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ANTI-CORRUPTION COUNCIL  
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B e l g r a d e

# **REPORT ON PRIVATIZATION OF THE COMPANY *NOVOSTI***

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**1. PRIVATIZATION ACCORDING TO THE PREVIOUS REGULATIONS**

The privatization of the socially-owned company NIP *Novosti a.d.* Belgrade started in 1991 by the payment of internal shares according to the Law on Socially-Owned Capital (Official Gazette of the SFRY No. 84/89 and 46/90). The privatization was continued in 1998 according to the Law on Ownership Transformation (Official Gazette of the Republic of Serbia No. 32/97). On 14 July 1998 the Directorate for Evaluation of Capital issued the Decision No. 647/98-1-6 by which the evaluation and the capital ownership structure were verified after the completion of the first round of the ownership transformation. The federal public institution *Borba* initiated an administrative dispute claiming the revocation of this Decision because *Novosti* had changed its status by separating from *Borba* without its approval as the parent company and without making separation Balance Sheets. Deciding on the *Borba* complaint, the Higher Commercial Court delivered the judgment Urs. No. 84/99 on 16 February 2000, by which the complaint was accepted, and which superseded all previous decisions on the ownership transformation of *Novosti*.

After this judgment had been passed, the Directorate for the Evaluation of Capital issued the Decision No. 647-1/98-23 on 29 February 2000, by which it revoked all of its previous decisions related to the transformation of ownership, as well as all relevant decisions and the public call for the registration of the shares in the first and second rounds of the ownership transformation issued by the Shareholders' Meeting of the company *Novosti*. After the revocation of the ownership transformation, *Novosti* was affiliated with the Federal State-Owned Institution (SJU) *Borba* by the Regulation on Amending the Regulation on the SJU *Borba* (Official Gazette of the FR Y, No. 10/2000).

As all the decisions and the ensuing actions based on them were revoked by the court decision, the decision of the Directorate for Evaluation of Capital *Novosti* was not in the process of ownership transformation at the moment when the Law on Privatization ("Official Gazette" No. 38/01, 18/03, 45/05 and 123/07) came into force. Specifically, the consequences of the revocation of the decisions and actions taken on the basis of these decisions had *ex tunc* effect, that is, it was as if they had never existed, which means that by the time of the adoption of the Law on Privatization, no legally valid action regarding the ownership transformation had been carried out at *Novosti*. Therefore, *Novosti* could be privatized only according to the provisions of the Law on Privatization, because it had not initiated the proceedings of ownership transformation before the adoption of this Law.

However, after the political changes in 2000, *Novosti* continued to operate as a shareholding company, despite the court's judgment and the decisions of the Directorate. The Shareholders' Assembly met and issued decisions in spite of the fact that the share capital had been cancelled.

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**2. REGISTRATION OF CANCELLED PRIVATIZATION WITH THE COURT REGISTRY**

The Extraordinary Shareholders' Assembly Meeting of the company *Novosti ad* held on 12 October 2002 passed a decision on establishing the ownership structure of the Company in the ratio of 70.48% state-owned and 29.52% privately owned capital, and on the issuance of 6739 shares, based on the evaluation of capital made on the basis of the Regulation Amending the Regulation on the Federal Public Institution (SJU) *Borba* (Official Gazette of the FRY No. 12/2001). However, the said Regulation regulated only the process of evaluation of the state-owned assets used by the Company's subsidiaries operating within the SJU *Borba*, and not the privatization process of the SJU *Borba*, or any part thereof. The Regulation also provided for agencies that were to participate in the evaluation of capital value: the authorized appraiser, who is chosen by the Federal Government on the proposal of the Federal Secretariat of Information, then the Commission for the Analysis of Evaluation and the Federal Government.

The evaluation was made by *Proinkom* from Belgrade according to the Regulation. In the evaluation text analyzed by the Council, which was delivered to us by the Archives of Yugoslavia in the attachment to the Minutes of the meeting of the Federal Government where the acceptance of the evaluation of *Novosti* was decided, *Novosti* is treated as part of the SJU *Borba*.

The Commission of the Federal Government to review the evaluation made a report on the *Proinkom* Evaluation in July 2002, in which the Government made a proposal for a new organization system of *Borba*. The Commission proposed the establishment of the company *Novosti a.d.* that would include *Sport*, the Agency *Borba* and *TV Novosti*, stating at the same time that "according to the assessment, the state-owned capital in *Vecernje Novosti* is 23.76%". It is unclear what kind of assessment it was, because *Proinkom* did not determine the capital structure of *Novosti* and the stated data corresponds to the amount of the socially-owned capital from the Decision of the Directorate for the Evaluation of Capital, which had been revoked by the court. The Commission also proposed an increase in the state-owned stake in *Novosti* from 23.76% to 29.52%, with an explanation that the company *Novosti a.d.*, together with new editorials, would increase its capacities by the use of *Borba's* building which is located on Nikola Pasic Square and Kosovska Street. *Proinkom*, however, did not assess the value of this building, which is registered as state-owned property, so it is not clear how the specified percentage was calculated. The Commission also noted that this "offer" for the change in the ownership structure came from the company *Novosti*. The Federal Government adopted the Commission's Report on the Review of the Evaluation at its 64<sup>th</sup> meeting held on 15 August 2002 and passed the Decision approving the evaluation.

At the Assembly Meeting of the company *Novosti*, held on 12 October 2002, member of the Supervisory Board Svetlana Vukovic raised some questions related to the *Proinkom* Evaluation. The Minutes of the Assembly Meeting state that the Director of the Company Manojlo Vukotic responded that the member of the Supervisory Board "used the data

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from the *Proinkom* Agency's Report, whose evaluation was unacceptable for *Novosti*, and which was superseded by the Decision of the Federal Government. Specifically, the initial evaluation was that the entire capital of the Company was owned by the state, and that the percentage of 70.48% share capital was established through negotiations", which Vukotic described as "a great victory for *Novosti*".

In accordance with Article 23d of the Regulation Amending the Regulation on the SJU *Borba* (Official Gazette of the FRY No. 12/2001), the changes made on the basis of the evaluation of the assets or property could not be entered in the court register without the explicit consent of the Federal Government. However, the Commercial Court of Belgrade allowed by the Decision V Fi-12252/02 of 31 October 2002 the registration of the NIP Company *Novosti a.d.* Belgrade without the Federal Government's decision giving an approval for the registration of the changes, and without proof that the capital had been paid in. The Court registered the total subscribed and the paid initial capital of 96,613,000 dinars, out of which the paid share capital of natural persons was 68,094,000 dinars, or 70.48%, and the paid share capital of Serbia and Montenegro was 28,519,000 dinars, or 29.52%, although there was no documented evidence that the capital had been paid. The Decision indicates that the registration was made on the basis of the Regulation, which could not be used as the basis for the registration, because the Regulation only prescribed the process of evaluation of the state-owned capital of the SJU *Borba*, and not the privatization process. In order to have the ownership of the capital structure registered, there must be evidence on the basis of which the court must determine exactly by whom, when, how and in what amount the initial capital has been paid. The Court Registry does not have the Federal Government's consent for the registration of the changes, and the Court does not refer to it in its explanation, nor in the evidence of the payment of the capital.

The fact that the distribution of shares to small shareholders was made only two years after the issue of the Decision on the issuance of shares and after the registration of the share capital with the Court Registry proves that no evidence on the payment of the initial capital could have existed either. The share of the small shareholders in this distribution was even changed in relation to that stated at the Court Registry, as the Pension and Disability Insurance Fund shares, which were not shown in the procedure of registration with the Court Registry, were deducted from it, so that the Book of Shareholders was registered with the Central Securities Depository only on 2 July 2004 with the following capital structure: 63.33% of the shares owned by small shareholders, 7.15% of the shares owned by the Pension and Disability Insurance Fund, and 29.52% of the shares owned by Serbia and Montenegro.

The documentation of the registration of the NIP Company *Novosti a.d.* Belgrade with the Commercial Court Registry in 2002 shows that pressure was exerted on judges to make an unlawful registration. Specifically, the registration of a business entity in the register is strictly a formal procedure which prescribes the form and the enclosed documentation required for the registration of the relevant data. Form 2 includes the data on the amount of subscribed and paid initial capital and the ownership structure, based on the submitted evidence of payment. It is interesting that all the forms Fi 12252/02, dated

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31 October 2002, were signed by the registration judge Mirjana Trninic except for Form 2, on which there is no signature. Form 2 is not complete in the dossier documentation, or more precisely its back, which contains a stamp signature of Judge Marina Tomic. It is obvious that there was a problem with the signing of this Form, which clearly indicates that pressure was exerted on judges to register, without the mandatory approvals and without evidence of the payment of capital, an ownership structure that was not in compliance with the Law on Ownership Transformation, the Regulation on Amendments to the Regulation on the SJU *Borba*, the Law on Privatization and the Law on Assets of the Republic of Serbia (Official Gazette No. 53/95, 3/96 – corr. 54/96, 32/97 and 101/2005 – another Law).

After the disputable issues related to the privatization and sale of the shares of the small shareholders of *Novosti* had been made public at the end of 2010, the Company published a text entitled *The Novosti Dossier* on the website of the daily newspaper *Vecernje Novosti*, as well as its interpretation of the events that had become a subject of public interest. Among other things, it was admitted in the *Novosti Dossier* that the registration of the shareholders with the Central Securities Depository and Clearing House was done "on the basis of the Book of Shareholders created in the process of the *Novosti* ownership transformation initiated in 1991 by the issue and sale of shares, and after the distribution of the first round of free shares", based on the ownership transformation process, which was revoked by the Higher Commercial Court's Judgment Urs. No. 84/99 of 16 February 2000. This means that the Newspaper Publishing Company (NIP) *Novosti*, which was 100% socially-owned on the basis of the Court Judgment of 2000, in fact operated as a shareholding company for four years without having a single shareholder, with illegal management and shareholders' representatives in the Shareholders Assembly of the Company. All that time, the Federal Government, the Government of Serbia and the Ministry of Economy were aware that the Company *Novosti* had been usurped by the interest group headed by the director Manojlo Vukotic, who declared themselves as shareholders of the Company despite the court ruling and the Decision of the Directorate, and that the share capital of nonexistent shareholders was registered with the Court Registry.

### **3. BID FOR THE TAKEOVER OF SHARES IN 2005**

Rather than taking measures to annul the illegal registration, the Ministry responsible for privatization used the illegal situation in *Novosti* in the following years to prevent the takeover of the shares by investors interested in the company.

On 17 May 2005 the business company SENTA HANDELS ANSTALT, based in Liechtenstein, submitted to the Securities Commission a request for approval of the takeover offer NIP *Novosti a.d.* Belgrade. According to the Councils' knowledge it was WAZ company standing behind this offer. While the Commission was deciding on SENTA HANDELS ANSTALTs' request, the Government suddenly opened up the disputable issues of the property relations in *Novosti* that had been known to it for years.

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Thus, on 1 June 2005 the news agency BETA published the following news: "According to information coming from the Serbian Government, maybe *Novosti* is not a shareholding company. Specifically, the High Commercial Court revoked the privatization of *Novosti* and reverted it to the status of a socially-owned enterprise in January 2000. However, two years later, the then Federal Government adopted a decision according to which the employees became the owners of 70% of the capital and the state became the owner of 30% of the *Novosti* capital."

The next day, the Privatization Committee of the National Assembly addressed the Prime Minister of Serbia with the recommendation that the Government should suspend all activities related to the takeover of the *Novosti* shares until the actual state of the ownership structure and the method and review of the evaluation of its capital were established. On 3 June 2005 *Vecernje Novosti* published an extensive article entitled "Serbia robbed of *Novosti*", in which, among other things, they conveyed the statement by the Chairman of the Privatization Committee, Nikola Novakovic: "I have discovered devastating data, but an encouraging conclusion. The way the registration of the changes was carried out was faulty and deficient, because the court registered the changes rather arbitrarily, referring to the Decision of the Government of the FRY. It cannot even be seen whether an assessment of the capital was made, or who made it." The same article quotes a statement by the Minister of Economy, Predrag Bubalo: "Every other step in the entire procedure from the beginning of the nineties was unlawful, semi-lawful and contestable decisions were made. That was why I have decided to respond. Had I not found it out, I would be sleeping peacefully and I wouldn't have any questions regarding the privatization of *Novosti*. And now I can sleep even more peacefully because I have warned of the existence of problems. Two days ago I had a meeting with the small shareholders and I suggested to them what I am saying now as well: to wait for the adoption of the new law, to make a majority package of shares and a serious tender. I have concluded, by my professional conscience and position, that we should wait. "

By its Conclusion No. 022-8631/2005-003 of 9 June 2005 the Government of Serbia decided to terminate the Agreement on the Regulation of the Founders' Rights in the Federal Public Institutions and State-Owned Media Companies, which was concluded with the Government of the Republic of Montenegro on 1 February 2005. In the information attached to the Decision, the Government stated that it was found out subsequently, after the signing of the Agreement, that "the ownership structure of the capital of the company NIP *Novosti* ha[d] not been established and it [was] not known what the share of state-owned capital of *Novosti* was, nor what proportion of the capital [could] be privatized" and it referred to the Recommendation of the Privatization Committee of the National Assembly. Following the request of the Republic Public Attorney, the Commercial Court of Belgrade adopted the following provisional measure on 28 June 2005, by which the State Union of Serbia and Montenegro was prohibited to dispose of the *Novosti* shares because of the dispute between Serbia and Montenegro and the Republic of Serbia. Because of the Court Decision, the Securities Commission made, at the 84<sup>th</sup> meeting held on 20 July 2005, Conclusion No. 4/0-32-1278/8-05, by which it suspended the proceedings initiated at the request of SENTA HANDELS ANSTALT, thus preventing the takeover of the *Novosti* shares.

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Four years after the unlawful registration, on 16 February 2006 the Government passed Conclusion No. 464-766/2006 by which it ordered to:

- The Republic Attorney General to register the rights to the immovable property used by *Novosti*, *Borba* and the *Borba* Printing House in favor of the Republic of Serbia;
- The Ministry of Economic Affairs to review the evaluation of the value and the ownership structure of the capital, as well as the title holder of the shares of *Novosti*, *Borba* and the *Borba* Printing House with the aim of determining the share of the state-owned capital in the total capital of these companies; and
- The Ministry of Economy to take measures in the privatization process in order to suspend all the activities related to the registration and issue of shares of the mentioned companies, until the completion of the review.

The Government's Conclusion confirms the information released by BETA on 1 June 2005. In fact, the Government was aware that *Novosti* had not been privatized and that the registration of the state-owned and privately owned share capital was unlawful, that the amount of the state-owned share in the total capital of *Novosti* had never been determined, and that during the registration in 2002 the percentage of the socially-owned share in the *Novosti* capital was actually just copied as it was before the cancellation of the *Novosti* ownership transformation. For this very reason, the Government ordered the Ministry to determine the ownership structure of the Company.

The Government's Conclusion was adopted by applying Article 48 of the Law on Assets Owned by the Republic of Serbia, which prescribes that the Government of Serbia, in agreement with the legal person using assets built or acquired through the participation of the Republic's funds, should determine the share of the state ownership in the assets used by the legal person. In cooperation with the competent ministry, the Property Directorate submits a proposal of the agreement to the legal person. If the agreement is not concluded within a period of six months from the date of its submission, the obligation of the Republic Public Attorney is to submit a request to the Court to determine the ownership rights and the state-owned share.

The procedure that was to be conducted by the Ministry of Commerce in accordance with the Government's Conclusion would not have concealed the fact that *Novosti* had not been privatized either according to the regulations that were applicable in the nineties, or according to the 2001 Law on Privatization. It would have also been determined whether the registration of the shareholding company with the Court Registry had been made without a legal basis, and without a previous procedure in which *Novosti* became a shareholding company. No ownership transformation procedure of *Novosti* was conducted or initiated at the time of the registration in 2002, and the percentage of the socially-owned capital from the Decision of the Directorate for Evaluation of Capital No. 647/98-1-6 from 1998, which was revoked by the Court, was registered with the Court Registry. Therefore, had the Ministry of Economy acted in accordance with the Law and carried out the review ordered by the Government after having established the facts, it would have had to initiate proceedings for the cancellation of the unlawful registration,

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and the publicly-owned company *Novosti* would have been privatized by the Privatization Agency in accordance with the Law on Privatization.

In order to have the aforementioned facts concealed, the Ministry of Economy never initiated a review ordered by the Government. Instead of a review, on 21 February 2006 the Ministry passed the Conclusion No. 764/91, by which it ordered the NIP Company *Novosti a.d.* to submit the documentation related to the procedure of the privatization of the Company conducted according to the provisions of the Law on Socially-Owned Capital. The Ministry of Economy stated in the explanation of the Conclusion that it made this order acting in accordance with the Government's Conclusion and pursuant to Article 77 of the Law on Privatization, which stipulates that the Ministry should continue to exercise control and verification of the initiated but uncompleted ownership transformation procedures. However, as all the decisions regarding the ownership transformation and subsequent actions based on them had been revoked by the Court Decision and the Decision of the Directorate for Evaluation of Assets, Article 77 of the Law on Privatization could not be applied in the case of *Novosti* because the Company was not in the process of ownership transformation at the time when the Law on Privatization came into force.

*Novosti* did not act in accordance with the order of the Ministry, and therefore the Ministry re-issued the same order on 3 April 2006. Even after the repeated order, *Novosti* did not act in accordance with it. At the same time, despite the explicit order of the Government, the Ministry did not take any measures to suspend the activities related to the registration and issue of the *Novosti* shares, so that their shares were offered without any obstruction at the Belgrade Stock Exchange on 21 August 2006.

It is stated in the document entitled *Information on the Status of the Case of the NIP "Novosti" a.d. Belgrade (Chronological Genesis According to the Available Records of the Ministry of Economy)*, which was submitted by the Ministry of Economy at the beginning of November, 2006 to the Privatization Agency, the Shares Fund, the Central Securities Registry, the Securities Commission, the Republic Directorate for Property, the Treasury Directorate of the Ministry of Finance and the Republic Public Attorney, among other things, that, after *Novosti* had failed to act in accordance with Ministry's order, the information in the documents of the Ministry of Economy regarding the capital structure of *Novosti* differed significantly from the information recorded in the Decision of the Commercial Court in Belgrade and from the data of the Central Registry. Despite this knowledge, the Ministry did not take any steps to carry out the order of the Government of Serbia of 16 February 2006, but instead only forwarded the Information on the unlawful actions to the aforementioned state agencies without any additional instructions regarding the measures to be taken. By the time this Information was forwarded, in November 2006, the majority package of the *Novosti* shares had already been sold through the Belgrade Stock Exchange.

The actions of the Ministry of Economy clearly lead to suspicion of their complicity with the interest group headed by the director of *Novosti* Manojlo Vukotic and the financially powerful individuals who made an agreement with Vukotic to take over the Company. Specifically, the Ministry first used the unlawful registration of *Novosti* with the Court



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Registry to prevent the implementation of the takeover bid submitted by SENTA HANDELS ANSTALT, and then, by failing to act in accordance with the Government's Conclusion of 16 February, made it possible that the shares issued on the basis of unlawful registration with the Court Registry could be sold at the Stock Exchange.

#### **4. SALE OF SHARES IN 2006**

At the Shareholders Meeting of the company *Novosti* held on 27 May 2006, which was attended by the representative of the state-owned capital Srdjan Djuric, then director of the Government's Office for Media Relations and a member of the ruling Democratic Party of Serbia, the director of *Novosti* Manojlo Vukotic informed the shareholders that he and "a team of associates" had come "to the commitment" that the shares of the company should "go to the stock exchange" and that they had "found some good, rich and experienced Serbian businessmen willing to buy the shares". Vukotic refused to answer the shareholders' question as to which businessmen those were, but he said: "I am fully convinced of their good intentions, their knowledge, their ambition and, if my word is worth anything, I guarantee for them. I stand behind them or in front of them."

On 21 August *Novosti* offered its shares on the Belgrade Stock Exchange. It was stated in the Prospectus for the first trading of the shares on the Stock Exchange, signed by the director of the Company Manojlo Vukotic, that the issuer had the right to use the 6,000-m<sup>2</sup> offices, but that proceedings establishing the property rights were being conducted before the Commercial Court. This information did not match the information in the Real Estate Register at the time, in which NIP *Borba a.d.* Belgrade was registered as the user, and the dispute initiated by *Novosti* against *Borba* and the Republic of Serbia before the Commercial Court in Belgrade in order to verify the co-ownership of *Novosti* of the building on Kosovska Street has not been ended so far. A prospectus is an essential source of information for the shareholders and prospective investors, on the basis of which decisions are made regarding investing in the shares and other securities issued by a company. The Law on the Securities Market prescribes heavy fines both for the legal and the responsible person in the legal person for presentation of false information in a prospectus as a public document.

Within a period of eight days from the date of taking the shares to the Stock Exchange, almost all small shareholders of *Novosti* sold their shares at a price of 289,488 dinars per share, or around 3,400 euros. The shares of the Shares Fund and the Pension and Disability Security Fund were not sold. Only on 3 October 2006 the Privatization Agency submitted to the Shares Fund the Decision No. 7841/06 on the Method of Sale of Shares of the Company NIP *Novosti* on the Stock Exchange, with an order to sell 482 shares belonging to the Pension and Disability Insurance Fund. However, on 1 November the Ministry of Economy sent an opinion to the Shares Fund and the Privatization Agency that the sale of the shares of the Pension and Disability Insurance Fund should be suspended, and that the sale of the shares owned by the Republic of Serbia in *Novosti*

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should not be initiated until the completion of all the proceedings conducted before the competent institutions.

The shares sold in August 2006 by the small shareholders of *Novosti* were bought by the companies STADLUX REALESTATE d.o.o. Belgrade and ARDOS HOLDING GmbH Austria. At the time of the sale, virtually all relevant media in Serbia reported that Milan Beko was behind the buyers of the *Novosti* shares, but the Securities Commission did not respond to this information.

**Actions by the Securities Commission**

As both STADLUX and ARDOS exceeded 25% of the ownership and failed to inform the Stock Exchange and the Securities Commission about it, and did not submit a bid for the takeover, whereby they violated Article 6 of the Law on the Takeover of Joint Stock Companies (Official Gazette No. 46/2006 and 107/2009), the Securities Commission initiated the procedure of supervision and control of the trading in the shares of the NIP Company *Novosti a.d.* Belgrade. Having established the existence of irregularities, the Commission took the following steps:

- It issued a decision by which STADLUX was ordered to submit to the Commission an application for approval to publish the bid for the takeover of the *Novosti* shares in the manner and under the conditions prescribed by the Law on the Takeover of Joint Stock Companies, or if it did not have necessary funds to conduct the takeover procedure or if the conditions for publishing the bid for the takeover had not been fulfilled in accordance with the Law, to sell an appropriate number of the *Novosti* shares on an organized market within a period of three months from the date of receipt of the Decision, so that the number of its shares would not exceed 25% of the voting shares. It was established by the Commission's Decision that STADLUX did not have the voting right on 558 acquired shares in *Novosti* as of the issuance of the Decision. However, before the delivery of the Decision, STADLUX had reduced their percentage to below 25%, and consequently the Decision was withdrawn.

- As ARDOS had acquired 173 voting shares, exceeding the regulatory threshold of 25%, the Commission issued the same decision as in the case of STADLUX, but since the company ARDOS had sold some of the *Novosti* shares and thereby reduced the percentage to below 25%, the Commission withdrew its decision. The Commission also ordered the authorized person in ARDOS to submit a statement regarding its concerted action with the other buyers, but ARDOS did not carry out this order. The Commission issued a conclusion by which the proceedings were terminated and a decision to reopen the supervision should it have evidence of a concerted action of the buyers of the *Novosti* shares.

- The Commission notified *Novosti* that, pursuant to Article 37 of the Law on the Takeover of Joint Stock Companies, the companies STADLUX REAL ESTATE and HOLDING ARDOS did not have the voting right on the basis of the acquired shares exceeding 25%, and that the body which called an extraordinary shareholders meeting scheduled for 22 September 2006 should be informed about it, and that *Novosti* should

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inform the Commission if these shareholders had voted at the extraordinary meeting on the basis of the acquired shares to which they were not entitled, and if such votes were decisive for the adoption of the proposed decisions, but there has been no feedback regarding it.

After STADLUX and ARDOS had sold shares exceeding the ownership of 25%, STADLUX sold all their *Novosti* shares, so that the following ownership structure was established: ARDOS HOLDING had 24.89% of the shares, TRIMAX INVESTMENTS had 24.99%, KARAMAT HOLDINGS 12.55%, the Republic of Serbia 29.52%, the Pension and Disability Insurance Fund 7.15% and other shareholders had 0.90%.

The way the small shareholders' *Novosti* shares were purchased clearly suggests that it was a covert takeover. At the moment when the *Novosti* shares were offered on the organized market, the buyer was aware that it was not possible to apply for approval of the takeover bid because it did not fulfill the basic requirement from Article 1, Paragraph 3, of the Law on the Takeover of Joint Stock Companies, because the shares had been traded on an organized market for three months before the publication of the notice of intent for a takeover. Besides, the temporary measure of the Commercial Court of Belgrade of 28 June 2005, which prohibited the disposal of *Novosti* shares owned by Serbia and Montenegro, was still in effect. It is obvious that the buyer knowingly made the decision to carry out the takeover in an unlawful manner, and exceeded the prescribed threshold of the 25% stake by buying shares on the stock exchange, in order to be able to take control of *Novosti* by subsequent sale of the surplus shares to a related person. Also, the findings of the supervision and control clearly show that the Securities Commission was aware that related persons, both individually and jointly, acquired more than 25% of votes in *Novosti*, because of which an application for approval of the takeover bid should have been submitted, but the preliminary requirements had not been fulfilled for it, and it could not be approved either within the three months' time because of the temporary measure imposed by the Commercial Court of Belgrade.

To the Anti-Corruption Council's question as to whether *Citadel Securities* had informed the Securities Commission that the buyers it represented were related persons, sent on 19 July 2010, the Commission replied on 20 August that it "did not have any information nor had it been informed by any third person about a possible connection between some of the buyers of the subject shares". On 30 July 2010 the Council requested the Commission to provide it copies of decisions and other acts related to the findings in the process of control and supervision related to the trading of the *Novosti* shares, which we have not received so far. As the Commission did not submit the requested documents within the statutory deadline, the Council appealed to the Commissioner for Information of Public Importance. Following the decision of the Commissioner, on 26 November 2010 the Commission sent to the Council a letter "on available information", stating the measures taken by the Commission in exercising the control of the trading in the *Novosti* shares, but it did not deliver the required copies of relevant decisions, conclusions and notifications, which it had issued and delivered to the controlled parties and to *Novosti*. On 25 December the Council reiterated its request, at the same time also requesting information related to other allegations that had been made public in the meantime.

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Appearing on the TV B92 show *Izmedju redova (Between the Lines)* on 21 November 2010, Milan Beko confirmed that the three companies through which they purchased the *Novosti* shares belonged to him: "There has been no doubt about it since the beginning," said Beko. On 27 November 2010 Vesna Vujic from the Securities Commission stated that, after Beko's appearance on TV B92, the Commission requested from his companies "an official explanation of whether they were connected", pointing out that the Commission had examined the connection between the owners of *Novosti* four years before as well, but it "had never received an answer". This statement is in stark contradiction with the information the Securities Commission provided to the Anti-Corruption Council on 20 August 2010.

In a repeated request for delivery of documentation regarding the control of the purchase of the *Novosti* shares of 25 December, the Anti-Corruption Council also asked the Commission if it, at the time of the control, had documentation indicating that the buyers of the *Novosti* shares were related persons behind which was Milan Beko, and what legally prescribed actions they took after Milan Beko's public confession that he is the owner of more than 60% of the *Novosti* shares. By the Decision No. 1/0-06-442/24-10 of 14 February 2011, the Commission refused the Council's request for access to information of public interest, on the grounds that the police had opened preliminary criminal proceedings relating to the acquisition of the *Novosti* shares and that such information was considered an official secret in the light of Article 239, Paragraph 2, of the Law on the Securities Market and Other Financial Instruments (Official Gazette of the Republic of Serbia No. 47/2006). The Council filed an appeal with the Commissioner for Information of Public Importance, but it is still pending.

The Chairman of the Securities Commission Milko Stimac announced on the national RTV *Pink* news on 24 February 2011 that "this body will complete the control of the ownership of the company *Novosti* by mid-March and request that one of the three companies, two based in Austria and one from Cyprus, which have a majority stake, publish the binding bid for acquisition of the remaining shares". Mr. Stimac also said "the Commission will persist in verifying the ownership in the company, because no equity buyer can remain hidden". Despite repeated announcements on several occasions, the Commission has not carried out the control of the ownership of the company *Novosti*.

Unlike the company KARAMAT HOLDINGS, where difficulties may arise during the control of the ownership as it was established at an "off-shore" destination, it can be simply established by researching publicly available information from relevant registers that the companies ARDOS and TRIMAX are related in terms of Article 4, Paragraph 2 and 3 of the Law on the Takeover of Joint Stock Companies, as they are under the control of the company BICOS Beteiligungen Gesellschaft GmbH, based in Austria, and Dr. Gottfried Wieser. According to the statement from the relevant Commercial Register:

- The only member of ARDOS is BICOS, with 100% stake in the founding capital, and the only registered agent of ARDOS is Dr. Gottfried Wieser;
- The only member of the company ABISCO Verwaltungen GmbH, based in Austria, is TRIMAX, with 100% interest in the founding capital;

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- The only member of ABISCO is BICOS, with 100% stake in the founding capital, while Gottfried Wieser is the only registered agent of ABISCO;
- The only registered agent of BICOS, and the majority shareholder of the Company, with 99.175% share in the capital, is Dr. Gottfried Wieser.

Thus, through his ownership of shares in BICOS, Dr. Gottfried Wieser owns both ARDOS and TRIMAX, and thereby has direct influence on ARDOS and BICOS, because he is the only registered agent of these companies, and indirect influence on TRIMAX, as he is the only registered agent of the owner of TRIMAX. In terms of Article 4 of the Law on the Takeover of Joint Stock Companies, the companies ARDOS and TRIMAX are considered to be parties that operate together and that are subject to the obligation to publish their takeover bids. As to the company ARDOS, in 2006 the Commission issued a Conclusion by which it stopped the proceedings instituted *ex officio* in relation to the acquisition of the *Novosti* shares, and a decision to reopen the supervision procedure should the Commission have evidence that the buyers acted in concert. The Anti-Corruption Council acquired information on the joint action of ARDOS and TRIMAX by examining the publicly available information of the relevant register of the Republic of Austria, so the statements by the officials of the Securities Commission, which suggest that this institution, even after almost five years, still cannot carry out an audit of the ownership in the company *Novosti*, sound extremely unconvincing.

**Actions by the Commission for Protection of Competition**

On 19 January 2009 the Austrian company OST Holding Sudosteuropa GmbH, which is part of the WAZ Group, submitted to the Commission for Protection of Competition an application for approval of concentration, regarding Sudosteuropa OST Holding's intentions to acquire indirect control of the NIP Company *Novosti a.d.* by gaining direct control over the three shareholders of *Novosti*: TRIMAX, ARDOS and KARAMAT. The applicant proposed that the Commission approve the intended concentration in summary proceedings and without providing any special conditions and without the hearing of the parties pursuant to Article 23 of Law on Protection of Competition (Official Herald of the Republic of Serbia No. 79/05). Since 19 January 2009, the Commission for the Protection of Competition has taken the following steps regarding the OST Holding's application:

- It requested on 9 February 2009 additional documentation and explanation of certain information provided in the application. On 13 and 19 February 2009 OST Holding amended the application providing requested documents and information. So far the Commission has not made any decision, or invited the applicant to amend the application.
- Article 23, Paragraph 5 of the Law on Competition provides that parties to the concentration are obliged to stop the implementation of the concentration "until the expiry of a period of four months from the date of the application". Considering the fact that after 19 February the Commission did not request any further information, or amendments, on 2 July 2009 OST Holding addressed it with a submission reading: "In our understanding the application of 19 February 2009 was duly filed and completed in accordance with Article 23, Paragraph 5 of the Law on Protection of Competition. The

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consequence of this is that the ban on OST Holding to enforce the relevant concentration and thus gain control over *Novosti* has expired as of 19 June 2009.” So far the Commission has not responded to this submission.

- Meanwhile, the new Law on Protection of Competition was adopted (Official Herald of the Republic of Serbia No. 51/09). The application of the Law began on 1 November 2009, and Article 74 stipulates that the proceedings commenced before the effective date of the new Law should be conducted according to the regulations by which they were initiated. On 25 January 2010 OST Holding submitted to the Commission an updated application regarding the concentration on the basis of Article 61 of the new Law, and the Commission responded to it on 26 February 2010, requesting certain additional information as soon as possible. The legal representative of OST Holding submitted the requested information on March 3, and since then the Commission has again remained silent.

- On 6 May 2010 OST Holding addressed the Commission requesting an explanation as to whether the new Law on Protection of Competition and Article 65, Paragraph 2 of the Law applied to it, according to which it is considered that the concentration is approved if the Commission does not issue a decision within 30 days from the date of the application. OST Holding submitted the same request to the Commission on 23 June and then again on 28 June 2010. On June 30 the Commission delivered its Opinion to the applicant that, in accordance with Article 74 of the Law, the same regulations by which the proceedings were initiated were applied to the concrete case.

- On 6 July 2010 the Commission requested the OST Holding to provide information as to whether the ownership of the *Novosti* shares had been changed in the meantime.

In other words, the procedure OST Holding is conducting before the Commission for Protection of Competition has lasted more than two years, from the submission of the application on 19 January 2009 to date, with no chance of its completion.

Owing to the actions of the Securities Commission and the Commission for Protection of Competition, the related companies, controlled by Milan Beko according to his own admission, have for almost five years had a majority ownership in the company *Novosti*, which they acquired in August 2006 by violating the Law on the Takeover of Joint Stock Companies, the Law on Privatization and the Law on Assets Owned by the Republic of Serbia.

## **5. CONCLUSIONS AND RECOMMENDATIONS**

The Anti-Corruption Council has gathered and analyzed extensive documentation which shows that over a period of ten years the state institutions have continuously issued unlawful decisions in the privatization of *Novosti*, which have been detrimental to the Republic of Serbia, and in favour of the interest group which usurped the company in 2000 and in favour of the tycoons with whom this group had conformed in order to acquire a majority stake. It should be noted that the usurpation of *Novosti* has not only

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caused damage to the Republic of Serbia, but also to the other employees of *Novosti* who were entitled to free shares of the Company in the privatization process. Consequently, on 22 January 2008 a group of 26 workers and former workers of *Novosti* filed a lawsuit with the First Municipal Court of Belgrade against Serbia, the NIP Company *Novosti a.d.* and Manojlo Vukotic for damages, as they have been denied their right to free shares under the Law on Privatization because of the "continuation" of the ownership transformation of the Company.

In 2000 *Novosti* was a 100% socially-owned company. The process of ownership transformation was not initiated in it and it was not privatized according to the Law on Privatization, nor did the Ministry responsible for privatization initiate this process after 2001. All relevant authorities were aware that the registration of the shareholding company with the Court Registry in 2002 was unlawful because no legally prescribed process of privatization was conducted. Though the Government of Serbia, following the perceived illegality, ordered the Ministry of Economy in 2006 to review its ownership structure and take measures to suspend the registration and issue of the *Novosti* shares, the Ministry did not do so. Had the review been made and had the process of making an agreement been opened as foreseen by the Law on Assets Owned by the Republic of Serbia, it would have been determined that the state-owned share in the total capital of *Novosti* was much higher than was registered, because the state-owned building at 20-26 Kosovska Street was not included in the evaluation of the capital.

*Novosti* claims the right to the building on Kosovska Street, which is clear from the fact that it filed a lawsuit with the Commercial Court of Belgrade against the Republic of Serbia in order to verify its co-ownership. Therefore, no ownership structure of *Novosti* could have been determined without an assessment of this facility, and had the Ministry of Economy made it during the review ordered by the Government, the majority of the *Novosti* shares would have been sold by the Republic of Serbia. In that case, however, the sale of the shares would have been followed up by the public quite differently - as privatization of state-owned capital for which the Ministry of Economy and the Shares Fund would have been responsible, and not as a private transaction between small shareholders and three unidentified foreign companies. However, by avoiding the review of the evaluation, or failure to act on the order of the Government, the Ministry allowed the ownership structure of *Novosti* to remain as it had been registered in 2002 with the Court Registry, and after that, to sell on the Belgrade Stock Exchange the majority package of shares owned by small shareholders, acquired by usurpation of the state ownership, and without even raising the issue of concentration, because the *off-shore* companies owned by Milan Beko did not operate in the field of information and advertising. The manner of sale, which was enabled by the Ministry of Economy through its failure to act, actually led to the situation where the establishment of control over the biggest-selling daily newspaper in Serbia took place as if it was a transaction of no public interest. Decisions that were then made by the Securities Commission and the Commission for Protection of Competition enabled Milan Beko to unlawfully control one of the most influential and profitable information companies in the country for nearly five years.

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It would be necessary to analyze how so many irregularities occurred by which the group of people led by Manojlo Vukotic was allowed to register in relevant commercial registers changes that never happened, and to then realize his agreement with Milan Beko to sell the illegally obtained assets on the securities market. In other words, how was it possible that, in the period after 5 October 2000, when privatization was singled out as a process on whose success the implementation of democratic reforms critically depended, such a valuable and important company as the publishing house *Novosti* was transformed from a socially-owned to a private company entirely outside the law and the institutions that regulate privatization and the capital market? First of all it is necessary to analyze, on the basis of facts, mechanisms that made it possible for state institutions to act so drastically in favour of the interests of powerful individuals, and not in accordance with the law, and to consider with utmost care the facts that point to corruption in the actions of all those involved in the privatization and sale of the *Novosti* shares, and to take appropriate steps to establish their accountability.

It is also important that the Government prevent further damage to the Republic of Serbia in the privatization of the remaining parts of the former SJU *Borba*, which are controlled by the structures that are behind the unlawful privatization and sale of the *Novosti* shares, which primarily refers to the Printing House *Borba*.

By the application of the Law on Payment of Wages (Official Gazette of the SFRY No. 37/90 and 84/90), the employees of the Graphic Printing House *Borba a.d.* acquired the right to the ownership of 20.58% of the total capital of the Printing House on the basis of the final judgment of the First District Court of Belgrade P1-337/97 of 19 May 1997, and on the basis of the final judgments of the Commercial Court of Belgrade XIV-P-3998/01 of 4 March 2002. On 4 March 2011 the Anti-Corruption Council addressed the Privatization Agency with a request to provide information about the status of the privatization of the remaining 79.42% of the share capital of the Printing House *Borba* that belongs to the Republic of Serbia. On March 22 the Agency replied that no initiative for the privatization of the Printing House had been taken yet, which is an action which starts the privatization process, and which may be taken according to the Law on Privatization by a body of the company to be privatized, by interested buyers, or by the Ministry responsible for privatization. In its response to the Council the Agency also stated that the Association of the Minority Shareholders of the Printing House addressed it on several occasions regarding the initiation of the privatization process, and that the Agency conveyed that information to the Ministry responsible for privatization, which responded that it would forward the material to the Government for consideration if the conditions for taking the initiative were fulfilled.

In other words, for the past ten years no action foreseen by law has been taken concerning the privatization of the Printing House *Borba*.

Meanwhile, on 24 April 2002 the Graphic Printing House *Borba* concluded an agreement with the company *Novosti a.d.* on a joint investment, whose subject is the procurement of new printing equipment. The Printing House *Borba* and the company *Novosti* would each contribute 50% of the required funds for the procurement of equipment. However, this equipment never entered the Printing House *Borba*; but, on the same day when the



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agreement on joint investment was signed, *Novosti* and the Printing House *Borba* set up a joint venture company Printing House *Novosti d.o.o.*, including the new printing equipment in the founding capital of this company, in which *Borba* and the company *Novosti* own 50% of the capital each. The Printing House *Novosti d.o.o.* was registered at Kosovska Street 26, that is, at the location of the Printing House *Borba*. The Printing House *Novosti* has no employees or premises, but through this company the employees of *Novosti* close to its director Manojlo Vukotic run the business operation of the Printing House *Borba*. Establishing the joint venture company limited actually enabled *Novosti* and Vukotic to carry out a "spontaneous privatization" of the Printing House *Borba* and to take over control of the printing house, its operations, and the business premises on Kosovska Street that this company used. The failure of the ministry responsible for privatization and its ignoring the proposals of small shareholders to have the Printing House *Borba* privatized fully complied with the interests of *Novosti*, and Milan Beko and Manojlo Vukotic.

Considering the fact that the subject of privatization of the Printing House *Borba* was state-owned and socially-owned capital, we propose that the Government initiate as soon as possible the cancellation of the harmful contracts with the company *Novosti* and to urgently initiate the procedure for privatization of the Printing House *Borba*; and furthermore, that the Ministry of Economy and Regional Development request a report as to why nothing has been done regarding the privatization of the Printing House *Borba* over the past ten years, despite warnings by the small shareholders that the company was under the threat of a "spontaneous privatization".

Belgrade, 17 May 2011

COUNCIL PRESIDENT

Verica Barac