the provision on accounting separation added to the Competition Act in 2019. The purpose of this provision is to ensure the transparency of business activities conducted by general government and to improve the conditions for monitoring the neutrality of competition. Competition neutrality is monitored by the Finnish Competition and Consumer Authority. Competition neutrality means that public and private business activities have a level playing field for competition.

The purpose of the audit was to assess and map the content and extent of competitive activities in central government and to ensure that different accounting offices have identified such activities on as uniform grounds as possible. In addition, the audit examined whether the accounting offices apply acceptable accounting principles when preparing a profit and loss account for competitive activities.

The accounting offices present a profit and loss account for competitive activities subject to the separation obligation for the first time in the 2020 report of operations, which they issue in spring 2021. The audit took place in the preceding phase and aimed at assessing in advance whether the profit and loss accounts of the accounting offices provide true and fair information on the revenues, costs and cost recovery of competitive activities. The National Audit Office audits the profit and loss accounts and the related performance accounting as part of the audit of the accounting offices' final accounts in spring 2021.

Economic activities in a competitive market environment were conducted by 26 accounting offices

Activities in a competitive market environment were conducted by 26 accounting offices. A total of 35 accounting offices did not carry out any or carried out only small-scale competitive activities. Competitive activities in central government are diverse, and their annual revenues vary to a great extent by accounting office: from a few thousand to several million euros. The activities include, for example, expert services, information services, on-demand research services, rental and accommodation activities, laboratory services, financial and human resource services, and IT services.

The nature of the accounting offices' own activities has been assessed comprehensively, but the identification of competitive activities is not unambiguous

The accounting office itself must identify and assess whether it conducts economic activities in a competitive market environment. The office should also document the interpretations it has made in connection with the assessment; the documentation is part of good internal control.

Accounting offices have been well aware of the new requirements under the Competition Act and have assessed the competitive nature of their own activities comprehensively. In several accounting offices, the assessment has proved difficult. One of the reasons is that the concept of competitive activities is unclear, and it is difficult to interpret the legislation related to them. A large part of the accounting offices had not yet documented the assessment criteria.

When making the assessment, an accounting office should identify its own statutory tasks and the situations in which it exercises public authority. In addition, it should identify whether its economic activities are associated with a statutory monopoly. As these tasks are excluded from the accounting separation obligation, the office can assess whether it carries out its remaining activities in a competitive market environment.

Internal sales within central government do not take place on the market, but there is uncertainty as regards sales to in-house entities

The National Audit Office is of the opinion that internal sales between on-budget entities do not take place in a competitive market environment and should not be included in the profit and loss account for competitive activities. On the other hand, the mere relationship with in-house entities as referred to in the Public Procurement Act would not alone prove that the activities take place outside the market. However, the relationship between a government agency and an in-house entity may be excluded from market activities on other grounds.

Sales between central government and its in-house entities or other exceptional situations related to the obligation to call for tenders under the Public Procurement Act are not dealt with unambiguously in legislation. The interpretation of the Competition Act is essentially influenced by the reference to the Local Government Act and the concept of "competitive market environment" that has been included in the explanatory memorandum the Competition Act. In practice, in connection with the accounting separation obligation, the Municipality Act is therefore also applied to government agencies and institutions, although it is not intended in general to be applied to central government. It should have been ensured already in the preparatory phase of the amendment to the Competition Act that the provisions are formulated so clearly that they can be unambiguously applied to central government as well.

The profit and loss account for competitive activities gives a true view of the operational performance if the competitive activities have been correctly identified

Accounting offices are well placed to keep separate accounts for activities in a competitive market environment. As a rule, they comply with the general principles for preparing a profit and loss account for competitive activities prescribed by the State Treasury and can present a profit and loss account for their competitive activities that gives a true view of the operational performance. However, it remained somewhat uncertain in the audit whether the accounting offices have identified competitive correctly and, thus, whether they present profit and loss accounts for the correct activities.

On the basis of the audit, the accounting offices comply with the regulation issued by the State Treasury and present the profit and loss accounts for their competitive activities as part of the report of operations. However, the National Audit Office is of the opinion that the profit and loss account should be presented as a note to the final accounts in accordance with the provisions of the Competition Act.

Recommendations of the National Audit Office

On the basis of the audit, the National Audit Office recommends that

1. the accounting offices assess the competitive nature of their activities and document the grounds for their interpretations appropriately in view of their own internal control and at a sufficiently high organization level, and perform this assessment regularly,
2. the accounting entities identify their economic activities in a competitive market environment primarily on the basis of a legal assessment and, if necessary, conduct a market survey to assess the market situation,
3. in the event of a market gap, the accounting offices verify the actual shortage of supply by a market survey,
4. the Ministry of Finance instruct the accounting offices in future to present the profit and loss account for competitive activities as a note to the final accounts,
5. the accounting units review their chargeable activities in cooperation with the steering ministry and ensure that the legislation, decrees on charging, and performance targets concerning the agencies' tasks are consistent and up to date in the case of each agency,
6. the accounting offices ensure that the revenues and costs of projects extending beyond the fiscal year, in particular, are allocated correctly so that the annual profit and loss account for competitive activities gives a true and fair view of the operational performance for each year.