

## **Report on "Jugoremedija"**

### **Privatization procedure**

On 10 September 2002, the Privatization Agency sold by auction the state-owned shares of "Jugoremedija" Pharmaceutical Factory from Zrenjanin, 41.93 % of the total company shares (Record from the auction).

The sale of 41.93% of "Jugoremedija" shares is the only case we are aware of in which the Agency used its legal authority to sell the shares by auction, dodging the stock exchange. The Agency prepared an auction dossier, conducted the bidding procedure, and chose the most favorable bidder, the Company 'Jaka 80' from Radovis, Former Yugoslav Republic of Macedonia, whose majority owner was Mr. Jovica Stefanovic – Nini. Nevertheless, since we are talking about the sale of the shares, a contract for the sale of shares and a contract for investments were concluded between the Shares Fund (not the Agency, which conducted the complete sales procedure), and the Buyer.

After the auction, the Shares Fund and the Macedonian Company "Jaka 80" concluded two contracts: for the sale of shares, and for investments.

1. The Contract for the sale of the 41.93 % shares was concluded on the same day when the auction was held. By signing this Contract the Buyer committed himself:
  - to pay the sales price within five days from the day of the auction,
  - to invest YUD 360,000,000 in "Jugoremedija" within thirty days from the day of the fulfillment of the terms, the Contract stipulates that the investments must be "made in cash or in other material assets in the form of a fully-paid capital increase amount, that the increase of the share capital be registered, and that all other members of the society be allowed to participate in accordance with the law",
  - to provide an unconditional bank guarantee, on account of the investment obligation.
2. The Contract for Investments was concluded on 2 October 2002. The Contract specifies in more details the manner and times of investments and stipulates that the Buyer commits himself to provide, on the occasion of the signing of this Contract, a bank guarantee as a security for the fulfillment of the his obligation (the Contract for Investments of 2 October 2002).

## **Who is the Buyer?**

The Buyer is the Company “Jaka 80” from Radovis, Former Yugoslav Republic of Macedonia.

## **Data from the Register of the Commercial Court:**

Pharmaceutical, Cosmetic, and Dietetic Industries, Joint Stock Company “Jaka 80”.

Owners in 2002:

- minority shareholders and Mr. Jovica Stefanovic – Nini, 51.97% of the total shares,
- Pension and Disability Insurance Fund paid by “Demeno Trade”  
“Demeno Trade” from Nicosia is registered for management services.
- The Company has three employees,
- The address is unknown,
- Original capital is USD 1000.

The 2001 Balance Sheet of the Company “Jaka 80” shows that the Company’s profit was EUR 1.86 million (transcript from the Register of Companies of the Commercial Court in Stip).

## **How was the Contract honoured?**

In spite of the fact that the Buyer, “Jaka 80”, did not provide the bank guarantee, either after the purchase of the largest individual shares package of “Jugoremedija”, or on the occasion of the signing of both contracts (neither the first one, nor the second one) and though the terms and conditions had not been fulfilled, the Shares Fund handed over the Company to the Buyer “Jaka” to manage, and he appointed his own management team and security guards. In the beginning, the cooperation between the shareholders was good; the workers-shareholders accepted the sale of the shares to the Company “Jaka” as a sound business action, trusting the Government authorities and the new co-owner.

Problems emerged when “Jaka”, as the owner of the largest individual shares package, began to violate the rights of the small shareholders. Meetings were called without ensuring proper conditions for the other party, the small shareholders to be represented at them, and the management threatened to dismiss those shareholders who collected shareholder’s authorizations for the formation of their own common shares package. Nevertheless, the Company “Jaka” violated most drastically the rights of the small shareholders when, instead of the increase of the capital, i.e. the recapitalization, bound by the Contract, it converted the debt into shares.

Records of the Meetings held in this period, threats to the shareholders, replacement of

management executives, where obedience to the management appointed by Mr. Jovica Stefanovic was given preference over the experience in the production of medicines, show, otherwise known syndrome in the privatized companies, that the one who buys the largest individual shares package becomes, practically, the exclusive owner. The other owners-shareholders, and at the same time the workers of the Company, were deprived of their rights by threatening with dismissals and by deceits, so that they had to fear for their shares and their jobs. After deceits, harassment, and drastic violation of the rights of the small shareholders, from their being thrown out of the factory to their detention in the factory building by the private army of the other co-owner, these co-owners (experienced pharmacists) have been recently assigned to work as gardeners and cleaners of the factory yard.

A statement made by the Deputy President of the Shareholders' Meeting, a pharmacist herself, reveals that, while managing "Jugoremedija" through its newly-appointed management, on the eve of the controversial recapitalization, "Jaka", indebted, unnecessarily, the Company "Jugoremedija" in favor of the Company "Jaka", by buying large quantities of the medicine "Viziren", which sells poorly on the market. The decision for the increase of the capital through the conversion of debts was not brought by the Shareholders' Meeting, which can be seen from the minutes of the Meetings held on 4 February and 20 May 2002, and which was verified by the statement of the Deputy President of the Shareholders' Meeting, Ms Emilija Mihajlovic, given in the investigation procedure at the Crime Investigation Police Office in Zrenjanin (Records from the hearing).

The fact that the decision on the increase of capital by the conversion of debts was not brought at a Shareholders' Meeting, and that it was not allowed by the Contracts signed with the Shares Fund, did not prevent the "Jugoremedija" management to sign the Contract with "Jaka" for conversion of debts into shares – a conditional increase of the original capital. According to this documentation, the Commercial Court of Zrenjanin registered "Jaka 80" as the owner of 61.02% of the total "Jugoremedija" capital. On 2 June, the representative of the small shareholders, Mr. Zdravko Deuric, submitted an initiative to the Commercial Court of Zrenjanin for the opening of an ex officio procedure for the annulment of the groundless registration in the Register of the Commercial Court in Zrenjanin.

Mr. Deuric submitted evidence that the stated Meeting of 17 June 2003, at which the decision on the increase of the capital was allegedly reached, had never been held. The Commercial Court of Zrenjanin and the Higher Commercial Court in Belgrade turned down Mr. Deuric's Initiative because of some formal shortcomings, although the Initiative suggested that the Court should ex officio delete from the Court Register the registration of the increase of the capital. Instead of allowing some extra time to the small shareholders to rectify the formal shortcomings, the Court rejected their motion. On 28 June 2004, the small shareholders submitted an application for the revision of the procedure with the Supreme Court. A decision of the Supreme Court is still pending.

Confusing are also the data disclosed after the completed recapitalization in a memorandum submitted to the Shares Fund and to all relevant Government bodies by the Company “Smart Invest” from Belgrade, an authorized representative of the Company “Jaka 80”. They state that the Shares Fund cannot be blamed for the increase of the capital, because “Jaka”, as a minority shareholder could not make a decision on the recapitalization, which has to be a two-thirds decision, and they state this circumstance as a ground which renders the signed Contract null and void (Memorandum of the authorized representative)

Indeed, the Company “Jaka 80” filed a suit with the Commercial Court in Belgrade against the Shares Fund for the termination of the Contract for Investments and the cancellation of the clause on the issue of a bank guarantee.

### **The Shares Fund**

Since the very beginning the signatory of the contracts for sale and investments, the Shares Fund, has never had any objections regarding the execution of the Contract, accepting the signing of the Contract without bank guarantees, thus altering the terms of the sale by auction, and the provisions of the Basic Contract. In the contract-honouring control procedure, the Shares Fund established that the Contract was fully executed.

When the Buyer violated the Contract on the obligatory increase of the capital, violating simultaneously both the Contract and the Enterprise Act, the Shares Fund took no action.

At this moment, 24 months have passed since the signing of the Contract on the Sale of Shares, which is the deadline by which the Buyer was obliged to invest YUD 180,000,000 and deposit a bank guarantee for another YUD 180,000,000. The Buyer has not yet deposited a bank guarantee for the first investment, nor has he made any investments in accordance with the Contract.

Following very pressing demands by the small shareholders for the introduction of supervision and protection measures because of the violation of the Contract, the Ministry of Economy responded after one year, and, in the supervision procedure, instructed the Shares Fund to initiate proceedings for the cancellation of both Contracts concluded with “Jaka 80” and to take other measures for the protection of the Company assets (Decision of the Ministry of Economy)

The Privatization Committee of the Serbian National Assembly also carried out a supervision of the privatization of “Jugoremedija” and accepted the information and explanation of the representative of the Ministry of Economy that the supervision over the work of the Shares Fund had been carried out and that the Shares Fund had been instructed to initiate the procedure for the cancellation of the Contract.

So far the Shares Fund has not initiated any procedure for the cancellation of the Contract, with an explanation that neither the Ministry of Economy nor the Ministry of Finance has provided necessary funds for the initiation of proceedings with the Foreign Trade Arbitration of the Chamber of Commerce.

The jurisdiction of the Foreign Trade Arbitration was contracted by the Contract for the Sale of Shares, but now the contractual obligations are not honoured by the Government authorities, and the Ministries. This is a clear message to other participants in the privatization process that the Government does not honour contracts it signs, and that such contracts can be breached without any consequences. This is a moment which influences possible corruption in the privatization process. The Government is responsible to ensure that contracts are based on the law and that they are the expression of mutually agreed will, and to prevent an approach of pro forma accepting of lots of obligations which one can get around, so that one, expected and not expressly contracted, could be realized and, first of all, it is responsible to ensure that contracts are honoured.

### **Recommendations to the Government**

The Anti-Corruption Council believes that the actions of the participants in the privatization of “Jugoremedija”, both of the Government and the Buyer point to possible corruption. We recommend the Government to review this privatization procedure completely and establish the facts which seem to be disputable, and particularly the following ones:

- According to the statement of the shareholders and the records from the hearing of the Deputy President of the Shareholders’ Meeting in the investigation procedure, referring to the statement of the then Director, the Company had before the privatization approximately EUR 11,5 million in stocks which were not shown in the Balance Sheet of the Company.
- The fact that the Buyer, as well as the other participants in the auction, offered a price several times higher than the starting price indicates that the auction dossier was not well prepared, i.e. points to the possibility that the participants in the auction had acquired some information which was not in the auction dossier.
- The correspondence of the Company “Jaka 80” shows that they had an agreement with the Shares Fund not to provide a bank guarantee. The records of the Shares Fund contain a letter from “Jaka” requesting that they do not provide a bank guarantee, for it would be expensive, but they would certainly commit themselves to invest by a statement resembling a mere verbal assurance. There is no reply of the other party, but the Contract was signed without any bank guarantee. In this way all the provisions of the Contract referring to the authorization of the Shares Fund to take adequate measures if the Buyer

does not honour the Contract are inapplicable because the Shares Fund has deprived itself of the possibility to act in case of default of the Contract.

- Neither the Shares Fund, nor the Ministry of Economy acted pursuant to the decision reached in the supervision procedure, and according to the recommendation of the Privatization Committee of the National Assembly. We believe that the Government is obliged to initiate procedures for establishing the responsibility of some Government ministers for the violation of the law and the Contract.
- As last year, following a complaint by the shareholders, the Council forwarded to the Office for the Prevention of Money Laundering some documentation pointing to money laundering, and has not received any reply so far. We were warned of certain facts related to money laundering by the Government Anti-Corruption Commission of the Former Yugoslav Republic of Macedonia. The same information was also forwarded to the Office for the Prevention of Money Laundering. The owner of the Company is a man who, at the time of the purchase, was on a police wanted list for smuggling medical drugs among other allegations.
- Who authorized Belgrade intervention police units, under the command of General Milivoje Mirkov, to interfere in the conflict between the two owners, and to take the leaders of the Strikers Committee and the Association of the Small Shareholders of “Jugoremedija” for questioning on August 19, after midnight? Instead of securing law and order, leaving the dispute between the owners to the court, the police and gendarmerie, with the private security guards, took the side of one of the factory owners, “Jaka 80”. They declared the strike of the workers-shareholders within the factory yard a public gathering, which they subsequently prohibited, thus violating the Law on Strike, and the property rights of the small shareholders of “Jugoremedija”. We recommend the Government to obtain the report on the conduct of the police forces and the private security guards on 19 and 20 August 2004 at “Jugoremedija” from the Ministry of Interior and present it to the public.

The privatization procedure of “Jugoremedija” is a most drastic example of the absence of the protection of minority shareholders in Serbia. Having no clear attitude regarding the principles underlying the privatization procedure that would make it lawful and successful, and in a procedure highly jeopardized by irresponsibility and corruption, the minority shareholders are sacrificed by the Government and treated as if they were not shareholders at all. The development of a market economy failing to provide clear and equal protection guarantees for each private property owner leads to conflicts and radicalization.

We recommend the Government to show, by insisting on the observance of the law and lawfully concluded contracts, clear respect for the principles of the protection of private property of all

owners and to ensure a transformation of the ownership structure in a legal way and with the observance of the contractual obligations. The observance of the rights of minority shareholders proves the existence of respect for the principles of private property protection and the principles of legality in the transformation of the ownership structure. Legitimate contracts and their honouring are vital parts of the public interest, which is also cherished by a government seeking to create a law-abiding state.

In Belgrade,  
September, 16<sup>th</sup> 2004

PRESIDENT,  
Verica Barac