Center for Economic & Social Analysis

M.E.S.A.10

from common to private

10 YEARS OF PRIVATISATION IN SLOVAKIA

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INTRODUCTION

Privatisation is one of the most complex, closely watched, and controversial processes that is changing the social system in all post-communist countries. Privatisation in Slovakia, particularly the chance to acquire wealth without work, has significantly affected the process of change in the society. According to some analysts, the possibilities of privatisation also had an influence upon the quickening of the process of splitting up the ČSFR.

In the light of the controversy affecting the process and the course of privatisation, we attempted in this publication to outline and present the course of privatisation to the public in a form as comprehensive as possible, i.e., to sketch it from its beginnings in 1990 until today. It is a summary of facts, analyses, opinions, and points of view, as the authors of individual chapters perceived them.

We are aware that it was not possible to cover in a single publication all what actually happened, and how we had originally intended. The preparation of the publication was not easy although many things that are to be found in the book have already been published. Many others, though, will remain covered with a veil of secrecy for a long time, or, maybe even forever; and definitely not incidentally. But that is also part of the unique social upheaval, which occurred in former Czechoslovakia and subsequently in Slovakia.

The initial idea to capture and condense the process of privatisation as a living document occurred when some interested people met, whom the development of privatisation in Slovakia did not leave indifferent. This meeting happened in March 1998 in a Bratislava restaurant called the Red Crawfish.

The authors of the present work are employees of the citizens association M. E. S. A. 10 – The Centre for Economic and Social Analyses, with the exception of one external collaborator from the Centre for Economic Development. The work was shaped also thanks to the unselfish willingness of friends - former or present co-workers - who provided valuable advice, comments, and recommendations. Without their help the book would not have seen the light of the world, therefore we would like to simply say to them here: "Thank you". Their names are listed in the alphabetical order: Jozef Dančo, Simona Bubánová–Tauchmannová, Vladimír Dvořáček, Michal Horváth, Eugen Jurzyca, Ján Kelo, Mária Kolaříková, Ivan Mikloš, Eva Orná, Juraj Stern, as well as other workers of the institutions, particularly of the National Property Fund of the SR and the Ministry for Administration and Privatisation of National Property of the SR, who have not been named, and who provided the necessary materials and information.

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Privatisation is one of the major pillars of the economic reform and is briefly documented in the contents of the first chapter, the Economic reform in the ČSFR. The beginning recaps the basic differences of "socialist" and "capitalist" social systems. The author then points to the complexity of the transformation process and explains the high growth of price levels and the slump in production early in the process. The frustrated population that expected the transformation process to bring fast and painless prosperity, in many cases began to reject a radical approach, whereby they legitimised the gradual concept of economic reform. The final part of the chapter is devoted to the area that privatisation takes in the transformation process. In his assessment, the author contrasts speed of privatisation as the major requirement and the subsequent underestimation of its institutional framework.

The subject of the next chapter entitled the Legislative framework of the privatisation process are facts and the genesis of relevant principal pieces of legislation that rein in the process of privatisation, the process of restitution, as well as related regulations.

The chapter on Small-scale privatisation contains characteristics of this part of privatisation and deals with its most important institutes, such as public auction, the commission for privatisation of national property, and the action of the participants in the auction, highlighting the course and results and the use of the resources gained in small-scale privatisation.

The chapter Large-scale privatisation covers general characteristics of the most important part of privatisation with regard to individual methods, stages, and the voucher privatisation. The purpose here was to analyse the process. The section of "Statistics" outlines the results and in its further parts points to new methods of acquiring assets through liquidation and repotrades. It also describes the situation in redressing privatisation errors in 1999 and gives an outlook for the year 2000.

The chapter entitled the Consequences of abolishing voucher privatisation and replacing it with the bond method gives the reader the chronology of the rise and implementation of the so-called bond method of

privatisation. The author gives basic characteristics and the evolution of the relevant legislation, as well as the ways of using the FNM bond (National Property Fund, FNM) and the development in trading it in the securities market. He also refers to the ramifications of replacing the original concept of voucher privatisation with the bonds as they affected citizens and the capital market, its subjects. He also takes note of the risk of failing to repay bonds by the Fund and evaluates options available for the solution.

Next chapter - the National Property Fund of the SR - (FNM SR) analyses the changes in the legislative position of the FNM in the process of privatisation, the relation of the Fund to the Government and the National Council of the SR (NR SR), internal structure, responsibilities, and the mutual relations of the bodies of the Fund. It later looks at the action of the FNM in handling state assets in the process of privatisation, the economic results of the FNM for the years 1992 - 1998, the current liquidity of the FNM in 1999 and the financial base for the forthcoming period.

Privatisation of state monopolies, its first section, describes the legislative development of the natural monopoly and the methods used to privatise state-owned monopolies. The emphasis of the second, analytical section of the chapter is placed on the causes of the imminent interest of the state to own natural monopolies. The concluding section deals with the possibilities of devesting of state monopolies, describing the risks connected with the denationalisation, and attempts to quantify the amount of money that could be raised through privatisation. It also considers potential areas of using the resources from the privatisation of these monopolies.

In the chapter Privatisation of banks, the author gives a concise account of the banking system in the SR from 1989. He then goes on to discuss privatisation itself of banking institutions with an emphasis on the largest privatisation affairs (IRB, Slovenská Poisťovňa, Poštová Banka), and other attempts at resuming privatisation. In the conclusion, he analyzes the current unpromising state of the banking sphere and its potential salvation.

The fact that cities and communities, too, take an important place in the process of privatisation is well substantiated in the chapter Privatisation of the property of cities and communities. It first introduces the legislative environment, in which self-Governments in Slovakia operate. It discusses the system of financing cities and communities and the major problems related to it. It looks at the reasons for municipal assets sales and also efforts to acquire new assets. A summary of the municipal assets and the methods of acquiring them then follows. It pays special attention to privatisation of these assets and to the most important moments that have affected and still affect it. In conclusion the author presents a new option open to self-Governments in connection with the public administration reform which is being prepared.

The principal objective of the chapter titled the Lack of transparency and corruption in the transformation process is to show the impacts that a non-transparent process of privatisation induces on the overall institutional framework of economy, with an emphasis on the decline of morals and the growth of corruption. The author also attempts to analyze the environment - informal and formal rules of the privatisation process that affected the measure of corruption in individual stages of privatisation process, i.e., the corruption prior to the sale of assets, corruption in the process of decision-making about the allocation, and post-sale corruption.

We have decided to include a summary and state the development of major privatisations in alphabetical order in Appendix 1. They have been processed on the basis of a contents analysis of daily press of most significant journals and periodicals. Then a summary is given of the most significant events under the title The chronicle of privatisation process giving also brief quotations of who said what on the subject of privatisation.

As the process of privatisation in Slovakia has not yet been published in such a comprehensive form, and remembering that certain simplifications in its presentation were made, we nevertheless trust that you will find our recent publication of interest.

Bratislava, December, 3 1999
Viktor Nižňanský and Oľga Reptová
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1. THE ECONOMIC REFORM IN THE CSFR

Martin Valentovič

The late nineteen-eighties were marked by sweeping changes: until then the much feared communist system collapsed and, on the debris, buds of democratic states began to grow. This was a time marked with a great dose of enthusiasm and optimism in the expectation of an early onset of prosperity as had occurred in capitalist countries. The only thing yet to do was to overcome the transformation period from one social and economic system to another, which was its direct opposite. The newly formed Governments of these states began to launch their economic reforms.

It was very soon evident that the post-communist transformation was much more difficult than even the most pessimistic statesmen and intellectuals could have imagined. Even if the communist hierarchical system fell apart overnight, a consistent reconstruction of the legal, economic, psychological, and moral system in a given community needs more time. The transition period of semi-anarchy allowed not only irrational conduct but also theft on a large scale and uncontrollable debts were generated by state enterprises or newly privatised companies. This period is characteristic by an unprecedented economic decline, augmented by stringent monetary policy, which was focused on mitigating inflation, necessary after installing macroeconomic equilibrium - as a result of accumulated forced savings of the population of the pervious regime.

The rapid onset of frustration among the majority of the population, expecting an achievable, quick and painless proSPerity is thus understandable. Such a population is vulnerable to manipulation and demagoguery, which is skilfully employed by mainly those individuals who have least interest in the future prosperity of the country. Consequently, the originally intended radical transformation concepts are left behind, there are obstructions placed in their route and painful but necessary measures are put off, debts at the expense of future are again incurred, and the most sensitive and controversial pillar of transformation - privatisation - is abused.

This chapter discusses the phenomenon of transformation with an emphasis on the economic reform in former Czechoslovakia.

1.1 MARKET ECONOMY VS THE FORMER SYSTEM, RATIONALE AND PROBLEMS OF TRANSITION

The economic system of Soviet-type communist countries can be characterised by the following features:

- a leading, totalitarian role of the Communist Party,
- predominance of state ownership,
- predominance of bureaucratic over market co-ordination, and vertical over horizontal co-ordination,
- macroeconomic instability (a shortage economy),
- predominance of soft budget constraints.

The basic philosophy of transition reforms is to eliminate the above systemic characteristics, shifting to a system that has proved viable in advanced countries with market economies and which may be characterised by the following features:

- plurality, democratic party system,
- predominance of private ownership,
- predominance of market co-ordination over bureaucratic, and horizontal over vertical co-ordination,
- macroeconomic equilibrium,
- predominance of tough budget constraints.

As we could later witness, such a transition was much more complicated than it would have appeared at the beginning. The main reason for it was the enormous influence of the former system privatisation of banks immediately in the beginning of the reform process could have prevented the unpleasant reality referred to above from occurring.

Table 1
Speed of the reform process in post-communist countries in 1996 by cumulative liberalisation index (CLI) [4]

Group	Country
Advanced stage of reform (CLI>4)	Slovenia*, Poland*, Hungary, Croatia, Yugoslavia, Macedonia, Czech Republic, Slovak Republic,
Upper-intermediate stage of reform (2.7<KIL<4)	Bulgaria, Estonia*, Lithuania**, Latvia*, Rumania, Albania, Mongolia
Lower-intermediate stage of reform (1.7<CLI<2.7)	Russia***, Kyrgyzstan, Moldova, Armenia, Kazakhstan, Georgia
Very slow state of the reform (CLI<1.7)	Uzbekistan*, Belarus*, Azerbaijan, Tajikistan, Ukraine, Turkmenistan

Source: De Melo, Denizer, Gelb, the World Bank 1996
* For years1989-93, ** For years 1989-92, *** For years 1989-91

continuing in the economy, the people's mindset, and their values. Although we cannot go into details for reasons of space, we will at least point out two factors that demonstrate this influence.

The dominance of soft budget restraints under communist regime meant that there was no direct relation between raising the resources and their efficient use in the microeconomic sphere. The money would come to the company regardless of whether it was going bankrupt or not. Such a system could be relatively stable in the co-existence with the totalitarian system of a single party, thanks to tough administrative restrictions (the management of the companies nevertheless were limited by party supervision, which would not permit them to move large financial sums without restriction to their benefit). That practice, however, stopped being applied the moment the communist nomenclature and the associated party discipline ceased to exist. The economy found itself in a state of combined soft budget restraint and soft administrative restraint, which provided scope for „asset stripping" and theft of state enterprise assets. In practice, it meant not only the stealing and „asset stripping" referred to above, but also massive , irresponsible and unchecked provision of credits on the part of the state banks, which later resulted in an overall crisis of the banking system in Slovakia. The authors of this publication maintain that a quick and extensive

Under the communist system, it was the common citizen who felt the macroeconomic instability most (or the demand outstripping the supply) as a result of the dominance of the bureaucratic co-ordination over the market co-ordination. The quality and the quantity of production was limited. The surplus of money, which resulted as a consequence of financing the deficit of public sector could not therefore be reflected in the increased rate of inflation, which had been artificially kept low, but in enforced savings of the population. This phenomenon, when the supply of money exceeds the demand, is referred to in specialist literature as so-called „monetary overhang". It in turn resulted in an extreme growth of the rate of inflation, once the elements causing the instability have been removed in post-communist countries through launching reforms. The price growth alone would not be problematic. It was, however, combined with a major slump in the production. And here, we get to the core of theories which emerged in different economic and political debates shortly after the reform process was initiated, and which attributed the economic decline to the restrictive monetary policy applied to eliminate the initial inflation. These theories preferred expansive policy over a restrictive monetary policy, with the argument of promoting economic growth. In those cases where the Governments managed not to

succumb to similar views, and carried on with the monetary restriction, the growth in price level stabilised itself. On the other hand, in countries where the restriction had been eased and the Governments struggled to support production with increased supply of finance, the process of deflation turned out to be more prolonged.[1]

This brings us to the classification of the transformation process into two basic and conflicting approaches: the slow (gradual, or so-called "Chinese") model and the fast (radical model, or the approach of the so-called "shock therapy").

1.2 ALTERNATIVE APPROACHES TO THE SCENARIO OF THE TRANSITION TO THE MARKET ECONOMY (SHOCK THERAPY VERSUS THE GRADUAL MODEL)

If we were to study more closely the individual approaches in the scenario for transition to a market economy, we would see that the main distinguishing factor was speed with which reforms have been implemented in particular countries. Accordingly, we can distinguish alternative approaches of two basic groups. The first group is represented by those countries, whose main objective was to establish conditions of competition within the shortest possible time period. This approach may be termed the principle of "shock therapy". It was broadly endorsed by western experts. It was first implemented in Poland - its major protagonists being J.Sachs, Professor of Harvard University and J. Balcerowicz, then Polish Deputy Prime Minister and Finance Minister. It is true that the main weakness of this radical model was high, greatly understated social costs in the first phase after effecting the "shock", which was often nor acceptable for a broad section of population due to their being unprepared and subsequent frustration.

As we have noted earlier, the largest parts of the population supported the anti-Communist revolutions in the expectation of fast "western" prosperity, not because of ideological reasons.[2] In many cases the frustration was used by anti-reform politicians and economists belonging to the second group and endorsing slow, gradualist concept, referring to the success of China, expressible in its economic growth. In contrast to their liberal thinking opponents, the proponents of the "Chinese" model have almost never submitted a comprehensive, clear, conceptually worked out strategy. [3]

Let us be more particular and look at the situation in speed of reform applied in different post-communist countries (see Table 1 below). For the sake of more immediate visibility, we have grouped the countries in four groups, and ordered them in a descending fashion, i.e., from countries with the greatest reform progress recorded to the lowest progress.

The table shows that considerable progress has been made in the reform process in the very countries that have a realistic chance to accede to the European Union in the foreseeable future, which may be explained as the result of efficient pressure from this institution. Unlike other countries, the transition in these countries was linked with political change, as a sign of longing to get away from Soviet influence, because there "communists were discredited and stripped of power, which allowed the application of *exceptional policies* with a scope for reforms".[5] In the non-Baltic countries of former USSR, former communists at the forefront of the political elite hoped that the newly formed Commonwealth of Independent States would grow into a free federation with continuing financial links. A relative quickening of the reform process only occurred after the Russian Federation undertook issuing its own currency in the end of 1993 and thus causing the rubble zone to fall apart. In other words, "a clear idea of where to go, was an important determining factor of the reform".[6]

1.3 DISCUSSION AND THE APPLIED REFORM IN THE ČSFR

The conceptual dispute about the way of economic transformation that was to be launched in the ČSFR, took place in the first half of 1990, mainly at the federal Government level. The proponents of "gradual concept" were headed by Walter Komárek, then Deputy Prime Minister of Federal Government, while the proponents of radical transformation were led by Václav Klaus, then federal Minister of Finance. Discussions and debates were held both at political and expert levels, the radical concept being eventually adopted. The external manifestation of this outcome was the resignation of Walter Komárek.

Two facts were decisive in the setting forth of Václav Klaus, then much less influential, both nominally and realistically. First, the Komárek group never submitted a comprehensive, realistic, and sensible concept for transformation. Second, Klaus's concept was nothing new, it was only an interpretation of the concept, that at that time was already being put in practical life in Poland (see chapter 1.2.)

The radical model of shock therapy was given a mandate in the results of the 1990 elections and took definite shape in the conceptual material titled the *Scenario for the economic reform*, approved by the federal parliament in September of the same year. According to this material, the Czecho-Slovak economic transformation was based on the following priorities:

- price liberalisation,
- stringent monetary and fiscal policy,
- internal convertibility of currency and liberalisation of foreign trade,
- rapid and extensive privatisation .

The above priorities of the transformation policy comprised a comprehensive system of measures that had to be taken, launched,and ensured simultaneously, and within shortest possible timeperiod in order that an early change of the economic environment was induced. By changing the economic environment, the main objective of the economic transformation was to be achieved - effecting change in the conduct of microeconomic subjects, or companies. Under the changed conduct, one has to understand rational behaviour in the terms of increasing the quality of production, minimising costs, growth in efficiency, growth in technical and economic parameters, etc. It is a common knowledge that under conditions of command economy and state ownership, such behaviour could not be conceivable.

The authors of the concept of radical transformation assumed the following three stages of economic development to occur, once it was put to life:

- the stage of price knock - it was assumed that in the course of this stage, in response to price liberalisation and stringent monetary and fiscal policy, macroeconomic equilibrium will be installed, i.e., an equilibrium of supply and demand. In other words, the seller's market would be eliminated and the buyer's market would be established. It was further assumed that the stage would be associated with a relatively fast price growth as a consequence of the mobilisation of enforced savings, and that it would last for 3-4 months;
- the adjustment stage - a change in the behaviour and subsequent adjustment of microeconomic subjects to the altered conditions was assumed, resulting from the influence of macroeconomic equilibrium and the instalment of criteria-based economic conditions. For this stage continued macroeconomic decline was still assumed, because the reduction of production due to the altered conditions was still expected to prevail over the increase resulting from successful adaptation. The second stage was estimated to last for 1-2 years;
- the growth stage - its onset was assumed for the second half of 1992, and particularly from 1993. The halting of the economic decline and the beginning of the economic growth was to occur as a result of the progress made in microeconomic adjustment.

The date for launching the radical concept of transformation in the ČSFR was set for January, 1 1991. After some preparatory steps in the second half of 1990, (preparation and approval of the state budget for 1991, devaluation of the currency, technical preparation of the introduction of internal convertibility, and approval of monetary frameworks for 1991) the transformation was actually launched on January, 1 1991.

1.4 THE PLACE AND THE ASSESSMENT OF PRIVATISATION IN THE TRANSFORMATION PROCESS

In the transformation process of the post-Communist countries, the instrument of privatisation serves to eradicate one of the most significant systemic characteristics of the communist system - the high prevalence of state ownership. Its specificity, unlike the change of all other systemic characteristics, lies in the fact that the change of ownership is - as far as time, technical execution, and political aspect is concerned - the most demanding, most dangerous

and most sensitive process. To prove it and understand it better, let us now look at what the actual course of transformation process was in the ČSFR and later in the Slovak Republic, how it departed from the anticipated course, which was briefly sketched in the previous chapter and what role privatisation played in it.

The price knock stage ran almost as it had been assumed. It lasted for about four months, during which the rate of inflation went up approximately 55 percent. Then the price growth stopped, and, by the end of the year, the inflation rate rose to only 63 percent. Roughly from April to May 1991, on the whole, there was a tough , criteria-based economic environment created in the Czecho-Slovak economy. A unified tax rate was introduced, subsidies and grants had been substantially cut, when compared to the previous period, credits were only available under commercial terms, a seller's market turned into a buyer's market, there was macroeconomic equilibrium in aggregate supply and aggregate demand. Positive effects of this were expected to be evident in the advancement of the adjustment of microeconomic subjects. It turned out, however, that the progress in adjustment was slower than expected, which was mainly due to the insufficient toughness and criteria enforcement of the economic environment.

In the opinion of the authors of the economic reform of the day, the obstacle that hindered swifter adjustment and restructuring of the economy was primarily in the significantly prevailing state ownership.[7] That was one reason why, from the beginning, a non-standard method of voucher privatisation had been advocated in the former ČSFR, which satisfies the criterion of speed best.

If we look at the outcome of privatisation after ten years, when the majority of companies have already been placed in private hands, we will find, that in many cases, not only was there no progress made in the area of efficient management of the companies, but the opposite occurred. The case of VSŽ (East-Slovakian Iron and Steel company) is a good illustration when the new owners brought one of the most lucrative companies, the flagship of the Slovak economy, to a significant loss.

Similar development could be seen not only in the SR but also in many other reform countries, particularly in those, which are geographically located to the east. A study of the World Bank, analysing privatisation in eight post-communist countries[8] has advanced the following conclusions:

- the relation between private ownership of the company and its restructuring (change directed at the survival and prosperity in a competitive environment) is weak or zero;
- only a small change in the behaviour has been noted between state and private companies;
- significant behavioural change occurred only in those companies that were sold to a foreign investor; [9]

In the above referred countries, but also in other transition countries, assets got into the hands of people who had neither the necessary experience, nor financial resources, and often not even the will to manage them efficiently. On a large scale, we have seen manipulation (in standard and non-standard methods), corruption, or "asset stripping" (i.e., unauthorised channelling of the equity of a managed company to another, private entity). Privatisation, as a tool of transformation, became an instrument of struggle for the consolidation of power. Perhaps the best illustration of this in our country is the struggle between Prime Minister Vladimír Mečiar and the representatives of the investment funds, the external manifestations of which was the abolition of the second wave of voucher privatisation; the blanket legislative attack on privatisation funds, which were degraded to the function of a portfolio investor, and the ensuing the liquidation of the capital market in the SR; direct attacks against individual funds (see the PSIS privatisation-gate).

To put it in other words, privatisation has failed. Where should we look for the reasons why? The critics say we should search in emphasis placed on the scope and speed of privatisation, which has already been highlighted several times, and which was in accord with the requirements advanced by international financial institutions. The creation of institutional protection was underestimated, which though deemed important was taken to be secondary. The financial institutions referred to above, together with the authors of the reform at that time believed that private ownership alone would permit sufficient motivation for new owners to exert pressure upon their management to be more efficient in managing their companies.

The underestimation of the institutional framework was influenced by the interpretation of the doctrine of neoliberalism. The reality showed that capitalism required much more than just private ownership. It functions on general compliance with and enforcement of basic rules that guarantee security, transparency, and predictability of the results of the exchange. With the institutions missing that would safeguard compliance with the above rules, none of the stakeholders, associated with the privatised company (employees, management, creditors, shareholders) is able or motivated to ensure long-term prosperity of the assets. In such case, privatisation may lead to stagnation and decapitalisation, rather than improved financial performance and increased productivity.[10]

This is also seen from the statements by Jeffrey Sachs, Professor of Harvard University, and one of the major ideologists at the background of transition reforms, who said, "As an economic advisor for the region, I preached: Untertake internal reforms swiftly and seek substantial international assistance, beware of morals and demand transparency in action from all parties. On the other hand, I was too much of an optimist in relation to possibilities of massive privatisation, which I deem faulty now."[11] The quoted statement apparently points to the fact that massive. i.e., voucher privatisation which is without capital, cannot bring about the necessary restructuring or consolidation of economy.

In this sense, we may say that privatisation or the achievement of a state where private sector by far prevails in the economy, together with the resources it brings, is one of the prerequisites for a successful adjustment and restructuring of the economy, thus also a prerequisite for the success of the entire economic transformation. Before it is launched, however, there is a need to build an efficient and enforceable legal and institutional foundation, capable of ensuring transparency and fair play. Otherwise, it may have not positive, but rather, catastrophic consequences.

NOTES

1 See: Gaidar, Y: The Legacy of the Socialist Economy: the Macro - and Microeconomic Consequences of Soft Budget Constraints, Institute for the Economy in Transition, Moscow, 1999. In: Valentovic, M: Slovakia in the Context of Post-Communist Transition Economic Reforms. Diploma work. Institute of international relations and approximation of law, Bratislava 1999.

2 See the research report of the M.E.S.A.10 project: Social cost of different types of transformation - economic and socio-psychological aspects. The archive of M.E.S.A. 10.

3 Mikloš, I.: The analysis of the progress of economic transformation in the ČSFR, M.E.S.A. 10 archive.

4 Cumulative liberalisation index (CLI), used first by de Melo, Denizer and Gelb, for the period of 1989-1995. It consists of three sub-indices, the value of each changing from 0 (command economy) and 1 (market economy). The indices represent the internal liberalisation of prices and the competition (I), liberalisation of foreign trade and the convertibility of the current and capital accounts (E) and privatisation, new entry adjustment and development of small and large businesses (P). The value of CLI is calculated by weighing these three indices according the scheme 0.3-0.3-0.4.

5 See Balcerowicz, L.: Common Fallacies In The Debate On The Economic Transition In Central And Eastern Europe. EBRD Discussion Paper No. 11, October 1993; Alan Gelb, 1994. Macropolicies in Transition to a Market Economy: A Three-Year Perspective, prepared for the annual conference of the World Bank for developing countries, 28-29 April 1994 in Washington. (Source: Cevdet Denizer: Stabilisation, Adjustment and Growth Prospects in Transition Economies. Macroeconomics and Growth Division Policy Research Department, The World Bank, February 1997.

6 Cevdet Denizer: Stabilisation, Adjustment and Growth Prospects in Transition Economies. Macroeconomics and Growth Division Policy Research Department, The World Bank, February 1997.

7 For more detail, see Mikloš, I.: The risk of corruption in the process of privatisation. Windsor Group Slovakia, Bratislava 1995.

8 It concerns Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russia and Ukraine, which although countries of the east, can illustrate the situation in our country. Poland is the only country where the privatisation was successful.

9 Source: Nellis, J.: *Time to Rethink Privatisation in Transition Economies?* Transition, 1999, The World Bank/The William Davidson Institute.

10 Source: Nellis, J.: *Time to Rethink Privatization in Transition Economies?* Transition, 1999, The World Bank/The William Davidson Institute.

11 Sachs, J.: What the West Failed to Attend to in the Transformation of the East In: Hospodárske noviny, November, 18 1999, p. 8.

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9. Sachs, J.: What the West Failed to Attend to in the Transformation of the East. In: Hospodárske noviny, November, 18 1999, p. 8.
10. *Valentovič, M: Slovakia in the Context of Post-Communist Transition Economic Reforms*. Diploma work. Institute of International Relations and Approximation of Law, Bratislava 1999.

2. THE LEGISLATIVE FRAMEWORK OF THE PRIVATISATION PROCESS

Oľga Reptová

In November 1989 a process was started that we call the economic transformation, based - apart from other aspects - on rapid and extensive changes of ownership. This process however, could not be commenced without clear legalisation. Our country, but almost all post-communist countries as well, launched the process with a substantial part of legislation in place which was inherited from the communist period. Although experts realised that the legislation did not possess the elements of market economy[12], they knew that the sequence of steps - first the changes in legislation and then the actual privatisation - could not be sustained if the emphasis was placed on the speed of the transformation.

In the years 1990–1991, decisive privatisation and restitution laws had been approved by the Federal Assembly of the ČSFR, Slovak and Czech National Councils, as well as Government regulations, ministerial guidelines and directives that defined the rules and fences in the privatisation process.

2.1 RESTITUTION

The process of restitution was part of the privatisation process in the broader sense, with laws being passed initially. The purpose of the laws was to return property nationalised after the communist coup in 1948 to original owners. The process of restitution was governed by a number of laws[13] but we will deal in this work only with the most important ones. They are two laws that defined clearly the conditions under which the property was returned to qualified persons, either physically, or in respect of which compensation was paid in cash or in securities. We will also briefly look at the law covering restitution of agricultural property.

Circumstances under which restitution claims concerning nationalised property can be satisfied are stipulated in the provisions of the Act no. 403/1990 of the Collection of Laws, on mitigation of consequences of some property wrongs, as later amended, and the Act no. 87/1991 of the Collection of Laws, on out-of-court rehabilitation, as later amended.

Restitution of agricultural property is covered by Act no. 229/1991 of the Collection of Laws, as later amended, on the title to land and other agricultural property. This law was passed to ensure returning collectivised land and other agricultural property, whereby consequences of some wrongs could be mitigated, that were committed in respect of owners of agricultural and forest property between 1948 and 1989. By introducing this law in practice, improved care for agricultural and forest land was intended through renewal of original title to the land.

The Act no. 403/1990 of the Collection of Laws on mitigating consequences of some property-related wrongs made provision for mitigating property related wrongs due to nationalisation, placing in state ownership on the basis of rulings by selected sector ministries

12 This was mainly due to the absence of laws on procurement of investments, goods and services, securities, collective investment, regulations preventing conflict of interests, tax regulations, laws and measures that would preclude using "laundered money" as well as due to a system of tax returns enabling property and income of individual persons to be tracked down.

13 List of legal regulations, altering restitution process is in publication: Collective of authors of legal section of MSPNM SR: Privatization in legal regulations. Open Windows Bratislava, 1993, p. 88-89.

issued after 1955, and referring to nationalisation regulations of 1948. The law was denoted also as the "small restitution act", subject to which the property was given back to the original owners and trade licence holders. The claim to obtain the article surrendered had to be made by the claimant against the holder of the property, not later than on May, 1, 1991. Subject to § 19, par. 2 of the cited law, the organisation was obliged to return the property not later than May, 31 1991. The claim to get cash compensation had to be lodged with the Ministry for Administration and Privatisation of National Property (further referred to as MSPNM) not later than on May, 1 1991, with the claimants covering physical and private legal entities, whose title to real property or tangible assets had been withdrawn. In the event of death of the original owner, the order of claimants to whom the property was to be surrendered was determined (e.g. hereditary proprietor through will, children of the proprietor and spouse that survived, as of the day of the effect of the cited law, parents of the proprietor, siblings, etc.)

The Act no. 87/1991 of the Collection of Laws, on out-of-court rehabilitation, was applied to mitigate the consequences of some property related and other wrongs which arose through legal action executed in the period between February, 25 1948 and January, 1 1990. It was also referred to as the "large restitution act". The act made a distinction between whether the title was withdrawn in accord with the law or at variance with the then effective legislation. This distinction was decisive in respect of the way the claim of the restitution claimant would be satisfied.

The adopted principle of priority of restitution claim over privatisation was an important fact, i.e., the property had to be surrendered to the claimants prior to privatisation of companies to ensure that property to which a restitution claim was applicable was not privatised.

In those cases where the property could not be physically returned to the restitution beneficiaries, financial settlement was applied. Where the small restitution act was applicable (Act 403/1990) cash compensation was provided, where so-called large restitution act was applicable (Act 87/1991), compensation of up to SKK 30,000 was provided in cash, with the remaining sum exceeding the amount claimed provided in securities - shares of a Special fund (the Restitution Investment Fund), in which 3 percent of shares of companies earmarked for voucher privatisation were deposited.

As we will not deal more closely with the area of restitution in the next parts of the text, we give at least some figures that may illustrate the challenges of the process. In connection with handling the cases arising from the Act 403/1990, there were around 17,000 restitution claims lodged within the stipulated deadline, until April, 30, 1991. There were 5170 claims for cash compensation registered and until 30 June, 20, 1999, 809 claims had been discharged with the amount of compensation paid amounting to SKK 227 million. These claims mainly concerned real estate that could not be surrendered by liable persons -organisations "in natura," or where the real estates surrendered were damaged to such an extent that without instant reconstruction they could not be used for housing, production or service provision. There was also cash compensation granted in respect of land that could not be surrendered, as it had buildings constructed in the period after nationalisation by the Czechoslovak state. Currently there are 400 claims not discharged, the remainder being rejected as not grounded, or because they were lodged with other than the relevant authority.

2.2 PRIVATISATION

2.2.1 Small-scale privatisation

From the beginning, privatisation was divided into so-called small-scale and large-scale privatisation. The process was governed by so-called "small-scale" privatisation and "large-scale" privatisation laws. Small privatisation is governed by the Act no. 427/1990 Of the Collection of Laws, on transfer of state's title to some property onto legal or physical persons, as later amended. The law stipulated conditions under which state property which was managed, as of November, 1, 1990, by state enterprises, budgetary and contributory organisations, national committees, is transferred to defined physical or legal persons. In this way, moveable and immovable property which was part of operating units of organisations running services or involving in trade and other than agricultural production, could be conveyed. To put it simply,

it concerned mainly small retail units, tourism facilities, mainly under the Ministry of Trade and Tourism, and also service rendering operating units. Rights and liabilities related to the tangible assets being conveyed, were not subject to the transfer and the transfer was effected in a simple form of sale, such as a public auction. This simplification permitted a shortening of the time necessary for privatisation and establishing a competitive environment, at least in a part of the economy.

The so-called small-scale privatisation act has been amended several times:

- the Act 541/1990 of the Collection of Laws – this amendment defines the relation of state companies, budgetary and contributory organisations, and co-operatives, to contracts of lease for non-living space.
- the Act 429/1991 of the Collection of Laws – specifies procedure for public auctioning and for failing to pay the purchase price for property auctioned.
- the Act 561/1991 of the Collection of Laws – extends the ban to terminate the contract of lease of non-living space, in which operating units are located, to cover also municipalities.

The basic laws governing the process of small privatisation include also the Act of the SNR no. 474/1990 of the Collection of Laws, on responsibilities of the bodies of the Slovak Republic in matters of transfer of state's title to property to legal and physical persons, as later amended. It stipulated the jurisdiction of MSPNM, and commissions for privatisation of national property in areas of transfers of property to legal and physical persons. It was amended by the Act of the SNC 501/1991 of the Collection of Laws in which rights and obligations of commissions for privatisation of National Property, district offices and the winning auction bidders were more specified.

The process of small privatisation was also regulated by implementing regulations, namely the edict of MSPNM SR no. 568/1990 of the Collection of Laws on public auctions in transfers of state's title to something other than legal or physical persons and on entry auction fees. It makes provision for particulars in public auctioning of operating units, which were managed, as of November, 1, 1990, by state companies, budgetary and contributory organisations and national committees. It was amended by the edict of the MSPNM SR no. 473/1991 of the Collection of Laws, which stipulated the procedure for public auctioning, primarily where the auction of an operating unit not offered for auction with the real estate, was not successful.

2.2.2 Large-scale privatisation

The principal law governing the process of large-scale privatisation is the Act no. 92/1991 of the Collection of Laws on conditions of transfer of state property to other persons, which was passed in the Federal Assembly in February 1991. It contains provisions for several methods of privatisation of almost all state property, except for the property which is protected in the Constitution and defined as property in sole ownership of the state. It covers natural resources and raw materials that serve the needs of the whole society.

The law defines the terms of transfer of state property, to which the tittle of management belongs to state companies, state financial institutions, state insurance companies and other state-owned organisations, including property shares in enterprises of other legal persons, and the conditions of transfer of state stake in these businesses to either Slovak or foreign legal or physical persons. The law also defines the position and obligations of the founding sectors in the capacity of bidders submitting privatisation projects to MSPNM SR, the relevant authority of the state administration responsible for the privatisation process, the National Property Fund of the SR, the body implementing the decisions on privatisation, the Antitrust Office of the SR, the institution responsible for issues of economic competition, and the Slovak Land Fund (SLF), the administrator of agricultural and forest real property owned by the state. It further stipulates the methods and forms of privatisation, specifies the use of investment vouchers within the voucher privatisation, defines bond privatisation and touches on the liquidation of state companies.

Since the above laws define the relations that were completely new to post-communist countries, it is quite natural that experience and

knowledge gained in the privatisation process gradually called for the adoption of several amendments.

The basic Act 92/1991 of the Collection of Laws has been subjected to a number of changes, 22 in total, (as of September, 30, 1999), of which 19 were amendments and 3 were findings of the Constitutional Court. We give them in the chronological order, with a short commentary and the denotation of the Government in office at the time the amendments were passed.

The Federal Assembly of the ČSFR Acts passed in the period of the rule of the Government of J. Čarnogurský:

The Act no. 92/1992 of the Collection of Laws. - a new § 6a is included stipulating that the privatisation project submitted after February, 29 1992 must include the company's assessment of environment protection commitments. Other supplements relate to cases where the privatisation projects are designed by other person than the company itself, the obligation of the company to access such person the relevant information pertaining to the company being privatised, the date of effect of the transfer of title to things of privatised property, and the cases where companies entering into lease contacts and other contracts of use of property by other persons, can do this only for the period until the property is transferred to the relevant fund.

The Act no. 264/1992 of the Collection of Laws. - the change concerns § 19, which specified the transfer of title to real property. (The title is transferred to the transferee on the day it has been entered in the cadaster of real property.)

The Federal Assembly of the ČSFR Acts passed in the period of rule of the second Government of V. Mečiar in the SR:

The Constitutional Act no. 541/1992 of the Collection of Laws on dividing up the assets of the Czech and Slovak Federal Republic - this law deleted the whole fifth part (§ 27 - 40) of the Act no. 92/1991 of the Collection of Laws , which related to the Federal National Property Fund.

The Act no. 544/1992 of the Collection of Laws - the amendment stipulated that Administrative Procedures were not applicable in respect of privatisation projects approval and at the same time it restricted the term during which the FNM SR guarantees the fulfilment of the pledge by the assignee of the privatised assets, the term set at one year since the obligation has been transferred to the assignee. The amendment also responded to the prepared split of the ČSFR by specifying in more detail part 4 which concerned investment vouchers.

The Acts of the National Council of the SR (NR SR) passed in the term of the second Government of V. Mečiar in the SR:

The Act of the NR SR no. 17/1993 of the Collection of Laws, which changes and amends the Act of the Slovak National Council (SNR-predecessor of NR SR) for no. 253/1991 of the Collection of Laws, on the jurisdiction of the SR bodies in matters of transfers of state property to other persons and on the FNM, as later amended, and the Act no. 92/1991of the Collection of Laws. The amendment simplified privatisation in connection with potential restitution claims in a way enabling privatisation of property affected by these claims, with the proviso that the assignee of the property became the liable person in potential restitution. Where this person becomes obliged to surrender the property, the law guarantees the right to compensation from the FNM. In connection with the guarantee for liabilities of the assignee of the privatised property, the law stipulates that the creditor has a right to claim fulfilment of the obligations from the FNM only where the claim - its legal reason and amount - was notified to the FNM within one year and only after using all legal means against the debtor. For the event of infringement of legal regulation in the privatisation, the amendment enshrines the right of the state to seek indictment with the court to invalidate the transfer of the privatised property.

The Act no. 172/1993 of the Collection of Laws - the amendment stipulated that the state body, that approved the privatisation project can change the way of privatisation proposed in the privatisation project.

The Act no. 278/1993 of the Collection of Laws - on administration of state property changed § 45 par. 5 in a way that provisions of par. 1 and 2 were not applicable to the property of companies of foreign trade and other special purpose organisations, nor to budgetary and contributory organisations.

The Acts of the NR SR passed in the term of the Government of J. Moravčík:

The Act no. 60/1994 of the Collection of Laws - the core of the amendment was to incorporate - in relation to the rise of the independent Slovak Republic in 1993 - provisions included in the SNC Act 253/1991 in the Act no. 92/1991, as later amended. It is one of the most significant amendments, which governs also privatisation of assets managed by the FNM. In addition, it provides for:

- adds requirements for a privatisation project,
- widens the rights of the Ministry for Administration and Privatisation of National Property,
- introduces sanctions in the event of company failing to notify the necessary information to other persons drawing up a privatisation project, specifies more clearly the procedure of decision making in the privatisation project, stipulates conditions to be satisfied in the event of cancelling the decision about privatisation after the decision has been issued.
- notes that the property of the FNM is not in the state ownership
- gives details for transfer of privatised property using vouchers.

The Act no. 172/1994 of the Collection of Laws - the amendment designates the recipient of the net proceeds from sale of vouchers (state budget).

The Act no. 244/1994 of the Collection of Laws - the amendment widens possibilities to use the property of the FNM SR also for transfer of privatised property for the purposes of health, sickness and pension insurance.

The Acts of the NR SR passed during the term of the third Government of V. Mečiar:

The Act no. 369/1994 of the Collection of Laws - one of the most controversial amendments, a major change to the law, when it was provided that the Board of the FNM SR at the proposal of MSPNM SR or the Executive Committee of the FNM, could issue decisions about privatisation through direct sale, outside public tendering or public auctioning, and not the Government of the SR, as the case had been until the amendment became effective. The Constitutional Court ruled that these provisions were unconstitutional.

The Act no. 374/1994 of the Collection of Laws - supplements provisions on receipt of part of proceeds of voucher sale (state budget only on the basis of the law on the state budget for the relevant year).

The Act no. 190/1995 of the Collection of Laws - a principal amendment that abolished the second wave of voucher privatisation. The amendment constitutes the climax of gradual diversion of the ruling coalition from the voucher privatisation as a method, which offered least chances to gain economic and thus also political power. The amendment was a major intervention in the next course of privatisation also because it introduced the institute of mandatory participation of employees, issuing 10% of employee stock, or the possibility to acquire a 34-percent stake in the equity of the assignee.

It also brought about changes in that the decisions were issued by the FNM SR, also in relation to old decisions by the Government or MSPNM SR (previously, only the body that issued the decision could change it), the terms of the contract of purchase were stipulated, and the obligation to back out of contract in the event of default, the impossibility to pardon interest for late payment, the impossibility to lease out assets until the whole purchasing price has been paid. Further the assignee is obliged to put up with oversight and control on the part of the FNM. Other, significant changes included those related to investing or selling assets in other trading companies where the FNM had a 34-percent stake, legalisation of the increase of equity effected by the FNM until April 1993 subject to the exemption from the Commercial Code, as well as accessing data of the FNM only to the relevant National Council Committee.

In compensation for the abolished voucher privatisation the amendment introduced the institute of the FNM bond of the nominal value of 10,000 SKK (for further detail, see chapter on the Consequence of abolishing the voucher privatisation and replacing it with the bond method).

The Act no. 304/1995 of the Collection of Laws - the amendment gives provisions for the issue of bonds of the FNM and organisation of trade with them.

The finding of the Constitutional Court of the Slovak Republic no. 4/1996 of 20 December

1995 - ruled that the provisions subject to which municipalities are obliged to accept bonds, was not consistent with the Constitution.

The Act no. 56/1996 of the Collection of Laws – the amendment changed the "obligation" to ensure participation of employees in privatisation to the "possibility". At the same time it introduced the jurisdiction of MSPNM SR to act when companies were selected for liquidation.

The Act no. 322/1996 of the Collection of Laws – the amendment introduces a liability for FNM in respect of bond holders, who on October, 24 1996 reached 70 years of age to repay FNM bonds, as of 31 December 1997.

The Constitutional Court of the Slovak Republic in its ruling no. 352/1996 of the Collection of Laws stated that the provisions subject to which responsibilities for direct sales were transferred from the Government to the FNM SR were not consistent with the Constitution.

The Act no. 210/1997 of the Collection of Laws – the amendment gave responsibility for approving direct sales back to the Government of the SR (after more than half a year since the ruling of the Constitutional Court fell effective) and expanded the possibility for the buyers acquiring assets to pay part of their liabilities against the FNM or the Slovak Land Fund, by FNM bonds.

The Act no. 211/1997 of the Collection of Laws – the amendment allowed to pardon interest in instalment sales and expanded the possibility of using FNM resources, subject to provisions of other legal norms.

The finding no. 221/1998 of the Collection of Laws by the Constitutional Court of the Slovak Republic decided that the provisions related to placing a designated group of persons at an advantage in acquisition of FNM bonds were unconstitutional.

The Acts of the NR SR passed during the term of the Government headed by M. Dzurinda

The Act no. 253/1999 of the Collection of Laws – specifies the list of companies having the nature of natural monopolies and stipulates that the Government will always decide about their sale after receiving the position of the National Council of the SR and gives a list of companies where a permanent stake of 51 percent must be retained by the state.

The basic laws making provision for the process of large privatisation include also the SNR Act no. 253/1991 of the Collection of Laws on the jurisdiction of the SR bodies in matters of transfer of state assets to other persons and on the FNM, as well as its amendments - the SNR Act 501/1991of the Collection of Laws, the SNR Act 29/1992 of the Collection of Laws, and the NR SR Act no. 17/1993 of the Collection of Laws.

For the sake of completeness, we give other legal regulations, which have the nature of implementing regulations. This category includes the decrees of the Government, both federal and national.

The Decree of the Government of the ČSFR no. 383/1991 of the Collection of Laws on the issue and use of investment vouchers and its amendment no. 69/1992 of the Collection of Laws. They were abided by in the first wave of privatisation. The provisions of the decree were abolished and related with the Government Decree of the Slovak Republic no. 134/1994 in connection with the establishment of the Slovak Republic.

The Decree of the SR Government no. 134/1994 of the Collection of Laws on the issue and use of investment vouchers - governs the issuance and registration of voucher books, privatisation waves and privatisation rounds, and also the procedure in ordering stocks or transferring investments points to investment funds. The Decree was amended by the SR Government Decree no. 235/1994 of the Collection of Laws of Statutes, no. 190/1994 of the Collection of Laws of Statutes, no. 139/1996 and no. 77/1997 of the Collection of Laws of Statutes.

The Government of the SR Decree no. 273/1991 of the Collection of Laws – on exemption from § 45 of the Act no. 92/1991 of the Collection of Laws enabled state companies, state financial institutions, state insurance companies and other organisations, with the exception of budgetary and contributory organisations, to conclude in addition to usual economic management, contracts of recompense

transfer of state property to which they have a right of management - where these concern unnecessary stock, assets of gradual consumption (up to 5000 KČS), basic assets having the net book value of up to 25 thousand KČS, vehicles older than 5 years, some movable assets located within the real property, surrendered subject to the Act no. 403/1990 of the Collection of Laws, or functionally connected to such a real property. It was amended by:

- the Decree of the SR no. 430/1992 of the Collection of Laws, which stipulated that the price in transfer of apartments to their tenants or of an apartment house to the apartment tenants, must be set by an authorised expert;
- the Decree of the SR Government no. 144/1993 of the Collection of Laws, which extends the exemption, subject to which contracts of recompense transfer of state assets may be concluded, to real property for location of a consulate office of a foreign state, international Government organisation or an institution, which subject to international law, is treated as one holding diplomatic privileges and immunities, with a proviso of a prior consent by the Ministry of Foreign Affairs of the SR;
- the Decree of the SR Government no. 151/1993 of the Collection of Laws, which further extends the exemption from § 45, by for instance, a possibility of a company to set up a limited liability company in the Czech Republic and to set apart funds totalling 100 thousand KČS for the purpose. It also assigned the ministers and the top managers of central bodies of state administration an obligation to submit applications for granting other exemptions from §45 par. 1 to the Ministry of Finance of the SR for approval, subject to prior consent by MSPNM SR, where it concerns the recompense transfer of tangible assets of the net book value of up to 5 million SKK. Where it concerns a recompense transfer of agricultural real property, the prior consent by the Slovak Land Fund is required. In the remaining cases, the applications had to be approved by the Government of the SR.

In order to get a full picture of the legislative framework defining the rules in the process of privatisation, we will also touch on some other relevant legal regulations.

2.2.2.1 Some related legal regulations pertaining to the process of so-called „large privatisation"

The Act no. 513/1991 of the Collection of Laws – The Commercial Code – this law defines the position of entrepreneurs, trading companies, trading liabilities relations, as well as some other relations related to carrying out business.

The Act no. 600/1992 of the Collection of Laws on securities – defines the system of securities, the contracts on securities, securities trade and the protection of the financial market.

The Act no. 248/1992 of the Collection of Laws on investment companies and investment funds - stipulates the activity of investment companies and funds, the protection of investors, and the state supervision over investment companies and investment funds.

The Act no. 192/1995 of the Collection of Laws – on securing strategic interests of the state in privatisation, which excluded some companies from privatisation. It concerned mainly energy networks, but also some other enterprises. In reality, however, the law did not affect privatisation because the Government excluded from privatisation only those enterprises, which they did not intend to privatise. This piece of legislation introduced the institute of "golden share", which had not been effective in practice and it was later confirmed that it was not consistent with the constitution of the SR.

A special position among related legal regulations is held by the Act no. 370/1994 of the Collection of Laws on repealing the decisions of the Government of the SR on privatisation of enterprises, parts thereof, and state share through direct sale, that were issued by the Government of the SR between September 6, 1994 and December 21, 1994. Ever since this act was announced, its unconstitutionality was apparent, which was confirmed by the ruling of the Constitutional Court of the SR of May 24, 1995, no. 126/1995 of the Collection of Laws. The effect in full scope was repealed on the date of the statement, but the FNM SR did not implement the decisions which were originally contained in the cited law.

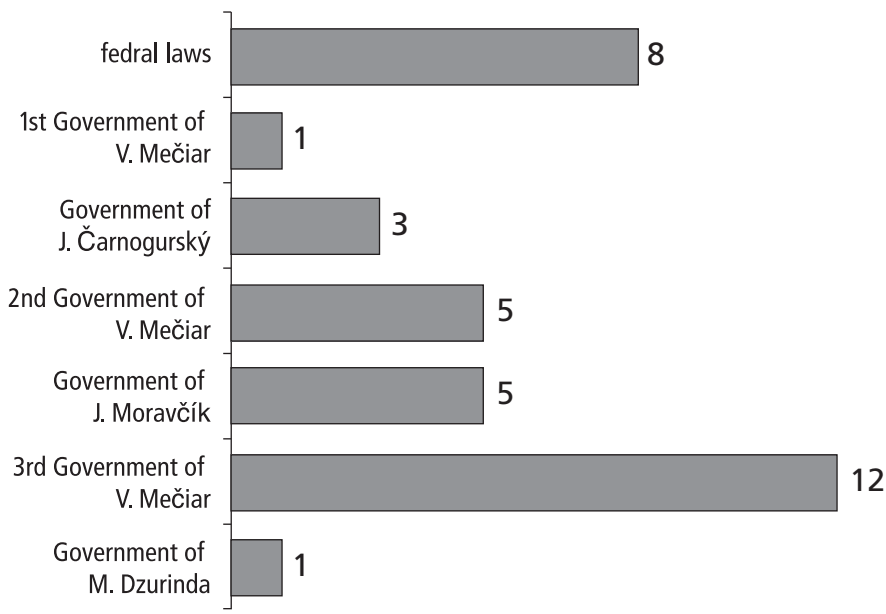
Last but not least, we should note that the process of large privatisation was governed also

by a number of guidelines, directives, edicts issued by MSPNM SR and the FNM SR, or the MF SR These fixed the principles, procedures, and terms in assessing best bids for public tenders, procedures for handling assets in liquidation, and for ways and terms in appraisal of assets and also gave model auction procedures.

The area of privatisation is definitely one area of economic policy entailing most legislative changes, which is apparently linked to its role in the transformation of economy. Perhaps no other area (except social) has gone through so many legislative changes as the area of privatisation, considering the number of legislative amendments adopted to the principal law on privatisation process and not insignificant number of associated implementing regulations.

This considerable number of amendments and changes indicates a lack of stability in the legislative framework. In characterising these amendments we may note that these have brought partial or provisional changes of the conditions of privatisation or the powers of the SR bodies. This situation has made the decision making of the potential investors - both domestic and foreign (though not numerous) - much more difficult because they had to constantly watch out for them and evaluate their impact upon their own intentions. We may put it simply, that frequent changes to the rules of the game increased input costs, that became irredeemable.

Figure 1 – Number of legislative changes by individual Governments



Source: M.E.S.A.10

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3. SMALL PRIVATISATION

Oľga Reptová

3.1 CHARACTERISTICS

On the whole, small privatisation can be considered technically, organisationally, and as to its scope, a less demanding stage of privatisation. It does not hold that it would be of less importance. It became a kind of vanguard and foundation of the privatisation process. It is also a stage that preceded the process of principal complex transformation of ownership relations in state property. It was directed, among other things, towards creating conditions for the rise of small or medium size businesses.

Small privatisation was directed primarily at the privatisation of the retail network, services, and small production facilities. Small privatisation also ensured transformation of the ownership relations in respect of basic means and stock, which comprised a substantial part of the operating units (OU) being privatised.

The difference between the small and large privatisation was in both the subject of privatisation and the persons, who could participate in the process. While the subject of small privatisation was only movable and immovable objects without the rights and liabilities being transferred, in large privatisation the subject of privatisation was the assets of the enterprises as a whole or a part thereof, including the rights and obligations. The transferee of the privatised assets in small privatisation could only be national subjects, in contrast to the assets transferees in large-scale privatisation, who can , be both nationals, or foreign subjects.

In implementing small privatisation, the settlement of obligations and liabilities was tied to the privatised assets causing problems. The title to them could not be transferred to the transferee under the legislation in force then (the Act no. 427/90 of the Collection of Laws), since the subject of small privatisation were only tangible and intangible things without the rights and obligations.

The intent of the process of small privatisation was also to demonopolise with the objective to significantly raise the quality of service in areas serving the consumer. The fact that it had not been always successfully achieved is seen in frequent changes of the owners of the operating units, rises in prices of goods, and the standard of service not always adequate to the prescribed norms.

In principle, however, the process of small privatisation is assessed as being very successful not only in the view of demonopolisation accomplished of such integrated units as were, for example, *Zdroj, Drogérie, Odevy, Textil* (the process of atomisation of trading and catering units came under intense criticism by many "socialist" experts), but, particularly, from the economic aspect.

Today, almost ten years after the inception of the process of small privatisation, one can encounter also many original privatising subjects - capable businessmen, who recruit primarily from the salesmen, hotel keepers, who have subscribed their lives to this way of doing business.

3.2 PUBLIC AUCTION

The sole institute through which assets were sold in small privatisation, was public auction, governed by the Act no. 427/1990 of the Collection of Laws, and the details being defined in the Decree no. 568/90 of the Collection of Laws of MSPNM SR on public auctions in transfers of state title to other legal persons and on the entry fees to these auctions, with changes and amendments effected by MSPNM SR Decree no. 479/1991 of the Collection of Laws. We need

to note that in making the legal framework, a model was used which allowed to make use of the institute of the "Dutch auctions", i.e., with the participation of minimum five competing bidders, the auctioneer is gradually decreasing the initial auction price, always by 10% at a time, but not more than 50% of the initial auction price, or, in repeated auctions, not more than by 80% of the initial auction price.

In the so-called first round of the public auction, only Czecho-Slovak subjects - physical persons that proved their national citizenship after February, 5 1948 and also legal persons, whose shareholders or partners were exclusively such physical persons, could take part.

3.3 THE COMMISSION FOR PRIVATISATION OF NATIONAL PROPERTY

An important element in the process of small privatisation was played by an umbrella body reSPonsible for the organisation and institutionalisation of this process. The legal framework of this institute was given in the Act of the SNR no. 474/1990 of the Collection of Laws on the jurisdiction of bodies of the Slovak Republic in matters of transfer of state property onto other legal or physical persons, with changes and amendments made by SNR Act no. 501/1991 of the Collection of Laws. The Ministry for Administration and Privatisation of National Property, and commissions for privatisation of National Property were designated as competent authorities to act in this process.

MSPNM SR set up one commission for each district and also for Bratislava, the capital, and Košice. The commissions prepared draft lists of the operating units (OU) that had to satisfy the requirements stipulated in the Act 427/1990 of the Collection of Laws. Transparency was a necessary component of the process, safeguarded by the fact that the lists of OU had to be posted 30 days prior to the date of the public auction. The background materials to the lists were submitted by the relevant authorities - in the given case either the Ministry of Trade and Tourism, Ministry of Interior , or municipalities. The commissions held talks with the relevant municipality about the draft lists. The draft lists were confirmed by MSPNM SR, subject to prior talks with the founding or establishing parties of the OU or the Ministry of Interior.

As for composition of the commissions, MSPNM, when pursuing law to appoint members of the commissions, was *guided mainly* by the proposals made by the district offices. Regard was taken to have primarily district office officials, organisations associating entrepreneurs, the Association of Cities and Communities, and relevant trade union authorities represented on the commissions. The list had to be posted at the official bulletin board of the relevant district office.

3.4 THE COURSE OF ACTION OF AN AUCTION PARTICIPANT

The auction bidder was obliged to deposit an auction guarantee, which was set at 10% of the initial auction price, and this was placed in the designated account of the relevant financial institution (in Slovenská sporitelňa, a.s.), not later than on the date of the auction. Where the bidder was successful in the public auction, he was obliged to pay the price achieved in the auction, with the auction guaranty being deducted from it, not later than within 30 days from the date of the auction.

Where the winning auction bidder did not paid the price for which he acquired the auctioned OU within the set period, the transfer of the title to the auctioned item was rendered void from the start, and the auction guarantee fell to the relevant authority, in this case MSPNM SR. In such case, the OU was put on auction again.

As the OUs being sold were mostly related to the area of trade and tourism, stocks had to be addressed as well. There were not part of the price, but an obligation was defined to pay for them within 30 days since the date of the auction. In a number of cases, manipulation with stocks and the equipment of the OU occurred, which was made possible by the law not stipulating an obligation for the transferee to carry out physical inventory.

Where the building in which the OU was located was not part of the auction, the winning bidder had a right by law to lease the relevant non-living space for a period of first two, and later, five years.

3.5 TIME COURSE AND RESULTS

The process of small privatisation, as well as the whole privatisation process was accompanied by stormy discussions already at the time when the legislative framework had been made, both in the Parliament and in public. Agitated discussions

Table 2 – Summary survey of auctions in the SR (including Dutch auctions) effected subject to the Act no. 427/1990 of the Collection of Laws, as later amended.

Lease				**Buildings**			**Buildings + land**			**Total**		
	Number of Ous	Initial auction prices in (000) SKK	Final auction prices in (000) SKK	Number of OUs	Initial auction prices in (000) SKK	Final auction prices in (000) SKK	Number of OUs	Initial auction prices in (000) SKK	Final auction prices in (000) SKK	Number of OU	Initial prices auction in (000) SKK	Final auction prices in (000) SKK
Bratislava												
1991	465	64, 998	229, 440	19	10, 973	23, 261	45	127, 530	164,289	529	203, 501	416, 990
1992	256	37, 830	320, 024	31	184, 309	197, 737	35	284 ,748	299, 917	322	506, 887	817, 678
1993	5	3,077	6,286	2	3,362	13, 749	1	1,182	2,807	8	7,621	22, 842
Total	726	105,905	555, 750	52	198, 644	2, 344 ,747	81	413, 460	467, 013	859	718, 009	1, 257, 510
Forfeited auction guaranty				of OUs:	Number	121	Value in thousand SKK: 6,446					
West-Slovakian Region												
1991	1,052	82, 658	229, 411	407	450, 881	552, 516	686	1, 669, 975	1, 885, 412	2,145	2, 203, 514	2, 667, 340
1992	341	32, 773	164, 053	79	285, 435	240, 819	201	1, 588, 083	1, 340, 222	621	1, 906, 291	1, 745, 094
1993	3	458	1, 161	1	2,766	2,600	9	24, 596	28, 348	13	27, 820	32, 109
Total	1,396	115, 889	394, 625	487	739, 082	795, 935	896	3, 282, 654	3, 253, 982	2,779	4, 137, 625	4, 444, 543
Forfeited auction guaranty				of OUs:	Number	182	Value in thousand SKK: 23, 150					
Central-Slovakian Region												
1991	1,352	111, 910	277, 552	489	685, 832	701,564	806	2 ,064, 708	2 ,337, 342	2,647	2, 862,450	3, 316, 458
1992	266	27, 314	82, 413	68	261, 983	234, 786	145	688, 493	674, 828	479	977, 790	992, 027
1993	3	40	292	0	0	0	2	1, 713	4, 864	5	1, 753	5, 156
Total	1,621	139, 264	360, 257	557	947, 815	936,360	953	2, 754, 914	3, 017, 034	3,131	3, 841, 993	4, 313, 641
Forfeited auction guaranty				of OUs:	Number	223	Value in thousand SKK: 12, 440					
East-Slovakian Region												
1991	1,408	119, 145	353, 617	173	187, 927	217,242	570	1, 613 ,231	1, 604, 652	2,151	1, 920 ,303	2,175, 511
1992	441	50, 960	222,148	60	304, 986	230, 394	230	1, 338, 405	1, 289 ,829	731	1, 694, 351	1, 742, 371
1993	7	2,245	4,589	1	7,900	7,900	8	19, 061	20, 204	16	29, 206	32, 693
Total	1,856	172 ,350	580, 354	234	500, 813	455, 536	808	2 ,970 ,697	2, 914 ,685	2,898	3, 643, 860	3, 950, 575
Forfeited auction guaranty				of OUs:	Number	262	Value in thousand SKK: 30 ,178					
Slovakia												
1991	4,277	378, 711	1, 090, 020	1,088	1, 335, 613	1, 494, 584	2,107	5, 475, 444	5, 991, 696	7, 472	7, 189, 768	8, 576, 300
1992	1,304	148,877	788,638	238	1, 036, 713	903 ,736	611	3, 899, 729	3, 604, 796	2,153	5, 085 ,319	5, 297, 170
1993	18	5,820	12,328	4	14 ,028	24, 249	20	46 ,552	56 ,222	42	66 ,400	92, 799
Total	5,599	533,408	1,890,985	1,330	2 ,386, 354	2 ,422, 569	2,738	9, 421, 725	9, 652, 714	9,667	12,341, 487	13, 966,
269												
Forfeited auction guaranty					Number	788	Value in thousand SKK: 72, 214					

Source: MSPNM SR, 1999

Figure 2 – Aggregate final auction prices in small privatisation in the SR in billion SKK

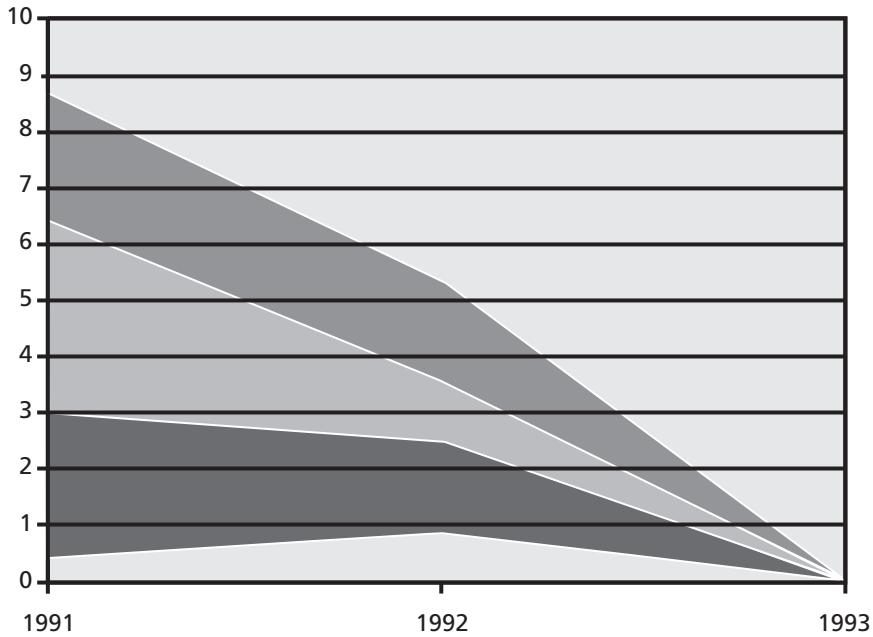

Fig: M.E.S.A. 10, **Source:** MSPNM SR

became even more violent when OUs were publicised or proposed for inclusion in the privatisation lists.

Not a day lapsed without potential businessmen streaming to the ministry for privatisation or delegations from state enterprises, which were immediately "touched" by the OU lists. These groups filed new requests - from the circle of potential entrepreneurs - for additional inclusions of OUs in the lists and, on the other hand, from the ranks of state enterprises delegations, for withdrawals from the lists of those OUs, which might become healthy core for new forms of "post-privatisation" society.

It is true that we may argue even today about some views on the matter, when for example, the new domestic business stratum in trade sharply criticised the possibility of foreign capital to enter this area, on the grounds of so-called protection of domestic production and price accessibility. This group would not admit that the scarcity of domestic capital would eventually entail technological backwardness of the whole retail distribution and would not ensure improved standards of services (e.g. the introduction of bar coding, packaging of foodstuffs, etc.).

Officially, the small-scale privatisation commenced on February, 14 1991 and ended on March, 1 1994 with the decisions by MSPNM SR on dismantling the Commission for Privatisation of National Property, based in Bratislava, and on ending the process of small privatisation subject to the Act. 4271990 of the Collection of Laws , as later amended.

The transformation of the property in the small privatisation was connected with negative phenomena as well, particularly related to unsettled ownership relations to the property placed on auctions, to auctions of leases of non-living spaces, (without real property being transferred, and securing protection of interest), and they also stemmed from the imperfect legislation. The ramifications of the so-called "gaps" in the law are still handled by the courts and it is not possible to estimate the time by which these legal disputes will have been resolved.

With regard to the above situation, the new management of MSPNM SR strove to submit an amendment to the Act no. 427/1990 of the Collection of Laws in 1999. The purpose of this amendment was to introduce a term, within which the winning bidder could still seek to make the auction act void through court. The proposal, however, was overruled and many bidders will

Table 3 – A recap of the financial resources usage from a special account of MSPNM SR in 1996

Purpose of the use:	Financial sum in SKK
Down payment of part of the principal of the loan on behalf of Považské Strojárne (machinery producer)	180, 387, 540.98
Payment of interest on behalf of Považské Strojárne	12, 346, 679.85
State Housing Development Fund	2, 000, 000, 000.00
Down payment of interest yield of the FNM SR bond	166, 445, 787.06
Down payment of part of the principal of the bond for half- year	240, 000, 000.00
ZVS Dubnica - down payment of principal	20, 338, 301.40
ZVS Dubnica - dawn payment of interest on the loan	4 ,912, 438.36
Interest yield on the bond – taxation	96, 588, 333.00
Total taxes for interest yields for first half of 1996	46, 417, 784.00
Debts on behalf of ZSNP (FNM SR guarantee)	362, 709, 000.00
DMD Holding – equity deposit, increased equity	2, 610, 000, 000.00
For promotion of MTZ SPort	225, 100, 000.00
AGROBANKA Prague – transferee of KB	5 ,390 ,077.06
FNM SR bond (for debts of conv. companies)	277, 420, 636.80
Share of interest net for the FNM SR bond against KB for 2nd half-year	78, 770, 759.55
Down payment of part of FNM SR bond (through DMD Holding)	2 ,146, 050, 000.00
Redemption of part of principal of the bond (from term deposit)	400, 000, 000.00
Payment for interest yield through transferor of DMD Holding	23, 000, 000.00
Total financial outlays for 1996	8, 895, 877, 338.06

Source: FNM SR, 1999; own calculations M.E.S.A. 10

have to continue bearing the business risk, many times due to their imperfect decision.

Within small privatisation, there were 9, 667 OUs sold through public auction, whose net book value amounted to SKK 12.3 billion and the overall amount achieved in auction was almost SKK 14 billion.

The process of small privatisation mostly affected state enterprises of the sector of trade and tourism of the SR, where of the total number of 8,408 OUs, 6,554 OUs, or 74.8%, had been privatised, 1,854 OUs had been surrendered within restitution and a part had been abolished. Within the Ministry of Soil Management, 54 OUs had been auctioned (of which the major part concerned bakeries, confectioneries, mills, breweries, malt plants, soda plants, etc.). In the sector of the Ministry of Culture 105 OUs had been auctioned - book shops, 46 OUs had been surrendered to original owners and 44 shops had been liquidated.

A summary survey of auctions (including Dutch), by individual years, and by former regions, shows that more than three-fourth of OUs, i.e., 77.3% had been auctioned in 1992, 22.3% in 1993, and only 0.4 % in 1994.

Table 4 – A recap of the financial resources usage from a special account of MSPNM SR in 1997

Purpose of the use:	Financial sum in SKK
Settlement of liabilities of state enterprise Kysucké Drevárske Závody	164, 821, 000.00
SHDF - reimbursement of the term deposit	690, 000, 000.00
SHDF - reimbursement from repurchase	250, 000, 000.00
State Housing Development Fund (SHDF)	60, 000, 000.00
Raising equity of DMD Holding, a.s.	420, 000, 000.00
Development program - aircraft engine DV - 2 (Považské strojárne, a.s.)	61, 522, 452.16
Development program „MTZ of the Slovak sport"	230, 000, 000.00
Development program – State Fund of Culture-Pro Slovakia	124, 500, 000.00
Development program – biotechnology, Ministry of Soil Management SR	105, 000 ,000.00
Tax transfer for 2-nd half of 1996	43 ,518 ,340.00
Tax transfer for 1-st half of 1997	18, 084 ,646.00
KB bond - principal (payment from REPO SP. a.s.)	240, 000, 000.00
KB bond - interest (payment from REPO SP, a.s.)	102 ,479, 359.08
ZVS Dubnica debt - principal, int. II. Q. (from REPO SP, a.s.)	11, 655 ,452.00
Total financial outlays for 1997	2 ,521, 581, 249.24

Source: FNM SR, 1999, own calculations M.E.S.A. 10a

Table 5 – A recap of the financial resources usage from a special account of MSPNM SR in 1998

Purpose of the use:	Financial sum in SKK
Ministry of Construction and Public Works – State housing development program	500, 000, 000.00
AUTO MARTIN, a.s., – Development projects of the automobile production in Martin	100, 000, 000.00
Payment of FNM SR bond yields for debts of converted enterprises	88, 136, 651.48
Total financial outlays for 1998	688, 136, 651.48

The financial means collected from small privatisation were revenues of a special account of MSPNM SR, which was not part of the State Budget. The Act SNR no. 474/1990 of the Collection of Laws, as later amended, defined the following uses for these resources:

- satisfaction of claims, that could not be satisfied from the proceeds of the liquidation of state enterprises;
- provision of financial payments to claimants, subject to the Act no. 403/1990 of the Collection of Laws, as later amended, on mitigation of consequences of some property related wrongs („small restitution" law) ;
- financial provision of activities of privatisation commissions;
- repayment of credits and severance pay which could be proven as related to the operating

units transferred in the ownership of other legal or physical persons;
- provision of financial compensation to those subjects in respect of whom the enterprise had been liable for faults at the time of the liquidation of the enterprise;
- reimbursement of costs to support transfer of state property, in compliance with the „small privatisation law" (427/1990 of the Collection of Laws).

In accord with the Act no. 92/1991 of the Collection of Laws, as later amended, the resources were transferred from special account of MSPNM SR to the account of the FNM between 1993 and 1998, at a total volume of SKK 12.1 billion in the following way:

1993: 7.0 billion SKK
1994: 0
1995: 1.0 billion SKK
1996: 3.0 billion SKK
1997: 0.5 billion SKK
1998: 0.6 billion SKK

In the period between 1991 until February 1996, the FNM SR had narrowly defined possibilities to use the resources (§ 28, par. 4 of the Act no. 92/1991 of the Collection of Laws, as later amended), and only the amendment of the Act no. 56/1996 of the Collection of Laws extended the use. The following table gives an overview of uses for these resources:

As the above overviews show, the resources gained from small privatisation have been effected for the very purposes, defined in 1994. In most cases, they concern so-called recovery processes in the economy, which, however, did not bring the desired effect. (A more detailed assessment will be given in the chapter on the FNM SR.) Only in a few cases, or only a small portion of the resources was used also for the pursuit of state interests in supporting health care, culture, agriculture and housing development. They were not used at all to support and develop small and medium-size businesses.

In connection with the use of proceeds of small privatisation we need to note that subject to provisions of the law governing the use of fund's assets, an amount of SKK 1,051.2 billion was transferred to municipalities over the course of the years 1993, 1994 and 1999, as a 25% share in the overall net proceeds of the sale of OUs, which were in the founding jurisdiction of municipalities and authorities of local state administration in individual districts.

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4. LARGE-SCALE PRIVATISATION

Oľga Reptová, Martin Valentovič

4.1 CHARACTERISTICS

Large-scale privatisation has always been considered a more challenging part - as to its technical, organisational aspects, and, last, but not least, as to the volume of property. With simplification, people referred to it as the privatisation of large enterprises. In the right sense of the word, it was a transfer of property that had to be clearly and accurately documented through privatisation projects. The questions of its potential to raise capital for the development, to ensure competent management, and in many cases, also new production program, were also being highlighted. It was and still is "large" privatisation.

In large-scale privatisation were included all state enterprises and other state organisations, such as budgetary and contributory, (which the law commonly denotes using a generic term "enterprise"), ownership interest in business of legal persons, which for this purpose had been put on the lists, approved by the Government as early as in 1991. To make the process of large privatisation smooth and flexible, it was divided into two waves, with accompanying division of enterprises into two groups.

4.2 PRIVATISATION METHODS

In the process of large privatisation standard methods, a non-standard method and a combination of a standard and non-standard method have been used.

4.2.1 Standard methods

We call them standard because they have been tested and commonly applied in the world. In most cases and under normal conditions, they are characterised by transparency, possibility of gaining maximum financial effect, possibility to attract foreign capital, openness to a wide circle of bidders, and by availability of the same information to all, equal conditions applicable to all and a necessity to be carried out in a way which would pursue the principles of free and fair competition.

In the process of privatisation following methods have been and still are being used:

- direct sale (to a pre-designated bidder),
- public auction,
- public tender.

The selection of a particular method depended and will still depend upon the intend pursued by privatisation. Each method possesses its own specific features.

4.2.1.1 Direct sale

Direct sale to a pre-designated bidder is such a form of selling property or a stake, in which sale is effected on the basis of approval of a privatisation project by the Government or on the basis of a decision on privatisation. The very title of the method conjured up distrust against its features, which are: high risk of non-transparency and a low measure of competition.

For the process of privatisation a principle was adopted to use this method in the beginnings (we mean the beginning of privatisation) when there is not a potential bidder interested in the privatisation of the given property or enterprise, using other standard methods. In many cases, this method has turned into a kind of simplified system of public tender (submission of competing projects). It is also evidenced from the material which was approved and put in practice at MSPNM SR early in 1992. The methodological guidelines titled the *Rules of procedure in*

selecting partners in the process of large privatisation were published in the Bulletin of MSPNM SR no. 1/92 and contained the assessment criteria for competing projects.

The method was also applied in cases where the restitution claimant applied to buy the remaining part of property, where there was favourable bid for an entity facing liquidation, or where the sale concerned small enterprises, or parts thereof, by employees, or the management in those cases, where the organisation of other standard methods would be inefficient.

An important principle in applying the method was "setting" the market price in the privatisation process, in addition to the acquisition price proposed by the bidder. (This principle, however, was not upheld in the whole process.) As this method has its weaknesses as well, which relate particularly to its non-tranSPparency and a potential for political abuse, and since it ranks among non-standards methods, it was used very purposefully by individual Governments.

4.2.1.2 Public auction

A public auction within the process of large privatisation is a sale of state-owned property privatised in a public way, at a set date, to a non-specified number of bidders. These bidders, however, have to satisfy conditions which are defined for participation in a public auction. The bidders advance their price bids, while the initial price is equal to the net book value of the property. The property designated for sale will be sold by a gavelling of the auctioneer to the auction bidder offering highest price.

This competitive method is applied exclusively in those cases, where the price is one of the most important privatisation parameters, i.e., when maximum financial effect is sought. The benefit of the method is its relatively unchallenging realisation and speed. A certain disadvantage is in the possibility to use only one criterion, the price.

Auctions have been the least frequently used method in large-scale privatisation. One of the reasons why they could not be employed in the sale of large enterprises was the payment of the auction price within 30 days from the date of the auction (without a possibility to use payment by instalments). This reason was also one of the major problems deciding whether the method would be used or not in any particular case.

4.2.1.3 Public tender

The method of public tender is thought to be the most transparent and also most advantageous method, offering competition and access to a broad circle of entrants.

The basic principles of public tendering include:

- the duty for all participants to follow generally binding legal regulations in its implementation,
- a need to access the same information and provide equal conditions to all entrants,
- selection of the most suitable bid is done while upholding the principles of free and fair competition and equal treatment of all bidders.

The sale of enterprises by this method has two stages:

Before the tender is called, conditions and criteria of the competition are determined, unless they are given in the decision on privatisation, and at the same time, weight for individual criteria is proposed; particulars are given on the appointment of members of the commission for recommending the most adequate bid, elaboration of the "information memorandum" as the basic source of information on the enterprise or a part thereof, intended to be sold, including the information on the enterprise, instructions on procedures in submitting competitive bids, sample contract for conclusion of future contract, criteria and their weight, the appendices, announcement of tender through a classified advertisement published in at least two national dailies.

After the tender has been called, arrangements are made to hand over information memoranda to the entrants interested in taking part in the tender, under the terms given in the advertisement calling the tender; to organise exhibition of the property to be sold for the bidders; to collect bids; to hold the session of the commission for recommending the most appropriate bid and evaluating satisfaction ofthe terms against the set criteria; to prepare materials necessary for the bodies that will make the decision about the result of the tender; and to announce the result to all bidders.

4.2.2 Non-standard methods

Voucher privatisation was a non-standard method of privatisation which was applied in our country. Under non-standard methods there are non-existent market institutions, the price structure is distorted, the function of money is

restricted, the legal prerequisites are inadequate, etc. These methods are specifically "tailored" to particular conditions of a given state.

The basic idea of the voucher privatisation was the transformation of a substantial portion of state-owned enterprises in joint stock companies and a gratuitous handing over of their shares to population in return for no money, but rather so-called investment vouchers. This method was opted for mainly on the grounds of its speed ýand low capital intensity.

The most respected principle in the voucher privatisation was that of equal conditions and, to a lesser extent, equality in property distribution. It did not create scope for corruption. (Despite this, even voucher privatisation was associated with corruption and incorrect conduct but not directly in the process of distributing property but in the accompanying processes, such as, the management of property).

Each participant got 1000 points and he could apply them in relation to each privatised company. Nobody knew in advance what the demand for shares will be of individual joint stock companies, equally, nobody knew what their actual market value will be. Thus it was not possible to gain, in any way, a more privileged position.

4.3 THE PRIVATISATION PROJECT

The transfer of the property is effected either according to an approved privatisation project of the enterprise concerned, or an approved privatisation project of the property interest of the state in business activity. The privatisation project of a company, as an operative instrument of denationalisation and privatisation, is a sum of economic, technical, property, time and other data. MSPNM SR produced a sample privatisation project.

The institutor (founder) is responsible for the elaboration and completion of privatisation projects. As a rule, the to-be privatised company prepares the draft privatisation project. It can also be prepared by another subject. In that case, the company concerned has to take a stance.

The institutor could also opt to impose elaboration of the draft privatisation project on the company. The draft privatisation project must be debated with the company’s trade union organisation.

The institutor evaluates privatisation projects and, without unnecessary delay, submits them to MSPNM SR, together with its stance. The ministry approves the projects and publicises them in daily press, special publications designated for the purpose, on television. In those events where enterprises or parts thereof, were sold directly, without a public tender or a public auction, the privatisation projects were approved by the Government.

4.4 THE FIRST WAVE OF PRIVATISATION

The first wave of privatisation was characterised primarily by the application of the non-standard method. We can also call it the wave of voucher privatisation. Subject to the Large-scale Privatisation Act, the privatisation wave was defined as a time interval, the beginning and the end of which was set by the Federal Ministry of Finance, and during which, owners of investment vouchers may either directly, or through investment privatisation funds, apply their right to buy shares.

4.4.1 The principles for making lists of companies earmarked for privatisation

The first wave of privatisation began in 1991 and its framework was stipulated in the Government principles for making draft lists of companies and ownership interests of the state earmarked for privatisation (further referred to as "Principles") of June 1991, which were approved on the basis of the provisions of the so-called "large" privatisation law. The principles included also the periods within which lists were to be submitted to the Government and the periods within which privatisation projects were to be submitted to the relevant authorities.

The basic principles included:

- the principle according to which the lists also included the enterprises whose operating units were subject of small privatisation,
- the principle according to which the lists did not include enterprises proposed by the institutor for liquidation,
- the principle of identifying those enterprises in which it would be desirable that, after transformation, the state should keep full or decisive control, while giving reason for it,

- the principle of identifying those enterprises that were in charge of providing material and mobilisation reserves,
- the principle of identifying the basic data the list should contain (e.g. stipulation of the property that could not be privatised, stipulation of the percentage share of property that should be privatised through investment vouchers, and the data about the wave of privatisation in which the company should be included).

In inclusions of enterprises for individual waves of privatisation, heed had be made particularly of the size of the company and the price of the privatised property, the possibility of restitution claims lodged by authorised claimants, territorial distribution , as well as the branch structure.

In order to raise the assets of the Restitution Investment Fund (RIF) a principle was adopted to set aside 3% of each enterprise proposed for privatisation for this fund that would then satisfy restitution claims, with the exception of potential participation of foreign capital. In the timetable of terms for submitting the lists of companies and ownership interests of the state, most important were the deadlines for submitting privatisation projects to MSPNM SR or the Government, namely, 30 November 1991 in respect of the first wave of voucher privatisation, and July, 31 1992, for the second wave of voucher privatisation. This denotation began to be used with respect of voucher privatisation although they were meant to cover broader definition, i.e., also use of standard methods.

Another important principle was to quantify the volume of assets to be offered in voucher privatisation, which could be defined using the form of balance method. This relied in expressing the value of the enterprise assets according to the data recorded in statements of accounts, with the price of land added to it. In the event of a particular foreign investor showing interest to enter, it was necessary to enclose an ad valorem appraisal of the assets, using the so-called market method. (A precondition for inclusion of an enterprise in the list of companies earmarked for direct sale to foreign investor, was submitting a letter of intent concluded with foreign investor.)

In order to ensure time, substantive, and organisational schedule for the first wave of privatisation, it was also important to specify the volume of assets designated for privatisation by the following terms: by August, 31 1991 for the first and by April, 30 1992, for the second wave.

The enterprises which did not manage to develop a realistic co-operation with a potential foreign investor, or which were not included in the list for sale to a foreign investor by their institutor, were streamlined for voucher sales, with at least 30% of their equity capital.

4.4.2 The time course and the results

To guide the process of large privatisation, on August, 13 1991, the Government approved the lists of companies and state ownership interests included in the first and second waves of privatisation. The list show that for the first wave 736 companies were selected. A more detailed specification of October, 4 1991 sets the number of companies included in the first wave at 751 companies and the value of state ownership interest at 166.5 billion Czechoslovak crowns, with the property value of 101.5 billion crowns earmarked for the voucher privatisation. MSPNM SR began evaluating the privatisation projects on 5 December 1991.

We will deal with the evaluation of the voucher method of privatisation in chapter 4.4.3.

Over the course of the first half of 1992, 181 privatisation projects were approved by the Government for direct sale to a pre-designated bidder. As this was a non-competitive form of the standard method, there was a mechanism in place at MSPNM SR, which turned this method of privatisation into a simplified system of public competition. The simplified method of public competition contained four principles:

- The principle of free access to the competition was made possible by allowing each domestic and foreign entrant, at a set and publicly announced date, to submit a privatisation project for direct a sale. The list of companies on which privatisation projects could be submitted was made public in advance.
- The second principle was the principle of unified and transparent criteria. In early part of 1992 methodological regulations were approved at MSPNM SR, titled *The Rules of procedure in selecting partners in the process of large privatisation*. These methodological guidelines were published in MSPNM SR bulletin no. 1/92 and contained the criteria for evaluation of competing privatisation projects.

There were eleven of them, the most important of them being the price, investment commitments, employment commitments, vocational schools commitments, commitments related to environment, feasibility, and evidence of financial coverage and others.

- The third principle was the adoption of so-called privatisation protocols. Those workers that evaluated the projects had to sign their selection in witness of their compliance with these binding criteria. Their superiors, too, (section directors, deputy ministers, and also the minister) had to confirm with their signature they had checked compliance with the criteria and bear responsibility for the selection made by their subordinates.
- The fourth principle was an obligation to set so-called market price and express it as a figure. In September 1991, *the Expert appraisal and assessment standard for the needs of conveyancing state property to other persons* was adopted, in accordance with the Act no. 92/1991 *of the Collection of Laws* in the process of large privatisation. A list of firms authorised to determine the market price for privatised companies was also approved and each applicant in privatisation had to present a document, as part of privatisation project, that would confirm that market price was determined. In this way effort was made to preclude sale for a lower than the balance sheet value.

In June 1992, Parliamentary election was held that changed the Government, bringing with it also a change in the concept of privatisation. After June 1992, there remained still 182 unresolved privatisation projects at MSPNM SR, of which 131 were proposed for standard methods, mostly not processed due to deficiencies or incomplete privatisation projects (mainly in the area of furnishing proof of the way property had been acquired by the state).

A new concept was adopted in September 1992, diverging from the original one in the following ways:

- the voucher method was deemed to be marginal,
- standard methods got priority,
- powers of founding ministries were strengthened,
- in standard methods, a commitment was declared to use competitive methods and increase transparency,
- readiness of the Government to privatise for the benefit of attested management,
- an effort to restructure companies before their privatisation ,
- speed was no longer emphasised,
- the weight of price was reduced and the weight of investment and employment commitments was highlighted,
- softening of conditions in sales of property by instalments, when first down payment was reduced from 30 percent of the purchase price to 10 - 15 percent, and the period of repayment was extended from 5 to 10 years,
- possibility to tackle the dubious property at the expense of equity capital,
- mandatory and common deadlines for submissions of basic and competing projects were abolished.

Just as the beginnings of privatisation process had critics, so did this concept. The slowing down of privatisation as a result of the new concept was pointed out, which proved fully true. On the whole, the period from June 1992 until March 1994 has been characterised as a period of stagnation in the process of privatisation.

The results of the first wave of privatisation, which took place in the years 1991 - 1993, are illustrated in the *Overview of the overall number of enterprises and the volume of privatised property in the first wave of privatisation*, which states that the assets of 678 companies of an overall value of SKK 169.1 billion was privatised.

4.4.3 Voucher privatisation

The first wave of large-scale privatisation was characterised mainly by the non-standard method of voucher privatisation. Standard methods were used to a lesser extent.

The voucher privatisation was expected to solve the problems of scarcity of capital in relation to the volume of property offered in privatisation, to ensure a speedy privatisation with an emphasis of compensating citizens through handing out shares free of charge, to enable acceleration of the rise of the capital market, and to increase the knowledge of the population about securities and institutions of the capital market. In addition, the voucher privatisation was expected to create a positive attitude of citizens towards the privatisation process and, last, but not least, it was intended to preclude in a systemic way, the corruption of the

state apparatus and privatisation along party lines. Since the method had never been successfully tested, it was actually an experiment. Its weak aspects included high measure of fragmentation of the property, a large number of shareholders, with the ensuing nameless ownership and abuse by investment privatisation funds. We also need to note that the voucher privatisation was favoured always in respect of those state enterprises, whose management did not have a clear idea about privatisation by standard methods by the date privatisation projects had to be submitted.

The specificity of the methods lies in a speedy and massive transformation of designated enterprises or parts thereof from state ownership in the hands of population. Regardless of financial or other status, each adult citizen could on payment of a symbolic manipulation charge (1000+ 35 crowns) become holder of a voucher book. On the basis of market mechanism, in individual rounds, the vouchers could be exchanged for shares of particular enterprises, either directly or through privatisation funds .

The voucher privatisation was conceived at the federal level. It was decided that it would be run in two waves, which corresponded to two waves of large privatisation. Equally, a decision was made to make the Federal Ministry of Finance (FMF) responsible for the demand side of voucher privatisation while ministries for privatisation of the republics were made responsible for the supply-side of the voucher privatisation.

The core of the market mechanism, according to which individual vouchers worth of the given number of points were exchanged for shares, were privatisation rounds having the following four phases:

- announcing the exchange rate of shares of individual joint stock companies offered in the relevant privatisation round for sale for investment vouchers,
- ordering shares,
- collecting and assessing orders,
- assessing and announcing the results of the privatisation round.

The FMF assessed the results applying the following principles:

- where the aggregate demand for shares did not exceed the aggregate supply, all orders of shares were satisfied;
- where the aggregate demand for shares exceeded the aggregate supply by more than 25%, no order of shares was satisfied;
- unless the aggregate demand for shares exceeded the aggregate supply by more than 25%, the FMF could decide, that the orders made by investment funds would be satisfied only partially, relative to the volume of orders made by individual investment funds. The investment points corresponding to the decrease could be used by the investment privatisation fund concerned in the next privatisation rounds;
- where orders of shares could not be satisfied in any of the above ways, the FMF decided that none of the orders was satisfied and these shares were again offered in the next round. At the same time, it set new exchange rates and ensured their publication. The ministry, too, depending on the development of demand and supply, could decide on ending the sale of shares within a given privatisation round.

Subject to the decree no. 443 of August, 13 1991, the Government of the SR, with comments, approved the lists of enterprises and ownership interests of the state included in the first and second wave of privatisation, and assigned ministers and other heads of central bodies to make the lists more accurate in co-operation with the Minister for Administration and Privatisation of National Property. The deadline for approval of privatisation projects for enterprises of the first wave of privatisation using voucher method set by MSPNM was April, 11 1992. Although the registrations of citizens were in progress from November, 1 1991, the first wave itself began on May, 14 1992 and was completed by the end of 1992.

The FNM SR earmarked assets of 484 joint stock companies worth KČS 90,111,742,000 for voucher privatisation, while the FNM CR earmarked 943 join stock companies worth KČS 206, 424, 419, 000. In Slovakia, 2, 579, 327 citizens lawfully registered (in CR, 5, 942, 851 citizens). Thus, there were assets worth KČS 34, 796 in net book value per one holder of investment vouchers.

What was the actual market value per holder of investment vouchers? According to the analysis conducted by M.E.S.A 10, assessing the average acquisition rates of the selected enterprises in individual privatisation rounds and their average rates in Prague and Bratislava off-exchange RM-System, the ratio of the average share's market

Table 6 – An overview of total number of enterprises (outputs) and the volume of privatised assets in the first wave of privatisation

First wave of privatisation	No of enterprises	Assets (mill. SKK)
Enterprises entering privatisation	678	169, 097
Privatisation outputs	1,010	169, 097
Of which:		
- assets sale	330	12, 428
- gratuitous transfer	116	2,086
- restitution	7	19
- assets placed in joint stock companies	557	154, 564
of which:		
- own equity capital of the joint stock companies		154, 564
of which: basic equity capital		134, 705
contingency and other funds		19, 859
Distribution of stocks in joint stock companies		
- stocks sold by standard methods		3,419
- stocks sold in voucher privatisation		79, 572
- stocks allocated to satisfy restitution claims (RIF allocation)		3,797
- stocks in FNM SR portfolio	47, 737	

Source: MSPNM SR, 1999

price and its corresponding accounting value was 60.5% in Czech Republic and 35.2 % in the Slovak Republic. That means that the average citizen participating in the first wave of privatisation acquired assets of the market value of KČS 18,400.

4.4.3.1 Voucher privatisation and investment funds

In the year 1992, 169 investment privatisation funds were established for the first wave of voucher privatisation. Owing to the confidence of citizens, the investment funds acquired shares in the nominal value of around SKK 55 billion, i.e., 70% of the property privatised by voucher privatisation, which represented a significant economic power within the distribution of ownership rights among scores of small shareholders.

Accordingly, there was a relatively high risk of abuse on the part of investment funds, which could be set up with the aim of speculation or fraud. This risk may be reduced by good laws for the given area, or by exercising state oversight on the part of the Ministry of Finance. Let us give an illustration:

It concerns the second largest investment fund of the first wave of voucher privatisation in the SR - Prvá Slovenská Investičná Privatizačná Spoločnosť Banská Bystrica (PSIPS: First Slovak Investment Privatisation Company Banská Bystrica). This fund attracted 190 thousand investment voucher holders, primarily from among the ranks of pensioners by promising them to buy out shares which the investment vouchers holders would acquire on the basis of investing of the whole voucher book, within one year for a sum of 20 000 crowns. Already this promise, which was not feasible when massively applied, (at the same time the highest among all funds) should alert the Ministry of Finance to be more cautious in supervising the activity of this fund and its manager. It was not the case, and it was only on the basis of a control made on July, 11-15 1994, that the MF SR issued a decision to suspend IF PSIPS from handling property and place it in receivership. The controls revealed that the founder of IPF unlawfully billed a reward of more than SKK 125 million for the management of assets, and there was a faulty reward accounted for the management of the fund in the

year 1993. The fund also paid unlawfully liabilities of the founder in respect of other subjects as well.[1]

The representatives of the economic forces, formed as a result of voucher privatisation in investment funds, comprised so-called "new structures". They were mostly young, market-oriented people, unburdened with the old regime. They had to wage a power struggle with the "old structures", i.e., elements comprising mostly senior management cadres of the socialist era, who remained in their positions even after 1989. Today they are associated in the Association of Employer Unions and Associations. It is logical that these components were directly opposing the voucher privatisation, which was motivated by their reluctance to hand over assets they controlled to any other method, over which they could not exercise direct control. Vladimír Mečiar, then only an in-coming politician with a populist rhetoric, gained immediately their support, as he was speaking up against it ever since 1991 and also against the participation of foreign investors (and against the Lustration Act). He became their main ally against new structures.

4.4.3.2 Further fate of voucher privatisation in Slovakia

The victory of Vladimír Mečiar and his allies in Slovakia in the election of June 1992 brought radical change in the concept of privatisation. While in the Czech Republic the privatisation process continued essentially according to the former rules, in the Slovak Republic, following split of ČSFR, a significantly different development took place. In September 1992, the Government of the SR approved a new concept of privatisation which was based, to a large extent, on denying the hitherto development. The voucher privatisation was thought to be of marginal importance, with a greater emphasis on standard methods and increased powers of sectoral ministries and branches in the privatisation process.

After Mečiar Government was removed in March 1994, the Government of J.Moravčík again set privatisation process in motion along similar mechanism as was the case until June 1992. The process of approving direct sales was accelerated, the preparation of the second wave of voucher privatisation began.

The registration of citizens for the second wave of voucher privatisation began on September, 1 1994. In Slovakia, 3,428,419 citizens registered, which was 1.33 - times the number of those registered for the first wave. The out-going Moravčík Government announced the beginning of the preliminary round for 15 December 1994. This was cancelled by the new Mečiar Government. That was the end of the voucher privatisation in Slovakia.

A definite end of voucher privatisation, however, occurred in 1995 when the laws were passed about its abolition and about restricting the proportion of the property of investment companies and the IPF to 10% in one company. Together with setting the minimum amount of equity capital in an investment company at 20 million crowns and reducing fees for fund administration by 50%, a process of transformation of managed funds into self-governing ones and abolishing investment companies began. At the same time, collective investment in Slovakia was hampered, which the very voucher privatisation was to encourage.

There is no doubt that the voucher privatisation had a number of benefits. Despite this, there are many critics even among renown economists, such as Jeffrey Sachs, who said in relation to the evaluation of ten years since first economic reforms in our country were launched: "if any of us now was to decide what to do, I guess he would not find support for voucher method of privatisation. There are several reasons for it. First, I would not push forward handing out enterprises in the form of vouchers, but I would rather sell them directly. Equally, I would not feel an urgent need to privatise all at once, as was the case in 1990 when we thought it was necessary to tackle it as quickly as possible. As it turned out later, the risk was often greater then the actual benefit. The voucher privatisation was an experiment and the Government took little care of the possibility of abuse, which occurred right from the beginning."[2]

The voucher privatisation may nevertheless be assessed as successful noting that it achieved its objectives: a substantial volume of assets was transferred in a non-challenging and speedy method, at a decreased risk of corruption; the capital market and collective investment were started and developed; a massive participation of population was secured whose knowledge about securities was deepened. Its failure proclaimed was not in the method as such but in privatisation as a whole. In a privatisation, which was launched on insecure pillars of an unfinished

Table 7 – Output classification by individual methods applied in the first wave of privatisation

Privatisation method	Proportion of total numberof total of outputs (%)	Proportion assets (%)
assets sales by standard methods	32.7	7.3
gratuitous transfer of assets	11.5	1.2
assets in joint stock	55.1	91.4
physical returning of the assets	0.7	0.1
of which:		
distribution of stocks in joint stock companies		
- sale of stocks by standard methods		2.5
- permanent and temporary participation of the FNM SR, including the original offer for voucher privatisation		94.6
- others (RIF allocation, gratuitous transfer)		2.9

Source: MSPNM SR, 1999

institutionalised framework. (We have discussed this subject in more detail inchapter 1.4, *The place and the assessment of privatisation in the transformation process*.)

4.5 THE SECOND WAVE OF PRIVATISATION

The second wave of large privatisation started in September 1993 and was intended to finish in 1996. Several essential changes were characteristic of the second wave. Since they are tied to particular periods we divided the second wave into several stages.

In the year 1993 the privatisation process slowed down (2% of the total assets designated for privatisation were privatised). The slowdown was due to lack of assertiveness of the Government in decision making about the methods to be used, as well as the responsibilities distribution between MSPNM SR and the FNM SR, although in the concept, priority was clearly given to standard methods over non-standard methods, and strengthening of domestic business stratum, thus discriminating foreign investors. This stage can be called a stage of stagnation.

The year 1994, particularly the period between February and March, 14 was just the opposite of stagnation - it was a period of wild privatisation, of approvals of projects regardless of compliance with agreed principles stated in the approved concept. Despite the existence of the institute of the so-called working groups, in which were representatives of individual sections of MSPNM, the founder, OU, and other representatives, the number of direct sales rose, without proposals being discussed in the working group. On the direct order of the former state secretary of the ministry (which at that time did not have the minister) proposals for direct sales were submitted to the Government and were approved by the Government in favour of bidders that he himself designated.

The privatisation process in each period was under the scrutiny of the public and the media. It was not otherwise in this period as well, but the criticism raised on individual cases of this period did not find response in the parliament and the media. The actors involved in giving away the property were not punished in any way.

Within this short period, the Government approved 44 privatisation projects. It is worth noting that despite the vote of non confidence to the Government of V.Mečiar on March, 11 1994, the Government ignored this act and continued approving privatisation projects until March, 14.

The period between March, 16 and November 1994 is characterised by the coming in office of the Government of J. Moravčík, which introduced in the privatisation process efforts to make it quicker and more transparent, and by the adoption of decision about the preparation of the second wave of voucher privatisation. However, many new problems arose as well. These related mainly

to the diversity of political parties represented in the Government, which brought about mutual distrust and thus also increased mutual control, but on the other hand also restraints and slowdown of the course of privatisation.

In this period, practices began to be applied of incoming new Government cabinets of exposing previous decisions about privatisation to control and after finding violation of the law, abolishing them or abolishing them even without such findings (in this period 13 violations of the law had been found). The contravention of the law was proved mainly in giving inadequate preference to the buyer. Following were the cases when privatisation was cancelled: ŽOS Vrútky, ŽOS Trnava, Slovenská automobilová doprava Považská Bystrica, Hubert Sereď, Mäsový priemysel Humenné, Polygrafické závody Trnava, Víno Košice, Slovenské liečebné kúpele Piešťany, Vydavateľstvo Tatran Bratislava, Skloobal Nemšová, Mlyn Pohronský Ruskov, Výskumný ústav jadrových elektrární Trnava, Zdroj Banská Bystrica, odštepný závod Prievidza (Government decree No. 283 of March, 29 1994).

The period after 1994 election, namely starting from November, brought a new dimension into the process -an amendment was passed according to which the responsibility in decision making about direct sales was transferred to the FNM SR. The ruling coalition composed of the representatives of the Movement For A Democratic Slovakia (HZDS), the Slovak National Party (SNS) and the Workers Party of Slovakia (ZRS) nominated solely their representatives to the bodies of the fund.

This stage can be also termed as a stage of the loss of state control over privatisation. The exercise of supervision over legality in privatisation by the bodies of prosecution was made impossible, the ruling coalition "fabricated" anonymous owners (by introducing unregistered stock) and permitted uncontrolled handling of the state property. It is a period of coming into office or, rather, returning in office of the third Mečiar Government, which can aptly be denoted as a wild "help-yourselfisation". This state, in which property was handed out for very law, even symbolic prices and this all for the benefit of Government parties proponents or directly party colleagues, lasted until the end of 1997. The ruling coalition was thus acquiring greater economic power. In order to augment it still, the ruling coalition abolished the second wave of voucher privatisation in 1995 and replaced it with the so-called bond method (chapter 5). This gave them even easier access to the property, excluding the possibility for other potential investors, including foreign ones, to participate.

Just as foreign investors, the employees of privatised enterprises too, could only be involved in the process in a limited scope. The *Principles for participation of workers in the privatisation of enterprises in which they work*, adopted by the Government, as well as the amendment of the Large Privatisation Act were intended to ensure employee participation in privatisation. In the decision on privatisation, the transferee could beimposed an obligation to ensure this participation by the issue of employee shares or enabling employees to acquire at least 34% of the privatised assets. Since this was not an obligation stipulated by law but only a possibility, the intention has not fulfilled the expectation, particularly on the part of employees. (This fact has been vivid until today. Many of those who are concerned, feel to be cheated and damaged by the privatisation process.)

Within the period of wild "help yourselfisation", the year 1996 is of significance - also because the Government and the FNM announced the date of completion of privatisation for the end of the first half of the year 1996. The growing disputes within the ruling coalition, however, resulted in the FNM not adopting any privatisation decisions between the end of February 1996 and August 1996. Starting from August the tempo of privatisation decisions approvals was stepped up.

The year 1996 continued to be a time of favouritism given to narrow groups closely tied to the ruling coalition. Contrary to 1995, the information leakage about the background of privatisation process was more frequent, as were leaks about the disputes within, the political background, family relatives, and also direct involvement of some parliament members and other high-ranking party members, in the privatisation process.

The favouritism in relation to transferees on the part of the FNM was evident also in setting purchase prices and terms of payment. While in the first wave of privatisation the base for determining the price was the expert appraisal and the market price, which could not get under the balance appraisal, in the second wave, the price was subject to agreement between the Fund and the transferee and was often considerably

Table 8 – An overview of the total number of enterprises (outputs) and the volume of privatised assets in the second wave of privatisation, as of 30 November 1996

Second wave of privatisation	Number of enterprises	Assets (mill. SKK)
Enterprises entering privatisation	610	136,804
Privatisation outputs	1 ,366	136,804
of which:		
- assets sales by standard methods	813	52, 226
of which:		
- direct sales	645	45, 072
- public tender	155	7,140
- public auction	13	14
- gratuitous transfer of assets (to municipalities, SPF, funds)	303	2,822
- physical returning of assets	16	22
- assets placed in joint stock (returning of state ownership interest)	234	81, 734
Of which:		
- equity capital of joint stock.		70, 933
Distribution of stocks in joint stock companies		
- assets sales by standard methods		36, 041
Of which:		
- direct sale		34, 801
- public tender		1,240
- permanent and temporary participation of the FNM SR, including the original offer for voucher privatisation		30 ,317
- gratuitous transfer of shares (to municipalities, SPF, funds)		2,414
- allocation for the RIF		2,161

Source: MSPNM SR, 1999

lower than the balance appraisal. As for terms of payment, while in the first wave, the first instalment comprised 20% of the purchase price, with the maturity of up to five years for the remainder of the purchase price, in the second wave, the first payment in many cases was at the level of 5-10% of the purchase price, with the maturity of the remainder of up to ten years. A possibility to have as much as 50% of the purchase price deducted in the event of investment, was a large advantage.

Many foreign institutions - the European Commission, the OECD, the International Monetary Fund, the World Bank and the European Development Bank - have principally agreed in their evaluation of the privatisation process when they alerted the danger of privatising to the benefit of enterprise management. Simultaneously they alerted the need for greater transparency which would give room also to foreign investors.

The new owners in a privatised firm carried out in the above described way could not bring the necessary capital. The methods employed (the purchase price paid in instalments, indirectly through the enterprise itself) could not provide the necessary restructuring of the companies.

In 1996, the largest "help-yourselfisations" on the privatisation scene took place, when a 45.9-percent stake of *Nafta-Gbely* (oil storage firm) was sold for SKK 500 million to an unknown company, *Druhá Obchodná*. In this sale, the FNM lost at least SKK 2.7 billion . Another major

Table 9 – Output classification by individual methods applied in the second wave of privatisation, as of 30 November 1996

Privatisation method	Proportion of total number of outputs (%)	Proportion of total assets
assets sales by standard methods	59.5	38.2
gratuitous transfer of assets	22.2	2.1
assets in joint stock	17.1	59.6
physical returning of the assets	1.2	0.1
of which:		
distribution of stocks in joint stock companies		
- sale of stocks by standard methods		50.3
- permanent and temporary participation of the FNM SR, including the original offer for voucher privatisation		42.7
- others (RIF allocation , gratuitous transfer)		6.5

Source: MSPNM SR, 1999

scandal was the sale of the most lucrative and most renown Slovak Spa Piešťany. A 51-percent stake was sold to an employee joint stock company, the Company of Spa Piešťany Employees (Slovak abbreviation: SZPK). The purchase price was SKK 302 million, with a balance sheet value of SKK 1.6 billion. (For more details, see the appendix, Privatisation affairs).

In order that the above cases of "help-yourselfisation" could take place it was necessary to prepare the legislative groundwork. It concerned abolishing the mandatory dematerialisation and subsequent introduction of the institute of unregistered stock. The original concept according to which the issuer decided about the form of securities, was replaced with a concept of absolutisation of dematerialised registered form after Mečiar Government (1995) came in office. The purpose was to ensure the ruling power to have an overview of shareholders in all privatised companies through the state-controlled Securities Centre. Over time, however, the mandatory registered form of securities encountered with the resistance from the newly created privatisation groups, as it was not possible to keep the actual owners' identity secret of questionably privatised property. Thus, in the end of 1996, at the initiative of HZDS MPs, it was successfully enacted that the mandatory dematerialised form would not be applicable to the shares that were not publicly traded, (such as the shares *of Druhá Obchodná*, in connection with the privatisation of *Nafta-Gbely*). This made the rise of the institute of unregistered stock possible, according to which the ownership of stock did not have to be compulsorily registered in the Securities Centre, and the person delivering the share to the general assembly meeting became the owner. The number of companies and the volume of privatised assets of the second wave of privatisation (until 1996) is illustrated in the following tables:

The slump in the privatisation activity in 1997 was due to the finding of the Constitutional Court of the SR, on the transfer of responsibility from the FNM SR back to the Government. The paradox of this period is that the amendment of the law initiated by the ruling of the Constitutional Court of the SR, was passed almost half a year later (on June, 27 1997), the Government did not make a single decision about any direct sale, MSPNM SR was not selecting the transferees of the assets. Everything continued in the previous uncontrolled manner through the FNM SR.

The year 1997 was also characteristic with a growing measure of disadvantage of sales for the FNM SR and a corresponding growing measure of advantages for their new owners. Privatisation along party lines continued together with the direct involvement in privatisation of party officials, their family relatives or otherwise closely-related persons. Cases of revisions of privatisation decisions appeared, aimed at repeated sale to the same person but at a lower

price, with the purpose to involve persons close to the management of the FNM SR and coalition parties (such as the case of NAD Trenčín, an automobile truck carrier). It was not possible to camouflage the first "big case" direct sale to the benefit of one of the leading FNM SR representatives (the case of the mine Baňa Záhorie).

Public discontent was growing. One of the major banks (IRB - the Investment and Development Bank) collapsed. The responsibility for the collapse is mainly placed with the group of companies around VSŽ (East-Slovakian steel maker). The FNM at that time owned a 35-percent stake and was not taking action in exercising its shareholder's rights. The number of individual cases of company asset stripping was growing – as a consequence of the way privatisation was effected and the number of non-transparent ownership relations. In October 1997, a partial qualitative change occurred in relation to the possibility of controlling the FNM, when the parliament elected Ivan Mikoš, a representative of the opposition, to the Supervisory Board of the FNM.

The privatisation in 1998 continued in the fashion of preceding years, and was marked with the impossibility to exercise control over it and a lack of transparency. It was a year in which no direct sales took place, and only a few gratuitous transfers to municipalities. This year of stagnation in privatisation was marked with the preparation of autumn parliamentary elections but was not spared of controversial moments. These confirmed the existence of the cooperation of privatisation actors to party top representatives. The evidence was in the arguments advanced by the opposition of the day which directly proved some politicians guilty of theft and "asset stripping" finances of the privatised assets (privatisation of aluminium maker, ZSNP *Žiar nad Hronom*, part of shares of oil refinery *Slovnaft*, and unsuccessful privatisation of Slovenská poisťovňa,).

4. 6 REDRESSING PRIVATISATION ENCROACHMENTS

The intense discussion about the problem of redressing the encroachments in privatisation, which were initiated in the year 1997, culminated in the year 1998, just before parliamentary elections. Almost all parties seeking favour of the electorate stated in their manifestos a commitment to review the legality of privatisation, with a possibility of reviewing privatisation decisions in a way that would eliminate state losses. After the new Government came in office, the pre-election rhetoric of the coalition grouping: the Slovak Democratic Coalition (SDK), the Party of the Democratic Left, (SDĽ,), the Party of Civic Understanding (SOP), and the Party of Hungarian Coalition (SMK) was also mirrored in the Government Statement of Policy and began to be implemented after the new management of the FNM took office. "Re-privatisation of property is one possible option" said Ladislav Sklenár, the Chairman of the Executive Committee of the Fund (in Práca, 9 December 1998), "but only in cases of the circumvention of the law, failure to fulfil the terms of the contract, or failure to pay instalments." Then the property can fall back to the Fund. We need to ensure its administration until we select - in a very transparent way, through competition, - a new privatisation participant", he added.

An important role in redressing privatisation encroachments was played by the legislative conditions created for reviewing closed privatisation contracts, potentially contesting them and with a possibility of making them void, and transfer the assets back into state ownership. The amendment of the Act no. 17/1993 of the Collection of Laws allowed review the contracts of transfer of the property in state ownership or in the ownership of the FNM.

The FNM began the process of reviewing privatisation decisions which resulted in the analysis that defined the departure from the law at the time of privatisation. On the whole, 900 contracts have been examined, in 186 cases circumvention of the law has been found. The public expected a swift and uncompromising action by law enforcement bodies. Nothing happened in this respect though. M. Machová, the Minister for Privatisation, announced a rapidly reduced number of questionable cases of privatisation arising from formal defects that could be eliminated on the basis of joint talks. The information brought doubt and raised a number of questions in the public. The material submitted for the Government debate referred to only 48 cases of challenging privatisation. The material was withdrawn from the debate on the grounds that it did not contain proposed solutions or that solutions proposed were only very general.

As the management of the Fund was removed (the President and the Chairman of the Executive Committee, for failing to tackle the *Nafta-Gbely* problem), the Minister for Privatisation maintains that the completion of the material will not take long and the material will appear still in this year. (*Reviewing privatisation gets put off again*, SME, November, 18 1999).

In the words of Ľudovít Kaník, the former FNM President, under whose leadership the material was prepared, the reluctance of the Government to debate the referred material as soon as possible, is due to the Government concerns over redressing privatisation because there is not a good solution available in redress, only bad and less bad solutions.[3]

Additionally, we need to note that the year 1999 will be definitely recorded in the history of the process of privatisation as a year of redress of privatisation encroachments. The results achieved in the *Nafta-Gbely-gate* are indicative of it (a 45.9-percent stake returned in the account of the FNM), as well as the backing out of the contracts with majority shareholders of the spas - *Dudince, Sliač, Kováčová* and *Slovenské Liečebné Kúpele Piešťany*, the chemicals maker *Istrochem, a.s. Bratislava*, the jewellery company, *Klenoty, a.s*., the shoe maker, *Obuv, a.s. Partizánske*, and the aluminium maker, *ZSNP, a.sŽiar nad Hronom.*

4.7 PRIVATISATION OUTLOOK FOR THE YEAR 2000

In the view of the unfavourable situation existing in the liquidity of the FNM recently, and the commitment to pay citizens 34 billion SKK for bonds as of 31 December 2000, the new management of the FNM and MSPNM, on several occasions have declared their commitment to continue in the privatisation of the remaining shares in the FNM portfolio over the course of the year 1999. Individual steps, as well as materials by the Government, suggested that strategic companies would also be privatised *(Slovenské telekomunikácie, a.s.,)* banks *(Investičná a rozvojová banka, Slovenská sporiteľňa, Všeobecná úverová banka, a.s., , Československá obchodná banka)*, and health care facilities. To date, it has not been the case, not even in the case of banks, despite the recommendations and warnings from the World Bank, which can probably be attributed to the Government concerns to bear the risk associated with it.

Government officials and the FNM representatives continue in their intention to step up the pace of privatisation process and the year 2000 will have to be, in their opinion, the year of privatisation.

As Vladimír Dvořáček, the Section of the Strategy Director of the FNM, stated for the journal TREND (December 1, 1999), of 149 joint stock companies the Fund has currently in its portfolio, the FNM intend to privatise important state ownership interests during the year 2000. This will concern primarily the Bank of Slovakia, where the process of privatisation is under way, with an objective to sell a 60-percent stake of the FNM by the end of next year. In December this year (1999), according to V. Dvořáček, a financial and legal advisor will be selected for the sale of the bank. In addition, the salt making company *Solivary, a.s. Prešov*, where the FNM owns a majority stake at a nominal value of SKK 78 million, should be privatised in the first half of 2000. Another major interest to be sold in 2000, is the majority stake in *Slovenská Plavba a Prístavy, a.s. Bratislava,* [Slovak Shipping and Ports].

Subject to the recent amendment of the Act no. 92/1991, falling effective on September, 16 1999, it is again the Government that shall decide about privatisation of natural monopolies and some major financial institutions. At the same time, privatisation is restricted in the following manner:

- forestry fund, railway transport routes, surface and ground waters and the post shall not be privatised;
- a 51-percent Governmental stake must be retained in *Slovenský plynárenský priemysel* [the Slovak Gas Industry], energy utilities, crude oil transport company *Transpetrol* and *Slovenské elektrárne* [the Slovak Electricity Utility];
- the state shall retain a property stake without specification in the Slovak insurance company *Slovenská poisťovňa*, and in *Slovenské telekomunikácie*.

In connection with natural monopolies, privatisation of water and sewer utilities has frequently been mentioned, part of which has already taken place under current legislation , e.g. in the whole Trenčín District. The issue of privatisation of other natural monopolies (particularly of Slovak gas company SPP, the Slovak power producer *Slovenské elekrárne* and crude oil transport company *Transpetrol*)

Table 10 – The volume of privatised assets in the SR by the signing date of contracts with the FNM SR in the years 1992 – 1998 (standard methods)

Year	Book value (000) SKK	Purchase price (000) SKK	Investment (000) SKK	Purchase price*/Book value (%)	Investment/ Total purchase price** (%)
1992	*12, 660, 380*	*12, 254, 724*	*679, 437*	*96.80*	*5.25*
1993	*4, 205, 361*	*4, 018, 224*	*155, 760*	*95.55*	*3.73*
1994 (up to 16/3)	*11, 223, 644*	*5, 831, 650*	*5, 706, 000*	*51.96*	*49.46*
1994 (from17/3)	*9, 479, 039*	*3, 526, 746*	*886, 485*	*37.21*	*20.0*
Total (1992-94)	37, 568, 424	25, 631, 344	7, 427, 682	68.23	22.47
1995	*37, 278, 070*	*12, 706, 436*	*6 ,457,362*	*34.09*	*33.70*
1996	*43, 805, 533*	*11, 596, 916*	*4, 841 ,841*	*26.47*	*29.45*
1997	*15, 317, 456*	*3 ,521, 388*	*410, 505*	*22.99*	*10.44*
1998	*12, 815, 857*	*2, 917, 726*	*1, 254, 000*	*22.77*	*30.06*
Total (1995-98)	109, 216 ,916	30, 742, 466	12, 963, 708	28.15	29.66
1999	153, 757	17, 500	-	11.38	-
Total (1992-99)	146, 949, 097	73, 873, 810	20, 391, 390	35.92	26.56

Source: Annual Reports of the FNM SR 1992–1997, The Black Paper of Privatisation of the FNM SR, internal materials of the FNM SR
* excluding investment, ** including investment
Note: the state, including supplements concluded by 31 December 1998

although resounding in public for quite some time, still remains open.

Considerable progress has been made in the privatisation of a 51-percent stake of ST (Slovak Telecommunications), when a tender was called in late November 1999. According to J. Macejka, the Minister for Posts and Telecommunications, the sector is going to make every effort to complete the tender in March 2000.

Proceeds are also expected of so frequently cited sales of *Slovenská poisťovňa, Slovenská sporiteľňa and Všeobecná úverová banka,* where the Fund's interests are still considerable. The privatisation of VÚB has been rendered more complex due to the unsettled ownership relations between the FNM CR and the FNM SR, which were finally resolved in the end of 1999 by signing of the so-called "zero variant" between the two funds. The sale of a 24-percent Slovak stake in the Czecho-Slovak Commercial Bank (ČSOB) is in the process of talks held with a Belgium KBC Bank, which is already a majority owner of this bank. The date set for resolution of the problem is January, 31 2000, which is not certain, as the date has been put off several times already. According

Fig. 3 – The volume of privatised assets in the SR by the signing date of the contract with the FNM SR in the years 1992–1998 (standard methods, thousand SKK)

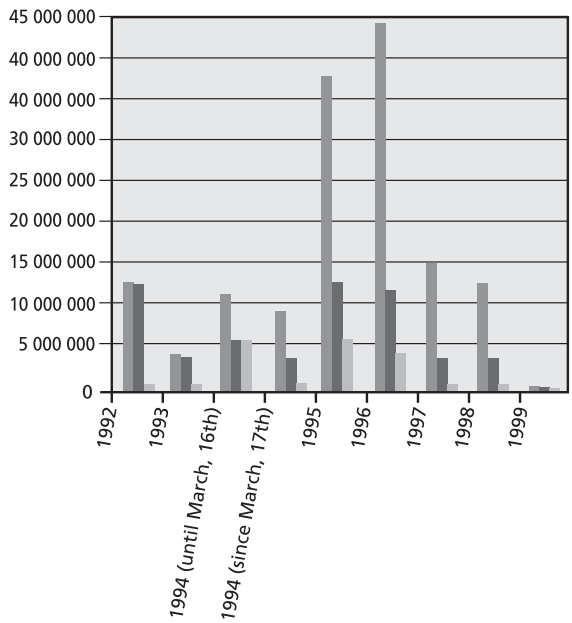

Fig. M.E.S.A.10

to Ján Onda, spokesman for the National Bank of Slovakia (NBS) some delay of late was due to the considerations of the European Bank for Reconstruction and Development involvement.

Reprivatisation of enterprises can also be considered, in respect of enterprises whose majority interests were gained by the FNM through backing out of the contract. This concerns the following companies: *Slovenské Liečebné Kúpele, a.s. Piešťany, Istrochem, a.s., Bratislava, Nafta, a.s. Gbely, and ZSNP, a.s. Žiar nad Hronom.*

4.8 STATISTICS

The book value of the assets suitable for privatisation in Slovakia has been estimated at SKK 427.6 billion (OECD Economic surveys, 1996). Of this, SKK 349.4 billion had been transferred to the FNM SR by 31 December 1998. By September 1999, SKK 226.7 billion had been privatised, with SKK 80 billion allocated for voucher privatisation and SKK 146. 95 billion sold by standard methods - mainly through direct sales.

By September, 30 1999, the overall value of the FNM SR interests amounted to SKK 55.2 billion, with as much as SKK 21.8 billion. (39 percent) comprising majority interests of the state *(Slovenské elektrárne, Slovenský plynárenský priemysel)*, which cannot be privatised under current effective legislation.[4] Consequently, the FNM has currently around SKK 20.9 billion of the property interests in the nominal value (net book value) available for sale. Their market value, however, represents only a small part of their nominal value (according to Ivan Mikloš, Deputy Prime Minister for economy, it is but one-tenth of their nominal value), as these are prevailingly minority stakes, or interests in companies which are in liquidation or bankrupt.

Since 1992, when the large privatisation began in Slovakia, privatisation was affected by, both, standard and non-standards methods. As can be seen in the preceding table, in the years 1992 and 1993, the purchase prices in standard methods were roughly equal to the net book value of the assets being privatised.

In 1994, in the period until March, 16 (until the departure of the second Mečiar Government), i .e. within less than one quarter of the year, assets three times the volume of the year 1993 had been privatised. This figure grew mainly in the last days of the Government in office, when privatisation took place „by day and by night". The figure on investment, included in the purchase price of the enterprise, is also interesting, when investment comprised as much as 49.5 % of the purchase price. The average purchase price, as a proportion in the net book value of the assets sold, comprised 68.2%, without investments (and as much as 88% with investment included).

After coming in office of the third Mečiar Government in 1995, the power to effect direct sales was transferred to the FNM . Following this step, a radical drop in purchase prices occurred, which has not ceased since, in 1998, reaching only 22.7% of the net book value. Over the period from 1995 to November 1998, the FNM sold, through standard methods, assets (state enterprise assets and shares of joint stock companies of the FNM portfolio) of the total net book value of SKK 109.2 billion. The purchase prices (without investments) comprised only SKK 30.7 billion of this volume, i.e., only 28.1 percent. In the light of the schedule of payment, when payment was in instalments, spread over ten years, as a rule, the FNM received only SKK 19.7 billion by 31 December 1998, which comprised less than 18 percent of the net book value. This sum includes also payment with FNM bonds, which totalled SKK 7.8 billion.

The apparent (three-fold) drop in the privatisation activity in 1997 was due to the constitutional court finding on transfer of responsibilities from FNM back to the Government which got published. In 1998, this trend sustained also due to the approaching term of September parliamentary election, when the ruling parties began to fear declining preferences (mainly of the Workers Party). It was also due to the overall low volume of what remained to be privatised. In 1998, the Government did not approve a single direct sale.

On the whole, in the years 1992-1999, the average purchase price without investment comprised only 38. 14 % of the net book value of the assets privatised by standard methods. The total real financial benefit for this period amounted to SKK 14 billion, from the first wave of privatisation, and SKK 12 billion, from the second wave of privatisation, i.e., only 18 % of the net book value of SKK 146.9 billion.

In the contracts concluded by the FNM SR, favourable interest rates have been set, at the level of discount rate, the terms for employee

participation in privatisation have not been formulated clearly, and neither were questions of employment commitment and investment activities. The liabilities were paid even less attention. Contracts of purchase contain a very soft clause, subject to which only a failure to pay two consecutive instalments constitutes ground for backing out of the contract. Despite this, there are many cases of FNM debtors failing to pay more than two consecutive instalments, with the Fund taking no action.

In 1998, MSPNM SR informed that it would publicise a public register of privatised assets, which has not happened over the year 1999 in the scope it had been previously announced. The lists are not updated, and the abstracts from the Trade Register about the new owners of the companies could not be made public. The year 1999 was a year of great expectations but also large disillusionment. (See Redressing privatisation encroachments, chapter 4.6).

4.9 LIQUIDATION OF STATE ENTERPRISES

The process of liquidation of state enterprises is an inseparable part of transformation of the state assets. The reasons for inclusion of enterprises in liquidation related mostly to their long-term unfavourable economic results. These poor results were partly due to setting aside portions of state enterprises for privatisation and privatising them. There were also parts of enterprises remaining in privatisation as outputs that could not be sold, which were put in liquidation, or remaining after a transferee of an output backed out of signing the contract of purchase with the FNM .

The liquidation of state enterprises sometimes amounts to a greater plunder of state property than its non-transparent privatisation. It is due partly to shortcomings in the existing legislation, that Minister Peter Bisák of Mečiar Government was to eliminate but happened to be also the man giving final consent to liquidation of any enterprise. He was assigned by the Government Decree no. 692 of September, 30 1997 to ensure the amendment of MSPNM SR Edict no. 140/1996 of the Collection of Laws. This happened after control authorities found that the legal regulation does not provide guaranty for transparent procedure in liquidation of state enterprises, neither does it unequivocally defines the powers of all stakeholders of the process. Low proceeds of liquidation best testified to it: in industry they comprised 3.6% , and in agriculture only 3% of the net book value of the liquidated companies. After liquidation of an enterprise, sale to a pre-designated buyer followed at a substantially lower price. The Supreme Control Office found that this type of sale, originally intended as exceptional measure, has gradually become a rule (*Pravda,* October, 9 1998).

The obligation to organis public auctions was successfully avoided, as the Ministry did not insist on compliance with this publicly controllable form of state assets sale and almost in all cases of request for a direct sale to pre-designated buyer, lodged by the liquidator, responded positively. The activity of the commission that reviewed the requests was purely formal.

The edict on procedures in liquidation of state enterprises was violated in three ways: the application for direct sale was discussed in the relevant commission after consent was granted by the Minister, or alternately, the commission did not discuss the request at all. A third way was when the consent granted by the minister did not contain identification of the buyer and the property was sold to other than the buyer recommended by the liquidator of the SR. Roughly 2000 state enterprises had been proposed for liquidation by their founding sectors. Of the given number, MSPNM SR issued 4200 decisions, 3 855 of which were approvals of direct sales, which comprised 91.2 % of cases, where this method had been preferred over public auction and other methods (public tendering, gratuitous transfer).

The liquidation of the State Printing House of Transport and Postage Stamps is a good example. The Ministry of Transport, a as the founder, and the Ministry for Privatisation wanted first to cash this enterprise in an auction at SKK 55 million . There was no bidder. Two weeks later, a firm, THB, applied, (in which was the son-in-law of Katarína Tothová, the former deputy Prime Minster). The liquidator immediately concluded a contract of future contract with the THB for the sale of the printing house for SKK 19 million and asked the Minster to give consent to this "good deal". A multi-story building in greater centre of Bratislava was appraised at less than SKK 8 million by an authorised expert. On the same day the minister granted consent to the direct sale, the contract of purchase and sale was signed and the state lost millions more. (*Pravda,* July, 10 1998).

4.10. REPOTRADE

Until 1997, the repotrades (the trades with the right of repurchase in which the FNM raised foreign resources for the transfer of shares from its portfolio, while the shares are covered by a lien) served only to bridge temporary problems in liquidity at the end of a calendar year. In 1997 the financial crisis of the FNM intensified to such an extent that in that period it did not have resources to pay its current obligations. In addition to the January loan, through a repurchase to pay a portion of bonds to citizens over 70 years of age, the Fund needed additional resources. In July 1998, the FNM had serious problems to raise any resources, it therefore effected other repo trades with *Slovenská Poisťovňa (SP)*, in which a loan was taken at SKK 1.6 billion. The FNM pledged the lucrative stock (15.93%) of *Všeobecná Úverová Banka (VÚB)*, the Restitution Investment Fund (39.08%), *Slovenské Lodenice a Prístavy* (31.43%) and the *Interhotel Tatry* (97%). The maturity of this repo trade was six months (*Národná obroda*, July, 4 1998).

Though in a deal like this, the FNM has a right to repurchase the stock at a given date, it has no obligation to do so. Thus there were concerns that in the event of a lost election, representatives of the FNM could easily change the terms of the repotrade in a way which would give SP the stock irretrievably. The FNM must push this debt before it due to its low liquidity and it has problems with raising resources to meet its obligations.

A suspicion of potential concealed privatisation was confirmed after the process of increasing the equity capital in SP began in July 1998, in which the state was to lose its majority to the benefit of private companies headed by *VSŽ Košice*. By failing to repay the repo trade, the stocks of VÚB and other pledged institutions would have been privatised.

In parallel with the repotrade, increase in equity in *Slovenská poisťovňa* took place, for which the FNM voted but in which it did not participate. That was the beginning of a concealed privatisation of not only SP but also VÚB and other institutions through FNM shares it had pledged in the repotrade.

In 1998, several largeger stock deals received attention. The most interesting of them may be the repotrade of the FNM with 1.3 million shares of *Slovnaft Bratislava*, which was undertaken in late January 1998. These Slovnaft shares were pledged by the FNM and in repurchasing them it paid the creditor SKK 757 million (i.e., 560 per share). On February, 24 1998, the FNM decided to sell 1.68 million shares of Slovnaft (10.23% of the equity shares) to a joint stock company Colorin, Žilina for SKK 620 million, which was valued at SKK 368 per share (Hospodáske noviny, February 26 1998). This was at a time when the Slovnaft stocks were not traded under SKK 800 per share at the Securities Exchange (BCP) or the off-exchange RM-system Slovakia. The Fund would have made a better deal if it had left 1.35 million stocks to the creditor or sold them at the BCP for a market price.

The result of reprivatisation in 1999 is its fulfilment exclusively in the form of stocks on the part of the original transferee or by payment of the instalment in favour of the FNM. This fact significantly affected the liquidity of the FNM and therefore, the form of repotrade was used to raise the needed amount to fulfil obligations. At present, the FNM had to pledge its triple A stocks of its portfolio, such as a 97-percent stake in the Slovak Shipping and Ports Bratislava, a 60.6- percent stake in spa Piešťany and also the RIF a.s. Bratislava stocks to address the situation. The last short-term repotrade was concluded with the stocks of the joint stock company Nafta-Gbely. "Despite the repotrades for these stocks, which the financial institutions concluded with the FNM under mutually beneficial terms, theoretically there exists a possibility that in the event of shortage of liquidity of the FNM , it may lose these stocks. The only solution might be accelerating privatisation of these companies. This would bring about benefit that would serve to pay the obligation of the Fund to its creditors", said Vladimír Dvořáček, the Section of Strategy Director of the FNM in an interview for Trend, on 1 December 1999.

NOTES

1. Source: Mikloš, I.: *The Risk of Corruption in the process of privatisation*. Windsor Club Slovakia, Bratislava 1995.
2. Milan Nič: Sachs: *Czecho-Slovak voucher privatisation was an experiment, which has totally failed and today would stand no chance of being repeated*. SME, 19 November 1999, p. 21
3. *Slovak Government fear redress of privatisation, claims Kaník*. SME, 19 November 1999.
4. For more detail, see chapter 7, Privatisation of natural monopolies

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7. *The analysis of the inherited state for the Ministry for Administration and Privatisation of the National Property of the SR 1999.*
8. Other internal materials of the FNM SR and MSPNM SR 1992, 1993, 1998, 1999.
9. Monitoring of the periodicals TREND, Profit, SME, Pravda, Hospodárske noviny, Národná obroda, Práca, press agencies SITA and TASR
10. Internet web site of the FNM SR

5. CONSEQUENCES OF ABOLISHING THE VOUCHER PRIVATISATION AND REPLACING IT WITH THE BOND METHOD

Marek Jakoby

5.1 THE CHRONOLOGY OF THE INCEPTION, ENFORCEMENT AND THE STRUCTURE OF THE SO-CALLED BOND METHOD

„It is going to be otherwise and it is going to be better." In these words, the Prime Minister of the day, Vladimír Mečiar, announced, on June, 6 1995, the end to any illusions about the implementation of the second wave of voucher privatisation (VP). The statement of the Prime Minister followed after eight months marked with postponing of the promised start of the second wave of VP, gradual shrinkage of the volume of the offered assets and an unequivocal preference for privatisation through direct sales to pre-designated buyers.

What is interesting, the pro-Government daily Slovenská Republika, already on June, 14 1995 noted, that "there is assumption that the works of the ministry for privatisation on privatisation projects with a share of stocks for voucher privatisation will end by the end of June of 1995". According to the daily, there were 214 privatisation outputs registered at the ministry worth SKK 32.784 billion.

After a surprisingly short preparatory period, on July, 12 the same year, the parliament passed the Government's fourteenth amendment of the Act on conditions of transfer of state property to other persons (also called the large privatisation law), the core of which related to the change in the provisions about voucher privatisation.

Instead of a possibility to buy stocks for investment vouchers, the amendment offered citizens, the holders of voucher books, a possibility of acquiring a non-negotiable bond of FNM of a uniform nominal value of SKK 10 thousand , with a five-year maturity - i.e., on 31 December 2000. The bond bears fixed interest at the NBS discount rate, which is, starting from January, 13, at the level of 8.8 percent. The yields are due together with the nominal value of the bond.

Since in this transaction, often there is no change of the owner of state assets involved, it is difficult to speak about privatisation, thus it is denoted as "bond compensation". The amendment stipulated the ways in which the bond can be used before maturity, and defined its potential transferees.

Under the provisions of the law, the bond holder could use the bond before it was due for the following:

- contribution into a company that acquired privatised assets to pay the obligations of the company in respect of the FNM ,
- acquisition of a privatised apartment (including persons who are close family relatives),
- complementary pension and health insurance (legislation adopted only later - the Act no. 123/1996 of the Collection of Laws On Complementary Pension Insurance of Employees),
- sale to persons, authorised to acquire the bond by law,
- purchase of stocks of the FNM assets in the open securities market,
- other purposes, where a special law establishes it.

The circle of persons, which, subject to the law, can acquire the bond of the FNM, was defined in the following way:

- physical or legal persons to pay their obligations in respect of the Fund, relating to the acquisition of privatised assets,
- owners of apartment houses for the transfer of the apartment in the private ownership and the tenants of apartments from close persons, for the acquisition of the apartment in their ownership,
- legal persons carrying out complementary pension and health insurance,
- banks designated for restructuring, subject to a special law,
- other persons, subject to a special law.

In reality the actual circle of the transferees has been narrowed to only the first group, as:

- the complementary pension and health insurance at that time was not legislatively provided for, its implementation is currently only starting up,
- more concrete projects of restructuring banks appeared for the first time as late as in the year 1998,
- purchases of the FNM SR stocks in the open securities market (RM-S) began to be implemented as late as July 1997, that is, two years after the amendment had been passed. The Fund included in its offer the remaining stocks of 23 enterprises. This possibility in effect elicited no response. They concerned the "lucrative" stocks of the enterprises, which in 1996 ended up in red figures (19 enterprises), two of them were petitioned for bankruptcy, three were in liquidation at that time, and in the case of other four, petitions for bankruptcy or liquidation were filed. One can understand that the interest in these stocks was minimal. In the first round, 20% of the stocks on offer were sold, all stocks of two of them, and there was no interest whatsoever in the stocks of nine other enterprises. In the second round, stock sales of three other companies were completed. The situation was aptly described in the daily Práca, when it wrote, that „"the uninformed citizens bought mostly worthless stocks, that the FNM offered without telling them what rubbish they were". (Práca, July, 30 1997)

The abrupt definite abandonment of the voucher privatisation project elicited huge criticism mostly among opposition political subjects. The opposition parliamentary parties denoted the decision of the Government unconstitutional and purposeful, serving only to increase the volume of assets the ruling coalition wished to privatise through direct sales. The unconstitutionality allegedly was in the retroactive changes to the conditions and in the intervention in legal regulations that arose in the past on the basis of effective legislation (the registration of investment funds for the second wave of privatisation, contracts between citizens and funds). The decision of the Government was at variance with the Government's Manifesto of January 1995, where the Government pledged to "ensure that second wave of voucher privatisation continue without unnecessary delay".

Michal Kováč, then president, returned the amendment in late July, together with the bill on investment companies and funds, and the bill on strategic enterprises, to be repeatedly debated in the parliament. The major objection raised by president concerned the retroactive breaches of contracts. He raised also an objection against the obligation of municipalities and housing co-operatives to accept bonds without being able to use them before they mature. All returned amendments were passed again in September by the parliament in their original wording.

In the same month, a group of forty parliamentary members lodged an instigation with the Constitutional Court in the matter of the amendment of large-scale privatisation law as being inconsistent with the constitution. In December, the Constitutional Court ruled § 24, par. 10 of the amendment, ordering municipalities and housing co-operatives to accept bonds as payment in transfers of apartments in citizens ownership, to be unconstitutional. The Constitutional Court (ÚS) ruled that equality of ownership rights was impeded, since the obligation was not applicable to all apartment owners, and that the right of exercise of free decision was restricted, since in sale and purchase of apartments, the contract cannot be based on an obligation to accept the bond. The ÚS ruling did not exclude a possibility of using the bond for similar purpose, subject to mutual agreement. The ÚS rejected the other items of the instigation by the parliamentary members. According to the court, though by changing voucher for bond privatisation, ownership rights were restricted, it was done in public interest and with adequate compensation , in the form of the state bond, with a possibility of buying stocks later on.

With this ruling of the ÚS, the bond "privatisation" could officially start off. As of January, 1 1996, the citizens, registered for the second wave of voucher privatisation, were credited bonds at nominal value of SKK 10 thousand in their personal property accounts at the Securities Centre (SCPB). In all, there was 3, 329, 630 bonds issued in this way, which was 200 thousand less than the original number of owners of investment vouchers (OIVs) registered, which is related to the fact that an equal number of citizens de-registered after the method was changed, whereby they de facto declined the bond "compensation". Although citizens were informed about the possibilities to use bonds before maturity, a number of related materials had not been approved at that time - which were prerequisites for real trade in bonds, which began only in August. That included

primarily the amendment of the Government decree on issuing and using investment vouchers (139/1996 of the Collection of Laws) which fell effective on May, 9 through publication in the Collection of Laws, i.e., eleven months after the bond method was announced. But even this decree was not legally "clean".

On June, 6, a group of parliament members lodged an instigation with the Constitutional Court to start proceedings in the matter of inconsistency of the decree with the Constitution of the SR and some other effective laws in thirteen items. The principal problem of the decree was the infringement of equal treatment before law and the principle of equal rights, restriction of the ownership right for bondholders, as well as the fact that the decree gave the FNM powers that were at variance with the effective legislation and that could only be provided for by law. That included, in particular, the power of the FNM to select the debtors who would be given the chance to pay their obligations in respect of the FNM with bonds, the power of the FNM SR to select securities dealers, authorised to trade the bonds, and the assignment of the FNM to organise the bond market , when the Government had only to assign it to one of the existing public market organisers (i.e., BCP Bratislava or RM-S). The decree thus clearly placed selected groups of subjects at an advantage. The arguments about unconstitutionality were accepted by the ÚS, which in its ruling of February 1997, stated that the Government in its decree[1] violated several provisions of the Constitution of the SR and a few other laws. The change of the concept of voucher privatisation into bond "compensation" was aptly dubbed by Marián Leško, a journalist of the daily *Pravda*, when he, inter alia, quoted Prime Minister V. Mečiar in his interview for Czech *Hospodářske noviny*: "The economic situation now commands to create a domestic business stratum, distribute assets that they had been creating by their work among them and other citizens." According to Leško, changing voucher privatisation for bonds is nothing but a change in sharing assets between "domestic business stratum and other citizens - the former will get almost everything, the latter a little more than nothing". (Pravda, 30 December 1995)[2]

5.2 THE DIFFERENCES BETWEEN THE VOUCHER AND BOND METHODS FROM THE ASPECT OF TRANSPARENCY, OBJECTIVITY AND EQUAL OPPORTUNITY

The voucher privatisation constituted a chance to participate in privatisation for all citizens under equal terms. It was therefore contained in the election manifestos of all major political parties, including the parties that were later to form the coalition Government.

The change of the way of voucher privatisation came at a time when:

- the preparation of the second wave of voucher privatisation was in full progress, relying upon the effective law and the experience of the first wave,
- based on the licence by the Ministry of Finance of the SR, a whole number of investment funds for the second wave of privatisation arose, which were registered for the purpose by the Ministry,
- registration of voucher books was under way, which the Ministry of Finance announced; by registering the voucher book, its holder became the holder of the investment vouchers,
- among citizens, or investment voucher holders, and investment funds, a whole number of legally established relations arose of different nature - similar to those known from the first wave of voucher privatisation.

The unilateral change of the rules of voucher privatisation, effected by the amendment, had a retroactive effect upon a large number of valid legal relations, thus eroding the legal security of parties to these relations. The legal insecurity is increased by the fact that that amendment does not contain any provisions about how the existing property relations between investment funds and citizens are subsequently going to be settled. The legal security is one of the most significant elements of a state with a rule of law, which, according to Article 1 of the Constitution of the SR,[3] the Slovak Republic is.

5.2.1 Loss of the possibility to realistically have a share in privatised assets

Voucher holders could gain - directly or through investment funds - stake in the joint stock companies put in the privatisation process. In consequence, with equal chances and for the benefit

of all of the population interested to enter the process of voucher privatisation, the general scarcity of financial resources necessary for a speedy privatisation of a great volume of state property was addressed.[4]

Apart from several weaknesses, which emerged in relation to the first wave of voucher privatisation (fragmentation of ownership, minimum inflow of real capital, and the decrease in the value of most stocks), the voucher privatisation had also advantages, such as, speed, a blanket effect, and justice, when it allowed the population to actually have a share in the privatised assets. Most negative aspects, mainly those related to the decline in value of the acquired stocks in the capital market or the "financial asset stripping" of investment funds, were not caused by the voucher privatisation itself, but rather, by the insufficient regulation of the capital market and the activities of investment funds, on the part of the Ministry of Finance.

The bond "privatisation" was thus hailed as a success mostly by those people who had negative experience from the first wave, particularly those, who felt to be cheated by investment funds. Apparently, the impression of a "secure" 10 thousand crowns was attractive (plus the relevant yield) without some measure of risk, which in the first wave was connected with the decision making when placing investment points with a particular joint stock company, or an investment fund.

The bond method de facto stripped most citizens of their chances to acquire direct share in the privatised assets. The obvious preference of so-called standard methods, mainly direct sales, in the further course of privatisation clearly favoured selected narrow groups of transferees, with the goal of creating a "strong domestic capital-generating stratum".

Even more serious is the fact that the Government, or the FNM, by pursuing their privatisation policy, did not raise financial reserves necessary to meet the bonds. By so doing, they threw doubt upon fulfilment of their own pledge and thus ignored the above "security" as well.

5.2.2. The possibilities to use bonds favoured selected groups of persons

The holder of stocks acquired in the voucher privatisation, apart from other options, could sell them in the capital market, without virtually no restrictions. Although the Act no. 190/1995 assumed several options for using bonds before they were due, in practice these options were limited essentially to selling them to „authorised transferees", namely persons having liabilities against the FNM.

In April 1998, Viliam Vaškovič, then an opposition MP, submitted a draft amendment to the Large Privatisation Act, aimed to extend the circle of transferees of bonds by physical persons having permanent residence in the territory of the SR, and legal persons, having their seat in the SR. It should increase liquidity of bonds in the capital market and make the market price more realistic through reconciling supply and demand. The restriction of the circle of transferees entailed a significant excess of supply over demand, which resulted in even greater advantage for the benefit of the transferees, who achieved very favourable prices in purchasing bonds.

The amendment also set a maximum period for payment for bonds, which should not exceed 90 days from the period of maturity. In order to curb subjective discretion of the fund as regards buyers of privatised property, the fund was to set a uniform percentage of the whole amount for privatisers due in the relevant year that could be paid in bonds.[5] But the draft amendment was defeated in the parliament.

On 19 November 1996, another amendment of the Large Privatisation Act, no 322/1996 became effective, which defined the period of maturity for persons, who, as of the date the amendment came in force, had reached 70 years of age and more, and set it as 31 December 1997.

Investments funds were fully excluded from the whole process of the so-called bond privatisation, while they were acknowledged the right to "compensation" at a lump-sum of half a million SKK. It concerned, of course, only those funds which were set up specifically for the second wave of voucher privatisation. Only the charges for issuance of relevant permissions and the mandatory deposit of equity capital amounted to a multiple of the lump sum, not to mention the commercial costs that were incurred in the preparation for the second wave itself. Discriminatory provisions of the law were just a continuation of a long-term campaign against the activities of investment companies and funds. The funds thus affected included also several funds set up by foreign subjects, mainly Austrian.

5.3. THE RAMIFICATIONS FOR THE COMMON PEOPLE

The registration for the second wave of voucher privatisation began in September 1994. Most financial institutions, large enterprises, but also several business people offered their skills in managing privatised assets. They set up investment funds. The strongest groups - financially and in terms of their property - granted citizens not only loans for the registration of the voucher book, but also advances for future back purchase of the stocks or yields.

On the basis of a contract, a large number of people pledged themselves to place their points with the funds, founded by the subsidiaries of the banks, e.g. *Sporiteľňa Fond, VÚB Kupón Plus, Veľký Fond, and Fond Dôchodcov*. The funds established by the subsidiaries of large enterprises, such as *VSŽ, a.s. Košice, Slovnaft, a.s., Bratislava, Slovenské Elektrárne, a.s.* Bratislava were also giving a convincing impression. It was, perhaps, due to the loans and advances provided in respect of future yields, that more people have registered for the second wave of voucher privatisation than for the first, federal one, three years earlier, by 500 thousand.

In December 1994, two days before the date of filing points with investment funds, the second wave of voucher privatisation was suspended and the following year abolished at the proposal of the Government of the SR. Ever since, the main method of privatisation has been the direct sale. Instead of stocks for the voucher book, citizens received a FNM bond of SKK 10 thousand in value.

Subsequently, investment funds began to recover money from citizens they had lent money for the registration in the second wave of voucher privatisation. The experts estimate the funds loans to citizens to amount to several billion crowns. Since the law did not allow the loan to be met by the FNM bond, the funds began exacting the money directly from the citizens. Payment orders issued by the courts and the distraint discharges elicited a wave of anger.

Given the multitude, the cost of recovering the funds' receiveables were in hundreds of million of crowns. The state administration officials were also to blame for the chaos as their statements suggested vaguely the obligation of citizens to repay loans for registration. To their detriment, several citizens understood the message wrongly from state administration officials as instructing them not to pay.

The recovery of debts was an existential necessity for managers of investment funds in an effort to minimise the losses, incurred by them because of the abolition of the second wave of voucher privatisation. Experts estimate that funds effected around 9 billion crowns for the preparation. Much of it was raised through credits and the failure to pay them would have ramifications on the bank savings. Part of the cost associated with the recovery of loans thus had to be paid by the debtors.[6]

By changing voucher privatisation in a "bond compensation", the Government in effect eliminated the economic activity of politically and economically independent investment funds (concurrently with the amendments adopted on investment funds and securities, the activities of the funds of the first wave also were restricted) and by allowing new owners to buy out the bonds, a scope was created for financing direct sales at an advantage for the circle of persons politically close to the coalition. For selected privatisation actors, an option was created to repay expediently part of their obligations in respect of the FNM in the form of bonds, acquired for fractions of their nominal value.

By approving bond "privatisation" the coalition managed to kill several birds in one stroke: it divested itself of the commitment before public to implement the second wave of voucher privatisation with a pledge of a lump sum of 10 thousand crowns for every investment voucher owner, and, at least for a time, silenced the voices of discontent of a part of population for whom "security" in the form of 10 thousand crowns plus the interest was more acceptable than the "uncertainty" of investing through vouchers.

A very serious drawback of the method is the lack of conceptual approach, or finding alibi, when through "cronyism privatisation" at low prices, the fund did not generate reserves in the following years necessary to pay for the bonds in the volume of around 32 billion crowns. When we consider that the Government in its policy, on the whole, did not even create conditions for alternative use of bonds, we may note, that the "security" was but an illusion.

5.4. THE RAMIFICATIONS FOR THE CAPITAL MARKET AND ITS SUBJECTS

The new potential owners of bonds (transferees of privatised assets with obligations against the FNM) created a secondary market for these securities, where they gained an instrument for expedient price to pay

portion of purchase price, of course, at full nominal value of the bond, including an adequate part of the yield.

As of April, 10 1996, a subsection for organisation of the bond market of the Fund was established as part of the Section of non-standard privatisation and capital market.

On July, 31 1996, a whole issue no. 880950000526 - *Dlhopis FNM SR* totalling 3, 329,558 pieces was despatched in the SCPB. Starting from August, 5 1996, the FNM bond began to be traded in the RM - System (RM-S).

In the year 1996, the Fund accepted the price in nominal value of 10, 000 crowns in redemption, the minimum price in the market was set at SKK 7,500. There were 72,148 pieces of the FNM bonds traded anonymously on the RM-S. In direct sales, 287, 737 were traded, at an average price of SKK 8,648.

1997

In 1997, the Fund accepted the price of SKK 10,748 for the bond, with the minimum price amounting to SKK 8,160. In direct sales, 381,751 bonds were transacted at a minimum price of SKK 8,160. In RM-S, there were only 4,887 pieces of bonds anonymously traded at the minimum price. The Fund sold 317,602 pieces of stocks from 23 issuers in an anonymous auction. In July, bond - share swaps from the portfolio of the FNM commenced. Through exchange brokers of the DLHOPIS, o.c.p., a.s., the FNM sold 3, 718, 951 pieces of stocks of 102 issuers.

The revenues of the FNM in the bonds for 1997 totalled SKK 4,560 billion, which comprises 49 % of the overall FNM receipts. The outlays to redeem the bonds were SKK 4,560 billion. The costs related to the issue, redemption of FNM bonds and their yields amounted to SKK 309 million. After deduction of redeemed bonds issued to the owners of investment vouchers, as of 31 December 1997, the FNM was left with having to pay 2,652,512 bonds by the year 2001.

1998

In January 1998, due to shortage of resources necessary to redeem bonds of citizens over 70 years of age, the Fund effected a bill deal, whereby it borrowed foreign resources in the volume of SKK 2,245 billion for a period of 6 months. As the Fund did not have sufficient resources to redeem the notes on their maturity as of July, 13, it covered the needed funds through a repotrade with *Slovenská Poisťovňa* (for details of both transactions see also the chapter *Large-scale privatisation*.

In 1998 the Fund paid 70 year-old persons and older (including their heirs) the amount of SKK 2,939,469,720. It paid the owners of apartment houses for the returned bonds an amount of SKK 156,334,104.

The Board of the Fund approved lists of joint stock companies (setting also a minimum price per share) from its portfolio, the stocks of which were sold directly by exchange for bonds through

Table 11 – The number of bonds returned in the liquidation account of the FNM SR (redeemed)

	1996	1997	1998	31. 8. 1999	Total
FNM debtors	220,061	390,862	121, 958		**732,881**
SPF debtors (the Slovak Land Fund)	1,085	1, 233	3, 829		**6, 147**
owners of apartment houses (VBD)		9,775	13, 599	9, 309	**32, 683**
payment for stocks:		54,102	4,949		**59, 051**
* auction		1, 877			**1,877**
* exchange brokers of *DLHOPIS*		52,225	4, 949		**57,174**
Pensioners			255, 695	3,807	**259, 502**
Total	221, 146	455, 972	400, 030	13,116	**1, 090, 264**
Share in the total issue	**6.6 %**	**13.7 %**	**12 %**	**0.4 %**	**32.7 %**

Source: FNM SR

Table 12 – Selected parameters of the trade in the FNM SR bonds in RM-S (anonymous dealings: September 96 – February 98; direct dealings: August 96 – October 99)

	Anonymous dealings	Direct dealings
Average price (SKK)	7,814	9,231
Total traded volume (mill. SKK)	292.4	6, 930
Number of bonds	38,550	847,688

Source: calculations according to the RM-S statistics

exchange brokers of the *DLHOPIS, o.c.p., a.s.*. The list was continuously amended. In 1998 the Fund redeemed bonds at SKK 11,496 with the minimum price in the market set at SKK 8, 820.

The constitutional court finding of June, 24 1998, which resulted from the request lodged by 30 MPs, decided that several provisions of § 24 of the NR SR Act no. 92/1991 of the Collection of Laws, on conditions of transfer of state property to other persons, as later amended (the Large-scale Privatisation Act) were not consistent with the Constitution of the SR, which made them void from the date of publication in the Collection of Acts, i.e., from July, 16 1998. These were provisions that concerned the possibility of privatised assets transferees to meet their obligations against the FNM or the Slovak Land Fund by the Fund's bonds.

1999

After the ruling of the Constitutional Court of the SR of 1998, subject to § 24 par.9, only owners of apartment houses or other persons, where a special law so provides, could acquire the Fund's bonds in their ownership. Equally, the use of the Fund's bonds before they were due, was not questioned, i.e., before 31 December 2000, for the purpose of acquiring ownership interests of the Fund in the open securities market. The bond of the Fund could be used in no other way. The Fund paid for bonds on a continuous basis only to persons who, at 19 November 1996, reached 70 years of age and more (including their heirs). The FNM still had to redeem 2, 239, 294 pieces of bonds, which comprised 67. 27 % of the issue. In 1999, the value of the bond was SKK 12,244, with a tax of SKK 396 ("70-year old persons" got 11, 496 SKK/piece, with a tax amounting to SKK 264).

The forthcoming development may take the shape of the following variants:

A. payment of the nominal value of bonds, including interest yield as of 31 December 2000,
B. extension of the period of maturity of the current bonds,
C. purchase of bonds on the part of the FNM (possibly Dlhopis, a. s., o. c. p.) in the capital market before bonds are due,
D. exchanging bonds for other bonds (annuity),
E. bond redemption and their exchange for stocks,
F. exchanging bonds for stocks of a "new state fund",
G. abolition of bond privatisation by law.

A. Payment of the nominal value of bonds, including interest yield as of 31 December 2000

In the years 1996-1999, 1,090,264 bonds of FNM were redeemed, which comprises 32.7 percent of the issue. There still remains then to redeem 2, 239,294 more, which at the value of SKK 14,400 - including yields – comes to around SKK 32 billion. However, the FNM currently does not have sufficient financial resources to pay this obligation. The financial resources needed may be raised through increasing the FNM debt (or that of the state) with a potential Government guaranty. The resources may come from domestic or foreign sources. Over the course of the year 2000, the process of privatisation of strategic enterprises will begin, which may take approximately two years. A portion of privatisation proceeds will automatically be transferred to the Fund's account, which will then pay its obligations. Such a solution is feasible but the process of redeeming bonds will thus become more expensive. Another aspect of the problems will be the fact that proceeds of sales of state assets will have to be used for more acute needs, i.e., reducing the state debt, financing health care, education, agriculture, projects in progress, etc. or possibly capitalisation of the enterprises concerned. A lump-sum payment of bonds can also erode the macroeconomic stability, when an abrupt increase of money in circulation occurs and an incidental pressure on consumption will be likely.

B. Extension of the period of maturity of the current bonds

Any change to the proprieties of the bond can only be made by changes to the law, which requires consent of a qualified majority in the National Council of the SR. Subsequently, changes to the proprieties of the bond would have to be effected in the SCPB. If the legislation does not allow to extend the period of maturity of the bonds, citizens could get a new bond replacing the current bond, having the same proprieties (yield at the discount rate, maturity of yields on expiry…) with the maturity put off for, say 31 December 2005.

C. Purchase of bonds in the capital market before bonds are due

The previous experience makes it clear that in the operations with the bonds privileged securities dealers "participated", who were buying bonds from the population for prices in the range of SKK 3,000 - 7,000, while they "moved them on" to the FNM for their nominal value. This possibility assumes that the bonds will be publicly tradable in the RM-S, on the basis of a change made to the law. The fund will create the demand side by placing orders to buy the bonds at a given price below their nominal value. This will also set the minimum price for which people will be able to sell the bonds. To date this possibility has not been available. With the average price of 6,000 SKK per bond, the Fund would effect around SKK 6 billion for purchasing 1 million bonds, which - with the nominal value of SKK 10 billion and the interest yield of SKK 3 billion - constitutes a saving of more than 50% of the target amount, which the FNM would otherwise have to redeem in the maturity period of the bonds. The Fund, of course, does not have that much cash, but similarly to variant A, it will have to raise it through borrowing , which it can subsequently repay from the proceeds of privatisation of strategic enterprises. Should this variant be opted for, the taxation of the capital and interest yields of the Fund or *DLHOPIS, a.s.*, will have to be resolved, among other, as the current legislation does not cover the problems of premature redemption of part of the issue by the issuer.

D. Exchanging bonds for other bonds

This is a variation of B variant. On maturity, the existing bonds will be exchanged for new bonds with a longer period of maturity. The Fund will pay the annual interest (at the amount of discount rate or even below). In ten years, the nominal value will be the same but after converting it in the USD/EUR or some other real benchmark value, their value will drop. The assumption is that in the same period the "dollar" value of the remaining enterprises will increase. The benefit of this variant is in that it does not require immediate sweeping privatisation of state enterprises, which thus may be spread over a longer period after restructuring has taken place. On the other hand, a delay in privatisation may lead to aggravated management of enterprises not privatised or to practices dubbed as „asset stripping". In real terms, the yields for citizens will decrease. Instead of getting an equivalent of around USD 320 in the year 2000, with the assumed rate of 43 SKK/USD, they will be getting an annual yield of SKK 880 (with the assumption of unchanged discount rate) and after several years, (say ten years), they will get about USD 200, at a rate of 50 SKK/US. The benefit for the state is in receiving annually almost SKK 300 million in tax on interest yields. For the Fund, this alternative would mean a need to secure additional annual revenues at around SKK 2 billion to pay the interest yields. Another variation of this might be a way of exchanging bonds of the FNM for standard state bonds, having a longer term of maturity.

E. Bond redemption and their exchange for stocks

This option assumes trading bonds for the stocks of the FNM portfolio before bonds are due, over the course of 2001 at the latest. In the late 1998, the FNM President, Ľ.Kaník, announced the intent to implement the exchange of bonds for part of the so-called strategic enterprises stocks for the first half of 1999. To date, no real decisions in this area have been made. First the relevant privatisation projects have to be approved, and the percentage of the stock for the citizens set. Subsequent algorithm will create theoretical prerequisite for the demand and supply and citizens will swap their bond for real stocks of individual enterprises. It is, however, likely that immediately on acquiring the shares, citizen's prime interest will be to sell them in the capital market. Bearing in mind what happened in the first wave of privatisation, one can reasonably expect them to wish to do so at once. That can, in turn, be used by some subjects with strong capital, which will get larger stakes of stocks at more favourable terms. On the other hand, the Slovak capital market will gain momentum to boost trade for two years to come. The administrative process of setting the algorithm for determining "the real prices" can take a relatively long time, around half a year.

F. Exchanging bonds for stocks of a "new state fund"

This option would be a variation of variant E. Citizens will not be able to trade bonds for particular shares but the FNM will set up a special fund, in which it would transfer all shares that will be earmarked for privatisation by citizens. The Fund would own, for example, a 10-percent stake in SPP, a 7-percent stake in *Slovenské Elektrárne…* Particular stakes of particular firms will be in this variant the same as under item E, when they will be based on real privatisation projects. The advantage over variant E would be in the fact that each citizen will get an equal stake in the fund, which would preclude potential speculation. The stocks of the new fund would be tradable in the public market, the statutes can stipulate that the Board and other bodies are appointed by the parliament (or the Government) and the general assembly meeting could not change them. Equally, a term for the fund can be set - five, ten, or twenty years after which time the fund would be automatically terminated, with each shareholder having a share in the liquidation assets. The liquidation of the new fund will happen after property interests of its portfolio have been sold. The fund could be identical with the current RIF, or a totally new one can be established.

G. Abolition of bond privatisation by law

This is the most advantageous variant for the state. It is most likely not feasible since a part of population have already been paid the bonds, another part having sold them. Thus those citizens who still keep the bonds in their personal accounts in the SCPB would suffer.

We deem a combination of several alternatives most realistic. It is mainly the concept of bonds being publicly tradable in 2000, (variant C) with the bonds - strategic enterprise shares trade (variant E , or the "new state fund" variant F. We do not think the possibility of depositing the bond in the system of pension or health complementary insurance to be a relevant alternative, as it does not address the core of the problem, which relies in the redemption of bonds on their maturity.

Given the low liquidity of the Fund, and the risk associated with an abrupt major increase of money in circulation for macroeconomic stability, the maturity of bonds will need to be spaced out (e.g. extension of term of maturity - variant B), with only a part of the citizenry being paid their bonds on the original date of maturity. It can be achieved by amending the law, and setting new age limits.

NOTES

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2. Leško, M.: *A year of dispute and contradiction*. Pravda, 30 December 1995
3. Kolaříková M.: *The amendment of the law was an intervention in the second wave already under way…* TREND, January, 10 1996.
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6. Žitňanský E.: *Investment funds of the second wave of voucher privatisation finished earlier…* TREND 10/98 March, 4 1998.

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6. THE NATIONAL PROPERTY FUND OF THE SR

Jana Červenáková

6.1. THE ORIGIN AND ITS ACTION IN THE PRIVATISATION PROCESS

The National Property Fund of the SR (FNM SR) was established by the SNR Act no. 253/1991 of the Collection of Laws on the jurisdiction of SR bodies in matters of transfer of state assets to other persons and on the National Property Fund of the SR, falling effective on June, 28 1991. The position of the FNM SR is basically defined in the Act of the Federal Assembly of the ČSFR no. 92/1991 of the Collection of Laws on conditions of transfer of state assets to other persons, as later amended.

These two fundamental pieces of legislation and their numerous amendments, and the findings of the constitutional court over the whole period of privatisation define the position of the FNM and the process of privatisation often contradictorily. As for the position of the FNM and the legislation of the privatisation process, we need to note that the FNM, established by a special law, filed in the commercial companies register, manages the property entrusted it by law, in its own name, but subject to regulations defined in the law. Despite being incorporated, it is not a commercial company subject to the commercial code, but an entity of private law with public law elements, to the activity of which mainly provisions of the Federal Assembly Act no. 92/1991 of the Collection of Laws , as later amended, are applicable, as well as generally binding legal regulations, including the Commercial Code, the Civil Code and the Securities Act, and others.

The public law elements of the FNM are seen , in addition to the form of its establishment by law, in the fact that the National Council of the SR (parliament) elects and removes members of the Board and the Supervisory Board, approves the Statutes of the FNM SR, its budget, the final statement of accounts, the Annual Report, the proposals for use of property with an obligatory notification duty and control empowerment of the National Council of the SR or its Auspices Committee. The parliament will decide, through a special law, on the termination of the activity of the FNM , its liquidation and the ways the assets of the SR will be used.

Although tasks, the jurisdiction, and the position of the FNM have been subject to changes in the process of privatisation , essentially, the FNM was responsible for pursuing the following tasks in particular:

- to ensure implementation of privatisation projects (conclude contracts of purchase and sale, organise public tenders and auctions and the like),
- ensure management of property owned by the fund (particularly management of commercial interests on short-term and long-term basis),
- pursuing other duties stipulated by law (such as ensuring that claims of authorised persons are met, subject to the Act 87/1991 of the Collection of Laws, on out-of-court rehabilitation, fulfilment of other duties arising gradually through legislative changes to the original acts of the Federal Assembly of the ČSFR no. 92/1991 and the SNR Act no. 253/91 of the Collection of Laws).

The Fund covers costs incurred through its activities from its assets, within its budget that is approved by the parliament.

A number of amendments have changed the legislative framework within which the FNM operates and did so differently, at different time. The following legislative changes affected the position of the FNM in the privatisation process most:

- the NR SR Act no. 60/1994 of the Collection of Laws , which changed the Act of the FZ ČSFR no.92/1991 of the Collection of Laws. on

conditions of transfer of state property to other persons, as later amended, and the NR SR Act no. 265/1992 of the Collection of Laws on entries of the title and other substantive rights to real property. Subject to § 11 par..2 and 3 of this law, it was provided that on the date as of which the a state enterprise was abolished, or a part thereof was withdrawn, the privatised state property is transferred in the ownership of the FNM, i.e., not in the administration of the state property,

- the NR SR Act no. 369/1994 of the Collection of Laws, which changed the Large Privatisation Act, to the effect that all decisive powers were changed (decision making on privatisation through direct sale outside public tendering or auctioning) was taken away from the Ministry for Privatisation and the Government of the SR and granted to the Board of the FNM SR.

It was particularly during the rule of Mečiar Government in the years 1994 to 1998, that the legislative changes related to the position of the FNM in the process of privatisation were often dubbed as unconstitutional (e.g. the transfer of privatisation responsibilities from the Government to the FNM), the findings of the constitutional court were not respected by the Management of the FNM SR *(see Mikloš, I.: Privatization in 1996 – A Global Report on the State of the Society. IPA, 1997.).*

Regardless of the formal state of the legislative status of the FNM in the privatisation process, the frequent changes to it, the uncertainties, the diverse interpretation of legal norms by coalition and opposition parties in different periods, it was apparent that the FNM was a key body in the privatisation process - in the implementation process and in the privatisation decision making. The fact that the FNM bodies were appointed and removed by the parliament has made the FNM bodies a component part of the political and economic power in the country. It was in the period between 1994 and 1998, in particular, that privatisation was under absolute control of the ruling coalition and the bodies of the FNM, with only Ivan Mikloš, an opposition representative, for a brief time, becoming a member of the Supervisory Board. The activity of the FNM, at that time, in particular, was characterised by actions, at best, on the brink of law, but definitely at variance with any morals or ethics. Despite this, we need to acknowledge that over the course of privatisation, the rank and file workers of the Fund have carried out a great deal of professional work as well. Its results, however, remain blurred in the shadow of queries, privatisation cases, and in general assessment of the FNM as an illegible, uncontrollable and inaccessible institution.

6.2. THE BODIES AND RESPONSIBILITIES OF THE FNM SR

The bodies of the FNM SR are defined in the Act no. 253/1991 of the Collection of Laws, on responsibilities of bodies of the Slovak Republic in matters of transferring state property to other persons, and on the FNM SR, as later amended. This law stipulates that the bodies of the FNM SR shall be:

a) the Board

Board is the supreme body of the FNM SR. It consists of 9 members. The President, Vice-president and 7 other members are elected by the National Council of the SR. With the exception of the Vice-president, Board members are not employees of the Fund. They are entitled to remuneration for the performance of the function in the scope stipulated in the Statutes. The responsibilities of the of the Board include in particular:

- appoint and remove members of the Executive Committee,
- approve compensation of the Executive Committee members and the principles of remunerating other staff of the FNM
- submit the draft annual accounts and the annual report on the activity of the FNM for the preceding year for approval to the parliament after it has been discussed in the Government ,
- submit the draft budget of the FNM and the proposal for using property of the FNM for approval to the parliament after these have been discussed in the Government of the SR,
- approve the rule of procedure of the Board and the Executive Committee of the FNM,
- approve organisational principles and procedures of action connected with fulfilling tasks of the FNM.

b) the Executive Committee

The Executive Committee is a statutory body of the FNM , it manages its activity and fulfils all tasks that subject to generally effective regulations and internal norms fall in its province. It has 11 members, The Chairman of the Executive

Committee being the Vice-president of the FNM, other 10 members are appointed and removed by the FNM Board. The members of the Executive Committee are employed by the FNM.

c) the Supervisory Board

The Supervisory Board exercises oversight over the activity and economic management of the FNM, its Board and Executive Committee, compliance with the law, generally binding legal regulations and the Statutes of the FNM. It has 7 members. The Chairman and other six members of the Supervisory Board are elected and removed by the parliament. The Supervisory Board debate the draft budget, year-end statement of accounts, and the annual report on the activities of the FNM before these are referred to by the Board of the FNM for Government debate.

The Statutes of the FNM SR define in detail the organisational structure and the activities of the FNM. It is approved by the parliament subject to prior debate in the Government. The Statutes also define the relations between the FNM, the Ministry for Privatisation and other central bodies of state administration in the privatisation process.

6.3. ACQUISITION OF PROPERTY BY THE FNM SR AND ITS HANDLING

The property of the FNM includes in particular:

- privatised property that were transferred to the FNM subject to the FZ ČSFR Act no. 92/1991 of the Collection of Laws on conditions of transfer of state property to other persons, as later amended,
- profits of the involvement of the FNM in business of commercial companies,
- revenues from sale of stocks or property interests in other than join stock companies,
- shares or property interests which have not been subject of decision making about privatisation and which the FNM acquired as a shareholder or partner,
- the property which fell to the FNM as a result of backing out of the contract.

The FNM assets are not part of the state budget and they can be used only for purposes stipulated by the Act of the NR SR no.253/1991 of the Collection of Laws, and subsequent legal regulations. The proposals about the use of the assets of the FNM are prepared by the Executive Committee, they are submitted to the Board, after deliberation in the Supervisory Board and are subsequently referred to the Government for debate and to the parliament for approval.

The property of the FNM SR is used in particular:

a) in accord with the decision about privatisation (for ways of privatisation, subject to § 12 par. 2, for transfer to the RIF, to cover costs effected by the transferee to settle ecological commitments that arose prior to privatisation),

b) in accord with the Government decision, particularly for:

- to meet obligations of the enterprises designated for privatisation, primarily obligations arising from borrowing that were secured with a lien,
- to strengthen resources of the banks and savings banks designated to provide credits,
- to fulfil guarantees for loans raised by commercial companies, in which the FNM has a permanent stake of at least 34%,
- to support development programmes in the Slovak Republic.

The book value of the property fit for privatisation in Slovakia is estimated at SKK 427.6 billion (OECD Economic Surveys, 1996). Of this, by 31 December 1998, SKK 349.423 billion had been transferred to the FNM (the Annual Report of the Activities of the FNM SR for 1998).

The remainder property that the FNM currently manages, comprise but an insignificant portion in the view of the overall amount of property already privatised.

Despite this, even a brief overview of economic management of the FNM so far will unequivocally show the anomalies in management, which only confirm the already well known facts about cases of unreasonable conduct in privatisation.

Preliminary report on the financial situation of the FNM for 1999

It will be evident that the overall volume of revenues that the FNM has received so far is mainly affected by the way of privatisation in the period of 1994-1998, when the assets, particularly in direct sales, were privatised below the price, with the down payment schedule spread over a long period and with different additional forms of "condoning" and relieves. Given the current payment discipline of the actual debtors of the FNM, it is hard to even estimate the development in revenues for the forthcoming period.

Preliminary report on the financial situation of the FNM for 1999

Although the FNM manages its assets in a non-standard way, even a passing glance at the result of this comparison is startling. Moreover, we need to

note that these figures do not give a complete picture of how the property of the FNM is treated:

- on the basis of Government decisions, the revenues of the FNM were used for recovery processes in the economy that failed to bring the anticipated effects, were results of political rather than economic decisions, and made the economic situation even more complicated (in the years 1992, 1993 discharging off debts of companies without complex assessment of the efficiency of such steps, this often only resulted in prolonging of the agony in companies and eventually entailed loss of resources put to this effect),
- a substantial portion of resources was used to supply state banks with capital, while these "financial injections" were not accompanied with further restructuring processes in the banks, hence the banks were not professional enough in carrying out their business, which resulted in the present staggering sum of classified loans, and the situation being often worse than before the banks were supplied with additional capital,
- based on the decisions made by the Government, the FNM undertook security for credits drawn by companies, in which it subsequently lost ownership control, while its obligation of the security provider persisted. Thus the FNM was unable to consistently defend its interests in these companies. This entailed dead capital invested, and other FNM liabilities. The decisions made after 1998, have brought about a partial change, when the FNM resumed property control over some of these enterprises and hence also capacity to influence the state of their activities.
- drawing FNM resources to pay the bonds, introduced into the privatisation process as yet another irrational element by virtue of a political decision, is one of the key faults committed,
- FNM funds had also been used to set up companies with ownership stake of the state (such as DMD Holding). Currently, in some of them, the state lost its control, the companies are often inefficient, and the intention of the state in founding them cannot readily be identified.

For the sake of objectivity, we need to say that part of the FNM funds were used to pursue the state interest in supporting agriculture, education and health care. Despite these activities, we may conclude that the SR Government have squandered the prevailing part of the FNM resources received in privatisation by taking ill-advised decisions, although they handled funds within the framework of the effective law.

6.4. THE LIQUIDITY OF THE FNM

The assessment of the FNM liquidity constitutes a separate chapter and currently it is the famed Trojan horse left behind by the last Mečiar Government. Already in the foregoing part, we made reference to the way and efficiency of economic management of the FNM based on brief financial results particularly in the years 1994 - 1998. The resources had been effected inefficiently, often to cover liabilities of the companies that were not owned by the FNM and hence should have been covered from the state budget.

The problems with the FNM liquidity were addressed in the worst possible way at the end of the last Mečiar Government term - by short-term borrowing at a high rate of interest but due mostly immediately after the election. Additional costs of the enormous interest rates have aggravated the overall financial downfall. Despite borrowing, the FNM SR was unable to meet its obligations for 1998 and entered the year 1999 with a deficit of SKK 2.3 billion .

Another, almost insoluble problem, the FNM is currently facing is the approaching maturity of bonds that replaced the second wave of privatisation. Disregarding the macroeconomic aspect and the issue of what will happen once the extra-ordinary volume of around SKK 35 billion has been put in circulation, nobody knows today what possible and lawful way there is available for the FNM to tackle the problem.

The accurate judgement of the development in the FNM liquidity for the forthcoming years is floating on estimates since it is impossible to determine the development in the FNM receivable. The state still has some limited volume of property, particularly in the so-called state monopolies and banks. A rational, efficient and speedy progress in privatising them might help to resolve the problem at least partially. Yet it is clear today that without external financial assistance and new legislative provisions, the FNM will neither manage to overcome nor resolve its liquidity problems.

Table 13 – Revenues of the FNM SR between the year 1992 and September, 10 1999

Revenues	1992	1993	1994	1995	1996	1997	1998	1999	Total
From asset sales	5,971	4,040	7,484	8,817	7,954	3,419	4,534	353	42,572
From dividends		21	412	602	368	246	172	28	1,849
transfers from MSPNM SR		7,000		1,000	3,000	500	600	261	12,361
loans							2,245	2,462	4,707
other receipts	50	599	1884	425	729	574	474	142	4,877
financial revenues	6,021	11,660	9,780	10,844	12,051	4,739	8,025	3,246	66,366
revenues in bonds					2,211	4,560	1,402		8,173
TOTAL REVENUES	6,021	11,660	9,780	10,844	14,262	9,299	9,427	3,246	74,539

Source: Annual reports of activities of the FNM for the years 1992 –1998

Table 14 – Expenditures of the FNM SR between the year 1992 and September, 10 1999 (in mill. SKK)

1992	1993	1994	1995	1996	1997	1998	Up to September, 10th 1999
5,754	10,775	10,180	10,119	11,257	9,326	10,196	5,487

Source: Annual reports of activities of the FNM for the years 1992 –1998

Table 15 – Comparison of revenues and expenditures of the FNM for the period between the 1992 and 10 September 1999 (in mill. SKK)

	Receipts	Outlays	Difference
1992	6,021	5,754	+ 267
1993	11, 666	10, 775	+ 891
1994	9,780	10, 180	- 400
1995	10, 844	10, 119	+ 725
1996	14, 262	11, 257	+ 3,005
1997	9,299	9,326	- 27
1998	9,427	10, 196	- 769
Up to September 10th, 1999	3,246	5,487	- 2,241
TOTAL	74, 545	73, 094	+ 1,451

Source: Annual reports of the activities of the FNM for the years 1992 - 1998

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7. PRIVATISATION OF STATE MONOPOLIES

Peter Pažitný

7.1. LEGISLATIVE PROVISIONS OF PRIVATISATION OF NATURAL MONOPOLIES

Under natural monopolies are understood economic subjects, which in their business endeavours are not subjected to a long-term pressure of a competitive environment, while their position stems from the economic and technological conditions under which they operate.[1] Natural monopolies play a key role from the aspect of financial resources, employment and their political influence upon the Slovak economy. The issue of privatisation and regulation of natural monopolies therefore has been resounding in the Slovak society and has been subject of much political and economic debate. Currently the issue of privatisation of natural monopolies is referred to in connection with the position of the state in economy. The dominant influence of the state on the economic management of monopolies is given by exercising ownership rights in these companies and regulating their activities. A combination of executive and regulatory activities leads to inefficiencies in the functioning of natural monopolies, which has an adverse effect upon the economic development. The current effort to privatise natural monopolies and to set an autonomous regulatory framework is not just an attempt to raise efficiency of monopolies. By the same token, it is the only means to eradicate the ensuing transformation distortions.

The question of natural monopolies in Slovakia is very sensitive and none of the Governments since 1990 have plucked up enough political courage to trigger off privatisation of natural monopolies. The notion of monopoly[2] had first been introduced in 1996 in the Act on prices and the subsequent implementing regulation by the Ministry of Finance. The ban on privatisation of natural monopolies was defined in 1995 in the Act on strategic enterprises. In 1998, concurrently with the election, a referendum on non-privatisation of natural monopolies had been called, preceded by a draft constitutional bill on non-privatisation of 6 natural monopolies. In the summer of 1999, the president again was submitted a request to call another referendum on the issue. The referendum in 1998 was declared void due to insufficient turn up and the efforts of citizens for a repeated referendum in 1999 were rejected by the President as under provisions of the constitution, a referendum on the same question can only be held once in three years. The recent step making provisions for privatisation of natural monopolies is the amendment of the Act no. 92/1991 on transfer of state assets to other persons, which lists the natural monopolies, in which the state should keep permanent stake at 51% or which cannot be privatised (see the next section).

7.1.1 The year 1995 - the Act on Strategic Enterprises

In 1995 the Government adopted the controversial Act no.192/1995 of the Collection of Laws, on securing state interests in privatisation of strategically important state enterprises and joint stock companies, which stipulated two groups of state - or FNM-owned enterprises. The first group set aside 26 enterprises that could not become subject of privatisation, among them also all natural monopolies. In the second group, 45 strategically significant enterprises were included, in which the state was to retain its influence.

Subject to §2 of the Act on terms and conditions of transfer of state property to other persons, the state property administered by state enterprises of the following branches could not become subject of privatisation:

- gas and energy industry (SPP, ZSE, SSE, VSE)
- post and telecommunications (SP, ST)
- military arms production and general machinery (6 enterprises)
- pharmaceutical production (2 enterprises)
- agriculture, forestry and water management (12 enterprises including state forestry enterprises: *Západoslovenské Lesy, Stredoslovenské Lesy, Severoslovenské Lesy, Východoslovenské Lesy)*

Under the law, the railway transport route, the Eastern-Slovakian trans-shipments at Čierna nad Tisou and at Maťovce, the shares of the pipeline operator Transpetrol and Slovenské Elektrárne (power utility) and the forest land fund administered by state enterprises could not be privatised.

As it later turned out, the law had but a declarative nature. Though natural monopolies remained untouched, of the second group of "strategic" enterprises only 10 remained fully owned either by the state or the FNM. The remaining 35 strategically important enterprises had been privatised [3] under notably unfavourable price terms[4] over the course of the years 1995 – 1998.[5]

7.1.2 The year 1996 - Natural monopoly

The term natural monopoly was first legislatively provided for in the implementing regulation of the Ministry of Finance of the SR no.87/1996 of the Collection of Laws, on prices. Subject to § 5 par. 3 of the Act on prices, a natural monopoly denotes technological, organisational and economic relations in a non-competitive environment between the seller and the buyer, which are reason for price regulation. These relations stem from total or partial linkage through a technical system (networks), subject to special regulations, particularly in:

- production, transmission, and distribution of electricity and heat
- production, storage, transmission and distribution of natural gas
- production of drinking and utility water from surface and ground sources and its distribution through
- public water systems and waste water discharge through public sewer systems and treatment plants
- telecommunication and postal services
- operation and use of railway transport routes
- other regulated activity, such as oil refining, operating water works and water transport, mining and extraction of raw materials and fuels, municipal public transport, arms production, radio communication and cable television services.

The act did not stipulate natural monopolies exactly, it only specified the areas having the character of natural monopolies. Such a definition offered considerable benevolence in understanding the notion of natural monopoly, which often resulted in its faulty interpretation.

7.1.3 The year 1998 - The draft constitutional law on ensuring state interests in energy and gas industries

At the 49th meeting of the NR SR on July, 9 1998, deputies did not pass[6] the draft constitutional law on securing state interests in energy and gas industries. The deputies for KDH (the Christian Democratic Movement) and the SMK (the Hungarian Coalition Party) declined to take a vote on it arguing there was such a law on non-privatisation of strategic enterprises already in existence and the ruling coalition was circumventing it anyway.[7]

The bill proposed by the deputies for the Workers Party (ZSR) would bar privatisation of these enterprises. Opposition deputies of the house however dubbed the bill as "one which does not solve anything and is empty"[8] The parliament voted on the bill several times as there were not sufficient numbers of deputies present in the house.

The bill would preclude privatisation of state enterprises and some joint stock companies in the above branches of industry. The proposed version specified the state enterprises and joint stock companies that could not be privatised, and whose assets or ownership interests they had put in other physical or legal persons could not be privatised either.

7.1.4 The year 1998 - The referendum on non-privatisation of strategic energy and gas utilities

Concurrently with the parliamentary elections, on September, 25-26 1998, a referendum on non-privatisation of strategic energy and gas utilities was held. It was called by the Government of the

SR which were also exercising some of presidential powers, on the basis of a citizens petition received on August, 13 1998. The referendum carried a single question. "Are you in favour of the National Council of the SR adopting a constitutional law that would ban privatisation of the following strategic enterprises:

- *Západoslovenské Energetické Závody, š.p., Bratislava (ZEZ)*
- *Stredoslovenské Energetické Závody, š.p., Žilina (SEZ)*
- *Východoslovenské Energetické Závody, š.p., Košice (VEZ)*
- *Slovenský Plynárenský Priemysel, š.p., Bratislava (SPP)*
- *Slovenské Elektrárne, a.s., Bratislava (SE)*
- *Transpetrol, a.s., Bratislava*

Participants in the referendum could answer either positively (yes) or negatively (no). Given the insufficient turn up (44,06 % of registered voters), the referendum was declared void.[10]

The referendum on non-privatisation of strategic enterprises was initiated by the Movement for a Democratic Slovakia (HZDS). At the same time, its members began collecting signatures for the citizens petition for calling a referendum , which was signed by more than half a million citizens by June, 11 1998. The opposition parties perceived this initiative disconcertingly. Then the deputy chair of the Slovak Democrtatic Left (SDĽ), Brigita Schmögnerová, denoted the petition campaign of HZDS and the referendum on non-privatisation of strategic enterprises as a game to cheat the public.[11]

Several liberal economists pointed to the necessity of privatising state monopolies but the opposition politicians, aware of pre-election pressures, the reluctance of the electorate for privatisation of monopolies and, particularly, fearing potential failure in the elections prepared their own bill on non-privatisation. The leader of the opposition Slovak Democratic Coalition, (SDK), M. Dzurinda, first dubbed the petition as a pre-election populist move,[12] but a month later, he himself became a populist when he together with the deputies for SDK, Viliam Vaškovič, Gabriel Palacka and Ľudovít Černák, drafted a constitutional bill on securing state interests in strategic state enterprises and joint stock companies. The draft excluded from privatisation state enterprises (ZSE, SSE, VSE, SPP), railway transport route, and trans-shipment points at Čierna nad Tisou and Maťovce, administered by the ŽSR, as well as forest fund administered by state enterprises. The above proposal further banned privatisation of Transpetrol, a.s. which was to be owned at 100% by the FNM. As V. Vaškovič said, the objective of the SDK was to get through the draft constitutional bill in the parliament immediately after September elections: "To this effect, SDK will seek support of the constitutional majority in the new parliament."[13]

Political analyst G. Mesežnikov maintains that the purpose of the petition campaign of the HZDS and the referendum itself was to use the banner of keeping a strong position of the state in strategic enterprises to the movement's benefit. The organisation of referendum on the day of parliamentary elections, in his view, could be motivated by an effort to make the election process more complicated, since the applicable implementing regulations for the two events differ.[14]

A number of analysts deemed the initiatives pursued by opposition and coalition parties of the day in the summer of 1998 for halting privatisation in energy and gas industry dangerous. Conceivably, the encouragement of anti-transformation mood of a large public just for the sake of getting their favour could, in the long run, lead to halting the transformation process.

Ján Oravec, the President of the F. A. Hayek Foundation, noted that the initiative for non-privatisation of strategic companies was tangible proof of how support of the public can be won through demagogy even in respect of measures, which, in the long run, can be damaging to all. In connection with paying off the bonds at January, 1 2001[15] and the high insolvency of the FNM, in his view, any Government in office in 2000 would happily forget about the "folklore initiatives of the mid-1998 and, in an attempt to save their neck, will offer enterprises or industries currently debated for sale as quickly as possible. In this respect, J. Oravec maintains, the initiative for non-privatisation of energy industry seems to be a factor that may have a very negative influence on the attitudes of the lay public. "In this respect, it is regretful that the current opposition has responded to populism with a similar populism and, in tune with coalition parties, is creating a united anti-privatisation front. And this, when at least the SDK has something different written in its manifesto, but its representatives have resigned on explaining the actual situation, and opted for an avenue of least resistance, that is, courting the prevailing albeit incorrect opinion."[16]

Numerous public opinion polls have indicated that citizens regard privatisation of natural monopolies very negatively and that they would

vote against privatising them. On the whole, we may conclude that in a referendum for non-privatisation of strategic companies at the instance of then coalition and opposition, more than 50% of electors eligible to vote would have participated, and retaining participation of the state in strategic companies would have been supported by more than half of the participant voters, which should prompt the parliament to pass a constitutional law banning privatisation of these enterprises. By the majority of population, however, its significance was perceived as secondary. The insufficient turn-out at the referendum can thus be credited, to a marked degree, to bad timing when its importance got lost in the pre-election tumult.

7.1.5 The year 1999 – Referendum on non-privatisation

The efforts to call a referendum on non-privatisation of strategic enterprises were resumed again in the summer of 1999, that is, less than a year after previous referendum had been declared void. The constitution bans calling referendum twice in a row within three years on the same question. Despite this, HZDS did launch another petition drive, in which along with the languages of minorities, it intended to raise the question of non-privatisation of strategic companies again.

At July, 2 1999, the petition against privatisation of strategic enterprises[17] had been signed by 367,000 citizens. The President gave a statement on August, 24 1999 that he had not called referendum on non-privatisation of strategic enterprises and on the use of minority languages because its was at variance with the constitution of the SR. More than 51% of 500 respondents, approached by phone by the Agency Polis - Slovakia, agreed with the decision. The opposition commented the president's decision by saying they expected the president to at least call referendum on non-privatisation of strategic enterprises.

It is noteworthy that the poll conducted on July, 19-23 1999 by the Agency Taylor Nelson Sofres, in co-operation with the press agency SITA in 1043 respondents indicated that as much as 76.9% of population was against privatisation of strategic enterprises. Grigorij Mesežnikov, the President of the Institute for Public Affairs, commented the situation of the referendum in the late 1998 as follows: "despite the fact that the majority of citizens is against privatisation of strategic enterprises, they do not think it necessary to come and give their view, although they do not agree with privatisation ."

7.1.6 The year 1999-the amendment of the Act no. 92/1991 of 16 September 1999

The Government amendment of the Act on conditions of transfer of state assets to other persons was approved at the 20th meeting of the National Council of the SR.[18] The amendment made provision for conditions of transfer of state property to other persons, bringing some changes primarily related to the definition of powers in further process of privatisation.

The Government always decides about privatisation of an enterprise having the nature of a natural monopoly, by determining property ownership of the state in the business of such an enterprise, or a commercial company and on privatisation of a joint stock company with state interest, having a nature of a natural monopoly, after the discussion about the intention and course of action in the parliament. The parliament must give its advice within 30 days since its presentation. After this period, the proposal is deemed to have been debated. The amendment strictly stipulates which enterprises are of a natural monopoly character. (Table 16) This change should, in a marked way, increase transparency and control over the privatisation process by the parliament. At the same time, however, the involvement of the parliament in decision making may significantly block and prolong the privatisation process.

Similarly to the Strategic Enterprise Act, the amendment, too, earmarks the state assets that cannot be privatised, namely the railway transport route[19], trans-shipment points at Čierna nad Tisou and Maťovce, the forest land fund, constructions and facilities serving forestry and the shares of their commercial companies owned by the state[20], unless they are subject to claims, subject to special regulations, surface and ground waters[21] and the property serving for the administration and protection of waterways and groundwater and shares of their commercial companies shares or property serving to provide postal services reserved to the state.[22]

The law brings two significant changes relative to the preceding legislation. Firstly, it significantly strengthens the responsibility of the Government,

and the parliament, in particular, in the privatisation decisions. Secondly, it designates energy and gas enterprises in which the state should retain permanent interest. In decisions on privatisation of SPP, ZSE, SSE, VSE, SE[23] and *Transpetrol*, the state or the fund must retain permanent property interest in the business of at least 51 percent. Under the Government decision, the state or the fund will retain some property interest in the ST.[24]

At the same time, the amendment repealed the controversial act of the NR SR no. 192/1995 on securing state interests in privatisation of strategically important state enterprises and joint stock companies, as later amended.

7.1.7 The Act on large-scale privatisation has its twenty-first amendment

After ten years, Slovakia has a law which at least partially permits to privatise natural monopolies. It was preceded by a major exchange of views within parties of the ruling coalition but also the opposition. It is a law of compromises, in which, as several experts agree, the post - socialist spirit won. The three months of political struggle and search for political consensus resulted finally in what the Government had declared as one of its priorities - a framework definition of what will still be privatised from among the enterprises understood until recently as strategic. The compromise took an unbelievably long time to reach, when SDĽ constantly blocked the bill and managed to get through its long-standing declared objective - to keep majority stakes in energy utilities in the hands of the state.[25] Six energy companies can only be privatised up to 49 percent of their property.

The expert commission reviewing the possibilities of privatisation of natural monopolies, composed of four members of the ruling coalition finally identified three possible solutions (table 17). SDĽ however got through a fourth, hybrid alternative substantially restraining the deetatisation of monopolies.

The liberal platform of SDK advocated a law that would not define any percentage interest of the state. On the other hand, SDĽ insisted on minimum 51% of the permanent interest in six energy companies and a 34% stake in the Slovak Telecommunications.

7.2. POLITICAL RELUCTANCE TO UNDERTAKE PRIVATISATION OF STATE MONOPOLIES

For the purpose of this part of the chapter, the term natural monopoly will denote state enterprises having the nature of a natural monopoly. It concerns, in particular, SPP, SE, ZSE, SSE, VSE, TRANSPETROL, ŽSR, SP and ST.

The functioning of natural monopolies in Slovakia is considerably restrained by the interventions of the state, not only in the area of regulation, but in exercising ownership rights as well. Over the course of last ten years, natural monopolies were regarded as the "family silver". There was a perception of them being untouchable and beyond privatisation. The society was being confirmed in the opinion that only the state could be the proper owner of these companies. This nationalistic conception of the position of a monopoly was supported by the ruling parties from the inception of transformation.

The preference given to state ownership as opposed to private ownership was defended by claiming that the private owner's involvement would be reflected in the output price of products and services of the monopolies. The motivation for functioning of a monopoly, just as in any other case of enterprise is in achieving profit. The entry of private capital in these companies would not avoid changes to final consumer prices. The problem of establishing consumer prices, however, can be addressed with correctly set regulatory framework, whose creation had frozen in 1992 and was resumed only in 1999. (For more detail, see Appendix 2 of this chapter). In case of such institutional shortcoming as a lacking functional regulatory framework, the benefits following from the privatisation of natural monopolies can be seriously marked with uncontrolled price increases.

The population is very sensitive to increases in the price level, particularly of those products and services that were "always", under socialist era, almost free. For ten years, the idea of the impossibility of privatisation of natural monopolies was being fashioned from this very axiom. These are the assumptions behind the reluctance of citizens to agree with the denationalisation of these companies, as is clear from the opinion polls indicating that more than 75% of respondents disagree with the idea.

The role of the Government in the Slovak economy is very closely connected with natural

Table 16 – Enterprises having the nature of natural monopoly subject to the amendment of the Act no. 92/1991

	Trade name	Abbreviation	Legal form	Seat
1.	Slovenský Plynárenský Priemysel	SPP	state enterprise	Bratislava
2.	Západoslovenské Energetické Závody	ZSE	state enterprise	Bratislava
3.	Stredoslovenské Energetické Závody	SSE	state enterprise	Žilina
4.	Východoslovenské Energetické Závody	VSE	state enterprise	Košice
5.	Slovenská Pošta [Slovak Post]	SP	state enterprise	Banská Bystrica
6.	Slovenský Vodohospodársky podnik [Slovak Water Management Utility]	SVP	state enterprise	Banská Štiavnica
7.	Železnice Slovenskej Republiky [Slovak Railways]	ŽSR	state enterprise	Bratislava
8.	Transpetrol		joint stock company	Bratislava
9.	Slovenské elektrárne	SE	joint stock company	Bratislava
10.	Slovenské telekomunikácie	ST	joint stock company	Bratislava
11.	Lesy Bratislava [Forests Bratislava]		state enterprise	Bratislava
	Lesy Trenčín [Forests Trenčín]		state enterprise	Trenčín
	Stredoslovenské lesy [Central-Slovakian Forests]		state enterprise	Banská Bystrica
	Severoslovenské lesy [North-Slovakian Forests]		state enterprise	Žilina
	Lesy Košice [Forests Košice]		state enterprise	Košice
	Lesy Prešov [Forests Prešov]		state enterprise	Prešov

Source: §10 of the Act No. 92/1991 of the Collection of Laws , as later amended

monopolies. Natural monopolies, owing to their influence and strength have become one of the direct instruments of economic policy. The high tempo of GDP growths were achieved primarily because of huge investments of natural monopolies, whose investment activities were backed with guarantees for their credits. The low inflation was achieved owing to inadequately tough regulatory policy. Natural monopolies became the largest employers and they undergo the process of restructuring and rationalisation with major difficulties. The profits generated by natural monopolies were progressively dissolved in the current expenses of the state budget, or transferred through unfavourable contracts to private companies or went for financing activities of political parties.

Privatisation of natural monopolies would mean loss of control of the state and the ruling political parties over a huge package of finances; since a private owner does not have to be grateful to anybody for the won election. A private owner does not have to come and rescue the deficit state budget or employ in return political and bureaucratic top officials. He does not need to channel finances in loss-generating firms. He does not have to support advertising agencies. Moreover, he does not need to cover the cost of activities of political parties.

The functioning of a natural monopoly can be defined by three objectives. Efficiency (Profitability). Equality (Social function). Stability (Price level). In the Slovak economic environment thus far, equality and stability have dominated the efficiency.

Efficiency of a natural monopoly is the key prerequisite for its privatisation. The data on sales and the economic result of natural monopolies over the course of recent five years indicate that the efficiency of natural monopolies has been declining. There is a marked inconsistency between the growth of sales and the growth of profit before tax. (Table 19). While in 1994, the proportion of profit before tax in sales was 25.4%, the same figure dropped to 4.8 % in 1998.

The alarming situation in the decreasing efficiency was due to the reluctance of the state to cede its ownership rights in state monopolies. The reach of the Government in the management of state monopolies was absolute and brought clear benefits to the Government, through which they could exercise influence on the running of economy. The effort of some political parties (both coalition and opposition) to denationalise monopolies was and still is very low. The exercise of ownership rights and administration of state monopolies gives political parties indisputable advantages:

- power to influence financial flows elicited by high consumption of the state, which entailed excessive drain of resources
- power to reward brought about by political appointments of the management, which was reflected in the low level of corporate governance
- power to finance political parties
- power to influence economic policy through pseudo-strategic factors (high employment, maintaining inflation, GDP growth)
- power to support private economic entities.

7.2.1 Power to influence financial flows, which entailed excessive drain of resources

In addition to tax liability, some state enterprises (SPP and ST) are obliged to transfer so-called special transfers to the state budget, which get into the budget as non-tax revenues and the Government use them to cover Government expenditure. The negative relation between the growing transfers to the state budget and the profit before tax is alarming. The substantial deficit of the state budget in 1996 called for a greater pressure on special transfers. The decline of SPP profit before tax was accompanied with higher transfers to the budget. While in 1994-1996 the proportion of transfers to

Table 17 – Variants of deetatisation of natural monopolies

Variant	Privatisation option
1	The first variant contemplated replacing blockage percentages with a provision that the state would retain property interest on the basis of defining the strategic interest of the state in any particular branch.
2	The second variant attempted to antecede the process of restructuring in these companies and strove to define substantively the natural monopoly, i.e., it separated in companies those aspects that had a monopoly position for natural or administrative reasons from what may be termed the scope for liberalisation and competition. State monopolies as such do not represent natural monopolies, only a part of their activities which have not been so far organisationally or assets -wise singled out. The variant proposed to determine a range of activities that cannot be privatised regardless of the volume of assets that serves to render these activities. For example, the central power transmission system and control in power industry or transport route in the Slovak Rail and similar companies serving to administer and protect ground water.
3	The third avenue determined that the Government make decisions about privatisation with a proviso that the concept of transformation of individual branches be submitted to the parliament with a clearly defined strategic interest of the state. Thus the Government would have to publicly declare certain position and the failure to comply with these provisions might be a reason for recalling the Government.
4	The last and the final variant carries a centralist handwriting of SDĽ which have got through a 51- percent stake of the state in 6 energy enterprises and an unspecified permanent interest in the ST (the Government decided it at 34%) and non-privatisation of the Slovak Post and the ŽSR (Slovak Railways).

Source: Variants 1, 2 and 3 are according to the statements by the Minister for Privatisation Mária Machová, the commission member. Variant 4 is the approved variant. PROFIT 39/99 of September, 21 1999

Table 18 – Motives for retaining natural monopolies in the hands of the state

Motives of the state for non-privatisation of natural	Impact on natural monopolies	Impact on business, economic and competitive environment
Retaining decision making power over financial resources of natural monopolies. Control over collecting taxes and transfers to the state budget.	Excessive drawing of resources that caused the enterprises did not have sufficient own resources for investment activities, which they compensated for by taking on outside resources.	Potential encouragement of the demand side of the GDP through increasing revenues of the State Budget instead of reducing state expenditures.
Power to reward political and bureaucratic top officials for good work.	Low level of corporate governance, when candidates were appointed to positions of director general along party lines, rather than according to professionalism and specialist skills.	Discrimination against specialists. Negative perceptions of the position by the public.
Financing political parties of the Government through different contracts with advertising agencies.	Draining resources	Distortion of the competitive environment.
Pseudo-strategic interests of the state, which are in fact political interests with a populist undertone. Fulfilling social functions.	Labour overmanning and shortage of development funds owing to price regulation.	Statistical posting of low rate of low rate of inflation through huge regulation. Fostering socialist understanding of the concept of a natural monopoly.
Support for private firms.	Increasing debt on the grounds of shortage of own resources.	Discrimination, sub-optimal resource allocation.

the state budget in profit before tax comprised 9%, in 1997 it went up to 21% and in 1998 to even 23% (Table 20). The state thus drained resources through special transfers to the state budget.

An unbearable situation in the state budget was confirmed also by the development in 1998 when the state required additional transfer also from the Slovak Telecommunications which until recently was not obliged to make an special financial transfers (Table 21). M. Machová, Minister for Privatisation, in relation to transfers said that although it was not most lucky for an enterprise to have to replenish the revenues of state budget more than others, it was clear that these enterprises had been one of the worst managers over the last three-four years, and faced enormous problems which were taking on not only local but wider social significance.[26]

The loss of this additional transfer may be a significant risk in privatisation. If the state is going to exercise ownership rights on behalf of its 51%, it can decide about using them to cover the state budget deficit, but a private investor could disagree. In the sale of a minority stake the Government will have to strengthen decision making powers of investors, which may weaken the Government position and the Government will no longer be able to enforce additional financial transfers.

7.2.2 Power to politically reward, which reduced the level of corporate governance

To be a manager of a state monopoly, both, in the past and at present, has been considered a lucrative position. A manager had to be a person who was politically acceptable. In return for the work done in advocating the policy of a particular party, a person could become general director of a state monopoly, which was publicly acknowledged by Ján Ducký[27] in 1997 when appointed to the position of general director of SPP. He said then that he took his appointment to the

new function as a reward[28]. When asked whether his allegiance to *HZDS* decided the appointment he said, he saw no obstacles in his membership in *HZDS* and his ambition was to continue with his duties as an MP. He went on to say "I will work in *SPP* and I will come to parliament to vote".[29] The most serious qualification yardsticks were political obsequiousness and readiness to subordinate to the dictate of a political party. The daily *Práca* commented the change at the top of *SPP* with scepticism: "Only a great optimist can hope that replacing A. Demko with a politician who --in his words --is only going to acquaint himself with the problems of the SPP, will bring about further increase of profits." Since the time J. Ducký joined SPP, the profit before tax went down by SKK 5.2 bilion (for details, see Appendix 1 of this chapter).

The greatest risk in filling top positions in state monopolies is the fact that the management does not manage their own financial resources but the state funds. This was a major temptation and it often lead and is still leading to abuse of the office for private and political purposes.

It is a paradox that the position of the director of a natural monopoly was not, and still is not a managerial position, but rather, a political one. Filling top positions in natural monopolies in this way resulted in controversial decisions and activities which, though producing an effect on the surface, were damaging not only to the interests of natural monopolies themselves, but, above all, to the citizens of this state. Natural monopolies were becoming less efficient, which showed in their economic results. The task for the director appointed in this way was to secure sufficient funds for the political party, which in practice was effected through so-called image campaigns and use of a selected advertising agency.

State monopolies are strategic mainly from the viewpoint of political parties, which is best seen in changes of Governments after the elections. Changes at positions of directors of state monopolies have become a natural consequence of the changing of the Government. In addition to the four-year political cycle, there are also changes at the director positions mainly for purpose of building a stronger position within the ruling coalition. It is thus not an exception when a minister becomes director of a state monopoly and vice versa. It is a rare case, when poor economic performance of a company results in changing the director. Yet, such arguments are used most frequently to justify a change which is actually of a "political and strategic" nature.

The low level of corporate governance resulting from political appointments to managerial positions could notably change as of January, 1 2000. Top officials of natural monopolies should switch to a system of so-called managerial contracts. Their fulfilment will be assessed at half-year intervals. The managerial contract will set each director different terms. What will be common to all, is a relatively low basic salary, which will have a very strong motivational component. This component will depend on how the manager succeeds in stabilising, rationalising or improving the position of the monopoly. Apart from prerequisites of a Specialist, the directors will have to possess also personal qualities, such as assertiveness, stability or resistance to stress.

A key prerequisite for introducing the system of managerial contracts is to abandon cronyism and corruption in the process of recruiting renown managers. At the same time, domestic managers should not be given preference over foreign managers.

7.2.3 The power to finance political parties

In Slovakia, all natural monopolies are controlled by political parties. Moreover, the founders of natural monopolies are individual ministries. Accordingly, there is a relation of subordination, on one hand, between individual ministers and the management of natural monopolies, on the other hand, a relation of political incompatibility, because the minister of

Table 19 – Profit before tax and sales of natural monopolies*

		1994	1995	1996	1997	1998
Profit before tax	Mill. SKK	29,091	26,094	23,857	13,374	6,913
Sales	Mill. SKK	114,423	122,442	132,122	137,445	143,213
Profit before tax/Sales	%	25%	21%	18%	10%	5%

* SPP, SE, ZSE, SSE, VSE, Transpetrol, ŽSR, SP, ST, **Source:** Top Trend 1995, 1996, 1997, 1998, 1999

the founder ministry may be of a different political orientation than the general director of a natural monopoly. This situation then may lead to contra-productive decisions which, on one hand, are consistent with the decision of a political party, but, on the other, do not necessarily correspond to the interest of the Government and vice versa. In the background of filling individual managerial positions, there is a tough political struggle and "coalition agreements" on getting control over a particular state monopoly or leaving it in the control of somebody else.

So, in the leadership of the strategic enterprises referred above there are concrete people of certain political persuasion. Moreover, the quality of management by state bureaucrats in many of these companies is falling dramatically. These companies have always been used by political subjects to achieve political objectives.[30]

Following example may serve to illustrate the liaison of political and economic power:

In January 1997, *Slovenské Elektrárne (SE)*, without a tender, signed a contract on exclusive advertising representation and collaboration in implementing marketing and communication strategy with an advertising agency Donar, at an amount of more than SKK 130 million.[31] In addition, the control of the Ministry of Economy revealed that Donar made out SE invoices without specification of works delivered.[32] The daily Práca even published an order of the general director of SE, Tibor Mikuš, asking all directors of units and district plants to always collaborate in their advertising activities with the Agency Donar. The daily further mentions that "the advertising agency Donar is running campaign for *HZDS* and T. Mikuš is a top-position candidate of the ruling movement in this year's parliamentary elections. This is then a way how money of the state budget can be transferred from a state enterprise for the election purposes of the *HZDS*."[33] It is most relevant that the management of SPP, headed by Ján Ducký, also concluded unfavourable contracts with Donar.[34]

7.2.4 The power to put forward natural monopolies as a tool of economic policy to achieve pseudo-strategic state interests

Maintaining low inflation

Until 1993, for political reasons delayed energy price deregulation had been conterproductive. The dogma taken over from the communist ideology, on some public goods "free of charge" or for low prices had become a key tenet of the whole process of transformation and the subject of deregulation had been detabuised only at the turn of the years 1998 and 1999, within the first so-called stringency measures package. A more significant deregulation occurred immediately in May when the populist SDĽ, too, had to give in to the pressures of right-oriented economists. Deregulation within second, so-called "rescue" package, was necessary mainly due to the pressure of the decomposing public finance and the failure to maintain the exchange rates.

The intentional delay of price deregulation in the last five years had a political overtone. Apart from the competent policy of the NBS, it was freezing consumer prices for energy, fuels, water, etc. that significantly contributed to maintaining very low growth of the price level. At the same time, the input prices of natural monopolies were steadily increasing in response to inflation and the changes in the interest rates. The distorted prices could not cover the growing cost of state monopolies, which reflected primarily in the economic results of natural monopolies. The widening gap between the regulated output prices and unregulated input prices could at least temporarily be closed by the double deregulation in January and in May 1999.

The energy prices and those of other regulated products and services had been regulated only minimally by January 1999. The final consumer prices were many times lower than the production and input prices. A particularly critical situation occurred in energy prices for individuals when they were regulated more significantly than those

Table 20 – Transfers of Slovenský PlynárenskýPriemysel (SPP)

	1994	1995	1996	1997	1998*
Transfers of in million SKK	1,197	1,200	1,200	2,000	2,000
SPP profit before tax in million SKK		13,253	13,322	13,792	9,645 8,574
Transfers /Profit before tax in %	9 %	9 %	9 %	21 %	23 %

Source: *Top Trend* 1995, 1996, 1997, 1998, 1999

Table 21 – Transfers of Slovenské Telekomunikácie (ST)

	1994	1995	1996	1997	1998*
ST transfers in million SKK	0	0	0	0	500
ST profit before tax in million SKK		2,117	2,802	4,199	4,310 2,061
Transfers / Profit before tax in %	0 %	0 %	0 %	0 %	24 %

Source: *Top Trend* 1995, 1996, 1997, 1998, 1999

for businesses and the proportion of individual consumers began to significantly grow against businesses.35 The low rates for electricity for households had an adverse effect upon investment activities of the companies.

This has been constantly pointed to by directors of distribution companies. Andrej Devečka, the director for trade and development of ZSE, stated that instead of profits being channelled into improvements of energy facilities they were lost in the low price of energy for the population. "The price for small consumers is at the level of 50% of the cost for which ZSE gets the electricity. Each citizen is then subsidised equally, regardless of consumption."[36]

The situation was assessed similarly by the senior director for economy and finance of the SSE Miroslav Ryšavý when he saw behind the negative economic development and performance the regulated purchase price of electricity, the regulated purchase and selling price of thermal energy and the inflation and its impact on the input growth. The company managed to cover the most urgent non-investment costs. The price structure of electric and thermal energy has no relation to the cost of production and supply, and these are higher than the selling price. As a result of the regulation mentioned above, there is insufficient accumulation of own resources for reproduction and the rate of interest burden is growing. [37]

It follows from the above that the strategy of increasing prices for electricity and heating is insufficient from the aspects of the costs connected to the energy supply.

According to the analysis of SE, their input cost have gone up 600 % over the last years, while the consumer prices do not even cover the production and distribution costs of electricity. Moreover, since 1993, the impact of the devalued crown, the change of VAT, inflation development, and new types of cost had not been reflected in the electricity rates.[38] Thus the electricity rates so far have not been an instrument which would take account of real cost of production, but rather, they were a social instrument.[39]

A similar situation developed in the price of gas. According to J. Ducký, then general director, the gross profit of SPP for the years 1995-1997 was running at SKK 33 billion, even with the price of natural gas for the population at the level of SKK 1.90 per m3, although SPP purchased it at SKK 3.40. "By doing this, we fulfil also one of the social tasks of the state. We do not need to add that a private firm would not do it, which would definitely entail increased prices of gas for the households."[40]

A policy of high employment

The process of restructuring and rationalising has not touched state monopolies at all. The reason for the employee reduction in state monopolies was the departure of 5,800 employees of the ŽSR over the course of the years 1993-1998. The excess number of employees under falling profits exerts an adverse effect on the economy of a state monopoly because the wage cost growth arising from the increase of nominal wages under equal (or higher) number of employees is not offset by increased profit. This entails a steadily declining proportion of profit before tax per employee, which since 1994, has gone down from SKK 250, 000 to the level of SKK 60,000 in 1998. (Table 23)

As one might expect, in the view of keeping social peace, the state was more interested in high employment than in improving economic performance. Owing to the peculiarly set way of taxing (a system of credited and deductible items) the companies always transferred the financial resources in the form of taxes.

Achieving high growth of the GDP at the expense of growing debt

Another stumbling block was the insufficient co-ordination in the economic policy with the economic management of the individual enterprises. The priority of the economic policy in the past years was the growth of the GDP. This growth, however, was not based on a sound development through increased competitiveness of

the economy, but was driven mainly by increased consumption of the population and the Government. Within a very short time, state monopolies had invested huge amounts. The positive effect of investments was significantly restricted by the volume of financial resources for this investment. Owing to low prices of their output products and services, and the declining profit, the undercapitalised state monopolies then did not have sufficient funds for these cost-intensive investments, consequently the Government had to give state guarantees for the credit financing of these investments. Though the high tempo of investments of state monopolies led to a speedy growth of their balance sheet amounts, it did so only at the expense of substantial increase of foreign resources in the assets of these companies. (Table 24).

Granting state guarantees and the subsequent credit burden of the enterprises hides an enormous timed risk. The credit repayment schedule is unrelenting. By taking over the guarantee, the state will have to pay if the enterprise is unable to repay the credit. The instalment burden for enormous investment activities will be transferred from the enterprise to the state budget and from the state budget to the taxpayers. This inability of natural monopolies to repay interest and credits is augmented by pouring profits of these companies into private firms and political parties. Minister Machová confirmed that "the indebtedness of state monopolies is paid by us all because the majority of their credits is guaranteed by the state and they themselves had pledged their assets for credits taken by other companies. Making their activities more efficient thorough privatisation thus is of equal significance as the revenues from their sale for the budget."[42] Moreover, domestic credit sources are several times more expensive when compared to foreign sources, which means that the resources for investment ambitions and restructuring are raised in foreign currency, which in turn relevantly affects the volume of financial cost through the change in the exchange rate.

7.2.5 The power to support private businesses which resulted in assets stripping of state monopolies

The assets stripping of state monopolies over the course of transformation has been pointed to by not only journalists but politicians and independent economists as well. The position of a state monopoly and the power of its management in Slovak economy makes (legal) assets stripping of the enterprise possible, i.e., to transfer its assets in the form of financial resources or capital to a private firm, from where the funds are directed to different purposes , such as private benefit, financing political parties, etc. The largegest weakness of the transformation process in Slovakia is the absence of institutional framework. The current state of institutional arrangements has offered management of state monopolies ideal conditions for pouring assets out:

- management is appointed by the sector minister without a competitive interview, only based on references and mainly political allegiance
- tough control process is missing, as well as control by the public. The Government accepts many errors and faults in decision making, with personal accountability absent. The controlling function is to a large extent eroded by the loyalty of the Government to the management of state monopolies
- state monopoly (and its management) lacks motivation to achieve profit
- management administer immense financial resources and they make decisions alone. Though the sector minister is superior, this superiority is often only formal, which is seen in the absolute wilfulness of the management of a state monopoly
- the nexus of political and economic power is thus taking on a severe dimension when efficient control mechanisms through the opposition or the public are not in place
- state monopolies are artificially maintained through subsidies to carry out social functions
- non-transparent selection of suppliers, preference given to close private firms. Insufficient information on the economic performance of enterprises
- exclusion of foreign consultancy firms from decision making processes.

The asset stripping of state monopolies has got several forms. The most common are the following:

- purchases through a mediator without calling a tender, or through a manipulated public tender (office equipment, information technology systems, etc.)
- signing fictitious delivery contracts that had been duly invoiced by third parties, duly paid by the state monopoly but never supplied

- concluding unfavourable third-parties beneficial contacts (unfavourable lease contracts, unfavourable leases, etc.)
- financing advertising image promoting campaigns
- purchases of unattractive stocks of loss making enterprises at higher than market prices
- reimbursement through drawing own bills of exchange
- exacting receivables through third parties for unreasonably high commission charges
- sale of property for unusually low prices.

7.3 RISK FACTORS OF PRIVATISATION

Privatisation of state monopolies carries with it a number of risks. The major risk involved is the readiness for privatisation, in which time plays an important role. The scope of privatisation and setting adequate price for assets privatised is another significant factor, while it is vital to opt for the right form of privatisation and decide how the proceeds of privatisation are going to be employed. Last, but not least, we need to bear in mind that the privatisation process must be economic and specialist, rather than political problem, as has been the case to date.

There are two important factors which are relevant prerequisites for minimising risks involved in privatisation of state monopolies:

- depoliticising the process of privatisation
- co-ordination of the process of privatisation and regulation.

7.3.1 The readiness of natural monopolies for privatisation

Excluded from privatisation for the moment are: *Železnice SR, Slovenská Pošta, Slovenský VodoHospodársky Podnik* and *Lesy SR,* administered by 6 state enterprises. Other excluded entities include transit gas network (component part of SPP) and transit petroleum pipeline, (a component part of *Transpetrol*). In the province of SE, the central transmission systems, the energy control, and the water power plant in Gabčíkovo have also been excluded from privatisation. Privatisation of the nuclear power plants in Jaslovské Bohunice and Mochovce will also be problematic in the forthcoming period. That would leave electricity generation (part of the SE) and distribution (*SSE, VSE* and *ZSE*) and the thermal energy producing facilities, subject to privatisation in the energy sector.

The *Slovenské telecomunikácie (ST)* are best prepared for privatisation, whose privatisation should have taken place in 1999 but several scandals have caused that it would likely happen in the year 2000. Under the recent decision adopted by the Government, the strategic investor's share should be 51%, that of the state 34%, and the FNM 15%, respectively.[43] Privatisation may slightly be problematic in those enterprises, where, subject to relevant legislation, the state is to retain 51% and which encompass also components that cannot be privatised. These include: *SPP, SE, ZSE, SSE, VSE* and *Transpetrol.*

A potential delay reduces the price of these monopolies. Eugen Jurzyca, the President of the Centre for Economic Development, in respect of the delay, notes that the most vehement opponents of privatisation who see themselves as defending the interests of Slovakia, should contemplate whether they have not deprived this country of tens, if not hundreds, of billion crowns.[44]

7.3.2 Privatisation - a victory of politics

In 1998, privatisation was opposed equally by parties of the opposition and the coalition. The attitude then was conditioned by the pre-election populism. Currently, the greatest opponents of privatisation are the opposition parties, which, in summer 1999, initiated a petition drive to ban privatisation of state monopolies. The opinions on privatisation of state monopolies vary within the current coalition. Only the parties of *SDK, SMK* and *SOP*, have unequivocally stood up to support privatisation, and also agree in suggesting that the amendment of the large privatisation law should not stipulate permanent percentage holdings of the state in so-called strategic enterprises, such as *SE, SPP, ST or Transpetrol*.[45] The position of SDĽ was expressed in two draft amendments. The first called for retaining 51% permanent stake in energy utilities, and the second proposed to increase powers of the parliament in privatisation, when each privatisation project of state monopolies should first be debated in the Government and then in the Parliament. (Table 25)

The greatest proponents of privatisation in the Government before the law was passed was the Deputy Prime Minister for Economy, Ivan Mikloš,

and the Minister for Privatisation Mária Machová. Ivan Mikloš said that considerations about potential restraints to privatisation of natural monopolies with permanent majority interest of the state had very negative direct and indirect consequences, both from the aspect of the conditions of the OECD, and the potential revenues of the state. If the investor, Mikloš contends, takes over the management and control over a strategic company, then it is necessary to also consider the sale of a larger stake of stocks. Such sale will bring the state budget much higher proceeds.[46]

The Minister for Privatisation saw major risks of the stipulation of permanent property interest of the state in natural monopolies and some financial institutions under the state control, in significant narrowing of the scope and ways for stabilisation of Slovak economy and the elimination of risks of the state budget for 2000. It would also make the position of the FNM SR more difficult in redeeming bonds of the Fund, bond /share swaps and also fulfilling some other priorities of the Government policies.[47]

Eventually, the political struggle for (non)privatisation of state monopolies was won by the SDĽ, which, despite the resistance of the other three coalition parties, advocating a more vehement privatisation, managed to get through the blockage clause and also the control by the parliament.

7.3.3 Through privatisation of natural monopolies as much as around SKK 266 billion could be received

The economic public perceives privatisation of natural monopolies and their subsequent legislative and executive regulation very positively. Their market value, however, will remain a problem, that is, how much a foreign investor will be willing to pay for any of these natural monopolies. The Minister of Finance has already introduced some alternatives of the market value. If her projections were to come true, the state might get as much as SKK 266 billion in privatising state monopolies. (Table 26)

7.3.4 The form of denationalisation and how to deal with the revenues

Denationalisation of natural monopolies may run in several ways. In selecting the privatisation method, at least two important factors should be accounted for, namely the proceeds of the potential privatisation and the obligation of the Fund towards the citizen in the form bonds. Privatisation can basically take four avenues:

- swapping natural monopolies shares for FNM bonds
- selling stocks of strategic enterprises to the citizens association Your Wave of Privatisation
- sale to strategic investors through public tender
- combining the above.

Trading bonds for shares

At January, 1 2001, the National Property Fund (FNM SR) must pay out bonds to citizens worth around SKK 32 billion. Swapping bonds for shares of natural monopolies is one of the solutions that is offered. Minister of Finance, B. Schmögnerová even thinks it appropriate to swap bonds directly for shares of lucrative, meaning now only strategic enterprises.[48] Minister Machová deems the idea of exchanging bonds for stocks of the predetermined enterprises, in kind of packages even, to be premature.[49]

The greatest advantage of this variant is a quick solution of the Fund's obligation regarding citizens, without inflation pressure being exerted on the economy.[50] The risks involved in applying this model clearly include the negative image of the voucher (voucher) privatisation and the citizens distrust for this form of privatisation. Another significant risk is that the economy would not get real money. The last relevant risk in case of swapping bonds for shares is the fragmented ownership and a possibility that subjects might buy out state enterprises that would jeopardise their functioning.

Sale of natural monopolies to a Slovak entity

A successful Slovak entrepreneur came up with the project of Your Wave of Privatisation. He founded a citizens association with the goal of privatising natural monopolies. Currently a massive advertising campaign has been launched to raise financial resources from the citizens. The idea is to then bid for privatisation of state monopolies with the money. The activities were criticised by both the Deputy Prime Minister Ivan Mikloš and the Minister of Finance Schmögnerová.

The major risks of this form of privatisation include the unverifiable promises of the association's founders about high yields reaching 100% of the deposit, whose guarantee is doubtful,

Table 22 – Price increases for electricity in the years 1990-1999

Year	Annual average rate of inflation	Price for households	Date of introduction	Price for businesses	Date of introduction
1990	4.5 %			53 %	1 Dec. 1990
1991	61.2 %	70 %	October, 1 1991	80 %	April, 1 1991
1992	10.0 %				
1993	23.2 %				
1994	13.4 %				
1995	9.9 %				
1996	5.8 %	10 %	August, 1 1996	5 %	August, 1 1996
1997	6.1 %			5 %-13 %	August, 1 1997
1998	6.4 %				
1999	10 -11 %	50 -100 %	July, 1 1999		
		35 %	July, 1 1999	5 %	July, 1 1999

Source: Monitoring of daily press

Table 23 – Employment in natural monopolies*

Natural monopolies		1994	1995	1996	1997	1998
Sales	mill. SKK	114,423	122,442	132,122	137, 445	143, 213
Profit before tax	mill. SKK	29,091	26,094	23,857	13, 374	6, 913
Number of employees	average state	115,890	113, 060	112,993	110, 738	110, 061
Sales per employee	mill. SKK	0.99	1.08	1.17	1.24	1.30
Profit per employee	mill. SKK	0.25	0.23	0.21	0.12	0.06

* SPP, SE, ZSE, SSE, VSE, Transpetrol, ŽSR, SP, ST

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 24 – Growth of foreign funds in state monopolies assets*

		1994	1995	1996	1997	1998
Foreign funds	mill. SKK	–	–	79,711	125, 920	172,747
Assets	mill. SKK	–	–	268,918	326, 118	371,337
Foreign funds/Assets	%	–	–	30 %	39 %	47 %

* SPP, SE, ZSE, SSE, VSE, Transpetrol, ŽSR, SP, ST, **Source:** Top Trend 1997, 1998, 1999

and also lack of confidence of citizens in investment funds as a result of the abolishment of the second wave of privatisation. The fact that the economy will not experience the inflow of foreign investment, know-how, technologies and management is a significant risk as well.

Foreign bidder (international tender)

The sale of a part of state monopoly to a foreign bidder requires long-term preparation. The key prerequisite for a successful privatisation is to call international tenders and ensure transparency in their preparation, course, and assessment. The major benefits of privatisation through a public tender include:

- inflow of real financial resources in the economy
- experienced management coming
- inflow of additional foreign investments
- curbing political influence on natural monopolies.

The major risks of privatisation through public tendering include:

- minority stake designated for privatisation will not be attractive to foreign investors
- failure to manage public tenders (invitation, control, assessment) may create bad image among investors
- yielding to political and populist pressures, whereby a risk is pending of consuming revenues from privatisation to cover current expenses,
- the absence of an appropriately set regulatory framework may elicit unfavourable ramifications on the economy in the form of price increase, etc.

The privatisation process of state monopolies will not be fast and without complications. The real financial resources of the privatisation of state monopolies will be coming gradually, in medium-term horizon, their potential use including:

- paying out bonds (recommendation of the International Monetary Fund), for which the FNM will need around SKK 32 billion.
- cutting foreign debt of the Slovak Republic which currently amounts to around SKK 480 billion, which comprises 60 % of the GDP
- supporting development programs for business sector, primarily small and medium-size businesses
- restructuring banking sector, which, according to the estimates of the World Bank would require around SKK 96 billion
- restructuring the system of pension security, i.e., switching from pay-as-you-go financing to a four-pillar system, the introduction of which over the course of 15 years will require SKK 300 - 400 billion.
- payment of state guarantees granted , the volume of which currently amounts to around SKK 130 billion, with significant peaks occurring in the years 2001, 2006 and 2007.

APPENDIX 1: CHARACTERISTICS OF INDIVIDUAL ENTERPRISES HAVING THE NATURE OF NATURAL MONOPOLIES

Slovenské Elektrárne

Slovenské elektrárne (SE), a.s., with the assets of SKK 136.1 billion is the largest Slovak enterprise generating 88% of the electricity produced in our country. In 1999, SE faced a collapse when the economic year ended with a loss of SKK 11 to 12 billion, and the costs of SKK 23 billion. The planned loss was only SKK 4.6 billion. The collapse was ascribed to the unfavourable development of the Slovak crown. The sales of the SE and its distribution energy plants should go up by SKK 3.7 billion following electricity price increase, of which SKK 3.2 billion will fall to the SE. No major improvement of results awaits the SE.

Západoslovenské Energetické Závody

The state enterprise *Západoslovenské Energetické Závody (ZSE) Bratislava* (West-Slovakian Energy Utility) was founded by the Ministry of Economy of the SR in 1990. Its business includes the purchase, distribution and supply of electricity and the services of delivery, consumption or use of electricity and heat. It further includes production of heat and electricity, engineering and design in investment construction, revision of operating boilers, gas facilities, electrical facilities and lifting devices.

Stredoslovenské Energetické Závody (SSE)

The state enterprise *Stredoslovenské Energetické Závody Žilina* is a distribution company operating in production, and distribution of electricity and thermal energy in the territory of Žilina, Banská Bystrica and partly also Trenčín regions. SSE deal also in design and construction and mounting activities of the extra high tension and high voltage technology, electricity and heating distribution services, metrology, and counselling. They are beginning to offer telecommunication services. The SSE is member of the international consortium Globtel for building GSM mobile phone network. The SSE employs 3,650 people, with an average age of 39.8 years.

Východoslovenské Energetické Závody

The state enterprise *Východoslovenské Energetické Závody (VSE) Košice* with a 70-year tradition carries out economic activity in the area of purchase and sale of electricity. The company focuses on construction of power and heating works, equipment necessary for their operation, including control devices and technical means to control electricity consumption. The activities further include designing electrical devices, research and development, electrical facilities inspection, repairs of transformers and electric motors, official measuring (official checks of measuring transformers of current and voltage,

official checks of electrometers). The VSE supply electricity through their distribution companies for the territory of Košice and Prešov regions.

Slovenský Plynárenský Priemysel

Over the first 6 months of 1999, *SPP* (the Slovak Gas Industry) posted a record-breaking profit of SKK 9.4 billion. The success was mainly due to sales for transit of gas which went up SKK 1.5 billion. A slowdown in profit is expected for the second half of the year, with the anticipated profit of SKK 16 billion by the end of the year. The SKK managed to cut its credit by SKK 1.6 billion (at mid-year, the credits reached SKK 8.2 billion). The payment discipline of SPP consumers was declining. The total receivables at mid-year were SKK 9.7 billion, with receivables past due increasing to SKK 2.7 billion.

Transpetrol

Transpetrol was founded on July, 1 1991, following the split of the ČSFR, it was divided into two independent companies. In the CR, the firm *Petrotrans* was established that later transformed into *Mero ČR*. Transpetrol is a monopoly operator of the transit pipelines *Družba* and *Adria* in the territory of Slovakia. Apart form the parent firm, there are four joint stock subsidiaries operating in the SR - Transpetrol - Tranzit, Transpetrol - Trading, Transpetrol - Finance Leasing and Transpetrol - Servis. The company employed 474 people last year, with the equity assets of SKK 1.9 billion. The Ministry of the Economy of the SR is the 100% shareholder of Transpetrol. The first half of the year 1999 ended for the joint stock company *Transpetrol Bratislava*, with the operating profit before tax of SKK 339.7 million, which is a 51-percent fulfilment of the agreed annual plan. They anticipate to run a profit of SKK 664 million, and a turnover of SKK 2.2 billion.

Slovenská Pošta

Slovenská Pošta (the Slovak Post) has been excluded from the process of privatisation although some analysts point out that there is nothing that would preclude it from being deetatised and other entities may provide postal services as well. On a long-term basis, the Slovak Post has been only very slightly profitable.

Slovenské Telekomunikácie

Slovenské Telekomunikácie, a.s., (ST) posted a net profit of SKK 902 mill. last year, the operating profit of almost SKK 17 billion and costs of SKK 9.5 billion. Last year, the ST invested SKK 9.6 billion in development and continued with the Telecommunication Project 2 (years 1996-2000). They lag behind in its fulfilment with SKK 6 to 8 billion. The SKK had 1.6 billion main phone lines in operation and is the third largest employer in the SR.

ŽSR

Železnice SR (ŽSR) ended the first half of the year with a loss in excess of SKK 2 billion.. The costs of SR amounted to SKK 11.4 billion, the sales to SKK 9.4 billion, respectively. Of this, as much as 68.5 % accounted for transport sales. For individual transport, ŽSR collected SKK 778 million, for freight transport SKK 5.6 billion, respectively. Their total debt climbed to SKK 32.7 billion, with the credits of recent four years accounting for half of it. The European Investment Bank granted the ŽSR a credit of EUR 200 million (in excess of SKK 9 billion) for a period of 15 years, with the first instalment due in 5 years.

APPENDIX 2: REGULATION OF MONOPOLIES[51]

The problems of regulating natural monopolies are not comprehensively provided for in the legislation of the SR. Although discussions about it began in 1992, to date, measures have not been adopted (except for telecommunications) that would correspond to world trends, as well as requirements of globalisation and maximisation of benefit for the whole society. The first attempt was made in 1992 when a draft bill was discussed in the Economic Council, which did not recommend it for Government debate. The Economic Council gave another advice on the draft concept for regulation of natural monopolies as late as in summer 1999 when they decided to refer it to the Government for debate.

The year 1992

The need for a special provision of regulatory framework for natural monopolies arose in early nineties and entailed the first draft bill on regulation of natural monopolies which was prepared by the Slovak Antitrust Office in 1992. The bill assumed unification of basic principles of regulation of particular entities enjoying the position of natural monopolies, namely the separation of the owner from the regulator, the obligation of regulated subjects to involve also in

Table 25 – Position of parliamentary parties on privatisation prior to passing the amendment

Political party	Position	Proposed percentage for state holding in state monopolies
SDK	The proposal by SDĽ have encountered indignation when the Deputy Prime Minister for Economy, Ivan Mikloš, called the efforts of SDĽ to set forth their ideas in the amendment as preference of politics over professionalism. It was assumed that the whole parliamentary caucus would endorse the draft amendment but the possibility was not excluded of SDK deputies to support some of the proposals by SDĽ with the purpose of gaining their support. SDSS (Social Democratic Party of Slovakia) proposed to stipulate lower threshold for the state property interest at 34%. According to its chairman, Mr. Volf, this control stake would enable to effectively retain the influence of the state in strategic enterprises.	Minority property interest of the state
SDĽ	The ministers for this party in the Government clearly endorsed the Government draft amendment. After the meeting of the Republic Board of the SDĽ, whose motions were acquired by Minister Schmögnerová, the approving position of the SDĽ to the Government proposal changed. SDĽ requested a minimum percentage threshold for the state interest to be stipulated in the law itself, and the scope for control by the Parliament over the course of privatisation of natural monopolies. The Chairman of the Parliament and the SDĽ, Jozef Migaš even said, that without these motions the SDĽ deputies would not endorse the Government proposal. Privatisation was supported only by the MP Fico, who said that the constant postponement of the process could damage the economy in many strategic enterprises considered for privatisation. As he stated, only the inflow of larger investments could help get these companies out of the red figures and start up development projects.	Minimum permanent interest of the state or the FNM at 51 % in case of energy enterprises (6), in case of the ST, at 34 %.
SOP	Supported the Government draft amendment, but support for several proposals by SDĽ was anticipated. According to Minister Machová, SOP would support all privatisation steps conducive to enhancing economic efficiency of the enterprises. The minister had no doubts about the existence of political will to set about practical implementation of privatisation and declared a minority interest of the state in individual enterprises and went on suggesting that the state holdings in strategic enterprises should range between 34 and 49%, and the Government proposal did not address this. The state's property interest would depend on particular proposals and the objective need for privatisation in any given state enterprise or a joint stock company.	The stake of the state or the FNM should range between 34 - 49 %.

SMK	Fully supported the Government proposal. The position of SMK was very similar to that of the SDK, when SMK representatives were not ready to endorse the SDĽ proposals and deemed them rather destructive. Equally as SDK deputies, they are likely to support at least some of the SDĽ's proposals to gain their support.	Minority stake for the state
HZDS	Thinks the whole amendment anti-Slovak and in no way will it endorse it. HZDS advocate non-privatisation of natural monopolies. In the words of Ján Cuper, HZDS is not going to vote for anything that would allow this Government to privatise.	Essentially against privatisation
SNS	In contrast to the HZDS, SNS acknowledges the need to privatise also some strategic enterprises. It requests majority to be retained by the state in the privatised subjects and transparency of the process. The support of the amendment by SNS deputies though is very unlikely	Retaining majority for the state

Source: Monitoring of daily press (SME, Národná obroda, Pravda, Hospodárske noviny) July - September 1999

Table 26 – Anticipated revenues from privatising natural monopolies

Natural monopoly	Revenue in billion SKK	
SPP	60-120 billion (estimate Schmögnerová)	
SE	not available	According to spokesman for MSPNM SR M. Lupták, only gross estimate of proceeds from privatising strategic *VSE* enterprises is available. In energy sector it may be as much as SKK 36 billion.
ZSE	B. Schmögnerová gives the estimated proceeds of privatising distribution companies at SKK 6 billion.	
SSE		
VSE		
Transpetrol	For the part of *Transpetrol*, SKK 7-10 billion	
ŽSR	Cannot be privatised.	
Pošta	Cannot be privatised.	
Telekomunikácie	According to daily SME SKK 30 to 100 billion. (SME, October, 30 1999)	
Total	According to available information, the scope of anticipated revenues is not equivocal. The total revenue from privatisation of state monopolies according to these statements should be around SKK 133 to 266 billion.	

Source: Monitoring of daily press

unprofitable activities (public goods), the right of a regulated subject to economically justified prices/tariffs, creation of conditions for the rise and enhancement of competitive environment where that is efficient. Other principles included increasing transparency, stability, and predictability of the regulatory framework. These regulatory provisions should be conducive to maximisation of benefit for the consumer, more efficient development of regulated subjects, and the creation of an environment encouraging access of private capital to the area of natural monopolies.

Regulation should be applicable to the production, transmission and distribution of electricity, heat, gas, water and telecommunication services. The subjects of regulation should include prices, tariffs, costs, trading companies, and access to the market through licensing.

The draft bill was worked out in two alternatives as for the way of setting up and the position of regulatory authorities. The first alternative contemplated setting up four autonomous regulatory offices that were to be financed from the sales of regulated subjects, with an assumed possibility of

Table 27 – Economic performance of Slovenské Elektrárne

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	9,294.20	7,487.20	4,935.60	2,435.40	1,535.10
Sales	mill. SKK	24,228.90	26,175.80	29,087.70	28,982.80	29,591.50
Profit before tax/Sales	%	38 %	29 %	17 %	8 %	5 %
Foreign resources	mill. SKK			37,479.30	56,393.30	75,080.20
Assets	mill. SKK			94, 453.40	115,733.30	136,085.90
Foreign resources/Assets	%			40 %	49 %	55 %
Profit after tax	mill. SKK	6,335.70	4,369.80	2,711.10	975.90	-1,715.50
Transfers to the State Budget (SB)	mill. SKK	–	–	–	–	–
Employees	Average state	10,294	10,382	10,748	11,282	11,313

Source: Top Trend 1995, 1996, 1997, 1998, 1999

regulation by municipalities. The other alternative assumed a central body of state administration designated by the Government to have the responsibility of a regulatory office.

The bill referred to above, was submitted for deliberations of the Economic Council of the Government that discussed it on 30 November 1992 but did not recommend it for Government debate. Between 1992 and 1994, inter-ministerial talks were held at different levels. Their main purpose was to eliminate the fundamental differences pertaining to the position of the regulatory office. The draft assumed devolution of all regulatory responsibilities to a single body. That would mean that either the Ministry of Finance or some other relevant founding ministry would have to give up part of their responsibilities. Moreover, at that time, with the exception of Antitrust Office and the Ministry of Transport, Post, and Telecommunications of the SR, the officials of central bodies of state administration did not agree to the idea of creating a relatively independent regulatory office.

The year 1999

Regulatory responsibilities are currently split between several authorities. Price regulation is the domain of the Ministry of Finance, while other regulatory responsibilities, such as licensing are undertaken by the relevant sector ministries. The Antitrust Office exercises its responsibilities in the area of protecting competition. The draft concept of regulation of natural monopolies assumes substantive regulation in the following areas:

- energy sector,
- transport, post and telecommunications,
- water management.

The Ministry of Finance in relation to the Act no. 18/1996 on prices and the implementing regulation no. 87/1996 has drawn up the "Methodological procedure in regulating prices of natural monopolies", in which under regulation of prices of natural monopolies is understood the following:

- setting prices, tariffs and tariff terms,
- setting binding conditions for the production, supply and purchase,
- setting economically acceptable costs and reasonable profit, including investment that can be calculated in the prices and tariffs.

Table 28 – Economic performance of the state enterprise Západoslovenské energetické závody

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	769.90	334.70	251.20	214.70	146.90
Sales	mill. SKK	10,928.40	11,301.10	11,949.70	12,642.10	13,061.90
Profit before tax/Sales	%	7 %	3 %	2 %	2 %	1 %
Foreign resources	mill. SKK			2,697.70	2,927.10	3,663.20
Assets	mill. SKK		3,017.30	9,387.90	10,261.20	
Foreign resources/Assets	%			89 %	31 %	36 %
Profit after tax	mill. SKK	418.50	177.90	111.70	95.90	46.10
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average state	3,730	3,771	3,732	3,728	3,762

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 29 – Economic performance of state enterprise Stredoslovenské Energetické Závody

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	618.50	232.40	4.40	68.30	-237.20
Sales	mill. SKK	10,411.30	10,635.80	10,927.30	11,332.80	11,628.70
Profit before tax/Sales	%	6 %	2 %	0 %	1 %	-2 %
Foreign resources	mill. SKK			3,703.90	4,324.10	5,763.70
Assets	mill. SKK			9,670.10	10,345.70	11,533.10
Foreign resources/Assets	%			38 %	42 %	50 %
Profit after tax	mill. SKK	302.10	116.00	4.40	39.10	-246.70
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average state	3,700	3,610	3, 615	3, 648	3,700

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 30 – Economic performance of the state enterprise Východoslovenské Energetické Závody

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	282.10	169.10	122.40	128.50	51.20
Sales	mill. SKK	6,561.20	6,87.30	7,153.30	7,662.90	7,974.70
Profit before tax/Sales	%	4 %	2 %	2 %	2 %	1 %
Foreign resources	mill. SKK			1,361.80	1,515.40	2,232.90
Assets	mill. SKK			4,028.70	4,284.20	5,000.10
Foreign resources/Assets	%			34 %	35 %	45 %
Profit after tax	mill. SKK	177.80	90.70	94.50	67.90	24.10
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average state	2,120	2,084	2,056	2,068	2, 087

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 31 – Economic performance of the state enterprise Slovenský Plynárenský Priemysel

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	13,252.90	13,321.50	13,791.80	9,644.50	8,574.10
Sales	mill. SKK	34,546.60	36,825.00	39,439.40	41,547.90	43,514.10
Profit before tax/Sales	%	38 %	36 %	35 %	23 %	20 %
Foreign resources	mill. SKK			9,155.90	18,032.20	23,095.30
Assets	mill. SKK			56,972.80	69,155.90	76,298.10
Foreign resources/Assets	%			16 %	26 %	30 %
Profit after tax	mill. SKK	6,321.00	6,467.90	7,404.34	3,459.10	1,674.40
Transfers to the SB	mill. SKK	1,197.00	1,200.00	1,200.00	2,000.00	2,000.00
Employees	Average state	5,473	5,586	5,935	6,265	6,440

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 32 – Economic performance of Transpetrol

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	1 461.5	1 441.1	980.5	770.5	619.9
Sales	mill. SKK	2 345.0	2 144.9	1 791.0	1 600.9	2 016.1
Profit before tax/Sales	%	62 %	67 %	55 %	48 %	31 %
Foreign resources	mill. SKK			422.6	535.5	648.6
Assets	mill. SKK			5 757.8	6 285.8	6 656.8
Foreign resources/Assets	%			7 %	9 %	10 %
Profit after tax	mill. SKK	870.3	853.2	573.7	446.0	283.1
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average state	476	490	470	462	474

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 33 – Economic performance of Slovenská Pošta

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	99.00	12.30	68.4	0.50	11.30
Sales	mill. SKK	2,976.60	3,094.90	3,342.90	3,626.70	3,940.50
Profit before tax/Sales	%	3 %	0 %	2 %	0 %	0 %
Foreign resources	mill. SKK			2,377.10	2,337.50	3,184.90
Assets	mill. SKK			4,814.60	4,812.40	5,866.80
Foreign resources/Assets	%			49 %	49 %	54 %
Profit after tax	mill. SKK					-21.20
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average state	18,730	18,866	18,718	18,581	18, 001

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 34 – Economic performance of Slovenské Telekomunikácie

Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	2,116.70	2,802.20	4,199.30	4,310.2	2,061.40
Sales	mill. SKK	8,648.80	9,882.70	12,863.90	15,235.70	16,973.50
Profit before tax/Sales	%	24 %	28 %	33 %	28 %	12 %
Foreign resources	mill. SKK			10,946.20	17,731.60	26,942.10
Assets	mill. SKK			31,082.10	39,799.90	48,838.30
Foreign resources/Assets	%			35 %	45 %	55 %
Profit after tax	mill. SKK	1,291.50	1,882.90	2,347.70	2,321.20	423.10
Transfers to the SB	mill. SKK	–	–	–	–	500.00
Employees	Average income	15,367.00	15,306.00	15,374.00	15,278.00	14,848.00

Source: Top Trend 1995, 1996, 1997, 1998, 1999

Table 35 – Economic performance of Železnice SR

Parameter		1994	1995	1996	1997	1998
Parameter		1994	1995	1996	1997	1998
Profit before tax	mill. SKK	1,196.20	293.10	-497.10	-4,198.90	-5,849.70
Sales	mill. SKK	13,775.80	15,594.20	15,567.10	14,813.30	14,512.40
Profit before tax/Sales	%	9 %	2 %	-3 %	-28 %	-40 %
Foreign resources	mill. SKK			11,566.60	22,123.70	32,135.70
Assets	mill. SKK			59,120.90	66,312.50	70,796.30
Foreign resources/Assets	%			20 %	33 %	45 %
Profit after tax	mill. SKK			-497.10	-4,198.90	-5,849.70
Transfers to the SB	mill. SKK	–	–	–	–	–
Employees	Average	56,000	52,965	52,345	49,426	49,436

Source: Top Trend 1995, 1996, 1997, 1998, 1999

NOTES

1 Jurzyca, E.: Natural monopolies - The family silver or the silver of some families? . In: Jakoby, Nižňanský(ed.): Promises and the reality (Slovak economy 1994 -1998). M.E.S.A. 10. Bratislava 1998

2 Since 1991, the Act no. 63/1991 of the Collection of Laws on protection of economic competition was in force, that used the term "monopoly position"

3 *For example, Nafta Gbely, VSŽ Košice, ZSNP Žiar nad Hronom, Slovnaft Bratislava, Benzinol Bratislava, Duslo Šaľa, Chemlon Humenné, Istrochem Bratislava, SCP Ružomberok, JCP Štúrovo*

4 For details, see Appendix 1 (privatisation-gates)

5 Though the law did not ban their privatisation , subject to § 3, they were included under the category of strategically important state enterprises and joint stock companies with property interests of the state or the FNM.

6 Of 117 deputies present, the motion was supported only by 87, while a constitutional law requires agreement of 90 MPs.

7 PRÁCA, July, 7 1998

8 SITA, July, 9 1998

9 The results of the referendum are valid provided minimum 50% of authorised voters participate.

10 Of the total number of voters, that have participated, 84.3% voted for passing a law on non-privatisation, whereas 15. 7% voted against such law.

11 Pravda, October, 15 1998
12 SME, July, 24 1998
13 SITA, August, 28 1998
14 Mešežnikov G.: Internal political development and the system of political parties. In: Mezežnikov G., Ivantyšyn M.(ed): Slovakia 1998- 1999, A summary report on the state of the society: The Institute for Public Affairs, Bratislava 1999
15 The fund will have to pay around SKK 32 billion for its bonds.
16 SITA, July, 31 1998
17 The term strategic enterprise in this context is not quite correct since most strategic enterprises were privatised over the period of 1995- 1998 and only minority stakes of some enterprises and natural monopolies remained in the ownership of the state and in the portfolio of the FNM.
18 Of 115 deputies present, 70 voted for, 37 against and 8 abstained from voting (SITA, 16 September 1999)
19 The NR SR Act no. 258/1993 of the Collection of Laws , on the Railways of the SR, as later amended in the Act no. 152/1997 of the Collection of Laws
20 The Act no. 61/1997 of the Collection of Laws on forests, as later amended
21 Article 4 of the Constitution of the Slovak Republic
22 The Act no. 222/1946 of the Collection of Laws on post
23 The Act no. 70/1998 of the Collection of Laws on energy sector and on change of the Act no. 455/1991 on trade license business, as later amended
24 The Government decided about the future composition of shareholders : 51% -the investor, 34% - the FNM, 15% - the state.
25 PROFIT, September, 21 1999
26 *Práca*, June, 10 1999
27 The economy minister of the day.
28 *Nový čas*, April, 5 1997
29 *Nový čas*, April, 5 1997Nový čas, April, 5 1997
30 *Nový čas*, April, 5 1997Profit, September, 21 1999
31 *Pravda*, March, 10 1999
32 SME - Kapitál , March, 6 1999
33 *Práca*, August. 11 1998
34 SITA, January, 11 1999
35 The individual small consumers/ businesses ratio was 44% :.48 %, with a growing tendency in small consumers
36 SITA, July, 1 1997
37 SITA, May, 12 1998
38 PROFIT, August, 19 1997
39 Ján Oravec, HOSPODÁRSKY DENNÍK, September, 7 1999
40 Ján Ducký, SITA, July, 14 1998
41 SITA, April, 22 1998, Peter Gavala, special director for economy and trade of the ZSE: „ The useable profit achieved is by far not sufficient to cover financing of its investment needs."
42 Práca, June, 10 1999
43 SME, October, 30 1999
44 Profit, October, 26 1999
45 SME, August, 27 1999
46 SITA, July, 12 1999
47 SITA, July, 12 1999
48 Profit, June, 15 1999
49 Slovenská republika, September, 16 1999
50 A single-time paying out of SKK 32 billion to citizens could seriously affect the development of the volume of money in circulation which might exert pressure upon the price level.
51 Processed according to the Explanatory Report for the draft bill on regulation submitted to the Economic Council of the Government in September 1999.

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4. *Discussion forum. Decentralisation and natural monopolies. Typescript of discussion.* M.E.S.A. 10, Bratislava, March, 15 1999
5. The NR SR Act no. 92/1991, as later amended
6. The NR SR Act no. 192/1995, as later amended
7. Monitoring of the dailies *SME, Pravda, Národná obroda, Práca, Nový čas, Hospodárske noviny, Hospodársky denník, Slovenská republika*
8. Monitoring of the weeklies *TREND, Profit, Domino Fórum*
9. SITA
10. TOP TREND 1995, 1996, 1997, 1998, 1999
11. www.privatiz.gov.sk
12. ww.natfund.gov.sk

8. PRIVATISATION OF BANKS

Miroslav Kňažko

8.1 THE BANKING SYSTEM OF THE SR SINCE 1989

The banking system, similarly to the whole economy of the SR, was characterised by a transition from a command-type of banking system to a market economy banking system It was marked with split of the ČSFR and the whole political and economic environment. The transformation of our banking system occurred in three phases:

- phase 1, starting on January, 1 1990 until February, 1 1992,
- phase 2, starting on February, 1 1992 until 31 December 1992,
- phase 3, starting on January, 1 1992.

The first phase, prepared already under the previous regime, concerned mainly a formal division, whereby a single-tier banking system was made into a two-tier system. Starting on January, 1 1990, the macroeconomic control centre of banking was separated and a central bank was created, which kept the name of the original monobank, Štátna Banka Československá, (ŠBČS) [the State Bank Czecho-Slovak]. At the same time, the Act 158/1989 Of the Collection of Laws, on banks and savings banks, made provision for creating first seven „commercial" banks focused on microeconomic activity of banking. These included:

- *Komerční Banka (KB),*
- *Všeobecná Úverová Banka (VÚB),*
- *Česká Státní Spořitelna (ČSS),*
- *Slovenská Štátna Sporiteľňa (SŠS),*
- *Československá Obchodná Banka (ČSOB),*
- *Živnostenská Banka (ŽB),*
- *Investičná Banka (IB).*

These commercial banks had mostly transformed from previously existing banks, and not much had changed in their practical activity. KB and VÚB were created from ŠBČS network of subsidiaries, other banks from specialised banks of the socialist economy. An essential change did occur in their focus though when they switched from narrowly specialised to universal banking. All banks remained state-owned, and the banking sector, on the whole, retained its monopolist structure.

The second phase of the reform was more radical in nature. Two important pieces of legislation came into force, the Act no. 21/1991 Of the Collection of Laws, on banks and the Act no..22/1991 of the Collection of Laws, on ŠBČS, which fell effective on February, 1 1992. The ŠBČS Act defines the position of the central bank, its responsibilities, the relation to the Government, and the other banks. Before it was adopted , there were efforts to create two central banks with a co-ordinating centre and a unitary monetary policy (federal arrangement) but the proposal was defeated.

The third phase was elicited by split of the ČSFR, and has virtually continued until today. ŠBČS was discontinued, its place being taken up by Česká národní Banka and Národná Banka Slovenska (NBS). The position of the NBS is stipulated in the Act no. 566/1992 of the Collection of Laws, on the NBS while the position of the other banks is still defined by the law dating back to the time of the existing federal arrangement, which, of course, had been several time amended. The principal element of the third phase should be progressive restructuring and privatisation of banks with state property interests. None of these areas have seen much change. Investičná Banka split into the Investiční

Banka Praha and the Investičná a Rozvojová Banka Bratislava in connection with the split and within sharing assets and liabilities of ŠBČS the share of the SR in ČSOB went to the NBS, while the shares of the FNM ČR in VÚB and the FNM SR in the KB are still subjects of disputes.

8.2 PRIVATISATION OF BANKS

Bank privatisation in our country did not only concern former state banks but also those newly created, whose majority owners were state enterprises or institutions. We have decided to structure this part chronologically, including the "affairs" accompanying the privatisation process in state banks.

Privatisation started as early as in 1992, when first stakes of shares were offered (*IRB* 52 %,*VÚB* 52 %) within voucher privatisation (1992). Apart from this, the state did not take a resolve in any further step towards full deetatisation of state holdings in the banks.

The year 1996 brought an interesting turn. In January, ambitious targets were announced as to completing privatisation and implementing a split-second privatisation of these financial institutions. The former Prime Minister Mečiar, on the occasion of a prestigious economic conference, the Economist Conferences, held in Bratislava on January, 25 1996, announced that the privatisation in Slovakia would be completed by the end of mid-1996. He then shocked both domestic and foreign participants when he said that "…by the end of this month, or by mid-February, at the latest, the privatisation of banking structures will have been completed. With the exception of the National Bank of Slovakia, everything else will be private" (*Trend* January, 31 1996).

What was startling about the statement was the fact that until then, there had not been any public or expert discussion about the issue, and there even was not any concept of either the Government or the NBS about taking such a serious step. The NBS Governor Masár said that "the NBS has not received yet any project connected with privatisation of banking structures. They will assess any such project of privatisation of a commercial bank, once it is submitted to them". (*Trend* January, 31 1996)

Soon it was clear in what way the Government intended to effect split-second privatisation of banks. Several Government and FNM officials jointly claimed that the privatisation of banks had been administratively prepared for quite some time and that the investor which would take part in it should be a domestic subject and that major Slovak industrial enterprises would also have their share in it. The absurdity, Slovak way, began to take on clear forms. The banks were to be privatised by large Slovak companies of which they were, at the same time, largegest creditors!

In March the waters again were stirred by Prime Minister V. Mečiar, stating, at a press conference held in Vienna on the occasion of his official visit to Austria, that by the end of February the essential decision had been made as to the way banks would be privatised, but that the delay in administrative action was due to the failure to reach conclusion on the property interest of the *FNM ČR* in *VÚB*.

In April, the banking privatisation stir pacified. The likely reason for not implementing split-second privatisation were differences in coalition parties over the participation of business structures close to them, in this undertaking.

8.2.1 The Slovenská Poisťovňa (1) case

Privatisation differences between *HZDS* on one hand, *ZRS* and *SNS* on the other, were fully unveiled in May and June of 1996, in the cause over changing the management of Slovenská Poisťovňa (SP) (Slovak Insurance Company). Although not a bank, SP is not mentioned in this section by accident. SP itself is the decisive shareholder in several Slovak banks *(IRB 66.7%, IstroBanka 71%, PoľnoBanka 32%)*.

In May 1996, *SP* management was called off, in which people from SNS and ZRS had major influence (Vice-president Sokol - SNS, President Trstenský - ZRS) and replaced with people from HZDS. The change was enforced by the FNM, as the largegest shareholder, the whole transaction was orchestrated from behind by the Deputy Prime Minisiter Kozlík. The exchange took place despite disagreement from SNS and ZRS. Subsequently, a sharp and widely media-covered dispute broke, in which top officials offended and

accused each other of privatisation interests and on both sides. Voices were overheard that this was the end of the coalition. When it turned out that until then the opposition SDĽ through entering into coalition with the HZDS might replace the ZRS and the SNS, the two parties returned to the coalition camp.

On June, 21 1996, still only new "under way" coalition of the HZDS and the SDĽ passed an amendment of the Strategic Enterprises Act, according to which the list of companies that cannot be privatised was extended by four largest financial institutions (VÚB, SLSP, IRB, SP). The privatisation embargo was approved for the period until March 1997, and concerned the very financial institutions, which according to the Prime Minsiter Mečiar, should have been privatised until the end of January 1996. After the ballot was taken, it turned out that a confusing text got passed, which prevented privatisation of the property of these banks but does not preclude privatisation of their shares. And as all four were joint stock companies, the law did not effectively address anything.

8.2.2 The IRB case

After this dramatic developments in SP, the situation in the privatisation of the four major banks on the surface calmed down and the status quo was maintained until the end of the year. That, however, applied only to the property interests of the FNM in these largest Slovak banks. The candidates for bank privatisation recruiting from the circles of industrial lobby had already been taking steps in other areas. The most active group of VSŽ, headed by the minister and simultaneously most influential of VSŽ owners, Alexander Rezeš, began buying out shares of SP and IRB (high proportion of shares in the voucher privatisation).

Early in August, a group of companies acting in agreement with the VSŽ, had controlled in excess of 43% of the bank's shares and changed four members of the Supervisory Board. Under the Slovak Banks Act, increasing property interest in a bank over the level of 15%, by a single company, or a group of companies acting in agreement, requires the consent of the NBS. The National Bank of Slovakia, by its decision of October, 2 1996, declined to give the consent and asked the VSŽ and the ARDS, o.c.p. to decrease their share under the level of 15%. This did happen, but only formally. The VSŽ reduced its share to 14.63%, but the shares appeared in the accounts of companies that collaborated with the VSŽ in similar transactions *(Slovrea, Eurotrade, Tectum, Tatrapetrol)*. On January, 22 1997, the Supervisory Board of IRB removed five of its six members of the IRB Board of Directors, including the President, Jozef Tkáč.

Representatives of subjects, directly or indirectly, linked to the VSŽ voted for the removal. The vacancies were filled with people close to VSŽ owners. Vojtech Vranay, a relation of Alexander Rezeš, became the new President of IRB. The FNM, with a 35.14-percent stake, supported the VSŽ group throughout the whole period, and even agreed to removing their own people from the management of the bank. The economic performance of the bank over the recent years had been steadily deteriorating.

Rumour began louder about a strategic partner coming to the IRB. This did not happen though and the shareholders attempted to address the situation in May 1997 by raising the equity by SKK 500 million. Eventually, the move was not supported by the VSŽ (which was beginning to face its own liquidity problems), or the FNM either. In December, MPs, within their deliberations about the draft state budget for 1998, agreed to cancellation of reimbursement of the property loss suffered by the IRB at SKK 782 million. That was a compensation for the losses on interest in low interest-bearing loans provided by the bank for the completion of housing construction. This triggered also insurmountable problems of liquidity, accompanied by massive withdrawals of deposits, which resulted in imposing receivership on the bank on the part of the NBS on 19 December 1997.

Table 36 – Economic performance of the IRB (in billion SKK)

1995	1996	1997	1998
0.167	-1.357	-3.250	-4.516

Source: Top Trend 1996, 1997, 1998, 1999 and Top trend in finance sector 1999

The NBS propped up the bank with a total sum of SKK 24 billion. Over the course of 1997, the NBS urged IRB majority shareholders on several

occasions (i.e., VSŽ and FNM) to raise the equity in the bank. The request had not been satisfied, by contrast, the shareholders around VSŽ opted for a different approach - in our opinion they simply tunnelled the finances of the bank. The statement of the Prime Minister Mečiar was all the more surprising to the public when he, meeting with the management of the VSŽ, said: "You have done a great deal (VSŽ, note by the author) for the rehabilitation of banking… and therefore we, together with the VSŽ, are seeking ways how to redress the situation in a way that would not deprive you of your property that you have put into it".

8.2.3 The Poštová Banka case

Over the course of 1996, the VSŽ had gained control over two other smaller banks - *Dopravná Banka* and *Poštová Banka*. It is worth noting that the VSŽ increased their share in these banks at the expense of state enterprises, which belonged under the ministry of A. Rezeš, the most influential owner of the VSŽ.

Following was the original shareholder structure in the *Poštová Banka: Slovenské Telekomunikácie* - 51.55 %, *Slovenská Pošta* 34.3 %, the Ministry of Transport and Telecommunications of the SR - 1.7 %, remaining shares were owned by two foreign investors. In 1996, the equity was raised from SKK 600 to 909 million, when the increase was due to only new shareholders. The companies Tectum and Trade Trans Rail (close to the VSŽ) acquired 15 % each, and Kinex 4 %, respectively. Hence, the shares of state shareholders dropped from 87.55% to 57.8%. At the AGM in July 1997, it was decided to further increase the equity, this time by SKK 300 million. State enterprises in the jurisdiction of the Ministry of Transport , and the ministry itself, again did not participate in this subscription. Their share came down to 43.5%, which in effect meant that the *Poštová Banka* was privatised by private companies, with considerable assistance from the enterprises controlled by the Ministry of Transport.

8.3 FURTHER DEVELOPMENTS IN THE PRIVATISATION OF BANKS

Another theatre act of privatisation of the four largest banks unveiled in February and March 1997, when first the opposition parties together with the Workers Party were successful in imposing moratorium on privatisation of these banks by the year 2003, but in a repeated vote taken the VÚB and the IRB had been withdrawn from the moratorium. The state holdings in these financial institutions then accounted for 91.3% in *Slovenská Sporiteľňa*, 50.8% in *VÚB*, 35.9% in *IRB* and 50.26% in *SP*.

At the end of February 1997, the National Bank of Slovakia, published a statement according to which "at present full privatisation of four largest financial institutions would not be appropriate, given their present position in the financial sector" (Trend March, 5 1997). The NBS proposed to finish privatisation of the IRB and did not exclude further potential partial privatisation of other three financial subjects.

The central bank wanted to address the situation in the IRB by selling the bank to a solvent bidder, most likely a foreign one, that would be capable of adequately raising the equity. Then, apparently under political pressure, they changed their view and agreed to *Slovenská Poisťovňa* increasing the equity in the IRB. This was proposed for an institution which faced enough problems of its own. The point was that in this way VSŽ did not have to invest any money in the sanitising the IRB without losing control over it. Though their direct share would be reduced as a result of the equity increase, yet their indirect influence through SP, in which they - together with the FNM - were majority owners, would increase (the FNM then acted in concert with the VSŽ).

8.3.1 The Slovenská Poisťovňa (2) case

Slovenská Poisťovňa was established on November, 1 1991 through transformation of a state enterprise, *Slovenská Štátna Poisťovňa*, into a joint stock company. In 1991, 48% of its shares were offered in the first wave of privatisation. In July 1998, the largest shareholder of SP was the FNM SR, controlling a 50.55- percent stake. *VSŽ Holding* had roughly 20 percent, and the companies *Vinlan and Telemar*, close to VSŽ,

owned 8,6 %, and 6 %, respectively, of the equity. In early July 1998, SP shareholders efforts intensified (primarily those of VSŽ) to gain a more significant position in the company at the expense of the state. VSŽ was not only interested in getting hold of the insurance company, whose book value was SKK 31 billion and SKK 25 billion in technical reserves, but also in the property holdings worth around SKK 100 billion. By increasing equity, the law would have been evaded banning the privatisation of strategic enterprises, including SP, until the end of 2003.

Originally, the equity was to be raised by SKK 1 billion, to SKK 2.5 billion. Shareholders changed it to SKK 375 million thus increasing the equity by 25 percent. This increase sufficed for the FNM to lose its majority position in the event it would not apply its pre-emptive right and SP would fall in private hands of privatising actors close to the ruling coalition. The share of the FNM SR would have fallen to 40.4%. The argument advanced by the Government officials that the increase by SKK 375 million would be beneficial to SP was but an excuse, given the SKK 2 billion which SP effected to raise the equity of the ruined IRB, i.e., more than five time the amount.

The process of loss of the majority of the state in SP strikingly resembled the procedure in increasing the equity of *Poštová Banka* in 1996 and 1997, even the bidder was the same, the VSŽ group.

In increasing the equity in July and August, all 375 thousand new SP shares in the nominal value of SKK 1,000 were subscribed without the participation of the FNM SR. The envisioned hidden privatisation scenario for SP was coming true. At the extra-ordinary general meeting on September, 4, SP shareholders, however, surprisingly did not approve the change to the statutes of the company - to enter the increased equity from the original SKK 1.5 billion to 1.875 billion in the companies register (despite having voted for it on July, 24). Due to the failure to agree on the equity increase by shareholders, it was not possible to lodge an application to have the change in the amount of equity effected in the companies register and the whole process then could not be completed.

After the parliamentary elections, and after small shareholders of SP not only brought a suit but lodged also an instigation to discontinue proceedings related to the entry with the Register Court, on October, 15 1998, further changes occurred in SP. At the proposal of ARDS company, representing the interest of *VSŽ Holding*, the extra-ordinary general meeting cancelled the resolution on increasing the equity, of July, 24 1998, and annulled the whole process.

However, shareholders have achieved another amendment of the statutes, which made any change to the amount of equity and personal changes in the Supervisory Board of SP, subject to the consent by the shareholders owning at least two-thirds of shares - i.e., one million pieces. Until then these actions had required consent by a simple majority of the participants. Karol Melocík, SP President, justified the proposal by the need to protect minority shareholders. Despite the fact that the change significantly restrained the influence of the FNM SR in SP, the Fund endorsed it. The amendment of the law on securing state interest in privatisation of strategically important state enterprises and joint stock companies of 20 November 1998 de facto neutralised the decision of the EGM.

8.3.2 Všeobecná úverová banka (VÚB) and Slovenská Sporiteľňa (SLSP)

Over ten years, nothing has happened in privatisation of these two largest banks. One needs to see behind it mainly the inability or the reluctance (of the Government, the NBS) to address the very complex situation that these two banks face.

Without restructuring their credit portfolio, the idea of them getting privatised cannot be conceived of. They both have not been meeting capital adequacy imposed by the NBS (8-percent minimum level of capital to be held against risk adjusted assets). Moreover, the VÚB is dependent on constant liquidity supplies from inter-bank market, which is not a sustainable situation in the long term view. The SLSP is slowly but for sure losing its dominant position in the segment of deposits of the population. Banks have not been increasing their equity for a long time because their owner, (the state - VÚB 50.8%, SLSP, 91.3%) cannot afford it and will likely not be able to raise funds for it for quite some time. In the case of VÚB, the question continues to be unresolved of swapping the VÚB stake held by the FNM ČR and the Komerční Banka stake, held by the FNM SR.

8.4 THE CURRENT STATE AND A POTENTIAL COURSE OF ACTION

Currently the state indirectly controls a few other small banks. That is the case of *Dopravná Banka*, formerly owned by the Slovak Railways (ŽSR), with a 45-percent stake (the stake was later taken over by the Slovak Savings Bank, and by Banská Bystrica based *Banskobystrická Dopravná Spoločnosť, š.p.,* which had a 37.5-percent stake, again a state institution; the *Banka Slovakia* (FNM: 60.1%, SP: 26.4%, SLSP: 6.6%); the *Priemyselná Banka* (SPP:11.99%, SP:10.17, *Slovenské Elektrárne:* 7.99% and SLSP:7.19%).

Table 37 – Economic performance of the VÚB and SLSP (in billion SKK)

	1995	1996	1997	1998
VÚB	0.647	0.074	0.170	-3.790
SLSP	0.670	0.401	0.079	0.088

Source: Top Trend 1996, 1997, 1998, 1999 and Top Trend in Finance 1999

The economic performance in most banks - directly or indirectly - controlled by the state has been progressively deteriorating. This is due to incompetent management and the political pressure to provide risky credits, and in the case of SLSP, VÚB, and IRB, also bad debts dating back to the period before and after 1989.

In 1998 the Government tried to tackle the situation in IRB through SP (it increased the equity of the bank by SKK 2 billion) but eventually they did not help the bank, while SP was placed in serious trouble. In 1999, the Government again increased the equity of the IRB from the extraordinary profit of the NBS, only to reduce it soon after, at the expense of loss of the previous years. It is not clear even after this intervention, whether the bank is able to be privatised.

Additionally, the Government, working with the NBS, adopted a program of restructuring the banking system of the SR, a first conceptual step after a long recovery period of the whole banking system. This was followed by the amendment of the Act no. 92/1991 of the Collection of Laws on conditions of transfer of state property to other persons, whereby full privatisation of the VÚB, and partial privatisation of Slovenská Sporiteľňa and Slovenská Poisťovňa were made possible (the amendment says only that the state will keep interests, without stipulating precise shares).

From the global perspective, even the largest Slovak banks rank among small banks. The total VÚB assets place the bank in 649th place and those of the SLSP at 883rd place among banks world-wide (Banker, 1998). Which means that the significance of none of them extends beyond the territory of Slovakia. In the spirit of general globalisation in the economy, it is vital that these banks find a strategic investor as soon as possible. Their share in the banking market is steadily decreasing (in favour of fierce young banks mostly relying on strong foreign investors), whereby their appeal for potential foreign investors is fading. It should be in the interest of the state to seek foreign investment as best as it can.

Still unresolved is the issue of the NBS stake (24%) in ČSOB of the Belgian KBC Bank, which bought a majority stake in the bank from the Czech Republic. The whole agreement is held up by the ČSOB receivables against Slovenská Inkasná, which the Slovak side is challenging. The political agreement about the solution of the problem is bound to be reached soon. Equally, the agreement was pending about swapping VÚB shares and those of Komerční Banka, owned by the FNM ČR and SR. On November, 24 1999 an agreement was signed by Czech and Slovak Prime Ministers that the VÚB-KB shares exchange will not take place.

For the sake of completion we need to note that the state, on 30 November 1999, controlled still three financial institutions: Slovenská Záručná a Rozvojová Banka, š. p. ú., Konsolidačná Banka š. p. ú., and EximBanka. For these financial institutions, privatisation is not assumed as yet, although these kinds of banks function abroad on a commercial basis as well.

In conclusion we will give the estimate made by the World Bank, which sets the amount necessary for the recovery of VÚB, SLSP, IRB and Konsolidačná Banka at SKK 96 billion (SKK 87 billion according the estimate by the NBS). The saddest thing about it is probably that the "bill" will have to be paid by us all, without

distinction. It goes without saying, that no clever investor would ever buy a bank with the credit portfolio these banks currently possess. It is necessary that the Government attempt, at least to some extent, to restructure the banks. In the view of the enormous cost of restructuring itself, it is desirable that the state makes every attempt to sell its holdings in the banks as soon as possible. We maintain that by so doing a unique chance would emerge to shift at least part of the restructuring burden onto new strategic investors.

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9. PRIVATISATION OF THE PROPERTY OF CITIES AND COMMUNITIES

Miroslav Kňažko

Though this part of privatisation has been going on from the beginning of the transformation, however it is little known. We believe it may be partly due to the narrow understanding of this part of the privatisation process as merely sales of municipal assets, which were not guided by privatisation laws but by the Municipal Establishment Act. Privatisation of the property of cities and communities under the privatisation law, effected through gratuitous transfer of state assets to the municipality, was and still is part of the privatisation process.

9.1. THE LEGISLATIVE FRAMEWORK FOR THE ACTION OF CITIES AND COMMUNITIES

At the outset we deem it necessary to define the legal framework in which cities and communities operate. In chapter 4 of the Constitution of the Slovak Republic the position of territorial self-Government, i.e., cities and communities too, is embedded. The municipality has the status of a legal entity, managing its property and finance. Municipalities can be given tasks and their activity can be intervened upon only by law.

The basic law stipulating the activities of municipal self-Government is the Slovak National Council Act no. 369/1990 of the Collection of Laws on municipal establishment, to which subsequently a number of other laws relate. This law lists the most important functional responsibilities and obligations for a municipality. For the purposes of this section, the following are important:

- acts related to regular management of tangible and intangible assets of the municipality,
- drawing up and approving municipal budgets (revenues – outlays),
- founding, establishing, and controlling of its own budgetary, contributory organisations, and other legal entities.

All tasks connected to the management of municipality and municipal property are carried out by citizens through self-Government bodies (City or Community Mayor - City or Community Council).

9. 2. FINANCING MUNICIPALITIES

The financial management of the municipality is governed by the approved budget. This is drawn up subject to the Act on Budgetary Rules. This law defines also the principles and guidelines for drawing up and approving the budget and financial management of municipality.

The budget is passed annually, often with delay, hence municipalities operate under the so-called provisional budget and cannot apply a financial plan for a longer period (a year). The unforeseen demands on municipal expenses are often covered through sales of municipal property.

The revenue side can be divided into own and other revenues. The main sources of own revenues include:

- local taxes and fees,
- tax shares in central taxes,
- proceeds of municipal property (lease and sales of property),
- proceeds of municipal companies and other legal entities,
- other revenues (credits, bonds, subsidies, grants),
- and other and irregular revenues (fines, penalties).

Main items of outlays include:

- expenses for self-Government,
- expenses for the maintenance and operations of municipal organisations,
- investment expenses.

Table 38 – Revenues and expenses of municipal budgets (mill. SKK)

	1991	1992	1993	1994	1995	1996	1997	1998
MB revenues	16,175	20,627	20,966	20,073	22,236	25,424	28,785	25,930
MB expenses	14,300	19,670	19,298	19,098	18,853	23,154	26,625	25,809
MB balance	1,875	957	1,668	975	3,383	2,270	2,160	121
Revenues/GDP	5.06%	6.21%	5.68%	4.56%	4.30%	4.42%	4.40%	3.59%

Source: SO SR, MF SR

Table 39 – Municipal bond issues (mill. SKK)

1991	1992	1993	1994	1995	1996	1997
–	–	–	40.4	2057.7	93.8	118.5

Source: Financing municipal self-Governments in the SR (ZMOS)

Table 40 – The degree of discretion and the anticipated scale of corruption

1991	1992	1993	1994	1995	1996	1997
404.0	–	1003.7	886.4	1173.4	2565.7	2733.1

Source: Financing municipal self-Governments in the SR (ZMOS)

9.2.1. Why do municipalities sell property

The scism between revenues and expenses of municipal budgets is being steadily widened. Although according to statistics, municipalities have still been generating surpluses, these data are not quite credible.

The surplus in municipal budgets tends to occur mostly due to enforced savings. They are caused by the necessity, particularly in small municipalities, (of insufficient credit capacity) to accumulate funds for investment undertakings over several years. Moreover, municipal budgets even cannot end up in deficit, because even if it was generated, it would have to be covered with a bond issue or a credit (tables 39 and 40).

This long-term trend of gradual generation of debt results in an insoluble financial situation many cities are facing. There are several reasons for it. The yields of local taxes and fees, although being still a stable source of revenues, are not growing much. Perhaps the most problematic item of the municipal budgets are the shares in centrally collected Government taxes. There are no fixed rules for the distribution of these tax yields. Self-Governments do not know until the very last moment what will "remain" to them when the annual budget is prepared, which renders longer-range planning and also investment impossible.

On the other hand, expenses, and current expenses, in particular, have been steadily growing, driven by ever increasing public consumption and inflation. Capital expenses get entirely pushed out by the current expenses. A number of municipalities tried to address this problem by selling municipal property or through borrowing, either raising a credit or issuing bonds. They used municipal property as collateral. Many of them overestimated the credit capacity of the city, with bankruptcy becoming imminent although, in this form, it has not been recognised by our law. When banks or other creditors apply their liens, municipal officials will be left with almost no salable property. Currently, municipalities are obliged to sell their property not only because of the shortage of funds for operating , maintaining, or for reconstruction of municipal property but also they use the resources raised in this fashion to cover current expenses, which is a very disconcerting phenomenon. These resources are non-recurrent in their nature, and unique (they cannot be reproduced) and should not be used for recurrent current expenses. The public administration reform, which is under preparation, will need to tackle this situation, mainly through clarifying the relations in functional responsibilities and finance between cities, communities, and the state.

9.2.2. Why do municipalities get involved in the privatisation of property as a privatiser

Municipalities are willing to privatise different property which is located in their territory for similar reasons as they sell their own property. They are attracted by the vision of new budgetary resources, which is the root of their frequently overstated demands. They demand to be conveyed or sold valuable land or even companies from the state. There are well-known cases of spas, bakeries, even cement works and many other enterprises being privatised this way. The most common argument on the part of municipalities refers to a kind of "natural" ties existing between the municipality and the firm. Perhaps one the most notorious cases is the interest of the City of Piešťany to privatise the spas, an interest which is still there. The statement by Ivan Mrázik, the former city Mayor of Piešťany that if they get hold of spas, they will be able to boost profits six-fold, perhaps calls for no additional comment. It seems that some city mayors and self-Government councillors have forgotten about the main role of cities and communities. The vision of fatty profits flowing into the municipal treasury may be alluring but none of them realises that most Slovak firms are financially weak and need capital to remain competitive, a situation in which municipalities fall short.

Yet, there is also property for which municipalities' bidding is justified. Since supplying citizens with drinking water is one of the tasks which municipalities are required to provide by law, municipalities logically demand gratuitous transfer of water and sewer utilities assets from the state.

Another very similar issue is the demand that cities and communities receive shares of those energy and gas utilities, whose facilities - such as, gas and electric distribution lines, regulating transformers for gas and electricity - were constructed from municipal resources or through the "Action Z" schemes (with voluntary citizens' efforts under previous regime). In this case the claim of municipalities to the property created in the past by their own citizens are justified. Though it concerns redressing injustice caused by past regimes, this will be far from smooth. Proving which construction and distribution lines had been implemented within Action Z schemes will be difficult, equally it will not be easy to calculate the costs related to it. Another disputed moment may be the setting of the value for municipal property and its equitable weighting in terms of shares. It is hard to believe that the law is still in force, under which municipalities are bound to gratuitously transfer the infrastructure (water, gas, electricity) built at the expense of municipalities, before it is launched into operation, to relevant state-owned companies. And to make the paradox perfect, the citizens are bound to pay the state enterprise one more time for using the infrastructure built with "their taxes".

9.3. THE PROPERTY OF CITIES AND COMMUNITIES

Under the Municipal Establishment Act, the property of cities and communities includes articles in municipal ownership, ownership rights of the municipality and the property rights of legal entities established by the municipality.

Municipalities acquired the property according to the Act of the SNR no. 518/1990 of the Collection of Laws on transfer of the founding or establishing function from the national committees to municipalities, central bodies of state administration and the bodies of local state administration, and also subject to the Act no. 138/1991 of the Collection of Laws on municipal property, which also stipulated municipal management of this property. According to these laws, the founding function in respect of state enterprises founded by the national committee was transferred to that municipality in whose territory the state enterprise had its seat. The enterprises founded by former regional committees were an exception. The founding function in respect of these state enterprises, as a rule, was transferred to a central body of state administration. A more complicated situation existed in budgetary and contributory organisations. The law stipulated precisely which organisations were transferred to the administration of a municipality, local state administration and which came under a central state authority. In the health sector, only child nurseries first came under municipal administration, in education initially nothing, and later kindergarten, came under the municipality, while in social area, it was pensioners clubs, canteens and pensioners meals distribution, laundries of the nursing service, and the centres for social care provision. Former state apartments were also transferred to municipalities, as were all cultural facilities, set up by city and community national committees.

In 1992, municipalities took over ownership of 280, 000 former state flats. Within large privatisation , they also took over from former state enterprises an additional 20,000 thousand flats. This housing fund had to be gradually sold to citizens. Municipalities also took over from the state, housing objects under construction or those which were unfinished, technical and civil infrastructure, and amenities valued at around SKK 12 billion. Municipalities also received from the state agricultural land, non-agricultural land, (around 179,000 hectare), agricultural buildings, and construction serving agricultural and forestry production, they had owned before 1949. They also own local roads, public spaces, and other public facilities serving for municipal operations (incinerators, municipal refuse landfills, mourning houses…). The real property used by sports organisations, historical city halls, cultural establishments, such as culture centres, libraries and cinemas, also came into the hands of municipalities. Within the privatisation process, those operating units in relation of which municipalities fulfilled the founding function could, subject to the decision by the Ministry for Administration and Privatisation of National Property, be withdrawn and transferred in the municipal property. Between 1991 and 1993, 489 operating units were withdrawn in this way from small privatisation and became municipal property.

In the first wave of privatisation, between March, 31 1992 and 31 December 1993, assets worth SKK 886 million were transferred to become municipal property. This concerned free transfers for the benefit of municipalities, which were part of approved privatisation projects. Mostly they were so-called companies apartments, dormitories, buildings of nurseries, kindergartens, recreational resorts, and the land on which blocks of flats are built.

Some cities at that time became shareholders in different companies whose shares could be subject of further sale - privatisation. Bratislava, Poprad, and Košice became shareholders of the ČSA (air carrier) (1.4% each), the city of Topoľčany of the local brewery Topvar (15%), Humenné, of the company Chemes (8%), following the agreement with the FNM, spa towns became or will become owners of a 10-pecent stake in local spas, with the exception of Slovenské liečebné kúpele Piešťany, in which case the city will get only 5%. These are but few well-known examples.

The volume of property that came in municipal hands was not small, which is well illustrated by the following facts. In October 1993, Peter Kresánek, the mayor of Bratislava City, ordered stocktaking of real property, ownership rights and obligations to real property and lease rights of this town. The results of the stocktaking carried out by city wards, budgetary, contributory, and autonomously managing organisations show that of the total area of the territory of Bratislava, the capital of the SR, municipal property comprises 13.3%. The city on the Danube River owns almost 4,900 hectare of the territory, worth more than SKK 73 billion, at SKK 1500/sqm, more than 4,400 buildings and constructions, worth SKK 16.5 billion, The stocktaking then set the value of property owned by Bratislava at SKK 90 billion.

For the sake of illustration, we give a curiosity related to the completion of small privatisation and the need to clarify property legal relations in 1994 in cases where state administration had the right to manage the property, while the founding function was transferred to the municipality. The files of the state property administered by municipality was not to be found even at MSPNM SR, although this ministry was, by law, the central body of state administration for administration and privatisation of National Property in business sphere The ministry attempted to map the property by approaching all Slovak cities and communities in a letter, but the response was minimal. Even a request for co-operation addressed by the Register Court and the Ministry of Justice of the SR would not help. With the exception of District Offices Košice - the city and Košice-countryside, the ministry was reported they did not register such property.

9.4. PRIVATISATION OF PROPERTY

In the event the municipality - for different reasons- is unable to directly use its property for fulfilling self-governing functions, it may:

- offer the property for sale,
- lease,
- place it in a commercial company, in which it enters as a partner with other subjects, or which it establishes as sole proprietor,
- use it as collateral.

In all these areas, the responsibility rests with municipal councils. The law provides which acts are subject to consent by municipal council. They include:

- contractual transfer of title to real property,
- contractual transfer of the title to a real property above the value set by municipal council,
- handling property rights of a given value,
- auction sales of things, subject to special regulations.

Over the course of past ten years, communities and cities have got hold of relatively large property in different ways. Concurrently, privatisation of this acquired property was progressively taking place. The form of privatisation of municipal assets vary from case to case. This process in individual municipalities depended upon several circumstances.

9.4.1. Composition of community and city councils

From the aspect of the council make-up, it was important whether there were majority of people inclined to build a municipality with a high measure of regulation and municipal property, or councillors advocating the philosophy that the major role of cities and communities lies in creating conditions conducive to business, which should, in principle, be carried out by private businesses and companies. The composition factor was, no doubt, also the cause of many privatisation and corruption scandals. Despite the way they were elected (direct vote), the councils were politically divided, the groups fighting not only each other, but often the city or community mayors. Such a situation was a breeding ground for different lobbyist groups, which took advantage of it. I will refer to a few most famous cases.

One such great scandal was the case of bribery of the mayor of Piešťany, Viliam Hájovský. He was caught soliciting part of the bribe at SKK 1 million for mediating direct sale of part of a municipal wood producing company (Drevovýroba) in liquidation.

The Žilina City Hall saw a few curious cases, too. The sale of a one-storey house in the centre of Žilina to the director of municipal investor's office for SKK 125 thousand while the market price of the real property was SKK 5 million, came under investigation. Only in annual rental, the city could raise SKK 700 thousand. Another odd case was the sale of Žilina Park of Culture and Relaxation, for one crown, (the value of around SKK 10 million) to Matica Slovenská. Mayor Ján Slota gave the following comment: "I am determined to promote and assist Matica Slovenská while I live!"

The last case to be mentioned here is the sale of the supermarket complex Jadran in Bratislava. The Councillors Committee selected the firm Homar in a public tender to be the new owner. The new owner paid SKK 40 million for the building but after it was entered in the property register, he sold it to another firm for SKK 80 million. The net profit of the private firm was SKK 40 million, with a duty to pay tax on real property transfer. (We were unable to find out how the councillors handled this case. Most probably just as in most other cases, that is, in no way. - the author).

We should not harbour any illusions about the situation being diametrically different in other cities. These cases probably just received less publicity than those referred to above. The accountability should be sought somewhere else. The genuine cause is the absence of efficient control over, both, councillors and city and community mayors, on the part of citizens - the electors. They do not even suspect the scope of decisions this group of people takes. To most city and community dwellers it has not yet ocurred that this concerns primarily their money and their property. It is enough if in the end of the election term a new pavement is built or a new park gets planted and the result of the election is not to be feared. It holds twice for a Slovak elector - What the eyes cannot see, the heart does not feel.

9.4.2. The existence or non-existence of the way municipalities function from the aspect of involvement in business activities or creating positive conditions for businesses

With a few exceptions, we may note that in majority of communities and cities, a more realistic and longer-term concept of economic development was missing. Such a concept should embrace not only a list of necessary investment and non-investment activities, but, above all, a draft arrangement of the economic structure of the municipality, including the ownership and organisational and legal form of subjects that were expected to ensure the performance of self-governing functions of cities and communities. It was due to this absence that municipalities have often been acting inconsiderately, almost

unrestrained. The problems which gradually began to pop up, (municipal waste, dilapidated real estates, municipal public transport, housing…) have often caught municipalities not prepared. The subsequent solutions selected under time pressure were rarely optimal. In what other way then, the inadequate investment undertakings of the cities of Košice and Banská Bystrica can be explained., which have brought them on the brink of bankruptcy.

The reason for the absence of any concepts and real estimates of municipal potentials lies not only in inadequate level and preparedness of self-Government officials, but also in the non-existence of rational rules of the game, which would clearly divide the rights and obligations between the state and local Government.

9.4.3. The volume, the value and the form of property fit for privatisation

The volume and the value of property was directly related to the size of individual municipality. The yield of privatisation grew in proportion with it, just as the problems associated with such property, which could often be sold with great difficulties.

Privatisation of apartments caused municipalities major problems. As was mentioned above, they have taken more than 200 thousand of them in their administration - former state and enterprise apartments. The original rationale was the expectation that, through sales, municipalities would raise finance necessary for new housing construction. As it turned out later when calculations were made, the funds thus raised would not be enough to cover maintenance of the existing housing fund. Moreover, self-Governments were concerned about the unfinished complex housing construction (CHC).

Apartment sales, in principle, were to start immediately on their transfer to municipalities in 1992. Ever since its beginning, the whole process encountered scores of legislative barriers and shortcomings. Only on July, 8 1993, did the deputies of the NR SR approve the draft bill on ownership of apartments and non-living space, on the basis of which the apartments could be sold. As early as in 1995, the self-Government through ZMOS called for the amendment of the law because communities and cities had great difficulties in selling municipal apartments and were striking against scores of insoluble problems. Under this amendment, Slovak nationals could apply for transfer of the ownership of a municipal or co-operative apartment starting from August, 1 1995.

After this amendment, there should be no obstacles in the way of privatisation of apartments. Each applicant should be satisfied within 2 years from the date of his filing the application..As it turned out, municipalities, and registry offices of the relevant district offices, were unable to absorb such a flow of purchase-anxious citizens. Hence, the privatisation of the housing fund has been going on until today, albeit at a considerably higher pace than was the case in 1995. For the sake of completeness it must be added that the Government in 1995, in relation to their switch from voucher privatisation to bond compensation wanted to make municipalities accept FNM bonds in selling apartments to citizens. After protests from cities and communities, it was left at their discretion to decide whether they would accept them or not.

The ZMOS idea of the volume of privatisation of housing fund was presented in 1995 by ZMOS President, M. Sýkora: "Cities and communities intend to earmark more than 52 thousand apartments (18.72%) for social purposes and they will keep more than 50 thousand of them in the category of regulated rent. Of the total figure of 278 thousand apartments more than 10 thousand will be withdrawn from privatisation on a long-term basis."

Following the transformation of former municipal housing enterprises, apartments were found belonging to different companies (as a rule, limited liability companies), which were set up by cities to administer and manage the housing fund. Their economic management was often very non-transparent and different machinations with the property entrusted occurred. Media highlighted mainly the scandals around allocation and sale of progressively completed apartments from the "inherited" CBC.

The fate of the CBC in progress was slightly different. Until 1991, the state contributed solid sums to municipalities to complete it. Despite this, municipalities had to finish these constructions later mainly at their own expense, or else solve the situation by selling them to an investor with the necessary capital.

Privatisation of agricultural and non-agricultural land is almost illegible as the data of the SO SR does not contain any land survey by type of owners. Privatisation of non-agricultural land was individual. For municipalities, lucrative

Table 41 – Reprivatisation of forest land in favour of cities and communities (ha)

1991	1992	1993	1994	1995	1997
–	–	166 ,503	180, 092	181, 425	198, 995

Source: SO SR

Table 42 – Capital revenues of municipalities (mill. SKK) and their percentage share in overall municipal revenues

1991	1992	1993	1994	1995	1996	1997
4.9	10.3	1,901.6	1,904.9	2,150.2	2,265.9	2,970.9
0.03 %	0.05 %	9.07 %	9.49 %	9.67 %	8.91 %	10.32 %

Source: Financing municipal self-Governments in the SR, MF SR

building sites, in particular, have become a substantial source of finance. They were sold for market prices, primarily through real estate agencies and public tenders. Here, too, municipalities did not avoid scandals and suspicions of corruption and clientellism. In the recent period, however, municipalities have come to understand deeper the problems of housing development and the economic development of regions and has begun offering land with built up infrastructure for marginal prices. They strive to help address the burning issue of housing and employment of their citizens.

Municipalities were returned forests and forest land within restitution. The table below shows the volume of reprivatised forest fund. The data for 2000 and 2001, and are predictions which have been used in the draft Program of Development of Agriculture and the Food Industry, Forestry, and Fisheries of the SR by 2010, submitted to the Government of the SR in September 1999.

Most often, municipalities have established municipal limited liability companies to administer and manage forests. Hence, the profit generated becomes a revenue of municipal budgets.

Indeed, the sale of real property (except for flats) has become a major source of capital revenues and scandal as well. We have mentioned several cases already and there is no need to refer to tens of others. What is necessary though is to alert to the problem of municipalities divesting of their property under pressure, which they, later on, could have put to good use efficiently themselves. Table 42 shows the tendency towards increasing municipal revenues through capital assets sales (the main component of municipal capital revenues).

The growth is visible, both in absolute terms and relative to the overall revenues of municipal budgets. This phenomenon is characteristic mainly of larger municipalities. As in the case of land, in other real property, municipalities have embarked on sales for symbolic prices. The more famous cases included the sale of Eurohotel in Banská Bystrica to the state for one crown, and under equal terms, and to the same transferee of the building of present seat of the Ministry of Foreign Affairs of the SR in Bratislava. To a lesser extent, we have seen transfers in favour of different non-Governmental organisations.

Table 43 – Credit burden per capita in SKK

			municipalities with the population					
YEAR	up to 500	501–1000	1001–2000	2001–3000	3001–4000	4001–5000	5000 plus	SR
1995	63	139	178	243	134	55	368	271
1996	106	174	203	335	308	130	695	479
1997	71	183	198	272	229	186	767	510

Source: Financing municipal self-Governments in the SR, MF SR

9.4.4. The economic situation of particular municipalities

This situation varies, but is essentially bad. Perhaps it is most critical in large cities. They are unable to cover current expenses from their current revenues and are forced to either sell their property or raise credits. It will follow from Table 43, showing the per capita credit burden in the SR, that it is highest in largest settlements.

Their problem is all the more significant, as they are most often metropolitan seats, which bring about additional tasks that are not accounted for in state budgets allocations. They are permanent debtors for energies, waste collection and disposal, and other services. Some cities find themselves in a situation where they are bound to sell their property under great pressure and for unfavourable prices in order to be able to repay instalments of credits and other debts. In contrast, small municipalities cannot finance even the smallest investment activities from the meagre funds that flow into the budget and are unable to borrow money.

9.4.5. The overall economic conditions for functioning of self-Governments

The situation of municipalities has been sad from the outset and is steadily aggravating. One cause may be the unbalanced economic relations that exist between the state and municipalities. The relations are very unstable, changing each year, and thus not giving self-Governments a chance to pursue medium-term and long-term planning. Though the Municipal Establishment Act gives municipalities a relatively great independence and autonomy, this de iure independence does not constitute a de facto independence, primarily in the economic area. This is mainly due to the fact that the economic conditions of self-Government functioning, which are determined by the state, restrain the autonomy substantially.

A major restriction in municipal budgets revenues and expenses occurred in the SR between the years 1990 and 1995. This restriction was much more significant in municipal budgets than in the state budget. As can be seen from Table 44, the phenomenon is well illustrated in the proportional changes between investment and non-investment expenses (from 1995 on, the SO SR does not provide the data).

The growing restriction makes communities and cities spend almost all their resources for current consumption, connected with provision of those functions that they are bound to undertake by law. The state made it even harder for municipalities by handing over some competencies without their subsequent compensation with adequate funds (for example, municipal public transport).

The Government acted punitively toward municipalities in 1993. In comparing the state budget for 1993 with the final statement of the account for 1993, the experts of M.E.S.A. 10 found unlawful cuts to self-Government share in personal income tax. The State Budget Act stipulated that 70% of this tax would be transferred to municipal budgets. The planned revenues of this tax amounted to SKK 6.766 billion, but actually reached the sum of SKK 9.326 billion. The budgets of cities and communities, however received instead of SKK 6.528 billion, only SKK 5.647 billion. In this way, municipal budgets were, at variance with the State Budget Act, short SKK 881.36 million.

Even today, the state fails to meet its obligations in a way it should, and is a permanent debtor (municipal shares in state-shared taxes) of impoverished self-Governments (on August, 31 1999, that amounted to SKK 180 million).

Apart from blaming the state, municipalities should also search their conscience when looking at their severe financial situation. Not always, were they managing their funds wisely. They not only attempted to privatise property, which was referred to above, but often placed municipal funds in companies that never brought them the desired benefit. First, these were banks and then regional television has become the most recent hit.

The most absurd may be one case that, fortunately, have never materialised. It concerned the offer for cities and communities to involve in the second wave of voucher privatisation (1994). Self-Governments maintained that some opportunities emerged that were easy to get hold of with their financial resources. They were to establish an investment company through Prvá Komunálna Banka Žilina, which was to fulfil the function of an administrator of three to six investment privatisation funds on a regional principle. The role of municipalities was to arrange advertising and to promote it in their contact with the investors - (investment voucher holders). It was even contemplated to provide

loans to citizens to purchase voucher books and the stamps from municipal resources.

9.4.6 Concealed forms of privatisation of municipal assets

Among these forms of privatisation should be included mainly contributions of municipal capital in companies whose operations closely relate to the municipal obligations imposed by law but also in companies which are totally unrelated to the running of a municipality.

The first group includes firms operating in cities which provide heating, road and public spaces and landscape maintenance, municipal refuse collection and disposal, funeral service, public lighting, and others services. Municipalities mostly put in them property of former communal enterprises, which is often in poor condition and does not satisfy current economic or ecological standards. This is the reason why they, as a rule, do not have majority in these companies and virtually lose control over their own assets.

The second group are contributions in the firms that are not necessary to running of a city. There are many examples around Slovakia. By putting a non-financial contribution of the building of former Gastrocentrum in Banská Bystrica, the city became a shareholder in Banka Slovakia (6.9%). Similarly, when the PKB was established, there were 61 cities and 80 communities, some of them putting their contribution into it in the form of buildings, which became the base for the future network of subsidiaries of this bank. Bratislava, too, became a shareholder in IstroBanka, holding an 18-percent stake.

A similar case would include collateral provided by a city or a community for credits taken by third parties, whether these concerned firms with municipal participation or not. In failures to repay credits, the banks then apply their mortgage rights to the property owned by municipality and become owners of this property. The municipality thus pays for the errors committed by others and for its own carelessness in providing such security.

9.5. PUBLIC ADMINISTRATION REFORM – NEW COMPETENCIES, NEW PROPERTY

On August, 18 1999, the Government approved the Strategy for the Decentralisation of Public Administration, which in 2001 should result in massive devolution of the functions from the state to self-Governments. The delegating of competencies, however, will not resolve the problems of managing municipal property (the property sale, so-called privatisation). The responsibility for this activity of self-Governments will rest with their decision making. Therefore we should not expect the public administration reform to tackle transparency, particularly in the process of municipal assets sales. In addition to the competencies and financial resources for their performance, cities and communities, or bodies of upper tiers, will get not insignificant property under their administration.

This property will preliminarily include the following:

- forest economy (forest land and the property related to it),
- agricultural land,
- transport infrastructure or part thereof,
- road network except motorways,
- water management except water sources,
- energy industry; participation together with the state in those sections which have the nature of natural monopolies,
- housing fund,
- health facilities except those of national significance,
- school facilities except universities,
- cultural facilities.

Table 44 – Municipal budgets expenditures (mill. SKK)

	1991	1992	1993	1994	1995
Noninvestment	8,376.5	12,123	12,715.9	12,863	12,971.2
Expenses	59%	62%	66%	67%	69%
Investment	5,922.8	7,547	6,583	6,237	5,881.8
Expenses	41%	38%	34%	33%	31%
Total Expenses	14,299.7	19,670	19,298.7	19,097	18,853

Source: Financing municipal self-Governments in the SR

It should be taken as a tentative list , which may be slightly changed by the time the reform is launched. There is no doubt that not all this property is fit for privatisation but there is some scope for privatisation, if not all, then of at least part of this property. In some areas, the development took the right direction. In case of the assets of water and sewer utilities, the Ministry of Soil Management and self-Government officials have agreed that these assets would be handed over to communities and cities, starting from July, 1 2000. They failed to come to similar agreement on the transferring of agricultural land. The Ministry of Health also worked out the privatisation of health facilities, in which, no doubt, municipalities and upper-tier territorial units will play important roles. We have to trust that cities and communities will handle this property in a way beneficial to both municipalities and their citizens.

Within almost ten years, property of different kind and quality has come in the hands of municipalities. We would hardly find a municipality in which the management of the newly acquired property was flawless. There are several reasons for it. Starting from the incompetent municipal management, preference was given to narrow interest groups, insufficient control, and the lack of interest on the part of citizens, to the inadequate economic conditions in which self-Governments operate. The result of all these influences and other factors is the bleak condition that municipalities find themselves in today, (excessive credit burden, insolvency, etc) and the property managed by them (the property in the hands of creditors, or sales under their pressure, emergency state of property). Moreover, the new property, which self-Governments should get through public administration reform will also likely be in poor condition and unfit for sale. The dilapidated buildings of schools, outpatient clinics, and social care facilities will take their toll, just as the long-lasting neglect of water pipelines and treatment plants. By further careless sales, municipalities might deprive themselves of not only control and guidance over vital services to their citizens but of the running of a city or if fact the community. The city and community mayors' chairs should be filled with managers that are capable of handling diverse property primarily for the benefit of the citizen - the elector.

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10. NON-TRANSPARENCY AND CORRUPTION IN THE PRIVATISATION PROCESS

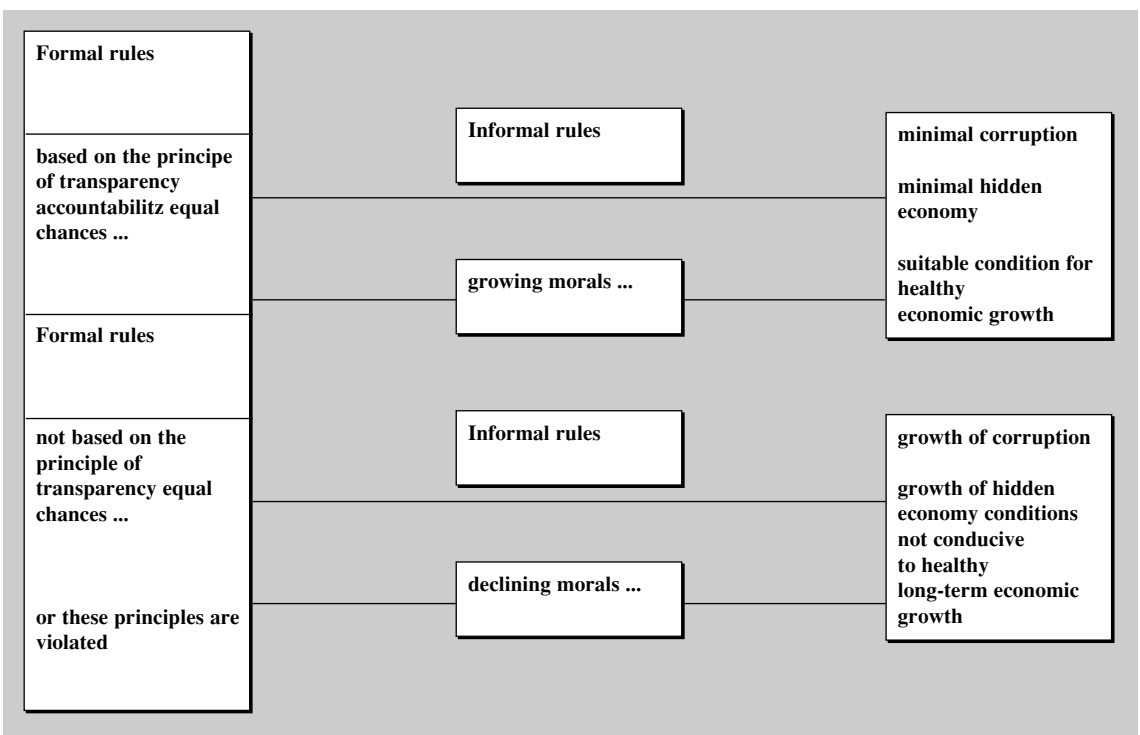
Emília Síčáková

In 1989 The Slovak economy started its transition from a command model of economic management to a market economy, which is generally based on private ownership and enterprise. Slovakia thus after a long period has become a country which set itself the objective to consolidate and develop business activities, to create motivational business environment, to create the market.

Privatisation has become one of the instruments of creating the market and the private sector in the economy. Privatisation in Slovak economy has not only affected the economic area, its course has had an impact upon the entire society. It affects essentially and, in at least three aspects, what type of institutional framework is being created in the economy and the society, mainly due to the fact that:

- ownership relations constitute the fundamental part of the institutional architecture of an economic system and privatisation, a substantial part of the institutional transformation,
- there is a strong effect the mode of privatisation has upon the formation of the business and executive culture and ethics,
- there is a strong effect the mode of privatisation has upon the whole social climate, formation of informal rules in the society, and subsequently on creation of conditions conducive to long-term sustainable development in Slovakia.

The following schemes depict a simplified relation between formal and informal institutions and their impact upon the economic growth:



The word corruption is of Latin origin, derived from the word rumpere, and means: break, break up, or tear. The Latin expression corruptus conveys the effect of breaking – anybody who undertook breaking is spoilt degenerate, perverse. To most people, the notion of corruption connotes with the break in faith with ideals, moral principles and represents betrayal of honour and obligations against the community.

There are several definitions of corruption though. Perhaps one of the simplest defines corruption as a deviant conduct - departing from the norms regulating the activities of public officials.

Corruption also implies a conduct of public sector officials, whether politicians or state bureaucrats, through which they unlawfully gain by abusing powers, which they have been entrusted. We can conclude from what has been said above the following characteristics. Corruption represents abuse of power over other person's property, rights with the objective of gaining one's own private benefit.

Corruption encompasses bribery, nepotism - that is favouritism shown to relatives, and clientellism - favouritism shown to friends. This understanding of corruption in the broader sense of the word encompasses every conduct that is at variance with the law, ethical standards and moral criteria and also inconsistent with the criterion of equal chances and competition on equal terms.

The size of corruption in individual parts of privatisation process - pre-privatisation phase, decision making phase about allocating property and post-privatisation phase, is affected by the formal framework which is determined for the implementation of the given process, but also informal rules existing in our society. We will discuss corruption in the above phases of privatisation in more detail in the following section, but before that, we should focus on the informal rules which have influenced all parts of privatisation process.

Informal rules concern mainly conventions and personal standards of integrity. The importance laid on informal rules is directly related to the adoption and implementation cost of formal measures. For example, the more difficult it is to implement the act on the conflict of interest, the more important the way people think, is. If the adoption of a given measure and its efficient implementation could be achieved at lower costs, it would indicate that the ideology in a given society was congruent with the law implemented. Conversely, it is necessary to influence also the ideology, which increases the overall cost associated with the implementation of a given law or a mechanism. Trust, morals, upholding ethical values are thus significant economic categories.

While formal rules can be changed "overnight", the change in informal rules is much more difficult to effect. It is because informal rules act gradually and often subconsciously, on the basis of individuals creating alternative patterns of behaviour, in agreement with new cost and benefit assessment.

Many factors had an effect on the formation of informal rules, but we will mention the following in particular:

* shortage- driven nature of the socialist economy

Informal rules, morals and ethical values had been distorted in Slovakia during the existence of shortage driven economy in the period of socialist economy. Disregard for the rules of the game on the part of a substantial portion of citizens was given by several specificities of the life in the society, in which the proclaimed values and rules of the game often differed from genuine values and rules of the game. In a deficient economy the actual differentiation in the living conditions depended more on the readiness and the ability to break written and unwritten laws of ethical and moral conduct than on the actual work performance.

In the socialist Czechoslovakia, there was no interest in deeper analysis of the inequilibrium of the supply and demand, the weaknesses of the system of management. A shift occurred only in the 1980s when more attention was devoted to clarifying causes for the existence of shadow economy. The shadow economy in socialist countries thrived mainly as a result of significant demand overhang over supply, which was due to the monopoly position of many organisations and the protective attitude of the state. Shadow activities were sought mainly by those customers who were impatient to get the product or could not wait to have some other needs satisfied through official channels. In 1988, an estimate was published in the ČSFR claiming that an average national spent 1- 10% of his work income in the black economy.

Corruption had become a part of life in socialist economies of the era. The rate of corruption of the day is illustrated in the survey of households of April 1988, and can bring us to the following conclusion: so-called payments for procurement had pervaded all walks of life and were perceived as quite common, generally occurring phenomena and there was no reason to hide one's personal share in the relevant activities. Only 6% of respondents said they did not use a bribe in order to achieve what they needed in some areas. 75% of respondents admitted to have used this form at least once in shopping in retail shops, 49.5% in health care, 44.5% in repair and some other trade services, 37.5 % in buying a car, spare parts for cars, and for repairs. Such was then the state immediately before transformation.

With a sufficiently long time of the system acting, considerable damage was done to the people's consciousness, which will take several generations to undo. The widespread predisposition for disregarding rules of the game, the efforts to help oneself at all cost - even at the cost of breaking not only written laws and regulations, i.e., formal rules, but also regardless of unwritten laws of elementary ethics and morals - have not stood in the way of the growing corruption in the process of privatisation in Slovakia. It is this inherited state which is one of the major causes of several undesirable phenomena, associated with the corruption in privatisation process, but also of the non-existence of real public opinion pressure against genuine and dangerous corruption in privatisation and its bearers.

* *social frustration after the fall of communism*

After the fall of communism and the launching of the economic transformation, economic decline ensued, coupled with social decline, decreased purchasing power and the living standards of majority of the population accompanied with growing unemployment and an overall social confusion of a considerable portion of the population. Very soon, property and economic differentiation followed the suit, which quite often did not stem from the differences in performance, creativity, and inventiveness but was also due to different measure of willingness and capability to employ illegal or at least non-ethical and immoral practices. As the result of failure to prosecute evident and notorious privatisation excesses, general social frustration has been enforced. One can assume that social frustration has facilitated boom in the overall corruption in the society, hence also in the process of privatisation.

We can conclude from the above that informal rules did not preclude the growth ofcorruption in individual phases of the privatisation process. A more detailed description of the corruption are given in the individual parts of the privatisation process which follow. Just to emphasise the different manifestations of corruption in individual phases of the privatisation process, we have selected the following classification:

- corruption before the property is sold, so-called pre-privatisation corruption,
- corruption in the decision making process about allocating the property - i.e., during the privatisation process itself, sale of property,
- corruption after the property is sold, so-called post-privatisation corruption.

10.1. CORRUPTION PRIOR TO THE ASSET SALE - SO-CALLED PRE-PRIVATISATION CORRUPTION

This kind of corruption connected with the economic transformation and privatisation is also called spontaneous privatisation. This denotes the process of stealing property in the period from the time the economic transformation or economic liberalisation was launched until the privatisation of a particular company is completed. It is a spontaneous privatisation on the part of management and their close people.

The scale of spontaneous privatisation depends on the speed of privatisation and is directly related to the duration of the period from launching economic transformation until privatisation of the particular company is completed. The slower the course of privatisation , the greater the scale of spontaneous privatisation.

Privatisation is definitely a challenging and unprecedented process, the implementation of which required and still requires achieving political consensus on the ways and concept of privatisation, carrying out many administrative acts with the purpose of introducing a system into recording the property relations and preventing subsequent challenging of the created private ownership. This kind of time schedule creates

conditions for potential corruption. Although § 45 of the Act no. 92/1991 of the Collection of Laws on large privatisation was drafted for the purpose of limiting spontaneous privatisation - as it should prevent the management of state enterprises to involve in transactions beyond the framework of regular management of the assets, which might decrease or depreciate the equity of the company and bring the management property benefit - Slovakia did not avoid spontaneous privatisation .

Spontaneous privatisation has many forms but they have a common feature in the existence of two subjects - a state enterprise or a state joint stock company on one hand, and a private physical or legal entity, on the other, with which the management of the state enterprise is in some way connected. The form of the connection may differ, from open participation in that company, through dormant partnership, participation of family relatives or friends to acting in return for payment. The most common form is setting up limited companies with dormant participation of the company's management.

The frequently applied forms of spontaneous privatisation include intentional aggravation of the economic situation in the company, reduction of its value and subsequent purchase at a low price. In Spontaneous privatisation, contracts were signed, for example, of lease for non-living space, foreign trade activities, advertising and promotion, supply and distribution, service, transport service, etc. An important factor encouraging the growth of spontaneous privatisation was the absence of competitive forms in procurement, as the Act no. 263/1993 of the Collection of Laws on public procurement was adopted with the effect at January, 1 1994.

10.2. CORRUPTION IN THE PROCESS OF DECISION MAKING ABOUT THE ALLOCATION OF THE ASSETS

In connection with the decision making process itself about allocating the property, we need to concentrate on the following elements defining the formal process ofprivatisation, which suggest the likely scope of corruption in the process:

- method of privatisation and control mechanisms,
- (non)existence of supplementing legal norms.

10.2.1. The method of privatisation and control mechanisms

The room for corruption in this stage of privatisation depends primarily on the methods used in privatisation - on the existence of clear, transparent, controllable, and controlled rules ofthe game. In this respect we should point to individual methods and how they depend on the degree of potential subjectivism in decision making.

Table 40 shows voucher privatisation and standard methods ofprivatisation as methods with the least likely for there to be corruption - there are clearly determined criteria on the basis ofwhich individual privatisation projects and control mechanisms are agreed and approved.

In Slovakia, so-called standard methods and also a non-standard method have been used in the process of privatisation. These methods have been discussed in particular sections ofthis publication. After briefly outlining their basic characteristics, the author will therefore touch on only those parts of formal rules, which define the framework for the way of privatisation and might have an effect on the scope of corruption in the privatisation process.

10.2.1.1 Non-standard method of privatisation – voucher privatisation

This method of privatisation reduces room for corruption and the risk of corruption prevalence. Among all privatisation methods, it is one that appreciates most equality of conditions and chances and gives the least room for subjectivism. Each national had thousand points in the voucher privatisation and each could apply them in relation to any joint stock company privatised in this way. The demand for shares of individual joint stock companies was not known in advance, at the same time, nobody knew what their market value was going to be. The rules of the game were known from the outset, and were applicable to all equally. The room for favouritism and manipulation had thus been minimised. Despite the fact that the voucher privatisation was - as to the process itself of distributing assets (shares) - evaluated as a transparent and quick way of distributing shares among the population, there, too, were several cases in this method of information abuse and hence also corruption.

Table 45 – The degree of discretion and the anticipated scale of corruption

Degree of discretion	Anticipated scale of corruption
total discretion in deciding the method and the price (this power is at lower levels of management)	considerably widespread
total discretion in deciding the method and the price, with final decision made centrally, at a higher level of management	Widespread and probably institutionalised, depending on control mechanisms
method that was decided before: a competitive method, public, buyers chosen by state employees	abuse is limited by a competition or criteria of selecting the buyer
method that was decided before: buyers selected according to clearly defined criteria	very limited, mostly in cases when the criteria set are vague
voucher privatisation: a model when clerks do not have powers in setting prices or providing information to participants	very limited

Source: Political Corruption, Privatisation and Control in the Czech Republic: A Case Study of Problems in Multiple Transition, University of Oxford

There are several indications that information was abused from the very beginning ofits implementation. Other problems related to this method of privatisation were, in most cases, not due to the voucher method itself, but rather, to the legislative provisions in the area of supervision and control of the capital market and insufficient protection of the minority shareholders.

10.2.1.2. Standard methods of privatisation

Standard methods of privatisation include:
- public auction
- public tender
- direct sales

Public auction

The so-called small privatisation was organised through district privatisation commissions having jurisdiction in their own districts, which were subordinate to the Ministry for Privatisation. The only criterion was the price offered. The selection of the bidder was made by public auction, whereby room was created for a transparent way of its implementation. Despite this, even in this way of privatisation a phenomena occurred which foretold ofthe presence ofcorruption. This corruption had direct, criminal, and unlawful nature and was (or should be) prosecuted by the police and law enforcement bodies.

It included, for example, hidden or open blackmailing of bidders or potential bidders with the intention to deter them from participating in the auction or from raising the price, soliciting reward for readiness not to enter the auction, or increase price on the part of speculators as opposed to serious bidders interested to get the operating unit, organising so-called Dutch auctions where serious bidders were discouraged from participation by threats, acquisition of operating unit through auction with the intention not to pay within the deadline and at which time the result of the auction is rendered void, and the manipulation ofdocuments regarding the previous lease of the operating unit auctioned with the intention of priority purchase.

Several measures were adopted by the Government, the parliament, and the ministry for privatisation, which were intended to minimise the scope of these negative phenomena.

Public tender

Even in the process of public tendering there are risks of corruption. They can be eliminated though - provided all standard procedures ofpublic tendering are upheld, such as publicising the offer for sale, setting clear selection criteria, sealed bids free ofthe risk ofinformation leakage on competing bids, and independent and unbiased selection committees. The experience of public tendering shows that these conditions are not always upheld, which may lead not only to opportunities for corruption and influencing these processes, but also to challenging the results of such tendering and their potential review and even annulment.

Direct sales

In the process of large privatisation, a major part of property has been sold through direct sales. The direct sale is a form ofselling property or shares of a former state enterprise, when the sale is effected on the basis of approval ofa privatisation project for direct sale to a pre-designated entrant. Even in the event of implementing privatisation through direct sales, transparent, competitive, and controllable course can be introduced. It is the case when rules of the game and criteria are defined on which selection takes place from among different bidders, and when it is possible to check the compliance with these rules and criteria during privatisation and also in retrospect. This mode of privatisation then can be effected in several ways, depending on the way of decision making, degree of transparency, control, and hence also room for corruption:

- the Act no. 92/1992 of the Collection of Laws on conditions of transfer of state assets to other persons stipulated for this form of sale an obligation of the Government approval for the privatisation project. Early on when direct sales began, it was provided that Government was to decide about direct sales. There were also clear efforts to introduce transparency in the whole process. For example, during the Government of Jozef Moravčík in 1994, institutions competent to issue the decision on privatisation were obliged to publish the information about submission of the privatisation project in daily national press before the decision was issued. It was also stipulated that the decision could not be issued before 30 days had elapsed since the information was published.
- an important systemic change occurred during the night ofthe 3rd ofNovember 1994. At the first session of the newly elected parliament, the parliamentary majority, represented by the Movement for Democratic Slovakia, (HZDS), the Slovak National Party (SNS) and the Slovak Workers Association, (ZRS) passed several substantive and systemic changes, among them, the amendment of the Large Privatisation Act, which took away all decisive powers from the Ministry for Privatisation and the Government of the SR and transferred them to the National Property Fund (FNM SR). The FNM SR transferred responsibilities on the basis of which the Board of the FNM could issue decisions on direct sales and change the decisions that had already been made regarding privatisation. This unconstitutional amendment of the Large Privatisation Act contributed to a situation where the privatisation process became much more uncontrolled and non-transparent. The privatisation process was outside ofthe control ofthe public and the media. Over the course of 1995, there were no press conferences, which had been common before. Peter Bisák, the Minister for Privatisation, repeatedly stated that subject to the Privatisation Act, the decision making on privatisation is not open to public. Although §10 of the Act no. 92/91 says in paragraph 7 that "decision making on privatisation is not public" , at the same time paragraph 5 of the same §10 says: "the ministry shall publish the privatisation decision issued within 30 days in the Obchodný vestník (Commercial Bulletin) and shall use also other forms ofpublicising it." The close character of privatisation decisions then only concerns the procedure of decision making itself.

The change of responsibilities, referred to above, allowed the FNM SR to disregard decisions issued by the Ministry for Administration and Privatisation of National Property of the SR, to change the method of privatisation, and to place at advantage the transferees of privatised assets in selecting and setting contractual terms (e.g. purchase price, terms of payment). The change also enabled the FNM to restructure liabilities, in some cases, a decisive part of liabilities were moved to a single output, with its subsequent liquidation. Subsequently, there were frequent non-

transparent assignments of assets to persons close to the ruling coalition at very low prices and with possibilities to have a significant part of down payments of the price, already low enough, pardoned. There has not been made public any criteria applied in selecting from the bidders for the property, there were genuinely no rules of the game, and hence no way to check them. The political opposition and the public were deprived of any possibility to at least formally control the process. The motion to get the FNM under control of the Supreme Control Office of the SR had beed defeated several times. The only information the FNM published were lists of companies it intended to privatise, and then the lists of companies that had been privatised, the purchase price, first down payment, and the transferee of the asset. No register of privatised assets was established that would provide equal information to all potential bidders.

Despite this confidentiality, some media have published information on privatisation affairs and favouritism of people close to the ruling coalition in the process of privatisation. Testimonies of contravention of the law appeared. Several newspapers have published names of persons concerned and facts.

In connection with the process of privatisation and potential corruption, we need to mention also a phenomenon of so-called wild privatisation. This denotes privatisation of the period between February and March 1994. Under the banner of declared objective "to create domestic business layer" the assets were assigned on the basis of business plan. The business plan, which thus became the main criterion of selection, made room for excessive subjectivism, as this criterion cannot be measured. Moreover, most proclaimed intends in the business plan cannot even be legally fixed and enforced. Since domestic entrants in privatisation have limited investment possibilities, the Government was contemplating "in order to support the growth of domestic business layer… to allow downpayment schemes in sale which would credit investment in the purchase price". Privatisation along these criteria allows subjectivism and favouritism of the management of state enterprises, or other pre-selected interested parties.

10.2.2. (Non) existence of supplementary legal norms

The process of privatisation was launched at the beginning of the transformation process. This implies, among other things, that it was not launched in a legislative environment which would correspond to the principles of standard market economy, based of private ownership and enterprise, but rather, in an environment tailored to an economy, in which private business, ownership of means of production, etc. were banned.

Hence, the process of privatisation ran in parallel with the process of drafting new legislation. The regulations missed most in the process of privatisation included the regulations that would make provisions for conflict of interest, laws and regulations governing procurement of goods, services and public works, laws and measures precluding money laundering, tax regulations making provisions about the system of tax returns, according to which property and income of individuals can be tracked down, etc.

10.3. POST-PRIVATISATION CORRUPTION

There may have been room for corruption in connection with fulfilling the terms of contract, signed by the buyer and the FNM SR. It may take place, for example, in payment of the purchase price of the privatised assets, particularly when the sale implemented was by instalments. These are the situations when the transferees are able to pay instalments but do not do so, relying on the imperfectness of the contracts of purchase and sale, high caseload of commercial courts, political lobbying in favour ofnot punishing breaches of contracts or even in favour of change in terms of reducing the purchase price or pardoning instalments, etc.

It must be emphasised that a failure to pay the purchase price can occur not only for speculative but also for objective reasons, when, say, the market conditions are eroded compared to the state assumed by the buyer. Accordingly, the inability to keep to the instalment plan, agreed at the time the contract of purchase and sale was signed, can arise.

In the context of post-privatisation corruption, we should also refer to the Act no..286/1992 of the Collection of Laws on income tax, which made provisions for deductions of investments

from the tax base in the transferees in direct sales. Thus a particular group of entrepreneurs has gained advantage.

The room for corruption was created also in the handling of bonds. In March 1996 a Government decree was adopted which specified the terms and forms of bond uses. The bond privatisation allowed, among other things, the sale of bonds to the FNM debtors, who could thus cover their obligations to the FNM. Subsequently, the sale of bonds to the FNM debtors became one of the main forms of handling bonds. The above Government decree then enabled some (or selected) new owners of privatised assets, who were FNM debtors, to acquire FNM bonds before the date of maturity in 2001. Selected privatisation actors, FNM debtors, could buy out bonds and pay their obligations against the FNM. The nominal value of the bond was SKK 10, 000, the Government fixed the minimum price at SKK 7,500. Given the significant imbalance which existed in the demand and supply, the real price was lower and was circumvented. The Constitutional Court of the SR later ruled that several decisions were at variance with the constitution, namely with Article 55 par. 2, which refers to the protection of economic competition. As there was difference between the nominal value of the bond and its market value, the privatisation actors could pay the FNM effectively using its nominal value, whereby this group of economic subjects were treated more favourably.

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APPENDIXES:

APPENDIX 1: Privatisation Cases

The appendix Privatisation Affairs contains selected most famous cases which we put in alphabetical order (bearing in mind that there is also a different way of sequencing). The cases have been processed on the basis of summarising the events according to monitoring of the press starting from the beginning of privatisation of particular companies until present state. We do not comment on the cases, neither do we close them. We leave to the reader to form his or her own judgement.

THE CASE OF BAŇA ZÁHORIE

The Board of the FNM SR decided on October, 2 1996 about the sale of a 51-percent stake of the *a. s., Baňa Záhorie* (Mine Záhorie) to a company, *Baňa Záhorie 1*, the actors of which were officials and members of HZDS in the time of privatisation, for a symbolic price of one crown. There were other bids at SKK 100-270 million. The winning company *Baňa Záhorie 1* was founded only two days before the tender was completed at the FNM. The fact that the case of the winning company actually concerned HZDS officials and members was highlighted by reference letters of the officials of coalition parties, and even with a supplement to the resolution of the coalition board of District Senica of 10 December 1995, according to which "district coalition board insists that the transferee of *Baňa Holíč* become the company *Baňa Záhorie1*."

On 9 December 1996, the Slovenská Sporiteľňa, a. s., (SLSP) bought in direct sale at the BCP for bonds the remaining 46-pecent stake for SKK 4.4 million at SKK 30 per share (The Board of the FNM decided this sale on 20 November 1996). On 12 December 1996, the SLSP sold two companies - *Auris* and *Emin*, 23 % of shares each, with a moderate profit (SKK140 thousand) (SKK 31 per share). In a few days, *Auris* transferred 23% of shares in favour of Miroslav Zachar (again at SKK 31 per share), also a member of the bodies of the company *Baňa Záhorie 1*, that privatised a 51 -percent stake of *Baňa Záhorie* for a symbolic one crown.

The company *Emin* (whose statutory authority is Miroslav Zachar) sold its 23-percent stake to R. Zbořil (also at SKK 31 Sk/p.s.), the director of the section of organisation of trade in bonds of the FNM SR. When asked by daily SME on January, 21 1997 why he decided to buy a 23-percent stake in *Baňa Záhorie,a.s.*, he replied: " I have to check this fact," and refused to give any other comments (SME, January, 22 1997).

In the late 1997, *Baňa Záhorie* increased its equity when its shareholder with a 13.5% stake became *Hornonitrianske Bane, a.s. Pievidza* through capitalisation of its receivable against Baňa Záhorie, a.s. Accordingly, shares of previous shareholders were decreased. At that time, Zbořil and Zachar sold part of their shares (12, 508 pieces each, i.e., around 3% of the original equity, apparently for SKK 1,000/p.s.) to the company *HOSTA, Ltd.* whereby (plus consequences of equity increase) their ownership shares dropped to 16.44% (each).

On March, 4 1998, M. Zachar and R. Zbořil sold all their remaining shares (16.44% each) to the companies *Koruna L, o. c. p.*, and *T. D. F., s. r. o.,* for SKK 760 /p.s., together SKK 89 698 240. Only from the sale of these shares, each profitted SKK 43, 019, 748, which means a corresponding loss for the FNM.

Summary: The FNM sold 97 % of the shares of *Baňa Záhorie, a.s.*, for SKK 4,291, 205.50. Through subsequent sale of part of these shares in the capital market, each of its "privatisation actors" - Miroslav Zachar and Rastislav Zbořil gained SKK 55,527,748. Only on sales of *Baňa Záhorie* shares, transacted so far, the FNM lost, while Zachar, Zbořil & co. made SKK 111, 055, 496 , with the total estimated loss of the FNM from the sale of 97 % of shares of *Baňa Záhorie* between SKK 224, 946,184 (at SKK 760/p.s.) and SKK 297, 336, 944 (at SKK 1, 000 /p.s.).

Rastislav Zbořil was at the time of the above transactions the director of the section of the organisation of the FNM bond market and remained employed by the FNM until at least July, 29 1998 (Pravda, July, 29 1998), despite these facts. §38 par. 3 of the Act no. 92/1991 of the Collection of Laws on conditions of transfer of state assets to other persons, as later amended, says: "Members of the Board, Executive

Committee, Supervisory Board and the staff of the Fund cannot carry out any activity that would be against the interest of the FNM. Members of the Board, the Executive Committee, and the Supervisory Board cannot acquire property of the fund, with the exception of bonds issued by the Fund (§ 22) and shares for these bonds."

After debating the information on privatisation of *Baňa Záhorie, a. s., Holíč*, the Board of the FNM in May 1999 lodged a criminal notice against an "unknown perpetrator", when there were suspicions of crimes being committed of neglect of duties in administering other person's property, breach of binding rules governing economic relations, and the abuse of public office. The information of the FNM says , that by committing all these, an alleged loss of around SKK 300 million was incurred to the FNM. (Práca, May, 3 1999)

THE CASE OF BIOTIKA SLOVENSKÁ ĽUPČA

On February, 29 1996, the Board of the FNM decided on the sale of a 40.6-percent stake of *a. s. Biotika Slovenská Ľupča* in favour of the company *G. V. Pharma, a. s., Prešov*. In the bodies of this company, among others, are also managers and owners of the largest pharmaceutical company in Slovakia - *Slovakofarma, a. s., Hlohovec*. *Biotika -zamestnanci, a.s.,* an employees and managers company, with a 65-percent employee stake and a 35-percent manager stake also bid for the privatisation of the above stake. They were not successful despite the fact that their bid was three times higher than the winning project. The bid by employees assumed cash instalments higher by SKK 140 million, investments higher by SKK 753.5 million, i.e., in total, a price which was SKK 893.5 million higher. In response to critical articles by the employee joint stock company, which appeared in the press, the FNM gave a statement according to which the price offered by the employee joint stock company was unrealistically high. This statement is surprising, especially if we consider that the price was set by the managers of the joint stock company themselves, who have best knowledge of what is a feasible price and what is not. In addition, the management representatives called the investment, offered by the project of *G.V. Pharma*, as not sufficient , a sum which is equal to a 10-month investment need of *Biotika*. The President of the Supervisory Board of *G.V. Pharma* and at the same time the general director of *Slovakofarma, a.s.,* Ondřej Gattnar said that the owners of *G.V. Pharma* did not wish to be named, but in Gattnar's words, *Slovakofarma* or a majority owner of *Slovakofarma* was not among them. Some *Slovakofarma* shareholders are in the bodies of *G.V. Pharma*, but in Gattnar's words, they are there to have strategic influence on and control over the running of *Biotika*. In this respect, there were suspicions voiced in the media of a strong group of HZDS people of Trnava District standing behind the privatisation of *Biotika* (Trend, March, 31 1996).

The suspicion was confirmed by former *Biotika* director Miroslav Otčenáš, who wrote an article *Too many false statements* in response to the interview with the current President of the Supervisory Board of *Biotika*, Jozef Dolník. In the article he commented the ownership relations in *G.V. Pharma*: "In a furher part of the interview, J. Dolník strives to make an impression of the owner of *G.V. Pharma* from 1997 and play down the presence of Mr. Gattnár, Varga and Póor in *G. V. Pharma*. It is scorning of all thinking people because *G.V. Pharma* is a company with unregistered stock." (Hospodárske noviny, October, 26 1999).

THE CASE OF COLORIN

Slovnaft, a. s., Bratislava is the largest Slovak oil refinery and one of the largest companies in Slovakia. Annually it processes more than 5 million tons of oil, and annual sales currently exceed SKK 40 billion. It exports more than half ofits production. Currently its majority shareholder is *Slovintegra*, which bought *Slovnaft* shares from the FNM at lower than the market price.

The company *Colorin* was set up on March, 19 1996 in Žilina, with a business in retail in non-specified outlets, mediating trade in mixed goods, and other trading activities.

The sale of a 10.23- percent stake of *Slovnaft* from the FNM portfolio to the firm *Colorin* on February, 25 1998 seems more than suspicious. The transferee - the firm *Colorin* paid SKK 619,441, 888 for this stake. The transfer of shares took place immediately before the GM of

Slovnaft, which means that the FNM consciously deprived itself of *Slovnaft* dividends. In the first days after the purchase of shares, *Colorin* gained almost SKK 43 million on dividends. The decision about the sale was adopted by the Board of the FNM despite the finding by the Constitutional Court about the deal being in contravention with legal norms. On the part of the FNM then it was a case of gross neglect of the law.

Even more scandalous than the unlawfulness of the transfer and conscious transfer of the dividends to an unknown entity, is the price of the contract; the fund sold 1,684,772 shares at SKK 368/p.s. The market price of *Slovnaft* shares at that time fluctuated around SKK 880/p.s. By selling them at half the price, the fund lost SKK 862 million. This decision was taken by the Board which was fully aware of the apparent crisis in the liquidity of the Fund and scarcity of reserves to redeem the bonds.The material on which the Board made its decision stated that if the FNM attempted to sell the shares, it would get a higher price than in the sale to *Colorin* and presented facts that the price of *Slovnaft* shares in the anonymous market was SKK 930-945 and that *Slovintegra* managed to sell a larger package in January at SKK 900. In May, BCPB stated that *Colorin* placed 1,683, 266 shares in repotrade, i.e., the whole its stake of the first issue of *Slovnaft*. Currently the price of *Slovnaft* oscillates around SKK 700, that means *Colorin* will make several millions in profit in any sale of *Slovnaft* shares above SKK 368.

It is worth noting that SPP bought *Slovnaft* shares in December 1997, still at SKK 1196/p.s. (suspicion of financial "asset stripping") and, two months later, the FNM sold 1.6 million shares to *Colorin* at SKK 368/p.s. A more comprehensive analysis of the deals in which SPP bought *Slovnaft* shares showed that unknown subjects made tens of millions crowns in these transactions at the expense of the state enterprise. On 11 December 1997, SPP was transferred to its account 10.1% shares from the second issue of *Slovnaft*. SPP bough them at the stock exchange for SKK 1,196 p.s. two day before. This package was formed in the preceding days though, starting from December 3, for prices around SKK 930. If these shares had not passed through an unknown broker but went directly to the account of SPP, the state enterprise would have saved almost SKK 90 million. These transactions were made in a way that made it impossible to identify who got the money in cash. At the same time and in the same manner, deals were made with shares of the first issue of *Slovnaft*.

By handling state assets in an irresponsible way, the FNM deprived the citizens of this state of one billion crowns in just this case, when in selling *Slovnaft* shares to *Colorin* it lost 862 million crowns, and additional 43 million crowns were lost in *Slovnaft* dividends, while in transfer of *Slovnaft* shares to the account of SPP through brokers, the sum lost was 90 million crowns.

THE CASE OF DMD HOLDING

The joint stock company *DMD Holding* arose in 1995, with the purpose of integrating and co-ordinating machinery production of state strategic enterprises, as a company with a 100% state interest. Its main machinery producing subsidiaries became : ZŤS TEES Martin, *ZŤS Dubnica nad Váhom, Považské strojárne*, and *PPS Detva*.

The obligation of the FNM against *DMD Holding* arose in 1996 in relation to increasing the equity of DMD (where the Fund was the largest shareholder). The FNM was to pay SKK 2.21 billion in favour of DMD in half-year instalments of SKK 200 million. The Fund paid its first instalment at May, 31 1997 but given the existing problems in liquidity, it did not pay the following instalments.

DMD Holding founded a daughter company *DMD Progres* on September, 7 1998, to which it transferred part of the FNM liability against *DMD Holding*, at SKK 1.61 billion. The Fund resolved its obligation against *DMD Holding Progres* by settling it with a transfer of 230 thousand shares at the nominal value of SKK 10,000 (i.e., in the total value of SKK 2.3 billion) to *DMD Holding Progres*. Through the decision of the Fund's Board thus *DMD Progres* gained a 40.48% stake in *DMD Holding* (Národná obroda, January, 15 1999). The Fund, which took this step as one of the last steps before the Government of M. Dzurinda came in office, lost its majority interest in *DMD Holding* and , hence, it lost control over property interests in 22 machinery companies in which *DMD Holding* is a shareholder.

The new bodies of *DMD Holding* were elected at the extraordinary general meeting on January 5, 1999. Shareholders also decided about a change to the statutes, through which so-called priority shares of the company DMD Fin (from September 10, 1998) comprising 0.09% of the equity, lost their possibility to block decisions of the general meeting. In practice this means, that the FNM, the Ministry of Economy and the state-run subjects *(SPP, Slovenské Elektrárne, Slovenská Sporiteľňa)* own together a dominant package of stock. The general meeting was attended by representatives of all shareholders and voted unanimously. The case of *DMD Holding* should then be finished.

THE CASE OF PRIVATISING HOTELS IN HIGH TATRA MOUNTAINS

In early 1996, the FNM began to sell off hotels in the High Tatra Mountains. Formally, the hotels were sold by *Interhotely Tatry, a.s.*, but in fact everything was decided and organised by the FNM, which was a 100% shareholder in this joint stock company. The President of the Board of Directors of *Interhotely Tatry* at that time was Jaroslav Bilík, staff member of the FNM, currently Vice -president of *VSŽ a.s.* for strategy.

Table 46 gives the list of the hotels, their book values, market prices according to the estimates by the Institute of Tourism for 1994, as well as the purchase prices for which the hotels were sold.

What is interesting, are the buyers of the hotels. The Grand Hotel in Smokovec has become part of Rezeš empire, the Park Hotel was bought by Mr. Haťapka's daughter and son-in-law, a former MP for the *SNS* and the current Ambassador to Mexico. The mountain hotel at Popradské Pleso fell to the son of *HZDS* deputy Ms. Lazarová, Grandhotel Praha in Lomnica was bough by the brother of another *HZDS* deputy, Ms. Šoltýsová-Gantnerová, and the mountain hotel Sliezky dom, by Slobodníková, M.D., a relative of the Ministry of Environment State Secretary for the *HZDS*. Slobodníková is the same person, who lives in one of the apartments in Mierová Street in Bratislava, which the FNM, at variance with the law, sold to high-ranking coalition offcials. It can be assumed that the remaining hotels also fell to people close to coalition top officials, only these did it less ostensibly, not through their closest relatives.

The last hotel to be sold from this group was the mountain hotel Sliezsky dom, which the FNM sold on the basis of its decision of April 8, 1998. Later, on May 21, 1998, the Board of the FNM decided the sale of a 97% stake of *Interhotely Tatry to Ekiva, s.r.o.* for SKK 131,631,600 that was to be paid by FNM bonds in a single payment within 30 days of signing the contract.

The arguments for this sale, given in the explanatory report to the material which the FNM Board approved, were that *Interhotely Tatry, a.s.* no longer owned any real property and thus could not carry out the original activity. If the shares were not sold, it would have to go in liquidation.

As follows from Table 46, the sum of prices for which the hotels were sold amounts to SKK 215.5 million. The purchase prices in these cases were not divided in instalments but were to be paid in a single payment within 30 days of the date the contract of sale fell effective. The material also contained a provision according to which the funds thus acquired by *Interhotely Tatry, a.s.* through sale of the hotels would be deposited at a term account and could not be used for modernisation of the remaining hotels or settling liabilities of the company.

If the privatisation actors fulfilled the terms of payment, which they were supposed to do under the contracts of sale, *Interhotely Tatry* should have in their accounts funds totalling minimum SKK 215.5 million. The material on the sale of 97% of shares gives the balance sheet statement at year-end 1997 as being SKK 241,827,000, when these assets were covered at as much as 99.5 % with own equity and only at 0.5 % with outside resources and other liabilities.

The FNM thus sold 97 % of shares of a joint stock company, which should have in its accounts at least SKK 215.5 million, for SKK 131 million, and even this was paid for through bonds. Hence, it cost those that were buying for the above sum of more than SKK 200 million, only roughly SKK 70 million, because those are average costs for which bonds could be acquired that could cover the liability amounting to SKK 131 million. (with an average cost per bond amounting to SKK 6,500 and the coverage of liabilities against the FNM by one bond amounting to SKK 11,760).

It can thus be calculated relatively accurately, what the actual costs were for which the privatisation actors, recruiting from the ruling coalition relatives and otherwise closely related people, bought ten of the most lucrative hotels in the High Tatra Mountains. The sum of book values of these hotels is SKK 336 million, the sum of their market values according to the estimates of the Institute of Tourism from 1994, was SKK 889 million. The formal sum of purchase prices was SKK 215.5 million, but the actual price for which the hotels were privatised by privatisation actors from the ranks of the ruling coalition comprises only around SKK 70 million.

It is then an amount which is equal to only 20.8% of the balance value of these hotels and only 7.9% of the market value estimated by the Institute of Tourism.

THE CASE OF JUHOSLOVENSKÉ CELULÓZKY A PAPIERNE ŠTÚROVO

JCP Štúrovo (the South-Slovakian Paper Mill in Štúrovo) ranks among major Slovak enterprises. According to the charts of Trend TOP 96, *JCP* placed 25th, according to the turnover, and 12th, according to the profit achieved in 1995.

Within the first wave of voucher privatisation, 70% of shares were sold, while 30% remained in the FNM. In 1995 the company got in the control of one of the largest investment companies in Slovakia - *Harvard Capital & Consulting Slovakia (HC&CS)*, which, in the words of *JCP* general director J. Kučera, controlled around 53 %. The representatives of *HC&CS* denied their majority position in *JCP*, but the changes that occurred in the bodies of the joint stock company in 1995, proved them guilty of fraud. In 1995, *HC&CS* representatives filled majority of the positions on the Board of Directors and the Supervisory Board of the company. The denial of apparent majority was motivated by the failure to abide by the Securities Act which stipulates, that where a single owner or a group of allied owners own more than 30% of the shares, a mandatory buy-out is imposed on them of all other shares for the capital market price.

In February 1997, a public commitment from a Swedish concern *AssiDomän* appeared in the capital market for the purchase of 91% of *JCP* shares for SKK 900 /p.s. *JCP* shares were traded at SKK 600 - 900 at that time. This public commitment was preceded by January sale of more than 50% of *JCP* shares from the hands of *HC&CS* in the holding of *AssiDomän* at assumed price of around SKK 900 /p.s. This transaction is in fact the first known large case of so-called third wave of privatisation when Slovak majority owners sold their shares to a foreign strategic investor. There is nothing negative about the transaction itself, just the opposite, the foreign strategic investor could bring the needed investment, know-how, and access to foreign markets. The reason why we mention the *JCP* cause among privatisation causes lies in the way the FNM privatised the 30% shares, which were not distributed in the first wave of voucher privatisation.

On October 28, 1996 the FNM sold its 30 % stake in *JCP Štúrovo* to the firm *KK Profin, s.r.o., Bojnice* for SKK 100/p.s. , when the price on the capital market at that time was SKK 600 - 900. It was clear then, that the FNM lost in this transaction around SKK 217.1 - 347.4 million.

In March 1997, the media brought an article according to which the firm *AssiDomän* owned already 91 % of *JCP* shares (Národná obroda, March, 12 1997). That means that the firm *KK Profin, s. r. o.,* had sold the 30% stake to the firm *AssiDomän* for SKK 900/p.s., which confirms that, only through this one transaction, the FNM suffered a loss amounting to SKK 347.4 mill., while those people who were behind the firm KK Profin, made easy and quick profit of the same volume. Who are these people?

At the time of the sale of 30% of shares of the FNM, in the extract from the trade register were given names of two sons of the general director of *JCP*, Juraj Kučera, and the seat of the company was in the private house of one of them in Bojnice. Father and the genral director Jozef Kučera called the participation of his sons in the privatisation of 30% shares of the company in which he was the manager a case of "puerile thoughtlessness" . The Kučera family also claims that the firm *KK Profin* changed the seat, the sons are no longer the firm's agents and do not own any shares. Kučera Sr. unequivocally insists that "the shares are outside our family", but they all refuse to name the actual owners, i.e., those who

Table 46 – Privatised hotels, estimate by the Institute of Tourism, 1994

Hotel	Balance price (mill. SKK)	Market valuation (mill. SKK)	Purchase price (mill. SKK)	PP/BP (%)	PP/MV (%)
Patria	114	259	75	65.8	29.0
Panoráma	33	82	20	60.6	24.4
Park	33	80	21	63.6	26.3
Grandhotel Smokovec	42	152	30	71.4	19.7
Bellevue	34	59	26	76.5	44.0
Grandhotel Praha					
Tatranská Lomnica	31	103	21	67.7	20.4
Tatra	10	18	7	70	38,9
Lomnica	8	14	6..5	81..3	46.2
Pop. pleso	20	8	6	30	75
Sliezs. dom	11	14	3	27..3	21.4
TOTAL	336	889	215.5	64.1	24.2

Balance price = the book value of the hotels as the book value of the construction, land and hotel equipment (in mill. SKK)
Market valuation = the market price calculated by the Institute of Tourism in 1994 (in mill. SKK)
Purchase price = the price for which the FNM (through a. s. Interhotely Tatry) sold the hotels in the period of 1996 - 1998 (in mill. SKK).
Source: Institute of Tourism, Bratislava, FNM SR, M.E.S.A.10

were in the background, and for whose benefit the whole transaction has been organised. (SME, February, 8 1997, Trend, February, 19 1997).

The contract signed between *KK Profin* and the FNM contained, inter alia, also a condition that this 30% stake could not be handled without the consent of the FNM for ten years. If during these ten years the buyer would want to transfer shares to a third party, he was obliged to offer them preferentially to the FNM at SKK 100 (acquisition price). Perhaps the greatest paradox is the fact that the *KK Profin* actually observed the contract with the FNM while, at the same time, they circumvented it. *KK Profin* did not sell the Swedish firm *AssiDomän* the 30 % stake in *JCP Štúrovo*, as the contract prohibited it, but the whole firm of *KK Profin*. The actual transfer of the shares was effected only after the elections when the former management of the FNM still managed to endorse the transfer of *KK Profin* shares to a third party, provided *AssiDomän* take over its obligations against the FNM and pays all instalments. The approval was signed by the FNM representatives on October, 13 1998 (Ing. Ján Porvazník, Vice-chairman of the Excutivee Committee of the FNM and Ing. Miroslav Velecký). The new management of the FNM, elected on November, 6 1998, did not deal with this case and on April, 14 1999 even noted that conditions were satisfied by *KK Profin* to be able to transfer these cheaply acquired shares to a third party. Thus the owners of *KK Profin* were allowed to "buy cheap and sell dear" also by the current workers of the FNM, although the recent President of the FNM SR Ľudovít Kaník announced that " FNM deems the privatisation of *JCP, a. s., Štúrovo* by the firm *KK Profin, s. r. o*., to be unprofitable for the FNM, with the former management of the FNM being fully responsible and currently hold talks with *AssiDomän* on settling mutual contractual relations with the FNM. " (Práca, October, 19 1999)

In the daily Práca, on October 25, 1999, President of the FNM Ľudovít Kaník responded to the situation in this case by stating that: "the current management of the FNM did not endorse the transfer of the shares of the firm *KK Profin, spol. s r. o*., to the Swedish *AssiDomän Packaging Štúrovo,* a. s.. The shares will remain in the account of *KK Profin, s.r.o.,* because the contract contains effective restriction on the transfer of shares to a third party for 10 years. The

only thing that the Fund can do is not to agree the change of the contract, which restricts transfer to a third party for ten years. The letter signed by two members of the Executive Committee of the FNM SR only notes that *AssiDomän* observed the terms of the contract against the FNM, but does not change the contractual terms. I would like to alert to the fact that conditional approval with the transfer of shares to a third party , which was signed by Ing. J. Porvazník and Ing. M. Medvecký, is not a consent in legal terms because it was not even debated by the former fund' s Executive Committee. Thus it equally does not give any guarantee that the shares could be transferred." (Práca, October, 25 1999)

THE CASE OF SLIAČ AND KOVÁČOVÁ SPA`S

The Board of the FNM SR approved at its 36th meeting privatisation of 51% shares of the *a. s. Slovenské Liečebné Kúpele Sliač a Kováčová* in favour of the company *Corvas, s.r.o., Piešťany*, whose one shareholder is also former Minister of Health of the SR for *HZDS* and former chief manager of the election campaign of *HZDS*, V. Soboňa. The purchase price was set at SKK 151 million, with the first down payment at SKK 30 million. Soboňa in his interview for the daily *Práca* said that the project of their company for the privatisation of spa was the only one (Práca, October, 12 1995). As was confirmed by S. Brachna, the Mayor of Kováčová, for the daily *SME* the next day, the community Kováčová was also interested and submitted their privatisation project on time. In answer to the question, how the Ministry of Health could enter privatisation of spas, State Secretary of the Ministry of Health, Š. Zelník said for *SME* that their sector only gave advice on whether the health aspect had been maintained: "That is all, the other things are in the responsibility of the Ministry for Privatisation and the FNM." Soboňa, who in the capacity of the Minister of Health in 1992, enthusiastically advocated the state keeping majority of shares of spas, because only then, in his words, the medical character would be preserved, had gained majority in both spas through a FNM decision for a sum which is, according to experts, laughable. The daily *SME* said, "the mere statues and fountains on spa premises are of a comparable value" (October, 13 1995).

On July 13 1999, the Securities Centre *(SCPB)* finally transferred 51 % shares of spa Sliač and Kováčová from the account of the company *Corvas Piešťany* to the FNM. Hence the share of the FNM in spas increased to 67 % (other shareholders include: *VšZP* (General Health Insurance) – 20 %, city Sliač – 8 %, RIF – 3 %, others – 2 %). The reason was the failure to fulfil the terms of the contract, particularly inadequate provision of sale of employee shares of spas. *Corvas* did not create 240 new jobs, as was pledged in the contract. The director of spas and former Minister of Health Viliam Soboňa deems this reprivatisation act on the part of the FNM to be a political revenge and simultaneously sued the Fund for unlawful repudiation of the privatisation contract. (SME, July, 15 1999).

In July 1999 thus the FNM unilaterally backed out of the contract of purchase with the company *Corvas* and SCPB transferred 51% shares in the Fund's account. *Corvas*, in turn, sought indictment with the Regional Court in Bratislava to annul repudiation of the contract and asked to have a preliminary injunction issued and consequently the Regional Court blocked the FNM to handle the shares and prohibited the Board of Directors and the Supervisory Board to call the general meeting. It also ordered SCPB to register the injunction of the FNM to handle *Corvas* shares until the matter was settled. Despite this, the Regional Court in Banská Bystrica at the instance of the FNM called the extraordinary General Meeting for October, 28 1999. The management of spas, however, obstructed its proceedings and turned to the Supreme Court. The situation in handling the shares and in filling positions in the company, which arose following the steps by the FNM, SCPB and subsequent rulings of the Regional Courts of Bratislava and Banská Bystrica was dubbed as legally confusing by dr. Ikrényi (solicitor of the firm *Corvas*) (SME, November, 16 1999).

THE CASE OF NAFTA GBELY

Nafta Gbely, a. s. is one of the most prosperous enterprises in the SR. The profit before tax in 1995 amounted to SKK 1,075 mill. (USD 35.8 mill.) and the company ranked fourth among the most profitable companies of the SR according to its profit/sales ratio. The shares of Nafta Gbely were ranked highest in the Slovak capital market, when in late July 1996 their price fluctuated in the

range of SKK 2,236-2,360/per share (with SKK 1,000 nominal value per share). It is also a company which was, subject to the Strategic Enterprises Act of September 1995, included among strategic enterprises. Part of the shares (54.1%) were privatised in the first way of voucher privatisation.

On August, 1 1996, the FNM decided about the direct sale of the whole unprivatized stake of Nafta Gbely (45.9%) to an unknown company *Druhá Obchodná a.s.* for SKK 500 mill., with the first down payment of SKK 150 mill. within 30 days and the remainder according to the payment scheme within 10 years. Part of these down payments can be invested in the company, in which case down payments are reduced by the investments. The annual profit of Nafta Gbely is more than SKK 1 billion, and hence it is clear that the new transferee will comfortably pay its commitments from the dividends which he will acquire as a new owner. It is another case of so called self-propelled privatisation (see for example the privatisation model of *Slovnaft a.s.*).

A number of domestic and foreign investors were interested in privatising *Nafta Gbely* shares, including *Ruhrgas, ÖMV*, and *Gas de France*.The President of the FNM Board and Vice-Chairman of the Association of Workers Party Štefan Gavorník said that the price, domestic bidder and his trustworthiness were decisive. (Národná obroda, August, 8 1996)

The purchase price was SKK 500 mill. With the actual price of SKK 2,200 per share on the capital market, the price of the 45.9% stake would have been SKK 3.2 billion. The actual market price would have been even higher because it is a controlling stake of a lucrative joint-stock company (the remaining 54.1% of shares were sold in the voucher privatisation and are relatively dispersed). Almost all domestic and foreign bidders offered a much higher price than the winner. We may conclude that direct loss arising from this sale amounted to around SKK 3 billion. As to the trustworthiness of the transferee and the domestic nature we may state that according to the investigation by the media, the seat of *Druhá Obchodná a.s.* was a derelict family house. At general meetings, new owners are represented by solicitors, while the statutory representatives of the joint stock company are entrepreneurs of local significance and character.

The amendment of the Securities Act, which was pushed through in the parliament at the end of 1996 by coalition deputies, and which removed the mandatory dematerialised form of securities, introduced in 1995, is closely connected with the privatisation of shares of *Nafta Gbely* and with similar privatisation scandals. The amendment reintroduced the form of instruments without the obligation to keep data on the owners. Thus, again, the uncontrollable institute of unregistered stock was resumed and the shares of *Druhá Obchodná* are just of this nature. In other words, it is impossible to find out who the actual owner is of the controlling stake in *Nafta Gbely*, which was privatised for a symbolic price.

In relation to this sale, repeatedly information surfaced in press claiming that the actual owners should be the top *HZDS* functionaries, namely the (former) Chairman of the Parliament Ivan Gašparovič, Vice-chairman of the Parliament, Augustín Marián Húska, Deputy Prime Minister Sergej Kozlík and former closest colleague to Prime Minister Mečiar, Anna Nagyová. They all deny participation in the privatisation, but statutory representatives of *Druhá Obchodná, a. s.*, admit they themselves are not actual owners of the company, and refuse to answer the question about actual owners, appealing to the trade secret. The secret is provided for by the unregistered stock, the use of which was allowed by the vote taken not so long ago by the coalition deputies. There is also much further indirect evidence and indication about the involvement of the top-ranking representatives of *HZDS* in this transaction.

The long-time spokesman of the Chairman of the Parliament I. Gašparovič, L.Jurík, who resigned quite recently, told a journalist from the weekly Plus 7 dní, in the presence of a witness that at the time the Parliament was deciding about stripping František Gaulieder of his Parliamentary deputy mandate, I. Gašparovič was for a long time considering his resignation from the position . Then he had a phone call, in Jurík's words, that decided that he did not abdicate. In reference to the reason behind, former spokesman said in front of witnesses : "And does that surprise you, when it involves 3.2 billion? (Plus 7 Dní, 8/97, p. 16)

The media also published an article according to which the shares of *Nafta Gbely* have already changed hands and were sold to a Russian gas giant *Gazprom*, which was known to have interest in this company mainly because of the large ground storage tanks, which the company owns and which have strategic significance for large gas exporters. *Gazprom* has become significantly active recently on the Central-European markets, particularly as they strive to keep their position in gas exports in the competition with the expanding West-European companies. The dumping bid of Gazprom for gas supplies to the CR is well-known, and was made in an attempt to prevent diversification in gas imports to the CR from Norway or other European exporters. Representatives of *Druhá Obchodná* have denied that the shares of *Nafta Gbely* had been sold to *Gazprom.*

What is significant, since the time the stake of *Nafta Gbely* was privatised, a commercial of *Nafta Gbely* has been appearing regularly on television VTV, whose owners are high functionaries of *HZDS*. The television VTV is also known for its high debts , a major part of which is in VÚB, which is controlled by the FNM and whose management is close to *HZDS* and the VTV owners.

In 1997 it was disclosed that one of the owners of *Druhá Obchodná,* i.e., also *Nafta Gbely*, is Vladimír Poór, the Chairman of the Regional Board of *HZDS* in Trnava. The Prime Minister and the Chairman of the HZDS, Vladimír Mečiar said however that he did not know who the owner of *Druhá Obchodná* was. The Social Democratic Party of Slovakia Chairman Jaroslav Volf filed legal notice against the members of the Executive Committee of the FNM and the President of the FNM Štefan Gavorník. In consequence, SPP bought 6% of shares at SKK 2,000, although a short time before that, SPP director Ján Ducký advocated privatisation of *Nafta Gbely*, arguing that the price of *Nafta Gbely* shares was unreasonable high at the time of privatisation.

The price of shares of *Nafta Gbely*, which in 1996 was more than SKK 2,200 dropped in summer 1998 to SKK 500. The parliamentary investigation into the sale of *Nafta Gbely* was not successful. Early in 1999 the price of shares of *Nafta Gbely* fluctuated around SKK 320. Vladimír Poór announced his intention to sell his stake in *Druhá Obchodná*. The Prime Minister Mikuláš Dzurinda stated that work was initiated to return part of the Nafta Gbely property to the FNM. (SME, February, 4 1999). This statement by the Prime Minister relied on a legal analysis, according to which there was legal claim to repudiate the contract of Nafta Gbely shares transfer in private hands. According to this analysis, in the case of *Nafta Gbely*, there was a clear contravention of the Privatisation Act, as the sale did not respect the approved privatisation project of 1991.

According to this project, the shares of *Nafta Gbely* were to be divided in the following way: a 3-percent stake should be deposited in the account of the Restitution Investment Fund, 47 % should be sold in the voucher privatisation scheme, 40 % should be the state interest in the company and the remaining 9.3 % should temporarily fall to the FNM. The privatisation law was also infringed in that all shares have been sold into private hands. Moreover, the Commercial Code was also contravened and the Act on Prices because this legislation refers to reasonable price in sale, which in the case of *Nafta Gbely* was not upheld.

In early March 1999, representatives of the FNM and *Druhá Obchodná* concluded an agreement about returning 40.9 % of shares of *Nafta Gbely*. This could only be done after the FNM sued *Druhá Obchodná*. *Druhá Obchodná*, which in August 1996 acquired a 45.9 % stake for SKK 500 million, when the market price for the stake at that time exceeded SKK 3.2 billion, will retain the remaining 5 percent. Nafta 's subsidiary - *Nafta Trade*, controlled by V. Poór, however was left the unfinished gas storages. (SME, March, 17 1999).

Returning the 45.9 % stake of the Nafta Gbely in the account of the FNM on October, 15 1999 put a definite ending to the scandalous privatisation and even more scandalous re-privatisation, whose victims after long media and legal protraction, were the president of the FNM Ľ. Kaník and Vice-president J. Sklenár. The report of the BCPB says it was returned for roughly SKK 500 million, i.e., for the sum which *Druhá Obchodná*, then still unknown, had acquired it in 1996 from the FNM.

THE CASE OF NÁKLADNÁ AUTOMOBILOVÁ DOPRAVA TRENČÍN (NAD)

On October, 19 1995 the Board of the FNM approved the direct sale of *Nákladná Automobilová Doprava Trenčín* (truck transport company) in favour of *v. o. s. Merkur* for SKK 60,140,000, of which SKK 30,140,000 was in cash and SKK 30 million was in investments; the cash payment: first down payment of SKK 15 million (a credit granted by the *Priemyselná Banka*), further SKK 15.140 million in eight annual instalments at around SKK 1.9 million, carrying an interest rate of 9.75 %.

The firm *Merkur* had two partners and agents (Karol Chorvát and Milan Macák). One of them, Ing. Macák, on January, 20 1997 filed a request to have the instalment put off by two years due to bad financial situation of the company. On January, 21 1997, i.e., one day after the request was filed (!!!) the executive board of the FNM denied the request and informed the applicant accordingly in a letter of February, 12 1997.

On April, 16 - 18 1997 a audit group of the FNM checked the fulfilment of provisions of the contract of sale for the company and also the state of handling the privatised property in the company *Merkur* for the period between January, 1 1996 and March,31 1997. The control report says among other things, that at the time *Merkur* requested the deferment of payment due to bad financial situation (at the time of second down payment at SKK 1.9 million that he did not pay), he had in his holding (at the account and in cash) financial resources amounting to SKK 5.3 million. He did not pay on purpose.

On June, 18 1997 the protocol of the control was discussed and it was concluded that the agent of the company Merkur, Ing. Milan Macák, has to eliminate deficiency and take measures for the improvement of the situation in upholding provisions of the contract by 30 June, 20 1997. On the same day the control report was debated, on which the date was set for rectification at 30 June, 20 1997, Ing. Milan Macák received a notification from the FNM of the FNM pulling out of the contract of purchase.

On June, 19 1997 (the day after pulling out of contract with Merkur), the Board of the FNM SR adopted a decision about the sale of the company *NAD Trenčín to S-BiBa s.r.o*, but this time for a puchase price of SKK 7 million. The first downpayment was SKK 0.5 million, the others added together totalled SKK 6.5 million, while mandatory investments were SKK 20 million. The cash price thus is less than one-quarter of that in 1996 and is lower by more than half compared to the first down payment that the previous transferee paid immediately on signing the contract, (SKK 15 mill.).

On July, 22 1997, i.e., a month after the sale, the abstract of the trade register gives Ing. Samuel Bibza from Bratislava as a 100% owner of *S-BiBa*, and the address of the firm as being in Trenčín, Jilemnického Street no. 2.

On September, 2 1997 the abstract of the trade register says that Ing. Milan Macák (!!!) is a 100-percent owner and the only agent for *S-BiBa,* but the address changed from Jilemnického to Zlatovská St. 29, which is the address of the former company *NAD Trenčín*.

On November, 4 1997, according to the abstract of the trade register, the address of the former *NAD Trenčín* (Zlatovská 29) is the seat of *Trenčianska Dopravná Spoločnosť*, abbreviated *TDS, a. s.* It was set up on September, 5 1997, issued unregistered stock (what a surprise), and it was established through transformation of the trading company *S-BiBa, s.r.o.*, with the firm *TDS, a.s.* taking over all rights and obligations of the terminated company *S-BiBa, s.r.o*.

On the Board of Directors of TDS, amoung others, is Ing. Milan Macák and on the Supervisory Board, among others, sits a Ján Paulíny, residing in Kostolná-Záriečie 81, the brother-in-law of the Vice-president and the Chairman of the Executive Committee of the FNM and the Chairman of the Regional Board of *HZDS* in Trenčín, Milan Rehák.

What is remarkable about this case is the fact that the first - for the FNM relatively more favourable sale of the company took place in 1995 (i.e.,already under the present FNM), subsequently there was an evident purposeful failure to uphold the contract of purchase on the part of the transferee, the pulling out of contract by the FNM SR, and a repeated privatisation at a

much lower price. From the outset, the transaction was apparently planned so that it would end up with one of the original transferees from the year 1995, but at much lower price and with the accession of a relative of the second highest official (and the highest executive) of the FNM, who happens to be also a high-ranking official of *HZDS*.

TDS Trenčín became the legal successor to the firm S-Biba, the members of the Board of Directors are Milan Macák, the agent for *Merkur*, and Milan Struška, the director of *Merkur*. K. Chorvát said for the daily SME that, "the legal analysis made by Dr. Volfová, indicates that the sale to the firm S-Biba was only a simulated legal act that should entail the change of owners and the reduction of the purchase price of the company's assets". After being withdrawn privatised assets, the firm *Merkur* filed a request to have the first down payment of SKK 15 million returned, together with 5 million that were invested. Instead, the FNM SR levied a liability of SKK 27 million, which indicates that *Merkur* has become a debtor of the FNM. (SME, July, 13 1999)

THE CASE OF PRIVATISATION OF A 51 % STAKE IN NOVÁCKE CHEMICKÉ ZÁVODY, A.S., IN FAVOUR OF THE FIRM INEKON (CR)

On November, 3 1994, the National Property Fund concluded a contract with the firm *INEKON Praha*. The Fund proceeded on the basis of the Government decision of September, 6 1994, according to which INEKON was to buy a 51 % stake in a chemicals manufacturer, *Novácke Chemické Závody, (NCHZ)* for SKK 1.217 billion (by SKK 403.5 mill., i.e., in excess of 49 percent of the nominal value). Of this, SKK 400 mill. should be paid cash, while the remaining SKK 817 mill. should be paid in investments in *NCHZ*, particularly related to ecology. *INEKON* signed the contract with a proviso that on November, 25 1994, shares of *NCHZ* would be transferred to their company and for each day of delay, the other contracting party was to pay a penalty of SKK 50 thousand. Although *INEKON* paid SKK 80 mill. (first of the five agreed down payments for 813, 485 shares) and provided NCHZ also a credit of SKK 200 million to bridge their business operations, the Fund did not transfer a single share to the joint stock company.

Immediately after the FNM managed to conclude the contract with *INEKON*, the newly elected Slovak parliament at its night session from November, 3-4 1994 recalled the officials of the FNM and adopted a law revoking the decisions of Moravčík Government. Soon after, the Ministry of Privatisation, after a legal analysis realised that the newly passed law was not applicable to 29 of 54 revoked decisions, including the privatisation of *NCHZ*.

In May 1995, the Constitutional Court of the SR ruled that the night act of the NR SR on revoking privatisation was in contravention with the constitution, arguing that the NR SR encroached their power and had no right to revoke the Government decrees. Although Mečiar's Government insured themselves and revoked the decrees of the former Government after the NR SR (although many people believe, unlawfully), even the possibility of the Government to revoke their own resolutions could not make it applicable to *NCHZ* privatisation. The Constitutional Court revoked the "night" law also for its unacceptable retroactivity, specifically because it unconstitutionally suspended and alienated the ownership rights that were acquired through effective legal acts, regardless of the FNM not transferring I*NEKON* the shares of *NCHZ*. This, despite the fact that the Supreme Court of the SR, in May, also confirmed that in this case the act on annulment of privatisation decisions was not applicable.

J. Ducký, the Minister of the Economy, said in January 1995 that he had nothing against the new owner, only he did object they should have a majority. In December 1995 this was confirmed by the deputy chairman of the Executive Committee of the FNM, J.Porvazník. In his view, the FNM want *INEKON* to remain a shareholder, take them as partners, appreciate they have a positive contribution, only strive not to allow them to be a majority owner. *INEKON* agreed even to this and offered to give up 17 % of their 51 % in favour of an employee joint stock company, provided the FNM would give this employee company 16%. Hence, *INEKON* would have a 34-percent stake in NCHZ (its majority stake changing in a controlling interest), the employee joint stock company a 33% stake , the FNM 30%, and the RF 3%, respectively. In

the end, the FNM did not sign the agreement and requested that the original contract of 1994 be rescinded first.

In the meantime, *NCHZ* achieved roughly a 40% increase in production and sales for 1995, generating the highest profits in their history. The excellent results which NCHZ achieved also with the contribution of *INEKON*, were used as arguments for the support of the privatisation efforts given by the councillors of the City Council and the trade unions of the company, who voiced their dissatisfaction with the course of action taken by the FNM (Práca, 20 December 1995).

Things got even more complicated by the FNM calling an extraordinary general meeting on 4 December 1995, on which the Fund increased the equity of *NCHZ*. If this decision had come into force, *INEKON* would lose its majority position in *NCHZ*. The Regional Court in Banská Bystrica took account of objections raised by the Board of Directors of *NCHZ*, challenging the authority of the FNM to call the general meeting. The court issued a preliminary injunction blocking the activity of the new Supervisory Board elected at the general meeting and blocked also ntering the increase of the equity that would change the property relations in the company to the detriment of *INEKON Praha*.

The dispute, going on for almost a year between *INEKON Praha*, as the plaintiff, and the FNM, as the defendant, over fulfilment of the contract of purchase of 813,485 shares of Novácke Chemické Závody ended on 19 December 1995 with the Municipal Court in Bratislava delivering the final judgement in favour of *INEKON*. According to the court's verdict, the FNM is obliged to transfer all shares in the account of *INEKON* within three days from the date of the verdict is effective and pay a penalty of SKK 18.8 million for failing to transfer the shares in accordance with the contract of purchase. The court in its verdict noted that they found no reason for which the contract of purchase should be declared void (sought by the FNM), whereby the Court confirmed the contract's validity and liability. The decision of the court is also binding for the Bratislava Security Center (SCPB). As this dispute concerns shares and penalties amounting to almost SKK 1.25 billion, the FNM appealed from judgement and the dispute will continue at the Supreme Court of the SR.

According to the interview with J. Hušek, the director of *INEKON Praha*, *INEKON* is ready to reach agreement according to the original agreement of October 6, 1995, i.e., to give up 17 % of shares to the benefit of the employee joint stock company. "I am very glad that the judge resisted the pressure from the official sphere when the advocate of the FNM invited the prosecutor to help him finalise the case and she stuck to the law. I was quite surprised by the conduct of the prosecutor, who should defend the law, and I cannot imagine how he could obstruct the law and bend it according to the need.", Director Hušek went to say, "that at present there is a virtual double-track ruling in the company". During the year when *INEKON* was involved in Nováky, it was possible „to secure increased profits by 77% higher than in 1994, employment was increased and the wages went up 25% in a year, the debt of the company was reduced. For this reason the principle of privatisation with our participation has won clear support in the region, which was recently expressed by the Municipal Council in Nováky". (Pravda, 21 December 1995)

Before Christmas 1995, the situation in *NCHZ* again sharpened. According to the report of the daily Práca, the trade union members do not want to allow the members of the Supervisory Board and the Board of Directors to enter the premises of *NCHZ*, who were appointed by the FNM unlawfully according to the court in early December. The trade union council of *NCHZ* in its statement, that was supported by economic workers say: "We do not accept decisions taken by the new Supervisory Board and newly constituted Board of Directors. We request that the original bodies of the joint stock company resume management in our company and that particularly during Christmas season unforeseen situations be avoided and our company function at least as before." (Práca, 22 December 1995)

A day before Christmas Eve, on 23 December 1995, the daily Práca reported continuing tensions. The executive director J. Kostka allegedly does not wish to comment the situation. According to a well-informed source, the main reason for not acknowledging the contract with *INEKON* is the fact that it is a Czech firm. "What is happening here can be compared to blackmailing. The FNM organises one general meeting after the other and we have not received

any documents from any of them, the source highlighted. The FNM blocked the *NCHZ* business activities, including accounts. The newspaper described the dramatic situation: "The new Board of Directors that unions refused to allow entry in the company, should come allegedly on 28 December. There is a tightened control at the gate carried out by the guards. If the members of the Supervisory Boards and the Board of Directors check in, the guards will not allow them to enter the premises but will accompany them to the House of Culture where everything is ready. The current management allegedly received only some conditions and ultimatums that they are expected to satisfy by Wednesday. Otherwise, they will all have to leave the executive management."

Two day later, on 30 December 1995, daily Práca writes about the meeting on 28 December 1995, where representatives of the FNM, new company's Board of Directors, members of the Supervisory Board, management, representatives of *INEKON* from Prague and the *HZDS* chairman in Nováky took part. The members of the company's union got to the meeting only after two hours. The meeting resulted in a promise by the executive management of *NCHZ* and trade unions to ensure further smooth running of the company. The *INEKON* representative offered immediate talks about the agreement between *INEKON* and the FNM to end the dispute as soon as possible. The employees of the company continue to have interest in employee shares. After the ruling of the Supreme Court of the SR, the FNM was obliged to transfer 51% of the equity shares of *NCHZ* in the account of *INEKON*. Under unclarified circumstances, however, INEKON later lost a 10% stake. Later, 49% of shares of *NCHZ* was gained by the company *PT-Nova* through direct sale from the FNM.

In April 1999, *INEKON Praha* accepted the proposal of the Executive Committee of the FNM and agreed to return 41% of the shares of *NCHZ Nováky* that were blocked in the account of *INEKON*. According to the director Dušek, *INEKON* pulled out of the contract in December 1997 but the shares of *NCHZ* could not be returned to the fund's account because they were blocked by the same fund. (SITA, April, 14 1999). In the account of the FNM, thus a 41% stake of *NCHZ* was added.

On July, 9 1999, a general meeting was held in which the companies of *Fingroup*, holding 35% of shares, decided to increase the equity shares. Other shareholders could not vote in this general meeting, which would raise the group's share to 50%. The FNM deemed this step unlawful and is prepared to seek its revision. According to A. Bubeníková, the director of the section of the founding activities and execution of shareholders rights, the court banned holding the July general meeting. If the court did not accept the FNM arguments, tha Fund would definitely lose the possibility to gain a majority in *NCHZ*, in which case the majority could later be offered for sale through a public tender (Pravda, August, 14 1999)

As was stated in the daily Práca: "The result is that *INEKON* did not acquire majority in *NCHZ* even now. The shares stolen by the Fund appeared in other accounts and the shares that *INEKON* was left with, were returned, while they made tens of million crowns in penalties, which the FNM had to pay according to a rather absurd contract." (Práca, August, 18 1999)

THE CASE OF PRVÁ NOVINOVÁ SLUŽBA (PNS)

PNS, a.s., Bratislava is the dominant publication company dealing in distribution and sale of newspapers and printed matter. The company's actual share is 65 %, when it distributes 30 dailies and 670 magazines. On February, 24 1998, the Board of FNM decided sale of a 97% stake of this joint stock company in favour of the printer giant *Danubiaprint,* close to the ruling coalition. *Danubiaprint* was privatised in August 1996 by people close to the ruling coalition. The director and one of the shareholders of *Danubiaprint*, S. Srník, is the President of the Supervisory Boards of the companies R-Press and H-Press, that publish the *HZDS* dailies Slovenská Republika and Hlas. Danubiaprint prints all national dailies with the exception of the daily SME.

Prvá Novinová Služba (press distributor) thanks to its dominant position in the distribution of periodicals was a sensitive firm mainly in connection with the actual political development and the unconcealed efforts of the former ruling coalition to curb freedom of speech and free competition in the area of dissemination of information.

The President of the Board of the FNM and the deputy chairman of the coalition party ZRS, Š. Gavorník, in his interview for the daily Pravda said two months before *PNS* was privatized: "There will still be tumult around *PNS*. Employees - union members wrote to me they wanted their share. It is justified, but to privatise *PNS* will not be just like that: It is a dominant distributor of periodical press. It is difficult to guess who will privatise it. The whole matter must be approached in a sensitive fashion. Maybe there will be an agreement reached on the parliamentary ground to get PNS among strategic enterprises, at least something similar seems to emerge." (Pravda, 19 December 1997)

Despite his words, Board of the FNM SR led by Š. Gavorníkom, sold a 97 % stake in PNS to a company close to HZDS, which is at the same time a printing enterprise having a dominant share in printing periodical press and almost a monopoly in national daily press. The chairman of the Association of Publishers of Periodical Press in Slovakia (ZVPTS) Miloš Nemeček in this connection said: "I cannot imagine a more unsuitable privatisation actor than a polygraphic giant and publisher, with a clear political background." (Slovenský Profit, April, 21 1998). Publishers maintain that there is no economic or logical argument that could defend this decision and that it is not accidental when the decision about the controlling decisive press distributor is scheduled for pre-election period. What is most disconcerting is the fact, that explanatory report gives one of the reasons for the FNM favouring *Danubiaprint* (there were 25 bidders competing for the privatisation of PNS) was "the link of the press and the distributor". According to the legislation on protection of economic competition, the new transferee of *PNS* must, within 15 days from the date the contract of purchase has been signed, seek approval of the concentration from the Antitrust Office of the SR.

Perhaps the most serious fact is, that according to the opinion of several experts and observers, the FNM infringed the law in deciding privatisation of 97 % of shares, because after the ruling of the Constitutional Court on unlawfulness of the transfer of responsibilities for direct sales from the Government to the FNM, the FNM should no longer privatise. In this case it was not only a violation of spirit of the Constitutional Court's ruling, but it was also a case of violating the letter of the decision, since property had been privatised, which even, subject to § 28 par. 5, could not be privatised. This paragraph itself was not subject to the Constitutional Court's review. According to this paragraph, only those assets can be privatised, which cannot be sold under previous decisions of privatisation. In the words of Vice-chairman of the Executive Committee of the FNM J. Porvazník, "this concerns particularly cases where a joint stock company was established but it was not specified in more detail how shares would be sold, or those cases, where originally shares were approved for sale in the voucher privatisation but after voucher privatisation had been abolished, original decisions could not be implemented" (Práca, 19 December 1996). The explanatory report to the decision on the sale of a 97 % stake in PNS itself refers to the fact that the only decision on privatisation of PNS is the decision by the Government of the SR of June, 20 1994, which designated 46 % of the shares for voucher privatisation, 17 % of the shares for tentative state interest, 34 % of the shares for a permanent state interest and 3 % of the shares for the RIF. Even if we admitted a possibility of privatisation under § 28 par. 5, it is apparent that the possibility is not applicable to the 34 % stake, which was subject to Government decision, designated for permanent interest of the FNM . Despite this, the FNM privatised 97 % of the *PNS* shares.

The undue concentration was the reason why the FNM pulled out of the contract of purchase with *Danubiaprint* early in February 1999. As a consequence, the FNM again owned 76.54% of PNS share and since May 1999, it has owned 100% of *PNS* shares. Moreover, the Bratislava regional court judged *Danubiaprint* bankrupt on May, 11 1999, because the company could not meet its obligations over a long time and is currently in liquidation. (Pravda, September, 9 1999)

On July, 22 1999, *PNS*, too, was declared insolvent, owing *Danubiaprint* SKK 44 mill. and, by January 1999, ran up debts of SKK 77 mill. against publishers. The PNS Boards of Directors appealed against the court's decision on declaration of insolvency to the Supreme Court of the SR. The economic director of *PNS* Milan Jablonický estimated the total damage caused by the former management at SKK 223 mill. (Hospodárske noviny, November, 11 1999)

THE CASE OF PSIS

By its decision of March, 31 1995, the Ministry of Finance of the SR revoked license of *Prvá Slovenská Investičná Spoločnosť (PSIS)*, which ranked among the most important investment companies in Slovakia. This investment company managed assets worth around SKK 7 billion and was, beyond doubt, the best Slovak company operating in the area of managing open end mutual funds. It was the best in terms of the volume of these funds and in terms of their appreciation.

The largest mutual fund under the administration of PSIS was *Sporofond*, pooling more than SKK 2 billion from more than 42 thousand legal and physical persons. This investment company (IC) founded two funds for the second wave of voucher privatisation which attracted most investment voucher holders within the process of registration of nationals for the second wave of privatisation, who pledged in contracts to invest in *PSIS* funds. This company was also known for its autonomy from the ruling coalition of the day and the support for independent press. The Government responded by sending control from the Ministry of Finance and subsequently revocation of the license. Several facts, as well as the way in which the license was revoked, indicate that it was a political move, the purpose of which was to liquidate a strong financial institution independent of the Government. Through the decision of Government, the assets administered by PSIS were transferred under the administration of two other investment companies, one of them being the Harvard Investment Company (HIS), known for its close contacts with some *HZDS* officials.

The decision of the MF SR to revoke *PSIS* the license is significant mainly because it is a precedent of failure to respect inalienability of the private ownership rights through a decision of a state body, having an apparent political undertone. The decision concerned the property of considerable volume which has been appreciating as private property for more than four years. By the politically motivated decision of the MF SR, an absolute loss of confidence of private entities in investing through mutual funds. After the news of revoking *PSIS* the licence and transferring mutual funds under *HIS*, the possibility was suspended of withdrawing deposits. First, there were concerns over massive withdrawals, second, *HIS* did not have the necessary capacity and know-how to do these operations. This in turn let to increased demand for deposit withdrawals and, eventually, to a situation where within a short time more than one-third of the shareholders applied to have their deposits returned, which, subject to the Act no. 248/1992 of the Collection of Laws, as later amended, entails closing of the mutual fund and paying out shares.

In August 1995, the former MP G. Kaliská established a citizens' association - Sporofond shareholders - to defend their ownership rights against the intervention of the state power. Out of 42 thousand shareholders 1,535 responded to her initiative. By the end of 1995, the association lodged two cases of seeking indictment against the state. One against the intervention in the exercise of their ownership rights, the other seeking damages, compensation for property loss incurred as a result of devaluation of their fund, the impulse of which came from the state intervention. The former minister of privatisation, M. Janičina, provided legal assistance.

At the end of 1995, the Supreme Court revoked the decision on license withdrawal by the Ministry of Finance for being unlawful. According the state secretary of MF SR J. Magula, the ministry was going to accept the decision although they did not agree with it. Magula said that both decisions of the Supreme Court of the SR - in case of Banská Bystrica PSIPS fund and Bratislava PSIS company, were in their favour, "guided clearly not from an independent position". The court allegedly interpreted laws in their own way, disregarding effective laws and placing themselves in the role of a law-making body. For example, the Supreme Court of the SR, in his view, based its decision on a faulty view that a bill of exchange is not a security, although another law - the Securities Act - unequivocally defines it as a security.

Even after the Supreme Court decision, the MF SR protracted returning *PSIS* and refused to hand over the administration of the mutual fund. Although they first sent out positive signals and announced issuing a report, in mid-February they sent a new control to *PSIS*. Four days after the

beginning, on February, 20 1996, the MF SR sent *PSIS* a decision about instituting proceedings on violation of laws concerning investment companies and securities. According to *PSIS* management the fact that the decision was made only 4 days after the initiation of control clearly indicates that the whole control was but a guise to impose sanctions. *PSIS* fears that the target of a new attack of the MF SR is to crush *PSIS* so that they would be unable to claim damages from the MF SR for the loss which has been incurred to them by revocation of licence and which was, in the meantime, rendered void by the Supreme Court of the SR.

After protracted handover of funds and applying the Supreme Court judgements, which ended as late as mid-February 1996, the Office for Oversight over Capital Market initiated a new control in *PSIS*. *PSIS* shareholders decided in late April about the liquidation of the company. They notified the Ministry of Finance about it on May, 31 1996. On the basis of control MF SR again revoked license from *PSIS*. The decision was delivered on June, 24 1996, by which time PSIS had already been dissolved.

THE CASE OF SLOVENSKÁ POISŤOVŇA

Slovenská poisťovňa (SP) (the Slovak Insurance Company) was founded on November, 1 1991 when *Slovenská Štátna Poisťovňa* was transformed into a joint stock company. In July 1998, the largest shareholder of SP, the FNM , controlled 50.55% of shares. *VSŽ Holding* had around 20% and the companies *Vinlan* and *Telemar*, bothe close to *VSŽ*, owned 8.6% and 6 % of the equity shares, respectively.

Early in July 1997, efforts began to intensify of SP shareholders (mainly *VSŽ*) to get a more significant position in the company at the expense of state. *VSŽ* strove not only to gain control over the insurance whose balance value and the value of technical reserve amounted to SKK 31 billion but also to gain its property interest through which they might control total assets amounting to around SKK 100 billion. Through increasing the equity shares, the law banning privatisation of strategic enterprises and that banning SP privatisation by the end of 2003, were intended to be circumvented.

Originally the equity was to be increased by SKK 1 billion to SKK 2.5 billion. Shareholders, however, changed this proposal to SKK 375 million, i.e., they increased the equity by 25%. This increase sufficed for the FNM to lose majority in the event of not applying its priority right and SP would get into the private hands of privatisation actors close to the ruling coalition. The FNM stake would drop to 40.4%. The argument of the Government officials that increasing the equity shares by SKK 375 mill. would be beneficial for SP, does not hold because SP effected SKK 2 billion, that is five time the amount, to increase the equity of the devastated *IRB*, which was controlled by the *VSŽ* group since 1996.

A similar scenario for the loss of state majority occurred in a commercial bank between 1996-1997 when the equity of *Poštová Banka* was raised (from SKK 600 mill. to SKK 1,200 mill.) and the share of state subjects (the Ministry of Transport, the Slovak Post and the Slovak Telecommunications) dropped from 87.5% to 43.5%. The possibility to increase the equity was used only by the private firms close to VSŽ which subsequently gained a majority interest. By the way, the Minister of Transport, Post and Telecommunications was Alexander Rezeš, later chief of *VSŽ*.

In increasing equity in July 1998, all 375 thousand new shares of *SP* in the nominal value of SKK 1,000 were subscribed, whereby the ownership relations were changed in one of the major financial institutions in the SR The prediction thus came true of concealed privatisation of *SP*. *SP* shareholders surprisingly did not approve the change to the statutes of the company - entry of the increase of equity shares from the original SKK 1.5 billion to SKK 1.885 billion in the trade register at the extraordinary meeting held on September, 4 1998. The FNM, apparently against the logic of the preceding action voted against the change to the statutes. Its representative M. Bernáthová voted for increasing SP equity at the extraordinary general meeting on July, 24 1997. Since shareholders did not approve the increase of the equity, it was not possible to motion a change to the trade register about the increase of the equity and the whole process thus could not be completed.

After parliamentary elections and after small shareholders of *SP* brought charge against *SP* and also filed notice to suspend proceedings in the matter of entering the change with the register court, other changes occurred in SP on October, 15 1998. At the proposal of *ARDS*, which represented the interests of *VSŽ* Holding, the extraordinary general meeting revoked the resolution proposing to increase equity of July, 24 1998 and annulled the whole process.

Shareholders achieved other change of the statute though, according to which the change of the volume of equity and the personal changes to the Supervisory Board of SP will require the approval of the shareholders holding two-thirds of the shares - i.e., 1 mill. shares. Until then, these changes were subject to the approval of a simple majority of shareholders attending the general assembly meeting. President of SP Karol Melocík argued for the proposal by pointing to the need to defend minority shareholders. Although this change significantly restrained the influence of the FNM in SP, the Fund endorsed it. The amendment of the Act on securing state interest in the privatisation of strategically important state enterprises and joint stock companies of 20 November 1998 *de facto* neutralised this decision of the extraordinary general meeting.

THE CASE OF SLOVENSKÉ LIEČEBNÉ KÚPELE PIEŠŤANY

The year 1996 saw privatisation of the most lucrative and renowned Slovak Spa Piešťany. On May, 23 1996, the FNM decided about the sale of a 51 % stake of *Slovenské Liečebné Kúpele a. s., Piešťany (SLK)* in favour of the employee joint stock company, *Spoločnosť Zamestnancov Piešťanských Kúpeľov a.s. (SZPK)*. The purchase price was SKK 302 mill., with the balance sheet price of SKK 1.6 billion and the generally prevailing opinion that the actual market price is higher than the balance sheet price. *SZPK* was founded and controlled by four members of top management and the FNM decided to their benefit despite the fact that city Piešťany offered a much higher price for the spa and despite the Supreme Control Office *(NKÚ)* alerting to multiple violation of laws in SLK when *SZPK* was founded and instituting criminal proceedings in the matter. (Pravda, June, 3 1996).

In late January 1997, 51 % of the shares of *SLK Piešťany* were transferred from the company *SZPK*, a. s. to a joint stock company *Vadium Group a.s.* founded by Karol Martinka, general director of Devín Banka. One of four *SZPK* founders and the trade union chairman Tibor Krajčovič said for the daily Pravda that it was a shock for him and that the president of *SZPK* Board of Directors told him that the shares were transferred „on the basis of some supplement to the contract of purchase between the FNM and *SZPK* that I knew nothing about." The employees of *SLK Piešťany* wrote a letter to the state officials of the SR in which they warned that the new owners intended to "sell a large part of the spa shares to their Russian partner" by the end of 1997 (Pravda, February, 5 1997).

In early February 1999, the FNM resumed in its holding part of property interest in *SLK Piešťany, a.s.* comprising 24.16% of the equity. The property interest was returned on the basis of an agreement on repudiating the contract with the company Všeobecná *Sociálna Poisťovňa Tatry Bratislava*. *Vadium Group* is still a majority shareholder of Piešťany spa (owns a 68 % stake), and have been recently transferring their assets to other legal entities. In the asset stripping of world famous spa a travel agency *Cestovná Kancelária Slovenských Kúpeľov (CKSK)* has been playing increasingly an important role since 1997 (Pravda, February, 17 1999).

Through this company based in Bratislava pass almost all payments of foreign clients of the Slovak curative spa *(SLK Piešťany)* for which they take a commission of 15 %. This fact had an impact upon considerable decline of the economic performance of SLK. Within this cause, a charge was brought against Ing. Karol Martinka, president of SLK, for suspicion of committing fraud. As was stated by J. Ivor, general director of the section of investigation and criminal expertise activities of the Ministry of Interior of the SR, the accused K. Martinka in the capacity of President of Board of Directors and the General Director of Vadium Group together with other persons unlawfully transferred 51 % of spa shares first to the employee joint stock company – Spoločnosť Zamestnancov Piešťanských Kúpeľov *(SZPK)*, and then to *Vadium Group*. In this connection J. Ivor noted that he had incurred the FNM a loss of at least SKK 602 mil (SITA, April, 12 1999). July

1999 was an important milestone in the development of this affair - on July, 7 a 68% stake in the spa was transferred to the FNM from the original buyer *Vadium Group a.s. Bratislava*. In consequence, the state managed to get back almost 92.16 % of the shares.

THE CASE OF SLOVNAFT

On August, 10 1995, the Board of the FNM decided on the sale of a 39 % stake of the joint stock company *Slovnaft* in favour of *Slovintegra, a.s.*, founded by 19 managers of *Slovnaft*. Formally, the sale was for SKK 6.4 billion, which was then the market price of Slovnaft shares, and which is, coincidentally, also the nominal price. As a matter of fact, the sale was effected in a very advantageous regime, which deprived the FNM of the proceeds amounting to several billion crowns. As it stands, the contract contains a mechanism which reduces the actual price against the officially stated price of 6.4 billion crowns to a minimum. The contract says that if the new shareholder pushed through that the company Slovnaft spend a sum of several billion crowns in the next few years in investments, a sum of SKK 3 billion crowns of the purchase price will be condoned. This is a formal criterion because it is clear from the investment efforts already under way that Slovnaft will spend this sum on investments. What is bewildering, the reduction in the price is not linked to the investments of the privatisation actor, but to the investments of the privatised enterprise.

Another reduction of price is offered, if the new owners ensure that *Slovnaft* achieve a certain level of profit in the following years. In which case the price will be cut by SKK 2.4 billion. Again, this is a formal criterion because with the present economic performance of Slovnaft one can assume that the profitability criterion will be satisfied.

In other words, the actual price for which 39 % shares of *Slovnaft* were sold was 1 billion crowns (!). The fact that this is the actual price is evidenced by instalments being spread over 10 years, always at SKK 100 million. These instalments are without interest. The first down payment at SKK 100 million was due one month after the contract had been signed and was remitted in the autumn of 1995. *Slovintegra* borrowed from *PoľnoBanka* to pay it. The second instalment was due only in 1997 and then each year until the year 2005.

The "charm" of this privatisation lies in that the dividends which correspond to 39% of shares which *Slovintegra* has thus got hold of are higher than SKK 100 million. Hence, the dividends for 1995 which *Slovintegra* is going to get in 1996, will pay back the credit from *PoľnoBanka*, the dividends for 1996 will pay the instalment to the FNM in 1997, and so on, until the year 2005.

In fact the only real investment the buyers of a 39% stake had to make was their contribution in the equity shares of the joint stock company *Slovintegra* (SKK 1 million). All the remaining resources that they will effect in the privatisation of this major property interest in one of the most profitable factories in Slovakia, will actually be the resources of the company, whose shares they have privatised.

One can make the best picture about the actual value of the *Slovnaft* shares from the following facts. Only few days before the above sale of 39% of shares, the equity of this company was increased and the shares of this increase were sold on foreign markets and on the domestic market. Apart from Slovak financial institutions, also the EBRD has become an important Slovnaft shareholder within this equity increase, with around 10% stake. These shares were traded for SKK 1,000 per share, which in a 39% stake would amount to SKK 6.4 billion. One can claim that the FNM lost a sum of several billion crowns in the above described way of privatisation and at the same time the property in this sum of several billion was given as a gift to several people close to the ruling coalition. In this respect we need to recall that part of present privatisation actors, including S. Hatina, President of Slovnaft, got in the leadership of Slovnaft through the FNM, as the majority shareholder, controlled by the parties of the ruling coalition.

In the sale of the majority stake in *Slovnaft* to the firm *Slovintegra* for one-sixth of the market price, including the deductible investments, the state lost even greater resources than in the case of *Nafta Gbely*. The 39-percent stake cost *Slovintegra* SKK 1 billion, which is SKK 155. 70 per share - i.e., 15% of its market value. Slovintegra borrowed money to pay the first instalment at SKK 100 million, but could pay

back the loan after getting the first dividends! In August 1996, *Slovintegra* paid the FNM the remaining SKK 900 million.

Later, after the FNM decision of July 1997, *Slovintegra* increased its share in *Slovnaft* when it acquired another 15% stake. The price was SKK 385.4 million , i.e., again around SKK 155 per share. *Slovintegra* raised the money to buy this stake by selling less than 3% of shares of *Slovnaft* (400 thousand shares) for market prices - at SKK 900 per share. After this sale, *Slovintegra* settled all its relations with the FNM, while keeping its majority in *Slovnaft*.

The new management of the FNM elected after 1998 parliamentary elections did not deem this conduct beneficial for the state and hence concluded a preliminary agreement with the owners of *Slovintegra* on March, 4 1999 about supplementary payment of part of the purchase price at SKK 1 billion, or returning 10% of the *Slovnaft* shares in the portfolio of the Fund. *Slovintegra* would have still one share per a little more than SKK 200. The Slovnaft shares are traded at around SKK 640 on the stock exchange. The *Slovintegra* management conditioned the supplementary payment of the purchase price or the return of shares in the portfolio of the FNM SR with a written decree of the Government that no additional request would be raised against Slovintegra, but until October 1999, the management had not fulfilled any of their declared pledges.

THE CASE OF TRANSPETROL

The origin of the *Transpetrol* affair dates back to the year 1995, when the Prešov regional court ruled that the MF SR was obliged to pay the firm *ILaS Vranov* SKK 43.26 million, with a 17.6 % delay charge from January, 1 1997. The firm had suffered loss due to a measure of the tax office. The liability was gradually growing, and *ILaS* sold it to the company C.S.I.-CD, which filed a petition for executory sale. A 34.05 % of shares (647 shares) of the monopoly Slovak oil tansporter for the SR and CR, *Transpetrol a.s.* , with a 100% interest of the Ministry of Economy of the SR (ME SR) was transferred to the accounts of seven private companies, on the basis of the distress warrant of October, 9 1998. (Práca, October, 28 1998)

The Act on securing state interests in strategic enterprises and joint stock companies, (no. 192/1995) stipulates precisely which state enterprises and join stock companies are strategically important. Under this act, the shares of Transpetrol cannot be subject to privatisation. It is remarkable that the sum of SKK 65.4 million , for which the distress warrant was given, should correspond to a significant stake in an extremely lucrative company whose net profit for 1997 exceeded SKK 433 million. The market price of 34.05 % of shares of *Transpetrol* is estimated at SKK 2 billion. Another interesting thing about the affair was that these shares did not belong to the Ministry of Finance, whose obligations were to be settled in this distress, but to the Ministry of Economy.

"This affair is unfortunately, a common way of circumventing the Act on strategic enterprises, when privatisation is attempted through a distress warrant, said, "Minister of Finance, B. Schmögnerová. She emphasised that the act does not contain any guarantee in the case of strategic enterprises and that "this gap in legislation is being effectively used by those who want to get hold of a significant interest in some companies". (Nový čas, October, 27 1998)

After the election, *Transpetrol,* as the issuer, and the Ministry of Economy, as the owner, lodged an objection against this course of action. They pointed to the fact that under the statutes of the company, the consent of the Board of Directors was required for any transfer of shares. This consent was not given. Moreover, the Act on strategic enterprises was contravened, as were certain regulations. The MF SR as the oversight body acknowledged the objections and granted the application. On 10 December 1998, The Securities Centre (SCPB) put the account of the ME SR in the state in which it had been before one-third of shares were transferred to other companies. By the action of the MF SR, the private firms lost their shares in *Transpetrol*, and *Transpetrol* was returned in the hands of the state. The investigator of the Regional Investigation Office of the police corps in Prešov in relation to the transfer of shares of *Transpetrol a.s.* brought a charge of fraud against two men that caused the state damages amounting to SKK 647 million.

THE CASE OF VSŽ AND INVESTIČNÁ A ROZVOJOVÁ BANKA (IRB)

The story of the *VSŽ* and their largest and most influential owner, Alexander Rezeš, is a story in which almost all of the traits of the Slovak post-communist economy and social transformation, privatisation, in particular, were reflected in a concentrated form.

The Slovak public became aware of Alexander Rezeš in the late 1994, when he was appointed to the position of the Minister of Transport and Communications in the third Government of V. Mečiar. His way to riches, power and influence began in March 1994 when the second Mečiar Government approved the sale of 15% of shares of Košice *VSŽ* in favour of his company *Manager* for a fraction of the market price. The Mečiar Government decided this after they had been recalled from office (following the vote of non-confidence for V. Mečiar in the parliament) and the company *Manager* arose and was incorporated on the same day as the Government adopted the privatisation decision. The privatisation project was delivered to the Government Office three days after the decision regarding privatisation had been made.

Another company of A. Rezeš bought further 15 % of *VSŽ* in July 1995, at the time he held the position of minister, again for a price much lower than the market price. His group acquired furher shares by buying out shares that had been privatised in the first wave of voucher privatisation. They were bought with the finances of *VSŽ* itself. At the time Rezeš was a minister, and was theoretically responsible to his people. When in 1997 Rezeš quit the Mečiar Government because of health problems, in his own words, he controlled 47 % of *VSŽ*.

Rezeš gained fame in Slovakia with some other activities as well. He bought a highly indebted football club, *Sparta Praha*, and he owns also a Slovak club, *1. FC Košice*. He finances other football clubs around Slovakia and in his club's money is not spared. Money is spent in a very non-standard way, for example, for bonuses for players of those teams, which play against the major Rezeš club's rival, in the competition for the title.

During the time Rezeš was in office as the minister, his companies became important shareholders in strategic banks, in which state enterprises belonging under Rezeš ministerial direction, *(Dopravná Banka, Poštová Banka)* had major interests. Rezeš in the capacity of minister in 1996 approved special discounts in rail tariffs for his private company *(VSŽ)*, hence only in this way his private company was saved SKK 1 billion in a year (and the state railways lost). Rezeš appointed his man to the management of the railways, and he caused railways a loss of SKK 3 billion in two years through unprofitable contracts and activities that are currently being examined by law enforcement bodies.

In 1996 *VSŽ* took control of third largest Slovak bank, *Investičná a Rozvojová Banka (IRB)*. They acquired a majority stake, contravening the law, without the consent from the National Bank of Slovakia. The disagreement of the NBS with the ownership concentration was tackled by a few formal moves of shares effected by the group around the *VSŽ* and particularly by creating political pressure to pacify the NBS.

On 17 December 1997, information leaked to the public about the insolvency of the *IRB*. It is the bank in which the FNM holds a 34% stake and in which *VSŽ* owners, Mečiar movement-allied Alexander Rezeš group, became majority shareholders in August 1996.

Gaining control of the *IRB* by *VSŽ* was unlawful because the accumulation of an ownership in access of 15% requires prior consent of the National Bank of Slovakia. The NBS did not give this consent, prior or subsequently. Nothing changed though in the matter because the *VSŽ* only effected a few formal transfers of shares and further controlled around 43 percent of the *IRB* shares. The majority shareholder did not even make it secret that they needed the bank to finance high-risk operations, particularly in former Yugoslavia. After they took over control of the bank, they changed its management and V. Vranay, the brother-in-law of Rezeš Jr. became the President.

Early in the year, optimistic statements were published of the new management about the consolidation program of the bank that was due to be completed by the end of 1998. Later, however,

the media brought information about the growing loss of the *IRB* (SKK 1.3 billion for the first 10 months of the year) and in the autumn, V.Vranay resigned from his position of the President of the IRB.

In early December, *IRB* began having problems covering its obligations, the NBS stepped in interceding with other commercial banks to provide *IRB* loans. It helped for a short time, but on 18 and 19 December the bank did not open its subsidiaries branches.

The NBS responded on 19 December by placing the bank in receivership, supplied liquidity to the bank to enable it to pay physical persons accounts that were due. Other accounts will be released only later.

There was information leakage that the situation in the *IRB* should be rescued by increasing the equity of the bank on the part of *Slovenská Poisťovňa* (the dominant insurance company with the majority interest of the FNM) by SKK one billion. On 19 December in the morning (before receivership was imposed) an extraordinary general meeting of *IRB* was convened in which the increase should take place. It did not take place, however, because only shareholders holding 9.2 % of the votes (*VSŽ* and FNM representatives did not participate) were registered. The responsibility for *IRB* insolvency lies with the majority shareholders of *IRB*, former ruling coalition and also the bank supervision of the NBS.

The *IRB* majority shareholders, companies allied with *VSŽ* and their owners made no secrets that they took control of the bank because they had problems raising funds for risky operations. They took control of the bank despite the NBS disagreement and appointed management that was liased not only economically but also through family ties.

The ruling coalition gave its signature to the present situation when in discussing the state budget for 1998 decided about revoking property loss reimbursement of *IRB* for non-commercial credits granted in the past at SKK 782 million. This publicly well known fact was the last step that triggered an attack on the bank the problems of which had been known not only to experts but also to the general public. It is shocking that Miroslav Maxon, chairman of the budget committee in the Parliament (HZDS) who was at that time designated as the new Finance Minister, presented the motion.

The responsibility of the NBS, particularly its banking oversight, is in that after initial resistance against concentration of *IRB* shares on the part of *VSŽ*, the banking oversight allowed themselves to be cheated by formal transfers of shares which did not change anything about the threat, when the subjects linked with the owners of *VSŽ* still control around 43% shares in *IRB*. The failure of the banking oversight of the NBS was also in that the NBS was not able to place *IRB* in receivership early enough.

The Prime Minister Mečiar in response to the situation in the *IRB* said that the NBS was responsible for all of its problems and said also that the NBS wanted to sell *IRB* abroad for a symbolic crown and that only his personal intervention prevented this from occurring. This statement is absurd because until receivership (19 December 1997), the sale of *IRB* shares could only be decided by the shareholders, that is the Mečiar-controlled FNM (35% shares) and the private companies (mainly around *VSŽ*) which could decide about the remaining shares.

Mečiar's attacks on the NBS are seen in the context of the NBS resistance, particularly its governor Masár, against the Mečiar movement-advocated amendment of the Act on the NBS, which would reduce the scope of autonomy and the NBS independence of the Government. The Government proposal of the amendment of the NBS Act was defeated in December in the parliament, but another attempt was scheduled for February 1998.

The recent events only confirm the non-standard position of *VSŽ*, particularly Alexander Rezeš. After the crisis in IRB in December 1997, the NBS provided SKK 11 billion to the bank in the form of a 90-day bill of exchange (whereby the NBS interest in *IRB* increased to 24 billion crowns). The NBS appointed an administrator who on, March, 18 1998, called a general meeting in which the NBS wanted to push through changes to the statutes enabling the administrator to sell part of the bank and renew its stability and

provide liquidity (the administrator announced that after clearing last year loss at SKK 3.06 billion, the book value of shares was minus SKK 1.2 billion). Majority shareholders (*VSŽ* and FNM) voted against it and requested to call another general meeting in which they wanted to consolidate the bank themselves. We have to note, however, that the NBS repeatedly urged majority shareholders in 1997, i.e., *VSŽ* and the FNM to increase the equity of the bank, whereby they would increase its capital adequacy. Majority shareholders refused this proposal in the general meeting held in May 1997 and did not even attend the general meeting called in December 1997 after the attack on the bank. The action of the FNM in concert with and in the interest of *VSŽ* has been symptomatic.

What is startling about the proposal of *VSŽ* and the FNM was that they were not in a good economic situation particularly as far as their own liquidity. The FNM had to borrow to redeem bonds of citizens older than 70 years and it seems that as a consequence of the unprofitable way of privatisation for the FNM, it will have enormous problems with liquidity, particularly in relation to redeeming bonds after the year 2000 (see above). *VSŽ* announced in late March 1998 that they had generated profits of only SKK 595 million for 1997, which is 41.6% of the planned profit. The liquidity crisis will apparently be intensified after prices of *VSŽ* shares dropped over the course of March by 40%. It was mainly due to the reaction to the results of the extraordinary general meeting where the influence of A. Rezeš fully surfaced and he managed to appoint new management (and the Board of Directors). A 29-year old son of Rezeš became the President of *VSŽ* and the son's peers and friends without much management experience became members of the Board of Directors. As the daily Trend wrote, this was a "victory of a football team of decisive owners… and the suppression of pragmatic managers". The general meeting then increased the risks of further development in *VSŽ*, the situation was not clear, which together with the growing political risks discouraged foreign investors without the demand of which the market is falling. The non-transparency within *VSŽ* also increased. As one of the Košice stock dealers stated for Trend, "nobody knows exactly what *VSŽ* Holding owns and what is outside, and it is controlled by the members of the Supervisory Board through their firms. So far, it is like investing in a black hole".

The problems for owners also arose because *VSŽ* mortgaged shares for re-po credits and according to the contracts, the decrease in value of the shares means that the banks can ask to have the loan returned or the difference paid. The banks that granted loans to *VSŽ* owners have these clauses in the contract but according to the statement of some bankers, the banks feared to exercise their rights for political reasons.

Another problem that the owners will face is that they used the difference between the market price and the low price for which they were buying shares from the FNM in a way where they paid instalments to the FNM by selling part of the acquired shares for the market price. This is evident also from the request of the Rezeš's company Manager, addressed to the FNM and asking to have instalments of July of the current year put off to 31 December of the current year. The request literally says that "the company Manager is not carrying out business and thus raises funds for instalments through sale of shares". The argument frequently repeated by the Mečiar Government that the FNM sell to Slovak subjects at a discount to avoid the assets getting into foreign hands, is thus apparently incorrect, because, as Trend notes, already 21.5% of the shares are in the hands of foreign subjects while they were bought for market prices from those who are buying them for symbolic prices from the FNM.

In late April 1998, new information surfaced about „asset stripping" of the *IRB* by the shareholders of the *VSŽ* group. The companies linked to *VSŽ* borrowed SKK 100 million in *IRB* in May 1997 and secured this credit with their own *IRB* shares. The credit was due in November 1997, but it was not returned. In December, *IRB* was placed into receivership. The bank's uncovered loss is higher than the equity. The own equity of the bank in March 1998 was minus SKK 9.5 billion. The shares that *IRB* holds as collateral for the credit of SKK 100 million are then worthless. Those who owned the bank, i.e., mainly the group around *VSŽ* and the FNM SR contributed a great deal to their becoming worthless. It is noteworthy that the NBS over the course of 1997 asked majority shareholders of *IRB* several times (i.e., *VSŽ* and the FNM) to increase the equity in the bank. The request was rejected, shareholders around *VSŽ* opted for another course of action - they have simply stripped out the bank'assets. Instead of

replenishing resources, they have drained resources using the shares of the bank itself as security that, as a result, became worthless.

The Prime Minister apparently saw the situation differently, when he, in Košice, meeting the Management of *VSŽ* made a following statement in their direction, "You have done a great deal in consolidating banking where in relation to *IRB* the reputation of *VSŽ s*uffered. As one of the participants in the talks from the very beginning, when the problems arose, I would like to confirm that the errors on the part of the *VSŽ* in this bank were insignificant. Their roots were planted even before *VSŽ* entered the bank and there was reluctance to reveal the errors or to eradicate them. We are therefore seeking a way together with *VSŽ* to redress the situation in such a way that you don't lose the property that you have deposited there." (*VSŽ* - Oceľ Východu, quoted according to daily PRAVDA, April, 30 1998).

This commitment of Mečiar to do anything to prevent the *VSŽ* group from suffering property loss can be seen in the way in which IRB was consolidated. The NBS which carries out receivership and which only between December 1997 and the end of March 1998 pumped SKK 11 billion in the *IRB*, wanted to resolve the situation by selling the bank to a solvent, most probably foreign bidder who could sufficiently increase its equity. The NBS, apparently under political pressure, changed the view and agreed to Slovenská Poisťovňa, Slovenská Sporiteľňa and the FNM to increase the equity in the *IRB*. These are institutions which are busy enough having their own problems, the point is that in this way, *VSŽ* do not have to spend a single crown to consolidate the *IRB* and at the same time they do not lose control over it. After the increase, their direct share will decrease, but their indirect share and influence will increase through Slovenská Poisťovňa (in which they are majority shareholders with the FNM) and through the FNM which acts in concert with *VSŽ*, and which is a majority shareholder in Slovenská Sporiteľňa.

The accumulated problems caused by inability to tackle the enormous dispersion of its own activities in areas not connected with steel making, murky supplier and consumer relations, poor financial situation, and the October changes in the Government which was not so tolerant of the management of *VSŽ* caused that even on November, 17 1998 - after a ten-day delay - the company was not able to pay the principal of the syndicated credit amounting to USD 35 million granted to *VSŽ* by a consortium of foreign banks. As a result, the steel producer found itself in a real danger of cross-default, that is a situation where all creditors could ask to have their credits prematurely repaid. Although the banks did not proceed to exercise their right for premature credit repayment, many financial institutions blocked the accounts of *VSŽ*.

VSŽ creditors held talks about the situation that arose, also with the Slovak Government. *VSŽ* later also joined the talks. Despite the information embargo, information leaked in public that the conditions of the Government (and probably the banks) include changes in the management of the company and *VSŽ* quitting the areas which are not directly connected with steel making as the main area of business.

VSŽ probably accepted the condition which can best be seen from the statement by the President of the company Július Rezeš that "all that is not related to steel production is for sale." It seems that the burden of 137 other companies is even for such a giant company as *VSŽ* too much.

Even *Slovenská Poisťovňa (SP)* became uninteresting to *VSŽ,* which they had attempted to get under their full control some time ago. According to the information from the Securities Centre (SCPB), the share of *VSŽ* in *SP* dropped from 20.03% to 12.7% as a result of the transfer of 110 thousand shares which occurred still on October, 31. The buyer was Poštová Banka whose share in *SP* reached 7.33%. What is remarkable about the whole transaction was the fact that the transaction was made through a broker that collected SKK 40 million in commission, which comprises 19% of the sum for which *VSŽ* sold the shares.

After consultations with financial and legal advisors, the Board of Directors and the Supervisory Board of the company realised there was need for adequate personal changes.

The debts of *VSŽ* against banks reached almost SKK 19 billion as of the year-end 1998. *VSŽ* found themselves in "receivership of their

creditors" (so-called regulatory receivership which means that the creditors of *VSŽ* have agreed on the control) and everything began to suggest that A. Rezeš and co. were no longer actual owners of the steel company but the banks. The likelihood of radical personal and structural changes has increased. The anticipated changes finally took place at the extraordinary general meeting of the company in 11 December 1998, when all *VSŽ* representatives declared efforts to attenuate the company and return to exclusively steel making activities.

Ladislav Drabik and Gabriel Eichler, who had worked for the Bank of America, and the former U.S. Steel President Thomas Graham, became new members of the Board of Directors. New members of the Supervisory Board, after the shareholder voting became Ján Turčan, Jaroslav Gruber, Albert Oberhofer, for the FNM SR Peter Huňor. A. Rezeš also retained his position, when he became President of the Supervisory Board at the first meeting.

From the beginning, the new company President, G. Eichler declared his commitment for major changes. The development from December 1998 also proves it. *VSŽ* divested of part of shares in the Slovak Insurance Company, over which they had wanted to gain control in summer 1998. They disposed of two media - the national daily Národná Obroda, and a regional newspaper Lúč. Further 30 firms are ready for sale, most of them not in the best shape. The turn came also to the former Rezeš family pride - the football club Sparta Praha. The negotiation about potential buyer began in the autumn 1998 and continued through early 1999. The sale of 25 luxurious limousines in March this year was to be a kind of a symbol. They were too many in the company, according to G. Eichler. The steel company's "flying assets", *VSŽ* own turbo-jet, should meet similar fate.

G.Eichler has clearly indicated that the critical situation of *VSŽ* is definitely not only due to the world crisis in the steel industry, the favourite argument used by the preceding management headed by Július Rezeš, the son of Alexander Rezeš. He commented the situation in the following words: "We were not prepared for the crisis at all. The management of the firm is bad. There is no way one can manage something without knowing basic information. Trade policy was problematic, too, and there were flaws in exclusive contracts for sales abroad." (Pravda, February, 10 1999) Stealing in the company is another, not insignificant factor, maintains G. Eichler, which has boomed not only at the top or middle levels but the lowest levels as well.

The definite departure of A. Rezeš from the management of the company took place at the extraordinary general meeting on February, 19 1999, in which he resigned from all his functions; many observers commented this move as his resignation from the power influence in *VSŽ*.

At the same extraordinary general meeting, shareholders have noted resignation of the Board of Director member Thomas Graham, and elected John Harold Goodish to this position, who was in 1997- 1999 President of the United Engineers and Consultants, Inc. Other members of the Supervisory Board, elected by shareholders, include Dušan Štefáni and Štefan Šulek, who, on February, 19 1999, became the Board's president at its first meeting. Other members include Peter Huňor, Albert Oberhofer, Jaroslav Gruber and the representatives of *VSŽ* employees, Ján Peržeľ, František Špička and Milan Ondáš, elected to the Supervisory Board in the election on February, 18 1999.

The definite ending to the departure of the former management was given by shareholders when they approved to change the trade name to the original *VSŽ*, leaving out "Holding" from the title.

In November 1999, a change in power distribution in the ownership structure occurred at the expense of the state. The transfer of a 10.79 % stake of the *Všeobecná Akciová Spoločnosť Košice*, which BCPB blocked from late 1998, with regard to the previous re-po trades, ended unexpectedly in the account of the firm *Stavard, a.s. Košice* on October, 26. The company sold it by return abroad. The transfer was made despite the shares being secured in *Slovenská Sporiteľňa (SLSP)*. According to Brigita SchmŒgnerová, the Minister of Finance, "it is most likely that a criminal fraud was committed which concerns high-ranking functionaries of the BCPB." (Profit 46, 9 November 1999). In this connection, General Secretary of the BCPB Marián Sásik resigned from his position, which will not compensate the lost shares to the state though.

President of *VSŽ, a.s.*, Košice Gabriel Eichler confirmed that the management of the firm was preparing to create a new company that should be

cleared of problem account items of the past. Assets and liabilities, which will be approved by the creditor banks and the state, should be moved to the new company. The new "core" company should be formed by 22 present subsidiaries and should exclusively devote to steel production. The *VSŽ* interests in different financial and trading firms and sport clubs should be included under "non-core".

THE CASE OF ZSNP

On July 1998, the Board of the FNM approved a sale of a 73.86 % stake in *Závod SNP Žiar nad Hronom (ZSNP)* (aluminium producer) to an unknown company, *Žiarske Hutnícke Konzorcium (ŽHK)* for SKK 1.065 billion, including investments. Under the privatisation decision of 1992, the FNM was obliged to retain at least 48 % of shares. As I. Mikloš said, the actual sum, which the FNM will get for the sale of *ZSNP*, will only reach SKK 65 million, which is the amount of the first agreed instalment. The remainder may be discharged in the event the company invests 1 billion crowns by the year 2003. The company will have to invest this sum anyway. The real price of selling an enterprise of SKK 20 billion thus amounted to only SKK 65 million, which amounts to SKK 15 per share (SITA, July, 16 1999)

In 1995 *ZSNP* equity was increased. The FNM then increased its property interest when it capitalised its receivables against the company (exchanged them for shares) in the total nominal value of SKK 2 billion. The price for share that the FNM paid, was SKK 1,000. From the difference between this price and the price for which the FNM sold its interest clearly follows the non-profitability of the sale for the Fund and thus also for the state. The FNM even took over security for fulfilment of the obligations and pledged to eliminate ecological damage of the company in which it no longer will have shares. These securities in relation to banks comprise additional SKK 2 billion. On the basis of privatisation contract, in the event of failing to pay debts of the company, the assets would be transferred again to the FNM, whereby the company could divest of its responsibility for fulfilling the obligations. "The buyer acquired the property under better terms than for free," says I. Mikloš (SITA, July, 16 1998)

Appendix 2:
The chronicle of the process

M.E.S.A. 10

1990

August

- August, 28 1990 the Government of ČSFR discussed and approved the Scenario for the economic reform - part of proposed changes - fast and extensive change in ownership relations

October

- Act No. 403/1990 Of the Collection of Laws on mitigation of consequences of some property-related wrongs (so-called Small Restitution Act)
- Act No. 427/1990 Of the Collection of Laws on transfer of state title to some things to other legal and physical persons (so-called Small Privatisation Act)

November

- Act No. 474/1990 Of the Collection of Laws on responsibilities of SR bodies in matters of transfer of state title to some things to other legal and physical persons

December

- Implementing regulation No.568/1990 of the Collection of Laws on public auctions in transferring state title to some things to other legal and physical persons and on the entry fees to these auctions

1991

February

- February, 14 - small privatisation launched
- Act No. 87/1991Of the Collection of Laws on out-of-court rehabilitation (so-called Large Restitution Act)
- Act No. 92/1991 Of the Collection of Laws on conditions of transfer of state property to other persons

May

- Act No. 229/1991 Of the Collection of Laws on the title to land and other agricultural property
- Act of SNR (Slovak National Council) No. 253/1991 Of the Collection of Laws on responsibilities of bodies of Slovak Republic in matters of conveying state property to other persons and on the National Property Fund of the SR (FNM SR)

June

- Government Decree of the SR No. 273/1991 of the Collection of Laws on exemptions from § 45 of the Act No. 92/1991 Of the Collection of Laws - allowed state enterprises, state financial institutions, etc. to conclude contracts on recompense transfer of state property in respect of which they have the right of management, in addition to their regular economic activity

September

- Government Decree of the ČSFR No. 383/1991 Of the Collection of Laws on issuing and using investment vouchers

October

- Amendment of the Act No. 429/1991 Of the Collection of Laws - a more comprehensive specification of the course of action in public auction
- Amendment of the implementing regulation of the Ministry of Privatisation (MSPNM SR) No. 473/1991 on public auctions

November

- Registration for first wave of voucher privatisation (beginning)
- Amendment of the Act No. 501/1991 of the Collection of Laws and the amendment and the supplement to the Act No. 474/1990 Of the Collection of Laws on specification of rights and obligation of the privatisation commissions
- Adoption of the Act No. 513/1991 of the Collection of Laws - Commercial Code - stipulating the position of entrepreneurs,

commercial companies, commercial relations as well as some other relations pertaining to carrying out business

December

- Act No. 561/1991 of the Collection of Laws extends the relation to contracts of lease of non-living space also to municipalities

1992

February

- Act No. 92/1992 of the Collection of Laws - an amendment of Act No. 92/1991 of the Collection of Laws includes a new § 6a, which provides that privatisation project submitted after February, 29 1992 must contain the assessment of the company's commitments in environmental protection

April

- Act No. 264/1992 of the Collection of Laws contains provisions on transfer of title to real property in such a way that the ownership rights are transferred to the transferee on the date it is entered in the register of real property.
- Act No. 248/1992 of the Collection of Laws on investment companies and investment funds - governs the activity of investment companies and investment funds, protection of investors and state supervision over the activity of investment companies and investment funds

May

- May, 14 - voucher privatisation launched

June

- Parliamentary elections - Government change - Government of HZDS and V. Mečiar coming in office

August

- Government Decree of the SR No. 430/1992 Of the Collection of Laws provides that the price in conveying apartments to their tenants or apartment houses to apartment tenants must be determined by an authorised expert

September

- September, 1 - The Constitution of the SR approved
- Government approved a new concept of privatisation

November

- Act No. 541/1992 of the Collection of Laws on distribution of property of the Czech and Slovak Federal Republic
- Act No. 542/1992 of the Collection of Laws on dissolution of ČSFR
- Act No. 544/1992 of the Collection of Laws - the amendment made provisions that made Administrative Procedures not applicable to the approval of privatisation project and stipulated the transfer of obligation in a way that does not require the creditor's agreement

December

- Act No. 600/1992 of the Collection of Laws on securities defines the securities system, securities contracts, securities market and the protection of the financial market
- Act No. 29/1992 of the Collection of Laws - supplements the Act No. 253/1991 of the Collection of Laws and No. 501/1991 of the Collection of Laws - specifies the uses of the FNM assets, which could be used also to increase equity shares of commercial companies in which the FNM was a shareholder or a partner

1993

January

- January, 1 1993 - rise of the independent Slovak Republic

March

- Government Decree of the SR No. 144/1993 of the Collection of Laws - extends exemption on the basis of which contract on recompense transfer of state property can be concluded, to real estates designated as foreign state embassy, international Government organisations or institutions, which subject to international law, enjoy diplomatic privileges and immunities, but prior consent of the Ministry of Foreign Affairs of the SR is required

June

- Government Decree of the SR No. 151/1993 of the Collection of Laws - extends exemption to a possibility of an enterprise to set up in the Czech Republic a limited liability company and to earmark funds at 100,000 Czech crowns for the purpose

July

- Act No. 172/1993 of the Collection of Laws - the amendment provided that the statutory body, which approved the privatisation project, can change the mode of privatisation proposed in the privatisation project

October

- Act No. 278/1993 of the Collection of Laws - on administration of state property - the change related to §45 par. 5, i.e., provisions

paragraphs 1 and 2, were not applicable to the property of foreign trade companies and their special purpose organisations, as well as to budgetary and contributory organisations

December

- Act No. 17/1993 of the Collection of Laws - amends and supplements the SNR Act No. 253/1991 Of the Collection of Laws on jurisdictions of SR bodies in matters of conveying state property to other persons and on the FNM, as later amended

1994

March

- March, 1 1994 - the process of small privatisation officially completed
- The sale of 1.5 % VSŽ shares for less than half the market price approved in favour of the joint stock company Manager
- Act No. 60/1994 of the Collection of Laws - important amendment of the Act No. 92/1991 of the Collection of Laws, according to which the same procedure is adopted as in the case of property administered by SPF, but mainly in relation to the rise of the Slovak Republic in 1993 includes the change contained in the SNR Act No. 253/1991 of the Collection of Laws.
- Following President Michal Kováč address in the Parliament, vote of non-confidence for the Government of Vladimír Mečiar
- The Government of Jozef Moravčík coming into office, the intensification of privatisation process

May

- The Government Decree No. 134/1994 of the Collection of Laws, on issuing and using investment vouchers - provisions about issue and registration of voucher books, privatisation waves and rounds, procedure in ordering shares or handing over investment points to an investment fund

July

- Act No. 172/1994 of the Collection of Laws - the amendment designates the beneficiary of the net proceeds of the sale of vouchers (state budget)

August

- Act No. 244/1994 of the Collection of Laws - the amendment changes - extends the possibility to use FNM property also for the transfer of privatised property for the purposes of health, sickness and pension insurance

September

- Early parliamentary election
- Registration of nationals for the second wave of voucher privatisation

November

- November, 3-4 - first meeting of parliament following September parliamentary elections, massive personal changes in all central bodies and extensive amendments of acts, installing of absolute power and control of the ruling coalition, particularly HZDS within this, removal and new election of the FNM bodies with exclusive representation of the ruling coalition

December

- Act No. 369/1994 of the Collection of Laws - amendment of the Act No. 92/1991 of the Collection of Laws, consists in that, the decision about the privatisation through direct sale outside public tender or public auction is made by the Board of the FNM at the proposal of the Ministry or the Executive Committee of the FNM and not the Government of the SR, the amendment entailed the loss of control over the process of privatisation
- Act No. 370/94 Of the Collection of Laws, on revoking decisions of the Government of the SR pertaining to privatisation of enterprises, parts of enterprises and property interests of the state through direct sales - this act de facto revoked privatisation decisions adopted by the preceding Government
- Act No. 374/1994 of the Collection of Laws - supplementing the section on proceeds of sale of vouchers

1995

March

- Ministry of Finance SR revoked licence of PSIS - an investment company managing the largest privatisation fund from the first wave of privatisation

May

- Constitutional Court ruling on the Act 370/1994 of 21 December 1994 which revoked some decisions of Moravčík Government on privatisation. It ruled that the act was not consistent with the Constitution of the SR and that the NR SR overstepped there powers and did not have the right to revoke Government resolutions

July

- KOZ (unions) passed a negative resolution regarding the way privatisation is being applied

August
- FNM Board decided sale of a 39 % stake in a.s. Slovnaft in favour of a.s. Slovintegra

September
- Act No. 190/1995of the Collection of Laws of Statutes - amending Act No. 92/1991 Of the Collection of Laws on conditions of state property transfer to other persons - the Act virtually abolished voucher privatisation and replaced it with a kind of bond compensation, and stipulated ways for bond use. It was supposed to satisfy in some way participants of the second way of voucher privatisation
- Act No. 192/1995 of the Collection of Laws on securing strategic interests of the state in privatisation by excluding some enterprises from privatisation

December
- 20 December 1995 - Constitutional Court decided that the provisions of § 24, par. 10 of the Act No. 190/1995 of the Collection of Laws, on conditions of state property transfer to other persons, which obliges cities and communities to accept bonds in payment of part of the price for apartment transfer in personal ownership, was not consistent with the constitution
- Supreme Court ruled the decision on revoking license to PSIS by the Ministry of Finance unlawful.
- Amendment of the Act No. 304/1995 of the Collection of Laws - provisions about issuing bonds and organising trade in them

1996

January
- Prime Minister V. Mečiar stating at an economic conference that by the end of January or mid-February 1996 at the latest, privatisation of all banks except the NBS will have been completed

February
- Act No. 56/1996 of the Collection of Laws - the amendment changed "obligation" to ensure employee participation and privatisation to a "possibility". At the same time it introduces jurisdiction for MSPNM in relation to enterprises designated for liquidation

May
- FNM completed a sale of a 51 % stake in SLK, a.s., Piešťany in favour of SZPK

July
- Act No. 214/1996 - amendment of the NR SR Act No.č.192/1995 Of the Collection of Laws on securing state interests in privatisation of strategically important enterprises and joint stock companies

August
- Beginning of trading in bonds
- FNM decided direct sale of the whole non-privatised stake in Nafta Gbely for a symbolic price

October
- Government adopted a measure to preclude circumventing the minimum price of bonds - suspending direct sales without financial settlement, which until then comprised 84% of all FNM SR bond sales
- FNM SR sold a 30 % stake in JCP Štúrovo to KK Profin, s.r.o. Bojnice
- FNM SR decided a sale of a 51 % stake in a.s. Baňa Záhorie to Baňa Záhorie 1 (sale in favour of a high-ranking FNM SR official)
- FNM SR approved direct sale of NAD Trenčín in favour of v.o.s. Merkur
- Act No. 322/1996 Of the Collection of Laws - another amendment of Act No. 92/1991 Of the Collection of Laws on conditions of state property transfer to other persons, as later amended - introduces obligation to redeem FNM bonds at 31 December 1997 to bondholders reaching at October, 24 1996 the age of 70

November
- Finding of the Constitutional Court No. 352/1996 of the Collection of Laws - declared transfer of responsibilities in approving direct sales from the Government to the FNM unconstitutional

1997

January
- Vice-president of the Board and Chairman of the Executive Committee of the FNM Milan Rehák said that banks were likely to be privatised in March

February
- Opposition in co-operation with deputies for ZRS approved the amendment of the Act No. 192/1995 Of the Collection of Laws on securing state interest in privatisation of strategically important state enterprises and joint stock companies according to which, by 2003 the property interests of the state (FNM) in four largest financial institutions cannot be privatised (VÚB, SP, SLSP and IRB)

- State Secretary of the Ministry of Finance, P. Staněk, said that international institutions previously endorsing blanket privatisation of banks, reviewed their attitudes and acknowledged a need for a slower and more specific approach in case of SP and SLSP, but deemed early privatisation of VÚB and IRB necessary
- At the proposal of the Government, President of the SR M. Kováč returned approved amendment banning privatisation of key financial institutions for parliamentary debate
- Chairman of ZRS, J. Ľupták, (Deputy-chairman of the Parliament) refused murky privatisation practices and opposed again the privatisation of banks
- Constitutional Court of the SR ruled that the Government violated several provisions of the Constitution of the SR and few other laws when they adopted the Decree No. 139/1996 Of the Collection of Laws (replacing the abolished second wave of voucher privatisation with bonds)

March

- Act No. 92/1997 Of the Collection of Laws. - amendment of Act No. 192/1995 Of the Collection of Laws, on securing state interests in privatisation of strategically important state enterprises and joint stock company - NR SR repeatedly approved the amendment of the Act on privatising financial institutions, returned by President of SR M. Kováč, but withdrew from the privatisation moratorium VÚB and IRB

June

- Act No. 210/1997 Of the Collection of Laws - amendment of the Act on large privatisation according to which responsibilities for approving direct sales were given to the Government (as a consequence of the Constitutional Court finding No. 352/1996 Of the Collection of Laws on unconstitutionality of transferring this competence to FNM)
- NR SR approved the amendment of the Act on measures in the area of radio and television broadcasting, whereby privatisation of transmission circle STV was precluded

July

- At the proposal of the Government, President M. Kováč returned the amendment of the act banning privatisation of STV2 for parliamentary debate

October

- The Government declared their approval of deputy bill (ZRS), which would strengthen the inability to privatise energy enterprises by constitutional law
- October, 9 1997, Ivan Mikloš elected to the Supervisory Board of the FNM, as the only opposition representative during the 3rd Government of V. Mečiar

1998

January

- FNM SR borrowed funds in German marks to redeem bonds, at 14-15% interest although current interest rates in the world markets were under 4%

June

- Constitutional Court Finding No. 221/1998 Of the Collection of Laws - declared favouring of defined groups of persons in acquiring bonds unconstitutional

July

- Beginning of HZDS petition drive for calling referendum on non-privatisation of some strategic enterprises

August

- By increasing equity shares of Slovenská Poisťovňa by SKK 375 million, the state lost majority in SP through the FNM
- Vladimír Mečiar received petition sheets bearing 620 thousand signatures of citizens demanding the calling of a referendum on the ban of privatisation of some strategic enterprises
- First unsuccessful attempt to convene extraordinary meeting of the Parliament (NR SR) about the privatisation of SP
- Second unsuccessful attempt to convene extraordinary meeting of the NR SR about the privatisation of SP

September

- Ivan Mikloš resigning from the position of the member of the FNM Supervisory Board, the only opposition representative
- Parliamentary elections
- Referendum on non-privatisation of some strategic enterprises
- Igor Lenský, chairman of the Central Committee for Referendum, declared the referendum void

October

- The instituting meeting of the Parliament
- Coalition Government constituted of SDK, SOP, SMK, and SDĽ headed by Mikuláš Dzurinda

November

- Act No. 364/1998 of the Collection of Laws - amended Act No. 192/1995 Of the Collection of Laws on securing state interests in privatisation of strategically important enterprises and joint stock companies, included VÚB among non-privatised enterprises and abolished Article 1 of the Act 211/1997 of the Collection of Laws on revitalisation of enterprises

December

- Possibility to exchange bonds for shares in enterprises in which FNM has property interests, announced by the FNM President Kaník. In his view the FNM will offer also shares of some strategic enterprises in exchange for bonds
- Existential problems of VSŽ, at the Government intervention change to the management of VSŽ. and action preventing the company's bankruptcy
- The Chairman of the Executive Committee Ladislav Sklenár of the FNM making a statement, that in case law is contravened or conditions of contract unfilled or instalments failed, the privatisation assets can be transferred back in the FNM ownership

1999

March

- An agreement concluded between the FNM SR and the owner of Nafta Gbely shares on returning shares in the FNM holding

June

- Despite the agreement on returning the shares of Nafta Gbely in the FNM ownership, sale of shares by the original owner to a new owner - beginning of a new "Nafta" scandal
- Prime Minister Dzurinda accusing statutory officials of the FNM of negligence of duties
- Government submitting a motion in the NR SR to recall Ľudovít Kaník from the position of President and Ladislav Sklenár from the position of Vice-president of the FNM

July

- FNM - pulling out of some contracts of assets privatisation

September

- Act No. 253/1999 Of the Collection of Laws – amending Act No. 92/1991 Of the Collection of Laws - listing enterprises having the nature of natural monopolies and stipulating that their privatisation will be decided always by the Government after receiving advise of the NR SR, defines a list of enterprises where permanent state interest of 51 % must be retained

October

- NR SR recalling Ľudovít Kaník and Ladislav Sklenár from their positions of President and Vice-president in the FNM

November

- The ruling coalition unable to come to an agreement on personal appointments to the positions of President and Vice-president of the FNM
- Ministry of Transport, Post and Telecommunications of the SR published a classified advertisement declaring interest to sell a 51% stake in Slovenské Telekomunikácie, a.s. Bratislava to a strategic investor
- Prime Ministers of the Slovak and Czech Republics signing their zero variant of distributing former federal assets

Appendix 3: Privatisation-statements

Dagmar Liďáková

Oto Šik: "Obstacles to the reform are mainly in the people's mindset and old structures."
(HN No. 6, January, 9 1990)

M. Tuček, Investiční Banka: "Before the denationalisation, we will need to resolve the problem of real appraisal and indebtedness of enterprises".
(HN No. 16, April, 20 1991)

Mr. Šulc: "Small enterprises should be privatised quickly, but large units should first be denationalised and then slowly privatised".
(HN No.18, May, 4 1990)

J. Palán, VSŽ: "Employee shares and selected form of sale of shares (not free market) should prevail in the process of privatisation."
(HN No. 27, July, 3 1990)

Karel Kouba, Institute of Prognosis, Czecho-Slovak Academy of Sciences: "We need to collect first experience and after evaluating it comprehensively, to speed up privatisation."
(HN No. 30, July, 25 1990)

M. Zelený, School of Economics and New York: "Employee shares will be a good motivation; and anyway, everything that has some value in this state is partly the property of workers as compensation for low wages and standard of living and destroyed environment of the past."
(HN No. 33, August, 15 1990)

V. Válek, MF ČSFR: "In privatisation classical methods will not be sufficient, else it would take more than 100 years. To scare people by notions of economic sell out or swallowing is silly, and as for exporting part of profits, the question is if there would be any profit at all without the foreign know-how".
(HN No. 34, August, 22 1990)

L. Andrášik, chairman of the Slovak Economic Society, Slovak Academy of Sciences: "Everyone has to be an owner and appropriator, that is not quite possible through vouchers, if they get distributed free, merits of the past in creating the wealth itself will be blurred."
(HN No. 5, January, 7 1991)

R. Filkus: "Privatisation will lead to new relations between supply and demand and to reducing unemployment, this can only happen through foreign capital, which definitely requires internal stability".
(HN No. 14, January, 17 1991)

M. Borgula, Federal Assembly Deputy for the Party of Slovak Democratic Left "Through privatisation the Government want to create a class of rich people that will elect them".
(HN No. 46, February, 23 1991)

F. Levcik, Vienna, "ČSFR, a testing territory for monetarists to sell abroad at any cost even below price, this is relative though, in the view of foreign investor' s contribution, but a common employee does not mind who pays his wages..."
"Even if, after privatisation, the ownership will be rather fragmented, eventually there will be concentration."(HN No. 66, March, 19 1991)

G. Eichler, Bank of America, "The state cannot take away hands from the companies and leave them to their fate, for the time being, it must take care of them, in order that it could sell them in the future at best possible price, which will only be achieved if they function well, this transition period should not take more than 5 years."
(HN No. 143, June, 20 1991)

G. Lesyk, advisor of the Ministry of Finance: "A privatisation project should contain how many percent the employees, the state, the foreign investor will get and how much will go to the voucher privatisation, if employees want to participate in privatisation, they have to submit a competitive privatisation project and if they win, they will be deciding about the company's fate.
(HN No. 6, October, 7 1991)

V. Komárek, Institute of Prognosis, Czechoslovak Academy of Sciences: "To halt the National Property disappearing we need to review privatisation that is irresponsible to the current and particularly the future generations. "
(HN No. 12, October, 14 1991)

Roman Hofbauer, Minister of Transport, Communications and Public Works of the SR: "Nothing is worse than this protraction because then a kind of pre-privatisation agony arises when the enterprises are aware they will not be state-owned anymore but are still not private".
(Republika, August, 19 1993)

Július Tóth, Minister of Finance of the SR: "I see the fundamental problem in whether that who won with his privatisation project will get credit from a commercial bank, or whether it will be somebody selected by the banks."
(Slovenský východ, August, 23 1993)

Dušan Slobodník, Minister of Culture of the SR: "Privatisation is possible but in a way where the state would retain the so-called golden share, the right of veto in potential decisions. It is a national cultural obligation."
(Mladá Fronta Dnes, August, 23 1993)

Vadim Haraj, director of the section of privatisation and business forms, MP SR: "The scarcity of free capital resources in many cases entails interest to privatise only selected - lucrative - parts of assets."
(Roľnícke noviny, October, 22 1993)

Ivan Lexa: "I do not believe that anybody could throw doubt, on the substantive grounds, on the privatisation under the Government of V. Mečiar. We were those who have applied in practice the idea of privatisation on the basis of broad involvement of employee collectives."
(Pravda, March, 16 1994)

Ivan Lexa: "I do not identify myself with the Government that is coming into office because they do not dare to name but the Government of broad corruption. With the exception of privatisation in the fashion - here a small factory to you, there a small factory to you… they are not capable of agreeing on anything constructive, for obvious objective reasons."
(Republika, March, 17 1994)

Milan Janičina, Minister for Administration and Privatisation of National Property of the SR: "I do not believe that the common citizen was at the core of V. Mečiar Government interest, when they were selling below price to their party colleagues over the course of recent weeks."

"The Mečiar Government conceived privatisation in a fashion that only what could not be sold will be included for voucher privatisation."
(Hlas Ľudu, June, 7 1994)

Peter Magvaši, Minister of Economy of the SR: "If the inflow of capital did not make trade more dynamic, if privatisation did not make it more dynamic, those would be things comprising and end in itself."
(Pravda – Finančné spravodajstvo, June, 29 1994)

Ivan Lexa: "Whoever will own banks and financial institutions will decide about future privatisation actors, give or refuse to give money, and decide about the existential issues of the SR". "Our concept of broad participation of employee collectives still holds - in standard methods, nobody has come up with any better. They only made up a figure - first 100, then 88 billion - which they promised to put in a massive, poorly thought out voucher privatisation at such and such date."
(Práca, August, 18 1994)

Štefan Gavorník, President of the Board of the FNM SR: "We as the FNM are very much interested in voucher privatisation because the proceeds of it are not revenue of the FNM, therefore the more assets will go in voucher privatisation the less revenues will go to the FNM, the less benefit it will have of it."
(Práca, January, 17 1995)

Ján Ducký, Minister of Economy of the SR: "My objections to investment funds are of different kind. What I maintain is they get property very cheaply, almost free, and I cannot see their contribution to the prosperity of companies."
(Národná obroda, January 21 1995)

Milan Janičina: "I am not going to defend funds, I am not their advocate. But on the other hand, I would like to point to the present ruling power has used the money people invested in voucher privatisation, they have them somewhere deposited and are gaining interest on them."
(SME, February, 21 1995)

Peter Bisák, Minister for Administration and Privatisation of National Property of the SR: "In my opinion the speed of privatisation should

correspond to the objective that should be achieved through privatisation."
(Profit, March, 14 1995)

Peter Magvaši: "I am principally against exclusive orientation of ownership of Slovak enterprises only in the hands of domestic business circles. Foreign investment can be a significant source of consolidating our companies after privatisation."
(Národná Obroda, April, 24 1995)

Ján Ducký, Minister of Economy of the SR: "It is better to sell any group of entrepreneurs, management, or employees a share of nominal value of SKK 1,000 for SKK 200, than to sell it to those interested abroad, about whom we know they would be willing to pay SKK 1,000 but then they would close the company and get the market."

"For those companies that are privatised in the second wave I recommended selling them always with a part of shares remaining in the FNM SR. In case of Košice VSŽ, where the FNM sold all shares, we will seek a way how to overcome it."
(Pravda, August, 24 1995)

Tomáš Cingeľ, member of the Commission for Supervision over Privatisation: "The state should be grateful if it can hand over a particular enterprise, provided the new owner is willing to take care of the given enterprise and its employees."

"Not all enterprises privatised can be sold in this way with profit. I spoke about those who are really in all kinds of problems, and there is a chance that the buyer will be able to stand on his feet again - I would not hesitate and sell for one crown."
(Národná Obroda, October, 27 1995)

Ľudovít Černák, Deputy-chairman of the Democratic Union: "The nation actually timidly accepted that instead of several thousand crowns they are getting a paper which is not covered by anything, and is of considerably lower value, and they are ready to sell it for a real two - three thousand in order to get money "on the table". It is an attitude of a Slovak waiting for thousand years in the hall, clutching his little hat in his hands, waiting what the nobility will throw his way. „
(Práca, November, 5 1996)

Mikuláš Dzurinda, deputy chairman of the Christian Democratic Party: "The statement by Vladimír Mečiar is in a way a milestone because it fully justifies our concerns we had expressed in June last year when he announced he was preparing something different and better than the voucher privatisation. I was then talking about a Government scam because it was clear to me that the FNM was never going to have that much money to fulfil his promises. " (reaction to the statement by V. Mečiar: If the FNM does not have so much money, there is Government as guarantor that will reach out for the state budget.")

"An interesting thing, and to some extent also a piquancy, consists in that the ruling power attempts to solve one scam with another. The first one is the bond compensation itself, which is nothing and will come to nothing. The other is represented by the promise of the Prime Minister that if the FNM SR is unable to pay out money, then the Government will do it. "

"I am afraid that even the act on strategic interests of the state is not sufficient guarantee to prevent the ruling power from handing out free even the most valuable things we still have in Slovakia. "

"I do not claim that the voucher method is the best there is in the world. But I do claim it is still most equitable for citizens. It could be made better, so that the citizen would not fall pray to some swindlers in an investment privatisation fund, much could have been done to prevent rubbish being included in the property."
(Práca, August, 22 1996)

Vladimír Mečiar: "There is no protection of citizens deposits in the Slovak banks, not even in those where the state has still a dominant share."
(Slovak radio, February, 5 1996)

Štefan Gavorník, President of the Board of the FNM SR: "Banks have to be privatised, but so far, we do not know how. "
(Pravda, February, 15 1996)

Ľubomír Javorský, Minister of Health of the SR: "Privatisation is a very sensitive process. We have found out that even if we gave a pharmacy, to a pharmacist, some would turn it back in a short time explaining they could not get a credit."
"Today privatisation of pharmacies is criticised by those who, within two years time, were unable

to even put papers together to at least apply for privatisatiion."
(Pravda, January, 5 1996)

Štefan Gavorník, President of the Board of the FNM : "The Minister of Finance called me a dead bug last June because of the insurance company, and I called him a bug very much alive, and how about today? He is already dead too."

"In my opinion, as if the whole project of privatisation of banks lacked an honest intention."
(Pravda, January, 29 1997)

Štefan Gavorník, FNM SR: "To seek justice in privatisation is not possible, it does not contain such condition. Let us not be mistaken, privatisation served the purpose of enforcing power."

"Here an opposite route was taken: privatisation was fast - we even praised that - and currants have been selected from the cake, so that it would generate profit immediately. Now it is too late to cry."
(Pravda, February, 1 1997)

Štefan Gavorník, FNM SR: "If banks got straight in private hands, but not in a fashion where somebody is curing his sore, but if they got privatised in a serious way, they would not be today in the mess".
(Pravda, 19 December 1997)

V. Mečiar, Prime Minister of SR: "Finishing privatisation, not privatisation of financial institutions, is a matter of expertise. It is bad when a political impression distorts a Specialist relation. If we say that banks are not to be privatised, we need to say also how to change the situation existing in the banks and how to fully maintain perspective of their development."

"I take the signal not to privatise banks until 2003 as halting capital movements in these financial institutions and directly eroding the competitive environment in internal and international markets."
(Národná Obroda, March, 1 1997)

Peter Stanek, State Secretary of the MF SR: "We can call privatisation in countries of Eastern and Central Europe without any scruples a Klondike of 2Oth century, theft and sell out of all the riches these nations have created over decades by grudging, getting low wages or salaries and working for the future."

"Unfortunately, they have created quite a few representatives of empires that laugh at us and brag how they acquired it all through "honest work"."
(Práca, April, 2 1997)

Ivan Mikloš: "Most reasons of insufficient success of the voucher privatisation from the aspect of forming efficient ownership relations, developing capital market, etc. consist not in the voucher privatisation itself but in the failure to tackle the processes after it has finished."
(Profit, March, 3 1998)

Ivan Mikloš: "That means that if Mečiar today claims what he claims the slogan holds: a thief yells, catch a thief!"
(Nový Čas, May, 16 1998)

Jozef Kollár, Deputy-chairman of the Board of Directors of Ľudová Banka Bratislava: "Consolidation of banks is only a prior preparation for the target phase, which should be privatisation. Only through privatisation economy will get new capital and in case of banks those will be successfully consolidated."

"Nobody on the Slovak market has sufficient capital to privatise two largest banking institutions. I see the entry of a foreign investor as a must."
(SITA , November, 18 1998)

Štefan Gavorník, FNM SR: "It was stupid to pass property to others, who have turned out to be villains and "tunnelers" of enterprises into the bargain, only not to those of the one's cloth. It is a principal duty of each party to reckon with a possibility that in the next election term they might not make it to the parliament and take care of their deputies, functionaries, activists. Save us God if ZRS loses election and will have to move to the trenches. Then it will probably fall apart once for all."
(Pravda, July, 30 1998)

Ivan Mikloš: "The published data confirm that many representatives of the ruling coalition that cannot privatised because of conflict of interest, do so through relatives and other dummies."
(Národná Obroda, June, 17 1998)

Ivan Mikloš: "It turned out that the negative side of the voucher privatisation were some funds and investment companies abusing their position. It

happened that funds had been ransacked, they pushed insufficiently restructuring of companies."
(Nový čas, May, 16 1998)

"The process of distributing shares of companies through voucher privatisation is a method hard to beat - as to speed, transparency and the reduction of scope for favouritism, corruption and subjectivism, as well as from the aspect of massive participation in privatisation ."
(Profit, March, 3 1998)

V. Mečiar: "Privatisation in Slovakia is basically coming to an end, further development takes the route of investing in technologies. Foreign investments are one of the conditions for restructuring and we have plenty of bids. We are in a situation where the supply essentially meets the needs of Slovakia. They come from all over the world."
(Trend, May, 6 1998)

Jaroslav Volf, chairman of NR SR Committee for Economy, Enterprise and Privatisation: "The register of privatised assets has got on the election agenda, because there was social order for it, people rightly wanted to get to know privatisation actors and owners. I had warned then that it would not be that easy to make such a register and publish it. It encounters not only legal problems but it is also difficult to fulfil it physically."

"Almost the entire privatisation ran through direct sales to a pre-designated bidders without anybody else knowing about it, or applying for it, and now also as an unsatisfied bidder to complain about it."
(Práca, April, 19 1999)

Peter Mihók, chairman of the Slovak Chamber of Trade and Industry: "It finally surfaces that even if we declare an objective to keep property in Slovak hands, the so called domestic capital-generating class would currently very much like to get rid of the acquired property."
(Pravda, September, 28 1999)

REGISTER OF TABLES AND FIGURES

LIST OF ABBREVIATIONS:

BCPB – Bratislava Stock-Exchange *[Burza cenných papierov Bratislava]*
ČSFR – Czechoslovak Federative Republic *[Česko-slovenská Federatívna Republika]*
FZ ČSFR – Federal Assembly of ČSFR *[Federálne Zhromaždenie ČSFR]*
FMF – Federal Ministry of Finance *[Federálne ministerstvo financií]*
FNM – National Property Fund *[Fond národného majetku]*
HZDS – Movement for a Democratic Slovakia *[Hnutie za Demokratické Slovensko]*
KB – Consolidation Bank *[Konsolidačná Banka]*
KČS – Czechoslovak Crown *[Koruna československá]*
KDH – Christian Democratic Movement *[Kresťansko Demokratické Hnutie]*
MSPNM SR – Ministry of Administration and Privatisation of National Property of SR *[Ministerstvo pre správu a privatizáciu národného majetku SR]*
MF SR – Ministry of Finance of SR *[Ministerstvo financií SR]*
MTZ – Material technical base *[materiálno technická základňa]*
NR SR – National Council of SR *[Národná rada SR]*
NCHZ – Chemical Enterprise Novaky *[Novácke chemické závody]*
OIV – Owners of Investment Vouchers *[majitelia investičných kupónov]*
RIF – Restitution Investment Fund *[Reštitučný investičný fond]*
SB – *State Budget*
SCP – *[Slovenské Celulózky a Papierne]*, Ružomberok – (cellulose and paper producer)
SCPB – Bratislava Securities Center *[Stredisko cenných papierov Bratislava]*
SDK – Slovak Democratic Coalition *[Slovenská Demokratická Koalícia]*
SDĽ - Party of Democratic Left *[Strana Demokratickej Ľavice]*
SDSS – Social Democratic Party of Slovakia *[Sociálno-Demokratická Strana Slovenska]*
SKK – Slovak Crown *[Slovenská koruna]*
SMK – Party of Hungarian Coalition *[Strana Maďarskej Koalície]*
SPF – Slovak Lands Fund *[Slovenský pozemkový fond]*
SP – Slovak Post *[Slovenská Pošta]*
SPP – Slovak Gas Industry *[Slovenský plynárenský priemysel]*
SR – Slovak Republic *[Slovenská republika]*
SSE – Central Slovak Energy Utilities *[Stredoslovenské energetické závody]*
ST – Slovak Telecom *[Slovenské telekomunikácie]*
SVP – Slovak Water-management Enterprise *[Slovenský vodohospodársky podnik]*
VSE – Eastern Slovak Energy Utilities *[Východoslovenské energetické závody]*
VP – Voucher Privatisation *[Kupónová privatizácia]*
ZRS – Workers Association of Slovakia *[Združenie Robotníkov Slovenska]*
ZSE – Western Slovak Energy Utility Station *[Západoslovenské energetické závody]*
ZSNP – aluminum producer *[Závody Slovenského národného povstania]* - (aluminum producer)
ZŤS – Heavy Machinery Assembly Enterprise [Závody Ťažkého Strojárstva]
ŽSR – Slovak Railways *[Železnice SR]*
ÚS – Constitutional Court *[Ústavný súd]*

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from common to private

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