

## CASE STUDY „JADRAN PERAST“



**I: INTRODUCTION:** This study shows one of many examples of harmful privatizations in Montenegro, where the state sold valuable assets for a low price to controversial investor, who did not fulfill his obligations. Instead of canceling the privatization contract, the government gave the investor a new deadline for implementation of the planned investment.

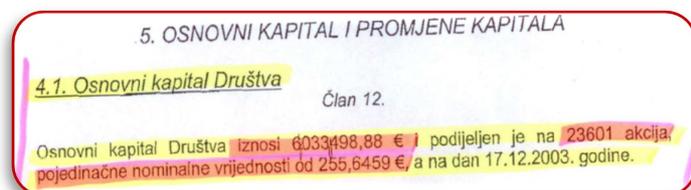
Furthermore, the study shows that the buyer did not respect the latest deadlines and also violated minority shareholders' rights. It also shows the profile of the controversial investor, including descriptions of attractive locations, which he has acquired on the Montenegrin coast in the last decade.

**II: BRIEF COMPANY HISTORY:** The company "AD Jadran Perast" was founded in 1924 in Tivat as a small workshop producing garments. It moved its headquarters to Perast ten years later. During nineties this company employed around 800 workers, while in 1995 it was transformed into a joint stock company. Then, the ownership of the shares was transferred to workers and state funds. Two years later the company entered into bankruptcy, while in the same year its core business changed into tourism.

One of the most valuable facilities that the company had in its possession is the attractive palace "Smekja", which was built in the 18th century and is a valuable cultural and historical monument, with an area of 2,500 square meters, as well as the hall of the same surface, which was once an industrial plant.

**III: BEGINNING OF PRIVATISATION AND CHANGE OF CAPITAL:** Privatization plan for 2000 included "AD Jadran Perast" on the list of transformed enterprises in bankruptcy, for which several models of privatization were proposed: sale of assets, segmentation or joint venture.<sup>1</sup> Value of the so-called shareholder's capital was estimated at 11.8 million Deutsche marks. Two years later, the Privatization plan shows that company's shares were not registered within the Central Depository Agency, whereby 34.5 percent of the capital was privately owned, while 65.5 percent of the capital owned by the state was intended for sale.<sup>2</sup>

Since in the meantime Euro became the official currency in Montenegro, the value of equity of "AD Jadran Perast" presented by the Development Fund was just over six million, as mentioned in the Statute of the company for 2003.<sup>3</sup>



*Capital of the company was more than €6 million in 2003*

<sup>1</sup> Decision on Privatization plan for 2000 („Official Gazette of Republic of Montenegro“, no. 31/00).

<sup>2</sup> Decision on Privatization plan for 2003 („Official Gazette of Republic of Montenegro“, no. 12/03).

<sup>3</sup> Statute of the company AD „Jadran Perast“, from 17 December 2003.

In early 2004, the Commercial Court of Podgorica suspended the bankruptcy proceeding of "AD Jadran Perast", noting that during bankruptcy all obligations to creditors had been settled and that there was a real possibility for the debtor to continue with the economic activity.<sup>4</sup> That same year, the government prepared a rapid privatization model for the company by finding a strategic partner (auction or accelerated tender).<sup>5</sup> This model was applied in companies where state funds had minority package of shares in most cases or less than 50 percent of the capital, while the privatization funds and workers were majority owners. The state-owned package of shares in "Jadran Perast" that year was 65.7 percent of the whole package.

15. KAPITAL I REZERVE			
15.1. UPISANI KAPITAL			
STANJE JEDINSTVENOG SPISKA AKCIONARA			
Vlasnici akcija	Vrijednost	Broj akcija	% učešća
Fizička lica	1.303.211	509.772	29,2191
Fond za razvoj RCG	1.894.215	740.953	42,4699
Republički fond PIO	946.991	370.431	21,2323
Fond za zapošljavanje	315.723	123.500	7,0788
<b>Ukupno</b>	<b>4.460.140</b>	<b>1.744.656</b>	<b>100,0000</b>

*By 2005, the capital was reduced by two million*

Furthermore, the privatization plan for 2005 envisaged privatization through sale in a public tender, thus showing for the first time that the state funds<sup>6</sup> owned 70.7 percent of the capital.<sup>7</sup>

It is not familiar whether the government conducted a business valuation of the company ahead of launching the tender procedure, but the financial statements of "Jadran Perast" for 2005 show that the subscribed capital amounts to €4.4 million and is

divided into 1,744,656 shares with the nominal value of €2.5 per share.<sup>8</sup> In addition, the statements show that, after the termination of bankruptcy in 2004, the company conducted a market valuation of assets. However, it is unclear who conducted the valuation, thus decreasing the company's capital by third in less than two years. At the same time, the financial statements show that the company had 11 employees.

**IV: ANNOUNCEMENT OF PUBLIC CALL:** Public call for the sale of the state package of shares in "AD Jadran Perast" was released on 21 February 2006, offering 70.7 percent of the state capital or 1,234,884 shares of the total of 1,744,656 shares.<sup>9</sup> The deadline for submission of bids was 22 May, but it was extended until 5 June 2006 at the request of bidders.<sup>10</sup> It is very interesting that the government did not give a summary of information about the company in this public call, but only general information on the number of shares to be sold and basic information about company (registration number and address).<sup>11</sup>

**V: BRANKO CUPIC BUYS THE COMPANY:** According to the Privatization Council's data in the report on privatization in 2006, it appears that five companies submitted their offers within the deadline, namely:

<sup>4</sup> Decision of the Commercial Court St.no. 327/97, from 5 January 2004.

<sup>5</sup> Decision on Privatization plan for 2004 („Official Gazette of Republic of Montenegro“, no. 24/04)

<sup>6</sup> Development Fund owned 42.4 percent of the capital, the Pension and Disability Insurance Fund 21.2 per cent and the Employment Agency 7 percent of capital.

<sup>7</sup> Decision on Privatization plan for 2005, from 3 February 2005.

<sup>8</sup> Report on audit of financial statements for 2005, from January 2006 (MANS FAI no. 51217, page 25).

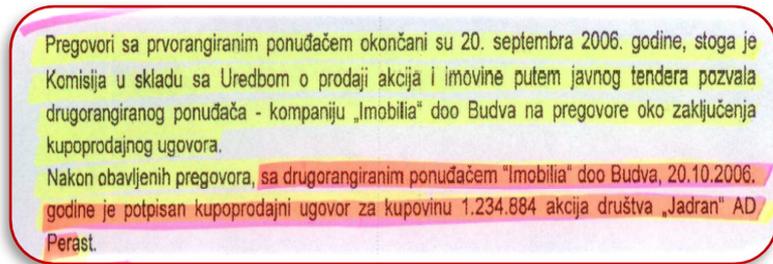
<sup>9</sup> Public call for sale of shares of the company „Jadran“ A.D. Perast, from 21 February 2006.

<sup>10</sup> Amendments to Public call for participation in public tender for sale of shares of "Jadran" A.D. Perast.

<sup>11</sup> Regulation on share and assets sale through public tender („Official Gazette of Republic of Montenegro“, no. 8/99, 31/00, 14/03, 59/03).

Consortium "Montemlin Sajo Montenegro" & "Adriatic express Montenegro", which offered the amount of €4.5 million with the investment program of €8.7 million, company "Mueller Trading S.A." from Panama with an offer of €4 million for the shares and additional €12 million for investments, company "Imobilia" from Budva, which offered €5.09 million for the shares and €10 million for investments, the consortium "Boka Fund" (comprised of "Capri Holdings" from Jersey, the "Stein Group" from Spain, "Boka Fund" from the Bahamas and consultant architect - Prince Nikola Petrovic Njegos) with an offer of €6.7 million for the shares and €17.3 million for investments, while the company "Silverleaf Capital Group" from the United States offered €3.04 million for the shares and €12.95 million for investments.<sup>12</sup>

Consortium "Boka Fund" was selected as the first ranked bidder, but negotiations with this group, as explained by the government, failed due to additional conditions for signing of the purchase contract that were set subsequently.



Pregovori sa prvorangiranim ponuđačem okončani su 20. septembra 2006. godine, stoga je Komisija u skladu sa Uredbom o prodaji akcija i imovine putem javnog tendera pozvala drugorangiranog ponuđača - kompaniju „Imobilia“ doo Budva na pregovore oko zaključenja kupoprodajnog ugovora.  
Nakon obavljenih pregovora, sa drugorangiranim ponuđačem "Imobilia" doo Budva, 20.10.2006. godine je potpisan kupoprodajni ugovor za kupovinu 1.234.884 akcija društva „Jadran“ AD Perast.

*Purchase contract concluded with "Imobilia"*

MANS still does not possess the complete tender documentation and reports of the Tender Commission to determine what were additional conditions, but Montenegrin media had previously reported that those were the requirements for the issuance of building permits.<sup>13</sup> The government subsequently entered into negotiations with the second bidder, "Imobilia", with which it signed a purchase agreement on 20 October 2006.<sup>14</sup>

Although the public call had announced the sale of 70.7 percent of shares, the purchaser bought a package of 74.9 percent of shares, which the state funds had acquired in the meantime. The total sale price was €5.09 million.

**VI: BASIC PROVISIONS OF THE CONTRACT AND ITS HARMFULNESS:** The buyer committed to investing €10 million in the investment program within three years, whereby the palace "Smekja" would be turned into a five-star hotel in two-year period. For the assumed investment of €10 million, a bank issued a guarantee of €5 million, which was valid until October 2009.<sup>15</sup> In terms of controlling the implementation of the investment program, the government envisaged appointing a controller.

<sup>12</sup> Report on the work of Privatization Council for 2006, from December 2006.

<sup>13</sup> Source: Article in Daily „Dan“ „It won the tender because it did not require permission“ from 22 February 2011.

<sup>14</sup> The contract was signed by late Dragan Lajovic on behalf of the Development Fund, late Branimir Bojanic on behalf of the Employment Agency, Radoje Zugic on behalf of Pension and Disability Insurance Fund, Predrag Nenezic, as an authorized representative of the Privatization Council and owner of „Imobilia“ Branko Cupic.

<sup>15</sup> Guarantee of the Nikisicka Bank A.D. issued in the amount of €5 million, on 31 October 2006.

2.2 Kupac se obavezuje da ispuni svoju obavezu da investira, u Društvo u svemu prema Investicionom programu, koji se odnosi na investiciona ulaganja ne manja od 10.000.000 € u roku neophodnim za realizaciju ulaganja u kvantitativnom i kvalitativnom smislu u skladu sa

*Buyer contracted investments of €10 million*

When it comes to the social program, the investor committed to retain all nine employees at that moment as permanently employed in the company, for a period of at least five years, as

well as to provide them with an average earnings of at least €584 per month in gross amount and fringe benefits.

The signed purchase contract is extremely harmful, since the government did not protect public interest with certain provisions, but favored the buyer instead. Firstly, termination clauses stipulate that the government may terminate the contract during the investment period if the buyer or "Jadran Perast" come to closure status, but the buyer will then be entitled to a refund of 70 percent of the purchase price (which is €3.5 million), and additional 10 percent of the amount invested, if the half of the envisaged investments has been realized. It is unclear according to which criteria, besides favoring the buyer, the government arranged such a provision.

Another very controversial decision concerned the provision that the buyer had the right during the three-year investment program to dispose of or sell the property of "Jadran Perast", the value of which did not exceed ten percent of the total recorded value of the company. After that period, the buyer was entitled to dispose of all the assets of the company. MANS has no information whether the recorded value is identical to the basic capital of the company.

**VII: BUYER VIOLATES LIABILITIES, GOVERNMENT EXTENDS THE CONTRACT:** Buyer did not implement the investment plan of ten million in due time, i.e. until the end of 2009. However, the government acceded to new concessions by signing the annex to the contract with the buyer in November 2009.<sup>16</sup>

The annex kept the three-year investment term, but it now defined that the deadlines for investments started from the date of the adoption of the detailed spatial plan for Perast, while the amount of the bank guarantee was reduced to €3 million.<sup>17</sup> There was no economic justification for lowering the amount of the bank guarantee, but it is very interesting that the bank guarantee was issued by Prva Banka, which at that time was under the measures of the Central Bank of Montenegro due to poor business results.

Član 2.2. Ugovora mijenja se i glasi:

"Kupac se obavezuje da ispuni svoju obavezu da investira u Društvo u svemu prema Investicionom programu, koji se odnosi na investiciona ulaganja ne manja od 10.000.000 € u roku neophodnom za realizaciju ulaganja u kvantitativnom i kvalitativnom smislu u skladu sa Investicionim planom koji čini Prilog 1, ali ne dužim od 36 mjeseci od dana usvajanja Detaljnog urbanističkog plana za Perast, što će pismeno konstatovati lica ili organ koji izabere Savjet za privatizaciju u skladu sa članom 6 ovog Ugovora."

*New deadline for investments extended for three years*

<sup>16</sup> Annex 1 to the Purchase Contract of 74.9749% of the share capital of the company „Jadran Perast“ A.D., signed on 16 November 2009.

<sup>17</sup> Guarantee of the First Bank of Montenegro issued in the amount of 3.000.000 EUR, on 21 October 2009.

Report of the Privatisation Council itself shows that the buyer implemented almost none of the investments, noting that until that period the investor had invested €300,000, which is only 3 percent of the contracted amount for investments.<sup>18</sup>

Company	Purchase price	Contracted investments	Realised investments	Realisation of investments
Jadran Perast	5,090,000	10,000,000	300,000	3%

*Until 2010 the buyer had invested only €300,000 instead of €10 million*

The Privatization Council concluded in its report that the contract was respected in part that refers to the welfare program, which is paradoxical given that at that time, according to the same document, there were no employees, while earnings supposedly increased, although with the extension of the Investment Program, duration of the welfare program extended as well.

**VIII: INVESTOR IS LATE WITH IMPLEMENTATION OF NEW OBLIGATIONS:** Detailed spatial plan "Perast" was adopted in December 2011<sup>19</sup>, i.e. two years after the signing of the controversial annex, which means that the investor's deadlines for the implementation of investment commitments extended to December 2014. However, until the end of 2014, the investor failed to fulfill any of the commitments, while the government controller's reports on fulfillment of obligations do not exist. Also, it is not known whether the new guarantee for the implementation of the investment program had been delivered, since in the end of 2012 the validity of guarantee that followed the signing of the annex to the contract expired.



*Investor had great ambitions for construction*

When it comes to the planning document, the local government of Kotor, which ordered the plan development and funded the works, fulfilled investor's requirements only partially. Namely, the investor had ambitious plans, because he sought the construction of a three-floor hotel with the ground floor and attic, but the authorities enabled him the construction of a two-floor hotel with the ground floor and attic. In relation to the existing situation, the investor was

allowed to construct the attic.

**IX: HARMING MINORITY SHAREHOLDERS:** The Number of shares and the value of the capital decreased from €4.2 to €3.8 million due to reported losses from previous years, through adoption of the decision of the Assembly of Shareholders on 16 June 2009, with the approval of the Central Depository Agency, the Commercial Court and the Commission for Securities.<sup>20</sup>

<sup>18</sup> Report of the Privatization and Capital Investment Council on implementation of commitments from 12 privatization contracts of companies privatized through public tender procedure, from November 2010.

<sup>19</sup> Decision on adoption of Urban project of city of Perast, from 29 December 2011.

<sup>20</sup> Decision on decreasing the basic capital of the Shareholders' Assembly, from 16 June 2009; Minutes from the Seventh Shareholders' Assembly of „Jadran“ AD from Perast, from 16 June 2009.

Although the purchase contract stated that the obligations to workers had been settled and that "Jadran Perast" had been sold without any load, the media reported statements from former employees of the company, who claimed that 340 workers had not received severance payments and that their service period had not been bridged. Workers demanded termination of the purchase contract and the compensation in shares, or 50 to 60 shares per employee, with a total value of around €300,000, for which they claimed that had been taken by the current owner.<sup>21</sup>

In addition to all this, "Jadran Perast" operates all the worse. Based on the financial statements submitted to the Commission for Securities, the company ended 2013 with a loss of €40,300, while operating income amounted to only €21,700.<sup>22</sup>

**X: WHO IS BRANKO CUPIC:** A businessman from Budva, Branko Cupic, is the founder of a large number of companies that own not only valuable real estates on the coast, but also cultural and historical monuments. According to official data from 2014<sup>23</sup>, he appears as the founder of the company "Imobilia", "Bellevue Hotels group" and "Citadela" in Budva, as well as the company "Montenegro hotels" in Kotor. According to previous MANS' data, in 2011 he possessed 1.3 percent of shares in Prva Banka, where Aco Djukanovic, brother of Montenegrin prime minister Milo Djukanovic, has majority ownership.

In 2003, Cupic bought "Bellevue" hotel along with the hinterland of Becici beach area of over 25,000 square meters from the hotel-tourist enterprise "Budvanska Rivijera" for €2.2 million. He also came into possession of the parcel of 3.6 hectares in Crvena glavica near Sv. Stefan, through his company „Imobilia“. On that site, he was allowed to build a tourist resort with buildings of up to eight floors, villas and apartments, garages to up to six levels below the ground, thus drastically devastating the coastal area.

"Imobilia" owns Gradska kafana in Herceg Novi, a symbol of this tourist town, while Cupic is also the owner of the famous baroque palace "Tripkovic" in Kotor, which is the most important monument of residential architecture in the area of Kotor from 17th and 18th centuries, as well as the palace "Zmajevic" in Perast, which encompasses the family chapel dedicated to Gospa od Razarija. He also owns the Budva Citadel, the medieval castle of the town Budva with walls, which is one of the most important fortifications on the coast, which he acquired under suspicious circumstances during the nineties.

Among other things, Cupic's name has been associated with the members of the criminal group "Pink Panther" at the beginning of 2012, after around 30 kilograms of precious stones were found in a safe of the hotel "Bellevue".<sup>24</sup> Montenegrin media also connected Cupic with cigarette smuggling during the nineties.<sup>25</sup> To this date, it is not known whether the competent state authorities ever checked the origins of the money with which Branko Cupic gained all of these valuable real estates.

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<sup>21</sup> Daily "Dan", Shares eaten by the old debts, from 24 April 2012.

<sup>22</sup> Website of the Securities Commission: <http://www.scmn.me/emitenti.php?eid=544&sadrzaj=32>.

<sup>23</sup> Data of the Real Estate Administration MANS acquired through the Law on Free Access to Information.

<sup>24</sup> DN Vijesti, Branko Cupic in Police, 16 March 2012.

<sup>25</sup> Monitor (no. 1118), Businessmen and Bijoux, 23 March 2012:

[http://www.monitor.co.me/index.php?option=com\\_content&view=article&id=3364:biznismen-i-dragulji&catid=2279:broj-1118&Itemid=3504](http://www.monitor.co.me/index.php?option=com_content&view=article&id=3364:biznismen-i-dragulji&catid=2279:broj-1118&Itemid=3504).



**BRANKO ČUPIĆ**

Osnivač 100 %

Osnivač 50 %

Osnivač 50 %

Osnivač 100 %

14,9 % akcija

"Montenegro hotels"  
d.o.o. Kotor

"Bellevue hotels  
Group"

"Jadran"  
' A.D.

"Citadela"  
d.o.o.

"Imobilia"  
d.o.o.

Palace Zmajević,  
Perast



Crvena Glavica,  
Sveti Stefan



Gradska kafana,  
Herceg Novi



Palace Smekja and Industrial hall  
'Jadran'



Palace Balović,  
Perast



Citadel,  
Budva