

Jutarnji list – From Todorčić's fall to Saif Alketbi's arrival: what has happened behind the scenes in Croatia's largest company

12 Nov 2022

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Over the last few weeks – since we learnt that the plan of four Croatian pension funds to acquire the share of Russia's Sberbank in Fortenova failed – the most frequently used terms to describe the situation in the country's largest business system were “business thriller” or “exciting business thriller”. This is not by accident. The use of the term “thriller” quite well describes the tension, as well as the confrontation of different interests, both personal and international. This is why – for the sake of seeing the bigger picture, as well as for the sake of mental hygiene – one should get back to the already too lightly forgotten period when Agrokor collapsed.

At that time the Hollywood meaning of the word “thriller” was to mild to describe what was going on. Back then the proper words to be used in media reports were “business drama” or something even stronger. Agrokor was feeding 60,000 mouths in the region then and its suppliers had 150,000 employees or 10 per cent of the total workforce in Croatia on payroll. Hovering above all of their heads was the sword of EUR 7.8 billion of Agrokor's debt, or a huge 15 percent of Croatia's GDP.

The story that in Germany this would mean that more than 1.2 million jobs were jeopardized (worse than if VW or the largest employer in Germany failed) and in Japan 1.8 million jobs (five times more than the number of people employed by Japan's largest employer, Toyota) has been told more than once so far. If we considered the possible overall impact on affected suppliers in Germany, we would be talking about 4.5 million jeopardized jobs. In Japan this would be 6.7 million.

This seems vertiginously worrisome to you, does it? Even more surreal are the financial parallels of the collapse of **Todorčić's** imperium under the load of the 7.8 billion debt; In Germany 15 percent of the GDP amounts to EUR 450 billion, and the horrible tsunami of 2011 cost Japan “only” 5 percent of the national GDP. Pardon my French, but prior to the activation of lex Agrokor Croatia had found itself in some shit of epic proportions caused by the private business of one man. There are no better words for that. Wallowing together in that shit were managers, politicians, creditors, bill-of-exchange holders, bondholders and employees and the Croatian tax payers were in fear as well.

This was a time when the Agrokor business system was in the spotlights of all local media, which were turned off after only a year or two because the introduction of the Extraordinary Administration Procedure prevented Agrokor's production and supply from being discontinued; the salaries continued to be disbursed, the blockades of around 15 Agrokor companies that had exceeded HRK 3 billion were being resolved, Konzum was drawn out of the bankruptcy procedure that had been initiated... But even then this did not mean that after only a year or two of the Extraordinary Administration and the transformation of Agrokor into Fortenova all the great excitement stopped. The managers in that system still had to count on heart attack being a realistic professional risk.

A continuous international high-tension business thriller has still been going on at Fortenova since 2019 and has to a significant part passed under the business radar. If you happen to be

following the overall commotion after the withdrawal of the Croatian pension funds from purchasing Sberbank's share, this is as if you had only watched the last episode of a long saga with dozens of major business battles that have predestined the history of Croatian business. And in order to understand Fortenova's current moment it is key to understand the processes in at least, let's put it that way, the last 30-ish monthly episodes of that movie-worthy business thriller.

So let's concentrate on what was going on behind Fortenova's corporate scenes over the last two or three years, i.e. primarily since Agrokor has been living under the name of Fortenova. This is somehow the period when everyone has thought that Agrokor was saved, and hence we underestimated and have not that closely followed the business excitement and the high level of stress that Fortenova's management has continuously been exposed to.

Once the Extraordinary Administration had managed to raise earnings (EBITDA) in 2018 against the last data from 2016 by 33 percent and reduce the company's overall debt by 76 percent (from 7.8 billion to 1.3 billion), the rescue and stabilization of the system have become likely, but its manageability still seemed questionable. Too many questions continued to seem too complicated or even insoluble.

After **Fabris Peruško** had become Extraordinary Commissioner and the settlement was closed among the creditors, a lot of important things were sorted out, but the company could by no means be considered to have found its way. For example, 80 percent of the creditors signed the Settlement Plan (including Sberbank), which can as well be interpreted as that 20 percent of them did not. Disputes won in Switzerland and the initiation of bankruptcy proceedings before the court in New York laid the foundation for further comprehensive legal actions following the Settlement Plan.

Peruško therefore faced a number a challenges in the new company, Fortenova, none of which seemed easily surmountable. The company still had a creditor structure that needed to be consolidated, and on the other hand it did not have the ownership structure that would have enabled a meaningful management, i.e. making decisions without being blocked by minority interests. And maybe the most important thing of all; although it was clear that the rescue of the largest business system was in sight, the company was still overindebted. The debt and ownership structure and the over-indebtedness were a nightmare combination for any manager, and only the most experienced ones know how many working hours and how much perseverance and strong will it takes to untangle those issues in systems much smaller than Fortenova.

Fortenova's ownership structure arose from the claims against former Agrokor. After the Settlement Plan Peruško found himself in a situation where Sberbank held a share of 39.8 percent, other bondholders 25.3 percent and the second Russian bank – VTB – held another 7.6 percent; smaller shares were held by OTP and Zagrebačka banka and a large 21.4 percent were dispersed among everyone else. If you take into account that both Sberbank and VTB are huge Russian financial institutions, some might wonder where the problem was, but one should bear in mind that the fact that they were "Russian" has over time not meant that their interests were the same, much less identical.

One of the challenging and sensitive business operations that Peruško had to engage in over that period with regards to the ownership consolidation of Fortenova was the search for a strong (domestic) entrepreneurial name that would enable him, by redeeming small creditors' claims, to consolidate the dispersed 21.4 percent of the ownership structure. This was not easy. Some of Croatia's big business systems did not even take part the settlement or have since the beginning been against the processes run by the Extraordinary Administration.

Commanding attention among that group was large Agram's name, but that problem was solved and at the end of the day an agreement was signed with Dubravko Grgić's insurance giant for the sale-purchase of the Cibona tower. It is also well known that the leader of powerful Adris, Ante Vlahović, has not entered Agrokor's Settlement Plan, nor was he inclined to accept Peruško's later offers to take part in the company's ownership consolidation.

In the persistent pursuit to find someone who would help him make the company manageable in terms of ownership, after several attempts Peruško came to the large Croatian gas magnate, **Pavao Vujnovac**, who proved willing to spend time and money to redeem the shares bit by bit. The initial idea was that Vujnovac would provide stability by acquiring several percent of ownership shares, but so far his share has already reached close to 30 percent. The appearance of a significant Croatian player in Fortenova's ownership structure has not only stabilized the possibility of managing the company and making key strategic decisions, but has also radically changed the balance of power. The Russians only realized that there was "a new kid on the block" which was rapidly growing when Vujnovac already held around ten percent of shares.

Another key battle in the ownership consolidation that Peruško had yet to win as the man at the helm of Fortenova was actually a legal and political clash in 'dežela' (Slovenia). Today the information about that difficult and uncertain process, encumbered with Slovenia's internal political issues, comes down to a not too interesting slide in the presentation saying that Fortenova was able to increase the ownership control of Mercator from 68 to 100 percent. If we know that this meant securing the full ownership control over 40 percent of Fortenova Group's revenue, only then can we understand how important that was, but again the extent of the actions that Peruško and the legal/propaganda team had to embark on to realize that goal is less known.

Besides the legal battle, there were written warnings to the Slovenian Embassy, letters were sent to all EU member states, a special procedure was initiated before the European Commission, they also referred to the Competition Agency, while the attention of the creators of Transparency and Doing Business lists was drawn to the unusual treatment of ownership rights in Slovenia...

This has not attracted particular attention in Croatia, and yet under Peruško Fortenova was able not only to secure the 100 percent ownership of Mercator, but also to gain full control over Mercator's debts on the way. How complex the operation Mercator was, the success whereof had not seemed likely due to the harsh approach of the Slovenian side, is illustrated by the fact that they had to secure a swap of Sberbank's 18 percent (in Mercator) to a 4 percent share in Agrokor/Fortenova, then squeeze out the small shareholders and secure a refinancing of Mercator's debt in a situation where it was not completely clear how Fortenova would be financed itself.

What was happening over the years with the credit structure, as another source of Fortenova's instability that Peruško had to relieve, was also a business thriller of sorts that could have ended quite differently.

Today almost forgotten, one of the first steps of Agrokor's financial consolidation was the so-called roll up loan, a financing that was necessary for the initial survival, which had supremacy over other claims. Today Fortenova's management makes no secret of the fact that this field of refinancing was a zone of mutual clashes between large investors, where there was no Russian homogeneity. At some point it even seemed that Knighthead Capital Management and VTB would, after the Settlement Plan (!), use the roll up to bring Fortenova to a default

and squeeze out Sberbank, as well as produce a new legal vacuum. Just imagine that scenario and the potential storm.

In tense and uncertain negotiations Peruško and his team were able to secure a financing in the amount of EUR 1.16 billion with US-based HPS Investment Partners, where VTB also took part with EUR 400 million. It was this refinancing that made it possible to repay Mercator's 55 creditors, which was like removing a point of pain and uncertainty from Fortenova's operations. Of course, the 2019 refinancing came with significant cost (an interest rate of 7.3 percent plus Euribor), but the uncertainty was reduced and the system was on track with stabilizing both its ownership and debt structure.

Following those turbulent times, it seemed that the management would only have to be persistent and consistent and deal with the issue of the still too high indebtedness gradually. With that in mind they threw themselves into selling assets, primarily buildings and real estate. The key to a significant deleveraging, however, was the divestment of the Frozen Food Business Segment at EUR 615 million. The disposal of Ledo had attracted much more attention of the public than the significant improvement of the company's EBITDA, i.e. earnings.

However, while the company seemed manageable, global geopolitical developments have done their part; Russia invaded Ukraine and consequently international sanctions were introduced. Fortenova has thus found itself in a situation where it had two large shareholders in its ownership structure that were subject to sanctions, VTB and Sberbank. All of a sudden, the sanctions mechanisms started to predetermine the mutual ownership relations within Fortenova, as well as to significantly aggravate the question of a new refinancing. The planned raising of funds for working capital needs and new investments suddenly seemed to be a difficult mission again, unless the delicate problem of Sberbank's quite sizeable ownership share of 43 percent was resolved.

Today Fabris Peruško will say with a calm expression on his face that the company SBK Art, that holds Sberbank's claims against Fortenova giving rise to voting rights in the Assembly, has become toxic for Fortenova. Let's repeat this because it is important: the sanctions have made SBK Art so toxic a company that Fortenova has to replace it with someone else as shareholder if they want to secure a continued normal and smooth financing for themselves, which will be more expensive than expected anyway due to the changed market circumstances.

There were several parties that were interested in entering Fortenova's ownership structure instead of the Russian bankers. The first negotiations that seemed to lead to the realization of a deal were held with the Hungarian entrepreneur **Daniel Jelinek**. He dropped out of the picture. Then the idea was born of a common investment by the Croatian pension funds in order for the ownership structure, with the support of Pavao Vujnovac, to not only be stabilized but also to be Croatized in the long term.

The idea with the pension funds seemed to make sense because, in aggregate, Fortenova's employees together account for around 2 percent of the total payments into the pension funds and thus the pension funds would in a way share the destiny of the company that contributes the most to their growth. One should know that the pension funds would approximately have invested around 3 percent of the annual payments into Fortenova, hence this would have been a kind of balance or interest symbiosis.

When the story with the Croatian pension funds seemed to be quietly approaching its end, something happened that the famous analyst and author **Nassim Taleb** has called the 'black swan' in his book with the same title: under mysterious circumstances the representatives of

German Allianz in the SV Board of the AZ pension fund management company voted – to the surprise of the Management Board (which was in favour of the transaction) – against the acquisition of Sberbank's share in Fortenova. Although Allianz could not have lost their own money, because the money of Croatian tax payers would have been invested, German Allianz was allegedly so concerned about their reputation that they wanted to avoid any meddling with a disbursement that would have involved a foreign exchange payment to a Russian bank under sanctions. In addition, German Allianz was allegedly also concerned about a number of slightly unclear legal and financial risks.

Allianz preventing AZ Fund to invest seemed to have opened the heaven above and the Earth beneath Fortenova, and all this happened after several months had been spent to carefully prepare the transaction. They performed a due diligence and received positive opinions from the financial and legal advisors. The Croatian funds reached that point having gone through a challenging and painstaking legal process of obtaining the required approvals or licenses, to say the least. In order for the transaction to be legal, they needed to obtain an exemption from the US and UK jurisdictions and align everything with the EU sanctions mechanisms.

His knowledge of the complexity of the legal procedure and its duration has led Peruško to the conclusion that it was impossible for the Arabian investors, who purchased SBK Art from Sberbank at the eleventh hour for an unknown amount, to obtain the required approvals and become legitimate co-owners of Fortenova. Moreover, he is quite convinced that any EU citizen who may have helped in that transaction one way or the other would end up on the sanctions list and maybe even be prosecuted for helping avoid the sanctions.

On the other hand, the representatives of the Arabian investor Saif Alketbi and he personally are convinced that they would get the necessary permissions in only two or three weeks and if not, they are ready to await the lifting of the sanctions to realize their governance rights. Alketbi, being a citizen of the United Arab Emirates, can regardless of the sanctions enter a transaction by which he would acquire ownership of assets held by a Russian legal entity. Whether he can register his ownership in the Netherlands, where the system's umbrella company has its registered seat under the name Fortenova STAK, is another question. Either way, another sequel of this business thriller that has lasted for several years already, is likely to follow.

Now the key question for Fortenova, the interests of the Republic of Croatia and its citizens and tax payers is – what is the next step? And it requires several question marks. That is still pretty unclear and will certainly not come down to the Croatian intelligence services 'hyperventilating', the top people in the Government shaking their heads in surprise and the general public showing some degree of interest.

Like in any business thriller, we should count on an outcome that currently none of the parties sees on the table. In particular, Fortenova's management seems to be preparing some solution at this point, but it is probably too early to disclose it in public because of the sensitivity of the situation. Anyway, the excitement in any thriller culminates in a turn of events immediately before the end of the "movie", arranging everything that was thrown into the air during the plot in a good, but possibly also in – a bad way. Depending on the screenplay. If the synopsis was written by a pessimist, the extent of a possible business drama in the Republic of Croatia is hard to predict.

Let us consider the position of the typically conservative Germans at Allianz when they gave their negative opinion for the acquisition of Sberbank's share. They were certainly not thinking only about their reputation, although this is said to have been key. Not even Peruško would disagree today that Fortenova, due to everything that was agreed when the bonds were issued

in 2019, would face a technical default in case its key investor, HPS Investment Partners, should activate one of the clauses that they have, together with VTB, protected their investment in Fortenova with. Theoretically, one of the reasons to activate a technical default could be the fact that Fortenova does not pay interest to VTB any more, but it does not pay it because it is not allowed to due to the sanctions, hence such technical default is not likely to be acknowledged in court.

Furthermore, Fortenova has failed to meet the deadline for the sale of properties worth EUR 60 million in total in order to additionally reduce its leverage, but the around 20 million that are still missing will be realized with a very small delay (one month), which does not seem to upset HPS Investment Partners. Also, Fortenova missed the deadline for the full integration of Mercator, but managed to realize it with three months of delay, which is what matters after all.

Although the American investor, HPS Investment Partners, proved to be very relaxed in previous cases where Fortenova did not meet its obligations in time, the question is – how long can they stay patient and fair. Peruško obviously counts on HPS Investment being constructive and assesses the risk of them activating a technical default to be only theoretical for the time being.

Currently it is not known what actions, apart from the legal ones, the Arabian investor is preparing to take, and the situation on the international financial markets does not bode well, either. The inflation has cut the consumers' purchasing power. Because of it the central banks have increased interest rates, which has dramatically accelerated the already manifest trend of growing borrowing prices. A special additional problem is the omnipresent energy supply uncertainty, as well as uncertainty in general. The question is, let's say, not anymore whether the recession will come to the eurozone (a member of which Croatia shall become on 1st January), but rather how deep the crisis will be and how long it will last.

Should the company again have an "unsettled" ownership structure in an environment like this, maybe even with Arab investors who acquired the share from Russian Sberbank without obtaining prior approvals from the regulatory authorities in charge of implementing the sanctions, it would highly likely be faced with increased caution on the side of the investors. Whether such increased caution of the investors would result in them completely turning their back on the company or in a dramatic increase in the borrowing price for Fortenova, cannot be predicted at this point. It is more likely that the Arabian investor will not resolve the issue of registering his ownership any time soon, but even in that variant there is still the question of what happens now.

We now have a very interesting situation: Fortenova's leader Fabris Peruško is convinced that SBK Art (Sberbank's share) has become toxic for the company's ownership structure and that this problem has to be urgently addressed, as the Arabian investor is not a solution.

The Arabian investor Saif Alketbi is convinced that he is the new owner of the 43 percent share in Fortenova and has announced to even be able to deal with the refinancing problem.

Let's hope that this 'plot of all plots' at Fortenova will not introduce another 'black swan' to the nation's most important company, but that maybe a 'white' one will come after all.

We can but wait and see.