



Summary of the audit report *Sale of share in the company Splošna plovba, d. o. o., Portorož*

The Court of Audit of the Republic of Slovenia carried out *the performance audit regarding the gratuitous transfer, purchase and sale of capital investment in the share of the company Splošna plovba, d. o. o., Portorož (hereinafter: Splošna plovba) in the period from 1 January 2005 to 31 December 2008.*

The audit objective was to express opinion on the performance of operations of the Government of the Republic of Slovenia (hereinafter: Government of the RS) and Ministry of Finance in gratuitously transferring capital investment in the share of Splošna plovba to Slovenska odškodninska družba, d. d., Ljubljana (Slovenian Compensation Company, hereinafter: SOD) and opinion on the performance of operations of SOD and Kapitalska družba pokojninskega in invalidskega zavarovanja, d. d., Ljubljana (Pension Fund Management, hereinafter: KAD) in purchasing and selling capital investment in the share of Splošna plovba.

The Court of Audit concluded that *the Government of the RS had not acted efficiently in making decision about the gratuitous transfer of capital investment in the 43.20% share of Splošna plovba to SOD in the year 2006.* In order to provide assets for the settlement of statutory liabilities, the Government of the RS adopted a decision on the gratuitous transfer of capital investment to SOD, despite the fact that the National Assembly of the Republic of Slovenia had already decided that the capital investment was due for sale in 2006. The Government of the RS adopted its decision based on the incomplete proposal by the Ministry of Finance without the consent of the National Assembly of the Republic of Slovenia. The decision of the Government of the RS did not include the commitment of SOD to ensure that the sale of the capital investment would be accompanied by the transfer of the guarantee of the Republic of Slovenia to the purchaser. SOD had little time to decide since the Government of the RS adopted a decision on the transfer of capital investment in the share of Splošna plovba to SOD only two days before the closing date for exercising the pre-emptive right. The Ministry of Finance did not consider all the purchase interests and did not inquire about other potential entities interested in purchasing the share of Splošna plovba and was therefore *not efficient in implementing the Ordinance on the programme of selling financial and physical assets of the State in 2006.* Since it did not consider the value of the transferred capital investment and did not identify the actual amount of assets necessary for the transfer to SOD, the Ministry of Finance was not efficient in drawing up a proposal for the Government of the RS. After the conclusion of the Contract on the transfer of capital investment, the Ministry of Finance did not call upon SOD to make reports about the position and realisation of the transferred capital investment and was not acquainted with the intended use of assets after the sale of the capital investment concerned.

SOD and KAD were partners *in exercising the pre-emptive right for a 5.25% share of Splošna plovba in 2006,* which enabled them to acquire a majority share of Splošna plovba before deciding on the sale of the share of the company. The decision-making was not done with due care. By being limited to only one day, *SOD did not act efficiently in deciding about exercising the pre-emptive right,* for it was not able to obtain the necessary basis and data on the operation of the company. *Neither KAD was efficient in deciding on exercising the pre-emptive right,* because it failed to use the appropriate basis and consider objectives determined in the business financial plan for 2006.

The Court of Audit concluded that in selling a 29.65% share of *Splošna plovba*, which they managed together, SOD and KAD did not act efficiently. They did not obtain an adequate and appropriate basis for decision-making prior to the selling procedure because they were not able to obtain the relevant estimated value of shares. Moreover, although being warned about the risks accompanying the recording of ships owned by the Splošna plovba group, they did not conduct due diligence or in any other way obtain information about the actual financial condition and operation of the company. They did not follow the situation on the global ship market, which prevented them from establishing that there was high demand for the purchase of such companies, and did not carry out analyses for determining conditions of sale and the value of the share being sold.

KAD and SOD did not conduct a transparent selling procedure, because they did not publish a public call for tender in foreign or specialized newspapers, they carried out several phases of the procedure (public call for tender, call for tender improvement, non-public auction) and did not give public notice of the changes they made during the procedure to conditions, subject and method of sale. During the selling procedure they set as a condition the conclusion of the contract on the put option for the remaining share of 25.05%, while during the drawing up of the agreement with the purchaser, the formulation of commitments regarding investments into the fleet of company ships and concerning company headquarters and staff policy of Splošna plovba was such that they did not guarantee their fulfilment by the purchaser. During the selling procedure, KAD and SOD did not provide equal treatment of tenderers because they did not provide equal information to potential tenderers about the subject of the sale. During the selling procedure they were able to realise a price which was 49% higher than initially disclosed in tenders, yet the Court of Audit made an assessment that they failed to provide conditions for being offered the best selling price because with their decision to sell only a 29.65% share in Splošna plovba (considering the fact that the tenderers were obliged to assume the guarantee of the Republic of Slovenia) they basically limited the competition to only two potential tenderers, who had already expressed their interest in the purchase in the past and could become majority owners. Moreover, they failed to actively search for potential purchasers and inform them about the commencement of the sale. By imposing conditions for auction participation they contributed to the fact that the tenderers limited the price for their highest bid beforehand.

By using this method of sale management, KAD and SOD failed to consider the proposed selling methods for illiquid investments and did not achieve the objective of maximising the sales value, laid down in the Decision of the Government of the RS on the sale of capital investments. They classified the capital investment in the share of Splošna plovba as an illiquid investment and at the same time jointly retained a 25.05% share of the company. Owing to this, they failed to achieve the objectives laid down in the Decision of the Government of the RS on the sale of capital investments, while SOD failed to achieve the objectives laid down in the Decision of the Government of the RS on the gratuitous transfer of share. During the selling procedure, SOD did not act in accordance with the provisions of Public Finance Act and Decree on the sale and other forms of disposing of financial assets of state and communities for it failed to adopt an individual sales programme and ensure transparency and equal treatment of tenderers.

In spite of the interest expressed in purchasing the remaining part of the business share in Splošna plovba in 2008, SOD and KAD did neither consider the price offered for the remaining part of the business share in Splošna plovba nor repeat the valuation, which prevented them from achieving objectives with regard to the sale of illiquid investments, laid down in the Decision of the Government of the RS on the SOD and KAD sale of capital investments. By retaining a 19.8 share in Splošna plovba until the end of

2008, SOD also failed to achieve the objectives laid down in the Decision of the Government of the RS on the gratuitous transfer of share or ensure the implementation of objectives arising from the SOD business financial plan for 2006.

In the process of gratuitous acquisition, purchase and sale, the KAD and SOD authorities failed to act efficiently or in accordance with their internal acts, because the KAD Supervisory Board did not give consent to conclude a purchase, sales and option contract, the KAD Management Board did not make a decision on the sale, the SOD Supervisory Authority did not exercise its supervisory function, the SOD Management Committee gave its consent to the sale and minimal price before the conclusion of the selling procedure on an incomplete basis, the SOD Management did not even hold meetings at the time of decision-making. The KAD and SOD Expert Working Bodies did not ensure an adequate supervision of transactions accompanying the sale, failed to adequately exercise their consultative function and submit proposals to the Director of SOD and to the Management Board of KAD.

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