THE GOVERNMENT OF THE REPUBLIC OF SERBIA
THE ANTI-CORRUPTION COUNCIL

Belgrade, 1 October 2007

REPORT ON THE COMPANY "C MARKET"

The privatization of the Company "C Market" brought to light numerous drawbacks of our political, legal and economic system, which contribute heavily to the general growth of corruption in the country.

According to data known to the public thus far, one could reach a conclusion that the participants in the privatization procedure of the "C Market", as well as the other interested parties, performed various violations of the law. These infringements pushed a very successful company, the proprietor of the considerable property, into the economic downfall, and led to its practical disappearance from the market.

We hope that the Court shall determine the whole truth on this subject. It is up to the Anti-Corruption Council, however, to alert the Government to possible causes and consequences of corruption which this case clearly implies, and which have widespread significance, and could definitely not be pinned on the privatization of the "C Market" solely.

Above all, one notices the fact that the socialist Director, who was the Head of the company in which there was little difference in the span of salaries, became the major owner of the company's capital. This capital, according to the estimates made by the Director himself, was worth several hundred million euros. The logical assumption would be that the Director probably did not pay the full market price for his share in the company's capital. Regardless of the possible abuse of his respective position, fraud or any other violation of the law, it should be pointed out that this is not an isolated case.

It is merely an example of consequences derived from the application of the travesty of the Law on Ownership Transformation from 1997 ("The Official Gazette of the Federal Republic of Yugoslavia" number 29/97), which practically secured privileged position of the Managing Directors in the privatization procedure. Surely the most important privilege given to the Managing Directors was the fact that, even as owners of the minority share packages of the company, they succeeded in wining the dominant position in the company.

By means of blackmails, falsified financial statements, connections to the judiciary and executive

authorities, threats of dismissal against the workers-shareholders, and other forms of pressure as well, they expanded their ownership share. The documentation regarding the Company “C Market” gathered by the Council clearly points out to this direction.

The process of the privatization, which by the end of the nineties and after the year 2000 in Serbia often favored the Managing Directors, led to a significant accumulation of the capital in the hands of individuals at times of a general poverty. Serbia became a country of penniless population and wealthy individuals. The fact that Serbia has four representatives among the hundred richest people in the East Europe, while Slovenia with almost five times larger income per capita has none, can be taken as illustration.

These altered economic and social surroundings were the setting in which Serbia adopted the new Law on Privatization in 2001 (“The Official Gazette of the Republic of Serbia” number 38/01). Pursuant to this Law a main prerequisite for the purchase of the socially owned and the state capital was to hold the accumulated capital. One of the consequences of this Law is that the richest people, who acquired their capital in the period of sanctions and heavily controlled privatization procedure by the end of the nineties, continue to be in charge of the remaining privatization procedures nowadays as well.

They are the first in line, say, during the privatization procedure of the oldest Mineral Water Plant, or once leading commercial chain of Department Stores, and purchase of the arable land, or in the case of the battle over the “C Market’s “ ownership.

The fact that an individual holds the wealth estimated at least 6% of the GDP, has not only economic, but a political significance as well. If this individual expresses interest in the privatization of a certain company, political circles instead of staying indifferent, would, according to the experiences so far, strive to indulge him. The case of the privatization of the “C Market” once again confirmed this unwritten rule, and this fact did not go unnoticed in public, since the politicians openly favored the “local buyer” in their respective statements, and courts passed bias rulings which hardly had any sound basis in the effective legislation.

The symbiosis between the political and economic power in the mentioned case is further strengthened by the standpoint of politicians that the creation of the monopoly in possession of the local entities is far more favorable then allowing foreign entities to engage themselves in the retail business in Serbia. This attitude has been justified by the appeal to the national interest.

The public, moreover, has been left in dark on the answer -whose interest that serves, whose interest has been declared the national interest? The political decision to create a trade monopoly, by all means, does not favor the interest of the consumers, or the manufacturers. It is well known that the competition among trade companies is always more favorable then the monopoly, both

for the consumers, and manufacturers.

The monopoly imposes higher prices on the consumers, while it pays lower prices to the suppliers, and they both incur losses in comparison to the competitive conditions. Only the newly established monopoly profits from this. Why were the interests of a company in a possession of one man declared the national interest, against the interests of millions of consumers and manufacturers?

The acquisition of the "C Market" by the retail network owned by the Company "Delta", led to the creation of the company that dominates the market, since, according to the words of one of the participants of this acquisition, this company now covers more then 60% of the legal retail market. This percentage by far breaches the limitation that the Law on Protection of Competition ("The Official Gazette of the Republic of Serbia" number 79/2005) envisages as the limit for declaring that a company has the dominant position on the market (according to the Article 16 the limit is 40%). The establishment of the dominant company originates conditions for the abuse of the market position, or to put it bluntly, conditions for monopolistic behavior.

Several sources in the Council's documentation indicate that the meeting where the truce between the opposite parties was to be made, and the elements of the purchase agreement defined, including the quantity and the price of the C Market' shares was held under the sponsorship of certain members of the Government who were, at the same time, leaders of the ruling parties (Appendix 1: Memorandum of Understanding).
According to the Director of the "C Market", who is now on the run, one meeting was held at the office of the Minister of Interior, where he was promised that "the police would stop all investigations of the "C Market" during the process of its privatization". (Appendix 2: Letter of Mr. Slobodan Radulovic forwarded to the Anti-Corruption Council). If these statements should prove correct, it would indicate serious meddling of the authorities into the economic flow.

It would seem reasonable to raise a question regarding the jurisdiction of the Minister of Interior, on account of which he expressed the interest in the privatization procedure of this company. Or, if certain individuals were under suspicion, how was it possible to postpone (stop) the investigation on account of the privatization procedure? When politicians show interest in the outcome of the negotiations of businessmen on ownership rights, then it is most often the case of corruption. National and international experiences clearly point out to this, since almost always the interest in business transactions is being expressed by politicians who themselves, or trough the parties they lead, expect material gain.

The fact that is even more disturbing, however, is that the deal was initiated and determined with the intention to harm free market principles by elimination of competition, to divide the market and fix the selling price of the shares. All these actions are forbidden by the Article 7 of the Law

on Protection of Competition, which refers to all such agreements as null and void.

Taking into consideration that Ministers, the Secretary-General of the Government of Serbia, and the Prime Minister are mentioned as initiators and indirect participants of this Agreement, it seems appropriate to form an interdepartmental Working Group that would gather all relevant facts regarding this case. The gathered data should be forwarded to the Commission for Protection of Competition, which should, ex officio, reach a decision comprising the obligatory measures to be taken by the immediate parties to the Agreement (pursuant to Articles 8 and 57 of the Law).

Our legislation does not envisage any material or criminal responsibility of physical persons who take part in the agreements that harm free market principles. Legislation of modern countries, nevertheless, regards all agreements on prices, prevention, restriction or distortion of the competition, or the division of the market as serious violations of the competitive conditions. Severe fines and imprisonment are prescribed for those who participate in such agreements, as well as for those who initiate them.

The first Antitrust Law, adopted in the USA back in 1890 is still in effect, and envisages an imprisonment in the duration of three years, together with a fine. The French Corporate Law envisages the imprisonment for four years and EUR 75,000 fine. The English Enterprise Act envisages the imprisonment up to five years and unlimited fine, and the Company Managers could be banned from performing executive duties in the duration of fifteen years. The Anti-Corruption Council deems that the Law on Protection of Competition should be thoroughly examined and harmonized with the provisions in effect in the European Union, especially with regard to the responsibility of the physical persons.

The Member States of the European Union regard the maintaining of the healthy market competition so highly that they incorporated these principles into the Constitutional Treaty of the Union. In connection to this, Articles 81 and 82 of this Treaty are very important for they define the common rules of competition. The European Union Council's Resolution of 16 December 2002 requires that all Member States have to incorporate the European rules of competition into their respective legislation. Also, all relevant authorities dealing with the protection of competition, including the courts, have to be vested with power to enforce the European rules directly.

The legislation of the respective Member States, moreover, is not in any way impeded to prescribe even more harsh rules than those envisaged by the Union. The implementation of the European rules in our country requires not only the adoption of the modern Law on Protection of Competition, but the change of series of other laws, as well as their full observance. The Anti-Corruption Council, therefore, recommends the Government to commence the amendment of the

relevant legislation as soon as possible, and to request its respective members to act according to the European principles.

Being the highest executive authority, the Government must champion the implementation of the rules of the civilized society, serving as an example to other authorities. More precisely, and in connection with the privatization of the Company “C Market”, the Council deems that aside from determining all facts and informing the public and the competent authorities accordingly, the Government has to determine the political responsibility of persons involved in actions, which, pursuant to the prevailing regulations are currently not liable to punishments, but differ from the European rules of protection of competition on the market.

The President
Mrs. Verica Barać