

Selling Island Lastavica with Fortress Mamula

I: INTRODUCTION: This case study examines the plan of the Government of Montenegro to valorize the fortress Mamula, a valuable historic monument, through a long-term lease to Egyptian investor Samih Sawiris. However, the long-term lease agreement, concluded in early 2015, is detrimental to the public interest, and it is not only that it denies Montenegrin citizens access to the island Lastavica, but also enables the investor to pledge rights from the agreement in order to get a loan for the investment or to grant a third party the right to sublease the property.

Moreover, the agreed fee for the lease on the basis of tourist valorization is extremely low, and what is particularly problematic is that the government has already concluded an agreement with the investor, signing a long-term lease for another location on the Montenegrin coast, i.e. part of the Lustica peninsula, thus violating the obligations from the contractual arrangement. Instead of questioning the fulfillment of the obligations under the agreement concerning the realization of the investment in Lustica, the government decided to go into a new business venture with the Egyptian millionaire.



II: DESCRIPTION OF THE LOCATION: The fortress Mamula was erected on the rocky island Lastavica, which has a circular shape and a diameter of about 200 meters, located at the entrance to the Bay of Kotor and is about 3.5 nautical miles away from Herceg Novi. The island is state-owned and registered in the cadastral municipality Radovanici, as a cadastral parcel 3438, covering the area of 31,848 square meters, and is registered in the real estate folio number 215.¹

The fortress Mamula is one of the most carefully preserved Austro-Hungarian buildings at the Adriatic coast, and according to Montenegrin regulations, it is protected as a cultural monument

of the second category.² The building was designed for military operations but never served its primary purpose - not a single cannon shot was fired from its walls, but it was used as a prison due to its isolated position.

III: THREE TENDERS FOR SELLING ISLAND: In 2008, the government acknowledged its intention to valorize the fortress Mamula, by proposing for the first time in the privatization plan a model of public and private partnership for this valuable location.³ The first tender was invited on 6 December 2008, and the deadline for submission of offers was 20 January 2009. On that occasion, two letters of interest were delivered, from the companies "Orascom Company" from Egypt and

¹ Annex to the Long-term Lease Agreement regarding the isle Lastavica with the Fortress Mamula in Herceg Novi, signed between the Government of Montenegro and Orascom Development Holding AG on 23 February 2015; <http://www.gov.me/vijesti/146355/Potpisan-Ugovor-o-dugorocnom-zakupu-ostrva-Lastavica-sa-tvrдавom-Mamula.html>

² "Cultural monuments of special importance are those which meet one of the following criteria: characteristic features of specific area or period of time in society development or development of cultural and civilization circle they belong to; parts or ensembles containing details of special importance; linkage to important events and cultural-historical persons from the past (II category)" - Law on Preservation of Cultural Monuments (Official Gazette of Montenegro 47/91, 27/94).

³ Decision on the Privatization Plan for 2008, on 6 March 2008.

"United Entertainment Partners - Montenegro" from Budva.⁴ However, the tender documents have not been purchased.⁵ A new tender for tourist valorization of the island Lastavica was invited in September 2011, and was opened until December of the same year.⁶ Yet, even then no parties showed any interest in it.

TENDERS	Bidders	Selected bidders
I TENDER	1.Orascom Company, Egypt 2.United Entertainment Partners Montenegro, Budva	Cancelled
II TENDER	No offers	
III TENDER	1.Vos Investment Group, Holland 2.Orascom Development Holding AG, Switzerland	Orascom Development

Finally, in December 2013, a new tender was called for,⁷ which set 31 January 2014 as the deadline for submitting offers. Under the conditions laid down in the public invitation, an interested bidder was obliged to meet cumulatively one of the two given groups of conditions.

Orascom selected in the third tender

The first group of conditions indicated that the bidder had to be an international hotel brand, with at least five years of experience in planning, development and management of 4+ or 5-star tourist facilities, had to involve a team of cultural heritage experts, to have the financial ability to implement the investment program, and to prove that in the last two years it achieved a positive financial result with an annual turnover of at least €30 million, for each year.

The second group of conditions indicated that a participant had to have a capital of at least €80 million, had to prove that at least in two business years out of five calendar years it achieved a positive financial result, also had to involve cultural heritage experts, had to have had a turnover of €50 million in the last business year and had to provide a letter of intent or an agreement concluded with a reputable company managing at least two 4+ or 5-star tourist complexes.

Consortiums were entitled to submit their offers, whereat the leader of the consortium was obliged to prove financial capability or to have €80 million worth capital, i.e. 50 million turnovers in the last business year. This public bid lowered the qualification criteria for bidders, which is obvious when compared to conditions set in the second bid, which is shown in the table below.

Qualification criteria	II Public tender	III Public tender
Group A	Last three years reached annual turnover of €30 million	Last two years reached annual turnover of €30 million
Group B	Assets under management of €100 million	Assets under management of €80 million
	achieved positive financial result in three business years	reached positive financial result in two business years
	Achieved turnover of €60 million	Achieved turnover of €50 million

Qualification criteria significantly lowered in the third bid

Further, the length of the lease could not be shorter than 31 years or longer than 90 years, while the annual rent for the property could not be lower than €1, i.e. 60 cents per square meter of sea water area. The

⁴ Report on Implementation of the Privatization Plan for 2009, March 2009.

⁵ Legal advisor B Legal Studio *Legale Internazionale* and Law Office *Martinovic* from Podgorica prepared tender documents for tourist valorization of the isle Lastavica; On 28 April 2015, MANS sent a set of requirements on the basis of the Law on Free Access to Information in order to determine whether the legal adviser won the tender, which is in compliance with the Law on Public Procurement.

⁶ Second public tender, in September 2011.

⁷ Third public tender, on 5 December 2013.

criteria for calculating the minimum rent are not clear. Since this is a valuable location on the Montenegrin coast, it is obvious that the minimum rent should be much higher than one euro for the land or 60 cents for the use of the sea water area.

IV: GOVERNMENT SELLS LASTAVICA TO ORASCOM: In April 2014, the Council for Privatization and Capital Projects announced that the Swiss holding company "Orascom Development Holding" and "Vos Investment Group" from the Netherlands submitted the offers. The Council evaluated the bid submitted by "Orascom Development Holding" as formally adequate and charged the Tender Commission with beginning negotiations on concluding the agreement.⁸

At the same time, it was announced that the Dutch group was not able to complete its offer, which included the term of the lease of 60 years and the investment worth from €25 to €30 million for the period of three years, as well as a fixed annual rent of €32,500 for the land area and €10,000 for the sea coast.

Bidder	Lease length	Investment value	Period of investment	Lease of coast	Lease of land
Vos Investment Group, Netherlands	60 years	from €25 to €30 million	3 years	€10,000	€32,500
Orascom Development Holding AG, Switzerland	49 years	€15 million	18 months	€0.9	1.5 €/m ² and 2 % revenues without VAT

Two submitted bids compared (Source: Council for Privatization)

MANS does not have insight in the offers submitted, although it requested offers from the Council for Privatization, based on the Law on Free Access to Information. Namely, the Council refused the request on the grounds that the information published would have led to harmful consequences to the security and interests of Montenegro, which were more important in comparison to the public interest to obtain such information.⁹



Sawiris and Gvozdenovic signing the agreement for Mamula

V: NEGATIVE IMPACT OF LEASE AGREEMENT: In early 2015 the government of Montenegro and the Swiss company "Orascom Development Holding AG" concluded the agreement on the long-term lease of the island Lastavica with fortress "Mamula", which was signed by the president of "Orascom" Samih Sawiris and Montenegrin Minister of Sustainable Development and Tourism Branimir Gvozdenovic, on 23 February 2015.¹⁰ On that occasion, it was announced that the Swiss investor would invest €15 million in tourist valorization of the island Mamula (hotels, heliports, marina), that the agreement was concluded for a period of 49 years, and that the investor offered an annual rent of €1.5 per square meter of land, i.e. 90 cents for the maritime

zone.

In addition, it was announced that Montenegro would generate revenues of €7.5 million from leasing the island for the first 10 years, €2.8 million from contributions for employees, while the VAT would generate €4.4 million and different types of taxes, such as income taxes or dividends would produce €0.1 million.¹¹

⁸ [Saopštenje sa 7. sjednice Savjeta za privatizaciju i kapitalne projekte](#), on 15 April 2014.

⁹ Responses delivered to MANS by the Council for Privatization, numbers: 62666, 62667, 74104.

¹⁰ <http://www.gov.me/vijesti/146355/Potpisan-Ugovor-o-dugorocnom-zakupu-ostrva-Lastavica-sa-tvrdavom-Mamula.html>

¹¹ Report on the results of negotiations with the representatives of the company "Orascom Development Holding AG", Switzerland, based on the bid for long-term lease of the isle Lastavica with fortress "Mamula" on 23 January 2015.

In early April 2015, the Parliament of Montenegro received the Agreement on Long-term Lease of Lastavica with the fortress Mamula for consideration, when the public was allowed for the first time to see the terms under which the location was leased to the Swiss investor. The analysis carried out by MANS shows that the agreement has the provisions which are harmful to the public interest, but favorable for the lessee.¹²

Although the tender conditions required that the investor had to have secured funds for planned investments, the contract enabled the Swiss investor to fund the project by pledging rights under the lease agreement, and it may assign it to a third party or sublease part of the future resort. The investment should be covered by the guarantee of €1.5 million, but it is highly questionable which provisions are to be in force during the construction of the tourist complex and a year after its construction, which means there is no coverage for the annual rent which is "Orascom" obliged to be paying almost half a century.

Regarding the island Lastavica, the contract says that the location will be a private project where the citizens of Montenegro will not have free access. This is indicated by contractual provision which defines that access to the coastal zone is unrestricted, except for the parts where the access is regulated by "the immigration laws or laws regulating foreign trade, free zones, traffic or customs, and other mandatory regulations (ii) where access is prohibited to protect privately owned buildings or vessels, (iii) foreseen to become a part of a private project under the Lease Agreement and the Location Study".

24.4. ZAKUPAC nema pravo da uspostavi nikakve Terete na Lokaciji, da ustupi, otudi ili dijeli vlasništvo na Lokaciji, niti da drži ovaj Ugovor o zakupu u ime nekog drugog lica. Kao izuzetak u odnosu na prethodno navedeno, Ugovorne strane su saglasne da ZAKUPAC može uspostavljati Terete na svojim pravima iz ovog Ugovora o zakupu u cilju finansiranja Izgradnje i Poslovanja, a ZAKUPODAVAC je dužan da dostavi sva potrebne odobrenja za uspostavljanje takvih Tereta, pod uslovom da to ne utiče na ZAKUPODAVČEVA prava iz ovog Ugovora o zakupu i ne stvara nikakav potencijalni ekonomski rizik.

Besides, the government defined consulting fees as investments, and they cannot be considered investments, whereas the supervisor for overseeing implementation of investment was not

determined, but left these obligations to be interpreted through annual audit reports. According to the official documents of the Swiss registry, Deloitte is the auditor of "Orascom", whereas the agreement states that the auditor can be a Montenegrin branch of one of four audit firms, to which Deloitte belongs.¹³

In addition, the agreement stipulated that the investor was under the obligation to build the additional infrastructure, which includes submarine power cable from Cape Arza to Lastavica, but what is at issue is that the government guarantees that the connection infrastructure is to be made available to the lessee free of charge to the points where construction of the underwater cable and water supply connection are to be built.

To which degree the government-financed infrastructure at Cape Arza has been developed is not known.

¹² <http://www.skupstina.me/index.php/me/odbor-za-ekonomiju-finansije-i-budzet/sjednice>

¹³ Other three possible audit firms that are mentioned are: PricewaterhouseCoopers, Ernst & Young and KPMG.

Ultimately, the agreement clearly defines that building a tourist complex “is a project in the public interest and important for the development of the high-end tourism sector”, which additionally put the investor in question in a favorable position. Namely, since early 2015, by making amendments to the Law on Value Added Tax, import of equipment and materials for building luxury hotels with five or more stars has been completely tax-free.

www.gov.me/ResourceManager/FileDownload.aspx?rId=192066&rType=2

VI: PLANNING DOCUMENT: The location of the attractive fortress has been examined in more details in the planning document, the location study “Sector 34”, which includes Zanjice, Cape Arza and Mamula. A public debate over adopting the Draft Planning Document was held in mid-2014.¹⁴

The planned complex on the island Lastavica is envisaged to have a specific kind of service primarily aimed at exclusive forms of educational tourism, and according to the Plan of Special Purpose island has been classified in Zone E - tourism, scientific and cultural contents. The hotel complex is planned to retain the dimensions of the restored and reconstructed fortress with "five stars". The main access to the location is the waterway, with the planned expansion of the existing dock, whereas in its immediate vicinity the construction of a heliport is envisaged. Pedestrian networks that would serve as a connection between facilities are also envisaged.

According to the draft State Location Study "Sector 34" the area is defined to cover 3.63 hectares, whereas the building covers 10,282 square meters, while the gross floor area is 15,826 square meters. The index of availability is defined to be 0.28, and the construction index 0.43.¹⁵ By adoption of the planning document, in early 2012,¹⁶ the total area was expanded to 4.26 hectares. The same applies to the gross floor area, which currently covers 20,564.50 square meters. Consequently, the index of availability dropped in accordance with the draft planning document to 0.23, while the construction index increased to 0.45.¹⁷

Pursuant to this document, it has been estimated that the investment on Lastavica is worth €9.5 million. Expected revenues from the land lease for a period of at least 31 years is close to €1 million, whereas for a period of maximum 90 years of lease this sum would reach €2.8 million.¹⁸

The fact that the competent institutions have never produced any reports on assessment of the value of the location itself is indicative of the manner in which this assessment was carried out.¹⁹

VII: ORASCOM IN MONTENEGRO: Samih Sawiris is an Egyptian billionaire, whose family founded the company "Orascom", which is engaged in development of tourism, telecommunications, construction and other fields.²⁰ In 2011, he was estimated to be worth \$1.4 billion, which makes him one of the richest people in the world. In 2011, Sawiris acquired the Montenegrin citizenship.²¹

According to the available official data of the Swiss Registry Office, he is the president of the company established in 2008 in Switzerland named "*Orascom Development Holding*", the assets of

¹⁴ Decision on Public Debate, on 27 May 2011.

¹⁵ Draft State Location Study for „Sector 34”

¹⁶ Decision on adopting Draft State Location Study for “Sector 34”(Official Gazette 8/2012), on 2 February 2012.

¹⁷ State Location Study for „Sector 34” adopted in January 2012.

¹⁸ Annex (table) to the Privatization Plan for 2014.

¹⁹ Response delivered to MANS by the Ministry of Economy, No. 67907, on 7 May 2014, and by the Council for Privatization, No. 62668, on 11 April 2014.

²⁰ http://en.wikipedia.org/wiki/Onsi_Sawiris

²¹ <http://www.amwalalghad.com/en/the-watch/get-to-know/6312-orascom-empire-samih-sawiris.html>

which amount to CHF 662,201,010 francs (less than €640 million).²² Otherwise, Sawiris is known to the public after the manipulations of his construction company "Orascom Development," which falsely presented stake in its sister company "Orascom Hotels and Development", and was sentenced to two-year imprisonment for giving false information to the Egyptian Stock Exchange.²³



The Montenegrin government has earlier allowed the company "Orascom" under extremely favorable conditions, to become a longtime lessee of the Tivat part of Lustica peninsula, where a luxury resort "Lustica

Development", worth over €1 billion, should be built. The contract with "Orascom" for Lustica contains a number favorable provisions, such as those laying down that a foreign partner to sell leased state-owned land or have an exclusive right to decide to which extent, if at all, Montenegrin citizens can access to Lustica, which is under the Constitution of Montenegro belong to them.²⁴

As early as in 2010, Montenegrin Prime Minister Milo Djukanovic and Egyptian investor Samih Sawiris officially announced the start of the investment project on the area covering 6.8 million square meters of land, envisaging to facilitate 8 hotels, with 2,200 rooms, 1,600 suits, 750 residential villas and a range of supporting facilities, such as schools, health facilities, marinas and shopping centers.²⁵

However, five years later, the government's partner has managed to build only 70 apartments for the market, which clearly indicates that that investment is belated.²⁶

²² <http://ur.powernet.ch/webservices/inet/HRG/HRG.aspx/getHRGHTML?chnr=1203002353&amt=120&toBeModified=0&validOnly=0&lang=4&sort=0>

²³ <http://www.vijesti.me/ekonomija/predsjednik-kompanije-koja-gradi-na-lustici-ne-ide-u-zatvor-dogovorilo-se-sa-vlastima-36841>

²⁴ [http://www.savjetzaprivatizaciju.me/preduzece/lustica-tivat/;](http://www.savjetzaprivatizaciju.me/preduzece/lustica-tivat/)

²⁵ http://www.b92.net/putovanja/vesti.php?nav_id=432283

²⁶ <http://www.vijesti.me/vijesti/poluostrvo-lustica-hotel-sa-300-soba-u-marina-village-u-804999>

