

The Republic of Serbia
The Government of the Republic of Serbia
The Anticorruption Council
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Belgrade

THE GOVERNMENT OF THE REPUBLIC OF SERBIA
- Prime Minister Mirko Cvetkovic -

B e l g r a d e

Dear Sir,

Trade Union "Nezavisnost" Trudbenik gradnja doo from Belgrade submitted its complaint to the Anticorruption Council with an extensive documentation regarding the privatization of this company. The Council analyzed the submitted documentation which indicated that the Privatization Agency made some serious mistakes in the process of control over performance of the Contract of Sale of Share in the company "Trudbenik gradnja" doo.

Preparation for the privatization

The company for design and construction "KMG Trudbenik" ad from Belgrade was the founder of the building company "Trudbenik gradnja" doo. The immovable property invested in the new company by its founder amounted to RSD 1,220,364,292.00, and the invested movable property amounted to RSD 298,850,541.00. On 24 July 2003, the Privatization Agency gave the approval for the foundation of "Trudbenik gradnja".

Taking into account that "KMG Trudbenik" was left heavily in debt, and with a property small in size, after practically all its assets, except the office building, was invested into "Trudbenik gradnja", the Privatization Agency rendered the Decision number P-07/05-OD of 28 January 2005 instituting a restructuring procedure over "KMG Trudbenik". The Auditing Company "Deloitte" appraised 100% share in "Trudbenik gradnja" to EUR 12,539,000.00, i.e. in the RSD counter value 1,072,055,000.00, as at 31 December 2005.

By its Decision on accepting the restructuring program number P-132/06-OD of 27 June 2006, the Privatization Agency gave its approval for the sale of the share that "KMG

Trudbenik'' had in ''Trudbenik gradnja'', and then, on 15 august 2006, the Management Board of ''KMG Trudbenik'' ad in restructuring, rendered the Decision to sell its equity in the amount of 100 % of its share in the company ''Trudbenik gradnja'' doo. On 23 august 2006, the Privatization Agency concluded a Contract of Power of Attorney with ''KMG Trudbenik'', and was given power to conduct the procedure of a sale of the share of ''KMG Trudbenik'' in ''Trudbenik gradnja'' for and on behalf of ''KMG Trudbenik''.

Privatization

Auction sale of 100% share of ''KMG Trudbenik'' in ''Trudbenik gradnja'' was conducted on 21 March 2008. The share was bought by the Company for construction, transport and services ''Monterra'' doo from Belgrade, at a starting price of RSD 580,000,000.00 which represented half of the estimated value. On 25 March 2008, the Contract of Sale of Share was signed by ''KMG Trudbenik'' as a seller, the Privatization Agency as the seller's authorized agent, and ''Monterra'' as a buyer.

Obligations undertaken by the buyer with this Contract are as follows:

- To pay the purchase price within eight days;
- To act in conformity with the Company's Collective Agreement in force, and not to dismiss employees for the period of three years from the day the Contract is signed, however, in the event that the buyer pays a worker a severance payment in the amount of at least EUR 200 per a year of service, i.e. average gross salary for the last six months the buyer may be freed from this obligation;
- To maintain business continuity for the period of five years.

Perfomance of the contract

Resulting from the documentation forwarded to the Council by Trade Union ''Nezavisnost'' Trudbenik gradnja, and presented to the Privatization Agency by the Union's representatives on more than one occasion, it was clear to see that violations of the provisions of the Contract referring to the ban of dismissal of workers and the obligation of maintaining business continuity occurred soon after the purchase of the Company. In March 2008, when the sale of the share took place, ''Trudbenik gradnja'' employed 497 workers. In September 2009, only 147 workers remained in the company. Pursuant to Union's data, neither of the dismissed workers was given their severance payment in the fashion envisaged by the Contract. Apart from that, the buyer alienated a significant property of ''Trudbenik gradnja'' in Smederevo (overall property of a then ''Trudbenik's'' Woodwork Factory in Smederevo was transferred as the initial capital into a new company ''Trudomont'' doo Smederevo, owned by ''Monterra''), and in Belgrade (Betonjerka ''Sava'' in Savski nasip), which, together with radical reduction of work force questions company's business capacities to the extent that it jeopardize its further survival. Trade Union ''Nezavisnost'' forwarded these data to the Privatization Agency on a timely basis. However, neither the Agency nor ''KMG Trudbenik'' undertook measures to prevent violations of the Contract, on account of which in August 2009 employees came out on strike, which is still going on. On 2 September 2009, the

Management Board of "KMG Trudbenik" forwarded a request to the Privatization Agency to perform a detailed control over the performance of the Sales Contract, "particularly taking into account evidences on violations of the provisions of the Contract stipulated in the letter written by Trade Union "Nezavisnost". At meetings organized afterwards in order to overcome the crisis in the company, the representatives of the Privatization Agency refused to fulfill the obligation prescribed by law, and to control the privatization procedure in "Trudbenik gradnja", and suggested that the control should be conducted by an independent auditing company which would be approved by the Strike Committee, "Monterra", and "KMG Trudbenik". Even though the agreement of this kind of control was reached on 21 September, the first step – appointment of an auditing company – has not yet been made. The Article 6, point 4 of the Law on Privatization Agency ("Official Bulletin of the Republic of Serbia", number 38/2001, 135/2004), bounds the Agency to perform the control over privatization procedures. It is up to Agency to choose whether to fulfill this obligation by its own resources or to appoint an external auditor. Therefore, asking the Buyer and the Strike Committee to approve the appointment of an auditing company was obviously meant to conceal the Agency's responsibility, and to further prolong, as well as to complicate the crisis situation, which led to more severe consequences. On 28 October, the management of "Trudbenik gradnja" handed over 45 dismissal notices to the employees who participated in the strike, which included all nine members of the Strike Committee.

The Anticorruption Council deems that, by its refusal to perform control over privatization procedure the Privatization Agency enabled the company "Monterra" to violate Contract of Sale of Share in the company "Trudbenik gradnja" doo, thus imposing huge damage on the company and the employees. The Article 7 of the Contract envisages that "the Seller, i.e. the Privatization Agency in the capacity of its authorized agent, is entitled to terminate this Contract unilaterally if the Buyer does not pay the purchase price in conformity with the provisions of this Contract", however, that does not mean that the Seller, i.e. the Privatization Agency, can not terminate the Contract if the buyer does not fulfill other important contractual obligations with respect to the Article 124 of the Code of Obligations. The Privatization Agency, together with the Seller, is bound to control the performance of the Contract of Sale of Share in the company "Trudbenik gradnja" doo, and if the buyer dismisses the workers contrary to the Contract and fails to maintain business continuity, a consequence of such a behavior could lead to a termination of the Contract.

What concerns deeply is the fact that the Privatization Agency took no measures regarding the letter of Trade Union "Nezavisnost" of 22 September 2008, containing data concerning the alienation of the property of "Trudbenik gradnja" in Smederevo and Betonjerka "Sava". The Article 2, point 1 of the Law on Privatization ("Official Bulletin of the Republic of Serbia", number 38/01, 18/03, 45/05, and 123/07), envisages that the basis of the privatization procedure is to create conditions for the development of the economy and the social stability. If this was not the case, the Privatization Agency could have dismissed the majority of the workers of "Trudbenik gradnja" in the restructuring procedure, and sold the company in parts, in the same way "Monterra" is doing now, making more profit than in the case of the sale of the company with the obligation of maintaining business continuity and ban of dismissal of workers on account of redundancies. These provisions of the Contract and the sale of the company at the

price two times lower than its appraised value, clearly indicate that the purpose of the sale of the share in "Trudbenik gradnja" was to preserve its production and jobs. However, not only did the buyer fail to act in conformity with the relevant provisions of the Contract, but with the alienation of the operating capacities, the performance of the Contract, which bounded the buyer to enable the employees to work, was made impossible.

What was also lacking in the privatization of "Trudbenik gradnja" was the control over the work of the Privatization Agency by the Ministry of Economy and Regional Development. We believe that it would be very important that the Government of the Republic of Serbia and the Ministry of Economy and Regional Development take measures from their respective jurisdiction in order to establish law and order in the privatization of "Trudbenik gradnja". Also, to consider with utmost care not only these facts, but a number of others, publicly known cases, where the lack of control over fulfillment of contractual obligations in privatization procedures jeopardized survival of companies, or even brought them to financial ruin. These examples, regrettably not few in numbers, create an impression in the public that the privatization actually enables powerful individuals to get their hands on attractive immovable property under very favorable terms, which is not in conformity with the privatization procedure prescribed by the Law.

Yours faithfully,

PRESIDENT

Mrs. Verica Barac