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PROBLEMS OF PRIVATISATION IN SERBIA

with indications of solution

Privatisation is a complex and multidimensional process. Its direct goal is more efficient economy and not purely a transfer of ownership from the state or the society to an individual or a group of individuals. The transfer of ownership is just a means to reach more efficient economy, since economic performances of private ownership proved to be better than performances of other forms of ownership. For this reason, Privatisation should determine clearly the functions of management and ownership, as well as the position of labor in every enterprise. This is what every legislative solution which defines this process needs to ensure.

In countries in transition, Privatisation also has an indirect, but equally important objective. In that sense, Privatisation is a fundamental process within the set of processes referred to as a transition. Privatisation should bring about a formation of a middle class, so lacking in Serbia today. In particular, it should affect, in a short period of time, the change of mindset, cultural model and priorities in the system of values. Of course, entrepreneurial spirit should not be expected to wake up in each individual. What Privatisation should bring is confrontation with (economic) reality of as broad as possible layers of the population, and encourage the transition of popular mindset from dependant and susceptible to manipulations, which is waiting to be given something (by the state of the "boss"), to the mindset of individuals responsible for their own economic and political position.

In many ways, the model of Privatisation in force Serbia since 2001 was extorted. However, as we have pointed out several times so far, referring to comparative experiences of transition countries, the problem was not in the model itself, but in the absence of institutions through which this process should have taken place, as well as in the lack of instruments to influence it. What is more, officials were stressing that institutions would have only backpedaled the Privatisation, without contributing to its quality. One could have even shared such a position, if it had not been for bad experience having resulted from the same mistake in the Czech Republic, Croatia and to a certain extent Hungary, let alone Russia and Ukraine.

The Privatisation was entirely left out of all existing institutions. Three laws, which governed this area, were actually three *leges speciales*, thus putting the entire process outside the existing legal system. The Agency for Privatisation and the Ministry for the Economy and Privatisation, together with the Share Fund, made the world in itself: these institutions at the same time organised the process, were its key participants and had exclusive competence for exercising control over it, which left room for expansion of corruption. It is obvious that such a solution cannot be systemically sustainable and that it needs to undergo change as soon as possible.

Last, but not the least, is the fact that processes which should have relieved the Privatisation of further inefficiencies, problems and perplexities had not been launched. This equally applies to the reform of the judiciary, clear defining of authority of the existing institutions, and perhaps most importantly, to the problem of denationalisation and restitution. Because of the latter, the state in situation to sell something that does not legitimately belong to it, thus not only shifting the problem to every future government, but also making it even deeper and more complex.

Institutional vacuum prompted the work of the Privatisation Committee of the National Assembly of the Republic of Serbia, which was constituted in January 2004. At the time of constitution of the new Assembly, enterprises sold in auctions and tenders up until that moment were completing the first stage of Privatisation. Sales contracts stipulated the following obligations of buyers in post-Privatisation process (a) investing of new assets in bought enterprises, following the stipulated dynamics; (b) implementation of social program, which was most often realised in the form of payment of termination compensations, and (c) ban on sale of a larger share of capital than the share specified in the contract, namely 10% in the first year.

The Privatisation Committee, immediately after its establishment, found twelve complaints filed with regard to individual Privatisation sales. And there, at the very beginning, the very depth of institutional vacuum showed up. Pursuant to the Law, complaints are in jurisdiction of the Privatisation Agency, i.e. the

Ministry. However, these are the very same institutions which organised Privatisation sales. Incompatibility of these two functions – organisation of the process and its control - was confirmed by the fact that the Agency and those who filed complaints had completely opposite views in almost every individual case.

On the other hand, as a body of the national parliament, i.e. a sovereign institution which holds the supreme legislative power in the country, the Privatisation Committee should not discuss individual cases. What parliamentary bodies should deal with concerns the strategic level of administration of processes. Namely, the Privatisation Committee should work on the improvement of the process as a whole. However, the Committee decided to discuss individual cases during first several months of its work. On the basis of mistakes made in these cases, the Committee was in position to decide on ways to put them right, i.e. to improve the Privatisation process.

There are several stakeholders gathered around every Privatisation sale. We discussed this matter in one of the earlier issues of the Economic Review. All parties involved, i.e. the state, shareholders, workers, investors and managements of enterprises, have certain short-term and strategic interests in the Privatisation. These interests are mainly in contrast with one another, which does not necessarily mean that they are completely mutually exclusive. The Committee receives complaints, not only of workers, and minority and small shareholders, but also of buyers and managements. When the Committee started working, the number of complaints reached 130 in only three months. This figure still does not exceed 10-11% of the total number of privatised companies. However, fear remains that this figure may suddenly soar after the completion of the first stage of Privatisation in every enterprise, arising from a systemic mistake incorporated in the Privatisation model.

The Committee, in its work, has not been governed by the interests of any stakeholder, but by basic objective of Privatisation, i.e. more efficient economy. The methods of work used were specified by relevant legislation and the Rules of Proceedings of the Assembly. These documents, in some cases, left the Committee under pressure, either direct or through media, as the strongest means, which has not necessarily yielded results. Limited competences of a parliamentary committee made the understanding and cooperation of the Agency, as an institution of executive power (sic!), become a key factor of successful work of the Committee, a body of the supreme and legislative power (sic, sc!)

After three months of examination of individual cases, the Committee has decided to divide all Privatisation problems, which it came across, into categories and to suggest certain solutions. Both the problems and recommendations for the solution thereof, require more comprehensive elaboration. At this point, we are presetting a systematic overview of identified problems and recommended solutions, which will be more elaborately discussed in future issue of the Economic Review.

AREA	MANIFESTATION	LAW	RECOMMENDED SOOLUTION
1. Privatisation procedure	1.1 Tenders	Privatisation Law	Clear and more precisely defined terms
	1.2 Auctions	Privatisation Law	Instead of third auction, to introduce free distribution of shares to employees; to prohibit participation in auctions of individuals who were buying companies earlier and ruining them.
	1.3 Capital increase	Company Law Law on Financial Markets	To link capital increase to social programs; to establish social funds at the level of local governance
	1.4. Bankruptcy	Company Law	To treat the sale of non-privatised enterprises through bankruptcy as Privatisation sale, and exercise control over it as in other forms of Privatisation
2. Post-Privatisation	2.1 Control of post-Privatisation process	Law on Privatisation Agency	To remove the function of control from the Agency; to establish a separate body with executive powers or to assign the duty of control to some of the existing institutions (e.g. Securities Commission)
	2.2 Contracted obligations	Law on Privatisation Agency	To specify the term “graver violation of contracting terms”, on the basis of which the contract shall be automatically terminated; the role of courts after the termination of contract (appeal)
	2.3 Restoration of procedure	Privatisation Law	
	3.1 Revision /	Accounting Law	To establish a state

3. Control of the overall Privatisation	Consultants		institution for the control of auditors, and super-auditing as an institution of second instance (this could be assigned to an existing institution).
3. Control of the overall Privatisation	3.2. Origin of capital	Money Laundering Act	
	3.3 Monopolisation	Anti-Monopoly Law Tax laws	To establish the Anti-Monopoly Commission; to subject monopolies to special tax treatment
4. Shareholding	4.1 Protection of small shareholders' interests	Law on Securities Market Company Law Law on Court Proceedings	To assign Securities Commission executive powers, in particular relative to company management and intermediaries. To ensure special, accelerated court proceedings in such cases. To support introduction of "Corporate Governance Codex" in companies
	4.2 Protection of private ownership and investors	Law on Central Securities Depositary	To transform Central Depository either in purely state institution or to insist on wide dispersion of its ownership, with clear responsibility of the Securities Commission for exercising control.
	4.3 Development of shareholding	Law on Securities Market Company Law	To centralise the market into the system of trading that would connect several stock exchange centers in the country (e.g. Belgrade – Novi Sad – Nis). To support permanent listing of the best performing Serbian companies in such a system.

	4.4 Takeover	Law on Securities Market	To amend the Law in part where it specifies limitation of takeover offer – it must not be limited.