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Concretization of the further course in the process of privatisation in the Slovak Republic

The "Concept of the Continuing Process of Privatisation" was derived from the objectives and principles of the Programme Declaration. According to this concept the basic features of further privatisation involve, in particular, the following:

(a) Emphasis on the material side of the privatisation concept under conditions of the establishing sectors, mainly targeted on the:

- Determination of enterprises where the Fund of National Property of the Slovak Republic (FNP SR) will be permanently participating, as a means of enforcement of strategic intentions of the SR Government, along with limitation of the amount of such participation and its substantiation,
- Determination of enterprises with temporary FNP SR participation, limitation of its amount and substantiation,
- Proposal of the future arrangement of privatised enterprises, emphasising creation of a competitive environment,
- Purposeful orientation of foreign capital, specify the enterprises and cases where the entry of foreign capital is welcomed,
- Elimination of enterprises under acute threat of bankruptcy from the privatisation process,

(b) Preference given to standard methods of privatisation, stressing the method of sales in public contests,

(c) Consideration of the coupon privatisation as a residual method which should, taking the disproportion between the scope of privatised assets and the range of available financial means into account, remain in implementation but will not subordinate the entire process of privatisation,

(d) Support to development of home entrepreneurial subjects, emphasis on the decrease of the capital threshold and at the same time the means saved on this way will be used for further development of acquired enterprise. At the same time by evaluating the advantages of the sale the rule of equivalence of the criteria of the practice and of guaranty of the investment and employment will be maintained,

(e) Support given to the development of indigenous business subjects by enabling payment in installments under favourable conditions.

Privatisation projects of the second wave of privatisation started to be presented at the Ministry of Privatisation and National Property Administration of the Slovak Republic (MPNPA SR) in December 1992. Until June 1992 privatisation projects of 261 enterprises were presented at MPNPA SR, while from this total 198 enterprises are of the Ministry of Economy of the Slovak Republic.

A special, particularly discussed as well as emphasised problem, is the evaluation of the property of these enterprises in the process of large privatisation, first of all in the case of direct sales to an owner selected in advance.

The Ruling of the Ministry of Finance of the Slovak Republic requires at direct sales to an owner selected in advance that the market valuation should be made by a subject included in the List of Institutes and Other Workplaces Qualified for Expertises. Since it has been suspected that several organisations making expertises undervalued the property of privatised enterprises and also some doubts arise in connection with the action of MPNPA SR at negotiating purchase prices at direct sales, recently a trend to realise every sale of the privatised property at public tenders has been enforced where no expertise for market valuation is required because the purchase price is being generated by public bids.

Practical realisation of these principles and criteria is linked to several open questions of conceptual, factual and legislative nature, particularly:

- (1) Methods used to create the entrepreneurial layer in the privatisation process,
- (2) Possibilities and means of privatisation in enterprises with major property values,
- (3) Range of utilisation of the coupon privatisation, stressing the need to secure optimum volumes of assets for the second coupon wave, definition of its implementation principles and expected time horizon of its commencement,
- (4) Participation of employees of privatised enterprises in the process of privatisation,
- (5) Determination of principles applied to the direct sales to owners defined in advance as a privatisation method,
- (6) Definition of the permanent participation of the FNA SR in privatised enterprises, enabling enforcement of strategic intents of the Government, and determination of the mode of administration of such participation,
- (7) Orientation of foreign capital in the privatisation process,
- (8) Problems of credits for the privatisation and the offer of credits for buying the privatised assets,
- (9) Amendment of the 92:1991 (Digest) law on conditions of transfer of state property to others (as amended by later legislation) and determination of its principles,

Methods of creation of a entrepreneur stratum

In conjunction with this principle one of the fundamental targets of privatisation in Slovakia was the proclaimed reduction of the capital threshold, particularly for domestic investors, under the concept that means thus saved could be utilised for development purposes by investors.

When selling the privatised assets to domestic entrepreneurs, the principle is that the priority of forming and encouraging effective and active domestic entrepreneurs takes precedence over the amount of money which can be obtained by selling the assets. The purpose of this process is to assist in the establishment of a stratum of business individuals from among the indigenous population and also legal entities with a lack of the necessary capital, on the understanding that the price of the privatised property will be paid from sources generated in the future.

It will apply to the majority of enterprises in agriculture, manufacturing, transport and services included in the list of enterprises qualified for privatisation with the exception of the following enterprises:

- those important from the point of view of strategic interests of the state,
- in which massive investments are needed and thus foreign capital participation is necessary,
- which in view of the large extent of privatised property are neither suitable nor typical for creating domestic enterprising stratum.

The course of action at selection of the privatisation method with a larger property extent

At the privatisation with a large property extent the following rules will be applied:

- a) if in the presented privatisation projects direct sale is recommended with the participation of an investor who can provide capital as well as other preconditions for ensuring the development of the enterprise and it is evident that the probability of obtaining a comparable offer at public tenders is very small, it is advisable to realise this method of privatisation instead of sticking to public tenders.

The interest of investors in these enterprises is as a rule conditioned by valuation of the privatised property at a substantially lower level than their accounting value.

This in principle should not prevent from the recommended method of privatisation if the supply of capital and know-how for the enterprise can be credibly proved and ensured by contracting and if the problems of its restructuring and prosperity can be solved.

Then the privatisation can be accomplished in such a way that

- the potential investor purchases for a negotiated price the whole property of the enterprise or a part of it and at the same time he takes the obligation to invest more capital, or
- the potential investor establishes in co-operation with the Fund of National Property of the Slovak Republic (FNP SR) a business association while FNP SR invests in this association the property of the enterprise and the selected investor makes his investment in the form of money, technology and know-how. The property participation of FNP SR in enterprising of this business association will be privatised by selling shares in market or through coupon privatisation.

Coupon privatisation and principles for its application in the second wave of privatisation

The application of coupon privatisation will be used in the further process of privatisation and oriented first of all to larger enterprises with larger property where it is natural to transform them to joint stock companies as a legal form of existence of the enterprising subject. However, in coupon privatisation in general only a part of shares will be offered. The part of shares for coupon privatisation will be determined individually and subordinated for reserving such a part of shares for sale through standard methods which is sufficiently large for winning a concrete investor.

According to the results of negotiations between MPNPA SR and the Centre for Coupon Privatisation of the Slovak Republic the volume of property for the second wave of privatisation should not be smaller than 50 bil. Sk. Approximately 70 bil. Sk is considered to be the optimum volume.

In view of previous experiences and knowledge gained at valuation and realisation of privatisation projects the principle is accepted to include in coupon privatisation enterprises with property exceeding 250 mil. Sk. However, this limit will not be strictly adhered to in order to provide some freedom in substantiated cases.

The participation of employees of privatised enterprises in privatisation including the possibility to apply the right of pre-emption in favour of so called staff shares of joint stock companies

The staff of privatised enterprises (including the management) can participate in its privatisation in three basic ways:

- a) by issuing staff shares,
- b) by selling the enterprise (or a part of it) or shares which are the property of FNP SR to the employees of the enterprise or to employees of the joint stock company or some other form of business association established by the employees of the enterprise through contracts,
- c) by obtaining the shares of the privatised enterprise by employees of the enterprise through coupon privatisation. While the first and the third way can be used only in

cases when the privatised enterprise is being transformed into a joint stock company, the second way is considered mostly also at other forms of privatisation.

The position of direct sale to an owner selected in advance as a method of privatisation in the further course of privatisation

MPNPA SR intends to prefer direct sales of property to an owner selected in advance instead of selling it at public tenders first of all in these cases:

- if it is a small enterprise with property generally amounting to 50 mil. Sk,
- if for the enterprise only one (basic) privatisation project was presented and also later no interest was showed at MPNPA SR in purchasing the enterprise (or a part of it) which proves that it is not very attractive,
- if the suggested conditions of sales are convincing and there is no great probability that at public tenders better conditions for sale will be created,
- if sale of the enterprise is offered to foreign investor under conditions under which problems of restructuring and the future prosperity of the enterprise are being solved fundamentally,
- if a part of the property of the enterprise is being sold to a person who received the main part of property through restitution, or if it is sold to a firm whose partner is the above-mentioned person,
- if there is a mass participation of employees in privatisation of the enterprise while the purchase price, payments and other conditions of selling are comparable with those in competing privatisation projects and are satisfactorily convincing in order to exclude the possibility of public tenders.

At recommending direct sales the standpoint of the establisher of the enterprise as well as that of the Antimonopolistic Office of the Slovak Republic will be taken into account. Direct sales to an owner selected in advance will not be recommended in the case of an attractive property when great interest of investors can be anticipated deduced from presented competing privatisation projects as well as interests in purchase of the privatised property which occur later.

Permanent participation of FNP SR in privatised enterprises in order to enforce strategic intentions of the state and the regime of administration of this participation

For strategic reasons as well as in the interests of a balanced and stable development of society it is inevitable that a certain part of social production should be directly governed by the state. Such strategic interests of the state are natural world-wide and they are generally oriented to transport and power infrastructure of the country, in a differentiated degree to the educational system, health services, culture as well as some selected industrial sectors which in a significant degree influence the economic and political stability of the country.

Orientation of foreign capital in the process of privatisation

Entering of foreign capital in the process of privatisation is as a rule accomplished in two accessible ways:

- through direct entering of foreign enterprising subjects from their own initiative or on the basis of results of the acquisition process or

- on the basis of personal contacts of domestic entrepreneurs alternatively or by obtaining credit from foreign financial institutions or by establishing business associations with foreign capital participation while the partners from abroad will ensure foreign credit and further credits for the development of privatised enterprises on the basis of their commercial image and their property guarantees.

Experiences have showed that for entering of foreign investors the following categories of enterprises could be specified:

- a) enterprises which can be lucratively sold abroad. Their sale does not impair strategic interests of the state and it is not necessary to create a domestic enterprising stratum by selling them (breweries, distilleries, enterprises in the sector of commerce and tourism). At selling these enterprises the criterion of price stressing payment in foreign currency should be preferred. Through sales of these enterprises abroad for lucrative prices the foreign exchange reserves of the National Bank of Slovakia can be strengthened and the incomes for FNP SR can be used later (under commercial conditions) for restructuring of other enterprises,
- b) large enterprises with high requirements for productive, technical, technological and marketing restructuring which exceed their internal resources, credit sources of domestic financial institutions as well as personal contacts and the governing know-how of the domestic management or other domestic enterprising subjects. Investments for restructuring represent the key condition for further existence of the enterprise. In these cases foreign capital is inevitable and it is necessary to stimulate it purposefully. The principle must be enforced that the recommended purchase price as the criterion of assessment of advantageousness of entering of foreign capital is equal or subordinated to criteria of other investments, employment and admitting of enterprises to foreign markets. In this connection it should be emphasised that entering of foreign investors in such enterprises in general does not occur through public tenders but through active seeking out and after negotiating the price and other conditions of sale as a direct sale to an owner selected in advance who is submitted for approval to the Government of the Slovak Republic.

Problems of ensuring credits for the process of privatisation and obtaining credits for purchase of privatised property

Ensuring credits for the process of privatisation and related problems of obtaining credits for purchase of privatised property are becoming the key question in application of standard methods and development of the domestic enterprising stratum.

Credit sources of commercial banks exhausted also as a consequence of small privatisation and accomplished sales in the first wave of large privatisation (approximately 19 - 20 bil. Sk) are limited to a considerable degree.

FNP SR seeking for the settlement of this situation concluded agreements with the National Bank of Slovakia and the National Bank of Slovakia subsequently with commercial banks on ensuring credits for the process of privatisation in the form of bills of exchange amounting to the maximum of 15 % of the purchase price (bill of exchange regime).

In view of certain complications at the application of this regime as well as its disadvantageousness for FNP SR, FNP SR concluded agreements directly with individual commercial banks on providing credit for privatisation under the condition that monetary means for reimbursement of purchase prices of the privatised property will be deposited in commercial banks on fixed time-limit accounts to the benefit of FNP SR and can be drawn in accordance with instalment plans of purchasers. The use

of this form of providing credit for the process of privatisation is conditioned by the requirement that the purchaser is a national and that credit is granted for the whole purchasing price. •

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