CASE STUDY: PRIVATISATION OF „CRNAGORAPUT“

Privatization of "Crnagoraput"one of many unsuccessful

I: INTRODUCTION: Company "Crnagoraput" AD Podgorica deals with regular and investment maintenance of highways and regional roads in Montenegro.[1] It was founded in 1962 under the name "Company for Roads", but in the mid-nineties of the last century it was transformed into a joint stock company. In 2005, "Crnagoraput" had 911 employees, but only a year later it was privatized by the Austrian company "Strabag AG", which laid most of employees in the following several years and led company into huge debts. The Study shows another example of poor privatization in Montenegro.

II: METHODS OF SALE THROUGH PRIVATIZATION PLANS: Company "Crnagoraput" AD Podgorica found itself in privatization plans for 2000[2] and 2001[3], when it was determined that it would be sold through a so-called batch method of sale, which represents a combination of the sale of shares in the tender and the recapitalization of the company. Exactly 30.01 percent of the state capital, estimated at 28.8 million of Deutsche marks, was planned for sale.

Privatization plan for 2003 envisaged privatization of the company through finding a strategic partner, for a total of 30.23 percent of the capital, which was estimated at €14.7 million.[4] The privatization plan for 2004 marked "Crnagoraput" as an enterprise important for development of Podgorica municipality and the state, and that should be on the priority list for finding strategic partners due to the number of employees, structure of payabilites and claims.[5] Through the privatization plan for 2006, 30.92 percent of the state capital of the "Crnagoraput" was designed for sale by public tender, with recapitalization.[6] The main goals were creating conditions for efficient business of "Crnagoraput", increasing competitiveness and investing in its modernization.

III: TENDER FOR THE SALE OF THE COMPANY: Former Agency for Economic Restructuring and Foreign Investments announced a tender for the sale of 30.92 percent of the state capital of the company "Crnagoraput" in mid-June 2006.[7] The sale of shares was conditioned by recapitalization through the required investments, in order to acquire additional 20.06 percent of the capital of the Company. Thus the purchaser would become the owner of 50.98 percent of the company capital.[8] In order to participate at the tender, companies had to be profitable in the previous three years, have at least five years of experience in

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[1] Note to Financial Reports from 31 December 2005.
[2] Decision on Privatization Plan for 2000 (Official Gazette of Republic of Montenegro, no. 31/00).
[3] Decision on Privatization Plan for 2001 (Official Gazette of Republic of Montenegro, no. 18/01), from 5 April 2001.
[4] Decision on Privatization Plan for 2003 (Official Gazette of Republic of Montenegro, no. 12/3), from 27 February 2003.
[5] Decision on Privatization Plan for 2004 (Official Gazette of Republic of Montenegro, no. 24/04), from 18 March 2004.
[6] Decision on Privatization Plan for 2006, no. 03-1346 from 9 February 2006.
[7] Report on the work of the Agency for Economic Restructuring and Foreign Investments for 2006 from December 2006.
[8] Shares that were the subject of the sale were owned by the Development Fund of the Republic of Montenegro in the amount of 12.97 percent, the Republic Pension and Disability Insurance Fund in the amount of 13.46 percent and the Employment Agency of Montenegro in the amount of 4.48 percent.

road maintenance and have the annual turnover of at least €300 million 2005. Companies that submitted valid offers were "Strabag AG" from Austria, "Tehnoput" doo from Podgorica, Road Construction Company "Beograd" ad from Serbia and "Cestno podjete" dd from Maribor in Slovenia.

IV: GOVERNMENT SELLS COMPANY TO „STRABAG“ FROM AUSTRIA: Company "Strabag AG" from Austria was chosen as the first-ranked bidder, which had stated in its offer that it wanted to make "Crnagoraput" a successful company in Montenegro and a renowned construction company all over Europe.[9] The buyer planned for "Crnagoraput" to achieve a turnover of €25 million in 2007, €32 million a year later and €40 million in 2009.

Purchase agreement with the Austrian company was signed in November 2006.[10] According to the agreement, 30.92 percent of the state capital of the company was sold to the buyer for €8.4 million. Before concluding the agreement, based on the decision of Shareholders Assembly of the company in October 2005, recapitalization of €5.5 million was launched, thus increasing the share capital from €13.5 million to €18.9 million. Company "Strabag AG" from Austria bought the issued shares.

Kao rezultat pregovora je usaglašeni tekst ugovora, sa sledećim osnovnim elementima:

- Kupoprodajna cijena za 30,9208% akcijskog kapitala iznosi 8.400.000€;
- Investiciona ulaganja u iznosu od 5.500.542,73 €, biće izvršena u roku od godinu dana od dana zatvaranja kao obavezan uslov dokapitalizacije;
- Kupac se obavezao da zadrži sve zaposlene i da u periodu od najmanje dvije godine nema prinudnog otpuštanja, kao i da održi na snazi u istom periodu Pojedinačni kolektivni ugovor;
- Kao sredstvo obezbijeđenja kupac će položiti bankarsku garanciju na ukupan iznos investicija;
- Ograničeno je pravo kupca da ne može otuđivati imovinu ili uspostaviti teret, a čija vrijednost prelazi 5% knjigovodstvene vrijednosti, donijeti akt koji ima za posledice statutarnu promjenu društva, raspolagati predmetnim akcijama ili uspostaviti teret na istima;
- Savjet za privatizaciju će imenovati kontrolora koji će pratiti sprovođenje ovog ugovora u svim njegovim aspektima;

The most important obligations according to the Purchase Agreement

Purchase Agreement defined the obligation of the purchaser to invest €5.5 million from the recapitalization in the company within a year and retain employees in the company for at least two years. Investments were considered to be only those that would enable company to perform the basic activities. The buyer had to provide a bank guarantee for good performance and was not entitled to dispose of or to encumber the property or shares that exceed the value of five percent of the book value of the company, while the designated controller would perform the control.

Investment program included investment of €3 million in the quarry, €2 million in a factory for the production of asphalt and half a million in the modernization of equipment, which was a total of €5.5 million. Regarding the fulfillment of the investment program, the contract stipulated that the Privatization Council[11] could terminate the agreement if the program was not fulfilled. In that situation, all shares would be returned to the ownership of the seller, while the purchaser would receive 80 percent of the paid amount of the purchase price. If the Privatization Council decided to terminate the agreement, the amount of 20 percent of the purchase price was defined as contractual penalty for not fulfilling the investment program or unauthorized encumbrance of property of the company. However, if the Council did not initiate contract termination, the penalty would range from 10 to 50 percent of the sale price.

[9] Report of the Tender Commission on Results of Tender for sale of 30,9208% of share capital of the „Crnagoraput“ ad Podgorica with the recapitalisation commitment, from 22 September 2006.

[10] Purchase Agreement on sale of 30,92 percent of share capital of the company „Crnagoraput“ AD Podgorica with recapitalisation through fulfillment of the investment program, from 16 November 2006.

[11] Agency for Economic Restructuring and Foreign Investments had changed its name in the meantime to the Council for Privatization.

Concerning the violation of the welfare program obligations, a contractual penalty was 25 percent of the purchase price. However, what was particularly controversial in the contract were provisions according to which the Privatization Council was obliged to help the purchaser regulate property issues with the Municipality of Podgorica regarding the ownership of the parcel number 120 KO Cijevna and obtain appropriate permits for the construction of asphalt base at this location, as well as to obtain a license for concession for exploitation of limestone in Stitarica.[12]

V: NEW OWNER INCREASES LOSSES INSTEAD OF RECOVERING THE COMPANY: According to the financial statements of the company, it had operated at a loss even in the years before the privatization. Thus, in 2004 "Crnagoraput"[13] had a loss of €770,000, with the total uncovered loss[14] of €4.9 million. Moreover, the company had €3.9 million of working capital[15], yet it had €9.2 million of current liabilities, which in economic terms indicated poor financial status of the company.[16]

Company operated at a loss in 2005 as well. The auditor's report[17] stated that the uncovered loss was €4.7 million, and current liabilities (€9.6 million) were higher than current capital by €5.6 million. "The accumulated uncovered loss with insufficient working capital and long-term frequent blockages of the company's bank account, indicates the existence of significant material uncertainties, which raise doubt that the Company will be able to continue operating as a legal entity," said the auditor.

NGO MANS does not possess the company audit reports for 2006, 2007 and 2008, i.e. the first three years after the company got new owner. However, in the Form of the Annual Business for 2008, which was published on the website of the Securities Commission[18], comparative figures for 2007 show that a year after privatization its uncovered loss was three times higher than in the period when the company was state-owned and amounted to €13.8 million. Working capital in that year was €9.1 million, while current liabilities were €19.6 million. In 2008, uncovered loss doubled to €24.4 million, working capital amounted to €12.2 million, while current liabilities reached the amount of €31.8 million.

Year	Accumulated uncovered loss	Working capital	Current liabilities
2004	-4,960,210	3,967,612	9,233,013
2005	-4,781,525	4,009,783	9,695,904
2006	?	-	-
2007	-13,888,834	9,101,594	19,677,868
2008	-24,424,144	12,242,856	31,835,726
2009	-28,498,559	12,622,146	32,501,291
2010	-27,721,646	15,695,191	34,757,326
2011	-27,920,570	13,797,283	35,898,850
2012	-18,703,294	12,971,576	29,174,299
2013	-18,703,294	6,993,563	21,962,497
2014	-18,484,785	5,523,660	19,780,014

Table 1: New owner increased company losses; source financial reports of the "Crnagoraput"

According to the 2009 audit report, the accumulated losses at the end of that year was stated above the value of the capital and amounted to €28.4 million, which was €12 million more than the total share capital

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[12] Stitarica is located on the territory of the Municipality of Mojkovac
[13] Audit report for the company „Crnagoraput" AD Podgorica for 2005 – comparative data from the report for 2004.
[14] Uncovered or accumulated loss is the loss of the company, which shows that the expenditures are higher than revenues.
[15] Working capital includes tangible and financial assets acquired by the company with the aim of successful business activities.
[16] Current liabilities include short-term loans and other financial liabilities that are due within a year, trade payables, liabilities from specific operations, liabilities for wages and salaries, liabilities for taxes, interest, dividends, etc. All current liabilities are due within one year.
[17] Auditor's Report for the Company "Crnagoraput" AD Podgorica for 2005.
[18] Data downloaded from the website of the Securities Commission: http://www.scmn.me/emitenti.php?eid=225&sadrzaj=96.

of the company, which was €13 million.[19] "Company presented current liabilities in the amount of €32,501,291, which is €19,879,145 more than the working capital. The Company has not concluded agreements on long-term loans, nor has acquired new sources of funding. Although the company has losses higher than the capital for the second consecutive year, the company made no addition of assets in the amount of the loss above the capital, increased by €25,000 statutory minimum of the core capital under the Law on Enterprises, nor the Shareholders Assembly adopted proposals of the Company management to cover losses above the capital from the share capital. Such a situation suggests that there is a significant uncertainty that may cause significant doubt about the Company's ability for continuance of business operation, that it will not be able to realize its assets and settle the liabilities in the normal course of business," said the auditor.

Furthermore, according to the audit report for 2009, it can be seen that in July 2008 the Company signed a Financing Agreement with the "ILBA Liegenschaftsverwaltung gmbh" concerning the revolving line of credit of €24.5 million, and that in October of the same year "ILBA Liegenschaftsverwaltung gmbh" purchased receivables from "Strabag International Gmbh" under the loan agreement in the amount of €21,115,366. As soon as March 2009, they signed the annex to the agreement on financing the increased indebtedness by €5.5 million, or up to the total amount of the revolving line of €30 million. The purpose of the loan remains unknown.

> Društvo je na osnovu Odluke Odbora direktora, 17.03.2009.godine potpisalo Aneks 1 Sporazuma o finansiranju sa Ilbau Liegenschaftsverwaltung gmbh i povećalo kreditno zaduženje za 5,500,000 EUR-a - do visine ukupne revolving linije od 30,000,000 EUR-a. Tokom 2009.godine Društvo je kreditoru izmirilo obaveze u iznos od 5,000,000 EUR-a po osnovu glavnice kredita.

The new owner settled the loan of 30 million

In 2009, the company paid off the principal totaling €5 million, and despite the poor business results, it granted a loan to a related entity "Strabag" Podgorica in the amount of €550,000.

The audit report for 2009 at the same time states that there is an inconsistency in the data regarding the value of the share capital. Thus, the value of the share capital in the ledgers was €12,890,781, the auditor in his report at the end of 2008 found that the amount was €15,539,539, while the value of equity in the Central Depository Agency was determined at €18,935,856.

Shareholders	Shares %	Value of equity in CDA	Value of equity according to auditor	Value of equity in ledgers
Individuals	10.83	2,049,979	1,682,297	1,395,544
„Strabag“ AG	50.99	9,654,855	7,923,169	6,572,643
Fund „Moneta“ AD	14.41	2,729,357	2,239,822	1,858,038
Fund „Atlas Mont“ AD	7.86	1,488,619	1,221,621	1,013,393
Futura export import ltd	7.24	1,370,101	1,124,361	932,710
Other legal entities	8.68	1,642,945	1,348,270	1,118,453
Total equity	100	18,935,856	15,539,540	12,890,781

Table 2: Structure of ownership in „Crnagoraput“ AD in 2009

Audit Report for 2010 shows that in November of the same year the company "Strabag AG Spittal“ concluded the purchase agreement of receivables with the "ILBA Liegenschaftsverwaltung gmbh" in the

[19] Report of the independent auditor on financial statements for 2009 for “Crnagoraput” AD Podgorica, from 5 March 2010.

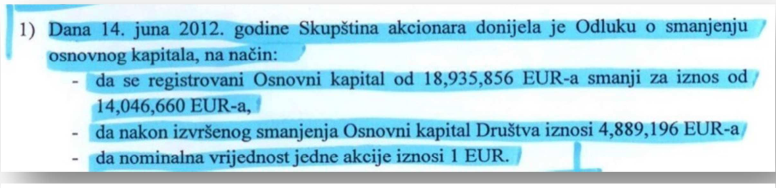
amount of €15 million, as part of the revolving loan of 30 million.[20] The auditor notes in the report that the deadline for repayment of the loan expired at the end of 2010, but the company has not announced whether it had signed a document extending the deadline for repaying the loan, nor has it concluded a contract on long-term loans.

The company has continued to operate with losses in the coming years. In 2011, "Crnagoraput" showed uncovered loss above capital in the amount of €11.3 million, thus reaching €27.9 million. The auditor indicated that the Company had not cover losses, that it had had a too big debt and that it had met the requirements of the bankruptcy.[21] Loan commitments with interest amounted to €30.2 million, and in the same year the shareholding company "Strabag" AG from Austria increased its shareholder equity through the purchase of shares of the Collective Investments Fund "Moneta" to 89.9 percent of total capital.

Shareholders	Shares %	Value of equity (CDA)	Value of equity (auditor)	Value of equity in ledgers
Strabag AG	89.9	17,038,346	13,820,402	11,599,031
Others	10.1	1,897,510	1,539,138	1,291,750

Table 3: The share equity of the company "Strabag AG" in "Crnagoraput" AD in 2011

In 2012, the company reduced the total amount of uncovered loss for €9 million, from €27.7 million €18.7 million, but it was still above the share capital. That same year, the share capital was reduced from €18.9 million, as registered in the Central Depository Agency, for over €14 million, and the capital was estimated at €4.8 million, with a nominal value of one euro per share.



1) Dana 14. juna 2012. godine Skupština akcionara donijela je Odluku o smanjenju osnovnog kapitala, na način:
- da se registrovani Osnovni kapital od 18,935,856 EUR-a smanji za iznos od 14,046,660 EUR-a,
- da nakon izvršenog smanjenja Osnovni kapital Društva iznosi 4,889,196 EUR-a
- da nominalna vrijednost jedne akcije iznosi 1 EUR.

Shareholders' equity significantly decreased

However, the same year, a decision was made on the conversion of debt to equity, so that at the end of the year it amounted to € 9.7 million.[22]

The company still kept high current liabilities, which amounted to €29.1 million, of which current loans were €23.4 million. The debt to "ILBA Liegenschaftsverwaltung gmbh" was €15.6 million, while the credit commitments to "Strabag AG" were reduced by €4.8 million through the conversion of debt to equity and it amounted to €11.1 million. However, "Strabag AG" wrote off the interest and a part of the principal of €3.3 million, which means that "Crnagoraput" owed "Strabag AG" €7.1 million at the end of 2012.

Shareholders	Shares %	Amount
Strabag AG	94.99	9,289,168
Others	5.01	489,933

Table 4: The share equity of the company „Strabag AG" in „Crnagoraput" AD in 2012

In 2013, uncovered loss was above the value of the capital of €6.4 million or €18.7 million in total[23], while the current liabilities were €21.9 million, compared to the working capital of €6.9 million. It was still indicating of poor financial state of the company. In the same year, loan agreements related to the company "Strabag" Podgorica, which had been granted €650,000, were presented.

[20] Report of the independent auditor on financial statements for 2010 from 30 March 2011.
[21] Report of the independent auditor on financial statements for 2011 from 27 March 2012.
[22] Report of the independent auditor on financial statements for 2012 from 19 March 2013.
[23] Report of the independent auditor on financial statements for 2013 from 31 March 2014.

At the end of 2014, the company had approximately the same level of uncovered losses, which was above the capital of €6.3 million or €18.4 million in total.[24] The auditor once again noticed that the "company's debt is too big", while at the end of the same year the company had debts on the basis of short-term loans in the amount of €18.2 million.

Moreover, if sales revenues are compared year by year, excluding 2006, for which NGO MANS has no information, it can be seen that the new owner achieved a significantly higher income in certain years. In addition, when taking into account the lack of any major investments in the same period and that the number of employees was reduced threefold, as well as that at the same time the company generated huge losses, there is a reasonable doubt that the short-term loans to affiliated companies served as a model of extracting funds from the company.

The table below shows the ratio of acquired sales revenue and invested assets year by year, as well as the number of employees in the same period.

YEAR	Revenues from sales/E	Cash outflow from investments/E	Number of employees
2005	13,765,792	827,036	911
2006	?	?	?
2007	12,993,755	112,344	?
2008	18,208,588	2,103,441	680
2009	22,341,555	483,485	347
2010	19,409,657	351,756	328
2011	15,009,817	47,228	287
2012	10,988,716	439,902	194
2013	13,619,142	311,257	214
2014	12,549,555	266,619	221

Table 5: Ratio of revenues generated from sales and invested assets, as well as the number of employees

Official data show that the number of employees in the company decreased each year. In fact, only a year before the Austrian "Strabag AG" bought "Crnagoraput", it had 911 employees. The number dropped to 680 in 2008, while at the end of 2009 the company counted 347 employees. In 2010, the number of employees was 328, while in the following year the company had 287 workers. In 2012, "Crnagoraput" employed 194 people, while the number of employees in 2013 was 214 and in 2014 it was 221.

VII: „CRNOGORAPUT" GENERATES INCOME FROM ROAD MAINTENANCE: Transport Directorate of Montenegro signed the Contract on maintenance and protection of 52 roads in Montenegro with "Crnagoraput" AD Podgorica for the period from June 2010 until the end of May 2014, in the amount of €39.7 million or €9.9 million per year.[25]

After the expiry of the four-year contract, the Government of Montenegro signed the annex to continue the same works with the "Crnagoraput" for four months in the amount of €3.3 million, under the pretext that the competent Ministry of Transport and Maritime Affairs needed that much time to prepare a new public invitation. At the end of May 2014, it invited to tender for the maintenance of roads in Montenegro for the period from 2014 to 2018, for the total of five lots[26], in the amount of €38 million or €7.6 million per

[24] Report of the independent auditor on financial statements for 2014, from 6 April 2015.

[25] Information about the necessity of conclusion of Annex IV to the Agreement No. 04/10 on works on maintenance and protection of main and regional roads in Montenegro.

[26] Parties or sections were related to Kotor section, Podgorica section, Berane section, Pljevlja section and Niksic section.

year.[27] "Crnagoraput" offered the sum of €35.2 million, €8.8 million annually or €733,400 monthly, but the tender was canceled due to certain complaints.

The Government once again approved the annex to the Contract with "Crnagoraput" for a new six-month period, from October 2014 to the end of March 2015, which was worth €4.9 million.[28] Thus, the company signed two annexes to the Contract worth €8.2 million or monthly €828,200 for 10 months, which was a larger amount than the one offered by the same company for the road maintenance on the annual level. Such operations caused damages to the state budget, which is why MANS filed criminal charges against the minister of Transport and Maritime Affairs at the end of October 2014.[29]

[27] Announcement no. 01/14 to Open procedure of public procurement from 27 May 2014.
[28] Information about the necessity of conclusion of Annex V to the Agreement on works on maintenance and protection of main and regional roads in Montenegro for the period 2010 – 2014.
[29] Criminal charges to the Supreme State Prosecutor's Office was submitted on 25 October 2014.