

Comment: What is behind Getspeed's exit?



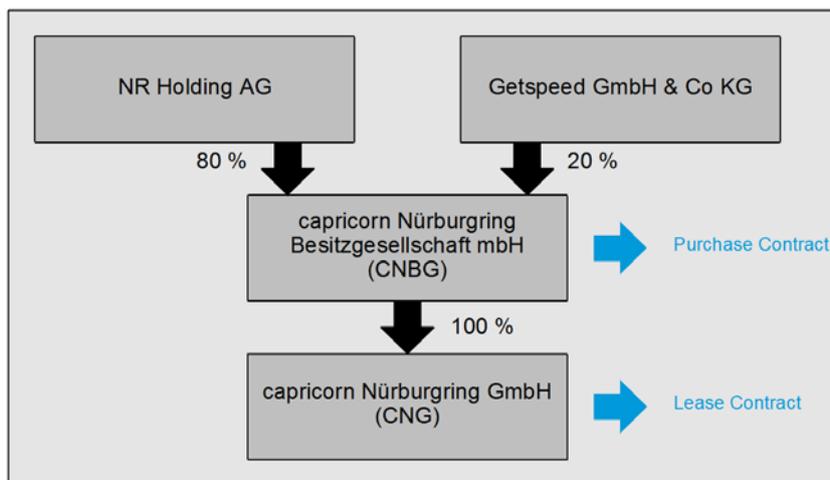
On January 18, 2016, capricorn Nürburgring GmbH has published a press release containing the following core statement:

GetSpeed GmbH & Co. KG has significantly reduced its share in capricorn NÜRBURGRING Besitzgesellschaft mbH. With this change GetSpeed GmbH & Co. KG also relinquishes its role in managing the Nürburgring corporations. A corresponding agreement has been signed by the two shareholders on Friday, Jan 15, 2016.

This comment shall help to understand the consequences for the situation at the Nürburgring.

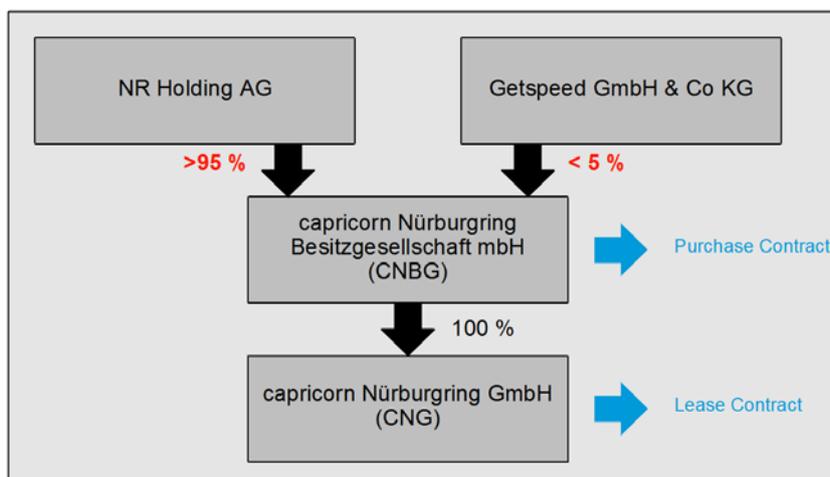
What exactly has changed?

Capricorn Nürburgring Besitzgesellschaft mbH (CNBG) is the corporation that has signed the purchase contract for the Nürburgring. The shareholders of CNBG are the Russian controlled NR Holding AG on one side and Getspeed GmbH & Co KG on the other side. The following graphic illustrates the situation so far:



CNBG, however, is shareholder of all shares in CNG, which has entered into the lease agreement at the Nürburgring and hence is responsible for all operational business.

After the announced change the situation looks as follows:



So far the exact share that Getspeed has sold to NR Holding AG is unknown. However, as the press release talks about “significantly reduced”, there should only remain a small percentage with Getspeed. Following the numbers mentioned by German magazine Wirtschaftswoche it should end up below 5%, thus being of minor importance only for future consideration for an important reason.

Getspeed had a barring clause in the operating agreement of CNBG, which enabled it to block decisions despite the small share percentage, as long as its share wouldn't fall below 20%. This has been put to good use throughout the past year. Getspeed was able to block contracts and decisions in this way. Now the share of Getspeed falls below 20%, which renders the barring clause useless. NR Holding now can decide at any time what shall happen inside CNBG, and hence within CNG as well.

Simply put, the Russian consortium owns CNBG almost completely, and it is unconstrained with regard to decisions. As CNG, managing the operative business, is a subsidiary of CNBG, the Russian consortium has full rein there as well.

What will be the immediate consequences?

As announced, Adam Osieka will resign from the management of both companies CNG and CNBG. Whether Carsten Schumacher will stay as the sole managing director, or whether there will be a completely new orientation remains to be seen.

Current operations will not be immediately affected by this change. For example, this concerns all contracts signed by the V-Pool (ADAC Zurich 24h-Rennen, Truck GP, GT Masters, Blancpain Endurance Series, Historic Tropy Nürburgring, RGB-Season Finals, ADAC Westfalia-Trophy and the races of RCN/GLP) as well as those for VLN, as far as such have been signed.

Significant Changes in the area of motosports will be possible after expiration of these contracts and are expected.

Who owns the Ring then?

The property situation has not been altered by this change. The Ring continues to be the property of NBR Ring GmbH & Co. KG. This is a trustee corporation, which is simply said under control of a trustee.

Though CNBG has signed the purchase contract, the transfer of property has not happened yet, because a portion of the purchase price worth 45 Million € has not been paid yet. Why this is the case will be explained below.

CNG, however, has leased the Nürburgring and therefore is the legal possessor at the moment. This is the basis for them to rent the tracks and conduct business at the Ring.

Property and possession

“Property” and “Possession” are often mixed. Once I have something in my possession, however, it still may be far from being my property.

A descriptive example:

If a thief steals a car, it will be in his possession afterwards, but it won't be his property. The thief will hence be possessor, but never proprietor.

Another example would be a rented apartment: the tenant possesses the apartment and hence has the factual control within the scope of his rental agreement. At the other end of the rental agreement sits the landlord though, and he is the proprietor of the apartment.

So what does the property question depend on?

As mentioned above, the Nürburgring is under control of a trustee. To keep it simple, we will not consider the rather complex construction used for this purpose in greater detail.

CNBG could become proprietor of their own volition. It doesn't take more than paying the 45 Million € to the insolvency administrators to make CNBG the irreversible proprietor. However, whether CNBG will dare to take this step remains a big question.

Still there is no legal certainty at the European Commission (EU). The legal cases against the decision of the EU of Oct 1, 2014 have a decisive influence on the situation. If the EU commission's decision at that time would change because of the legal cases, the purchaser CNBG would inherit the recovery order of incompatible state aid of almost 500 Million €, because the claim for recovery is attached to the assets of the Nürburgring. Without speculating over the chances that these legal claims at the European Court may have, it is clear that there is a risk in any case. Thus two situations may arise:

1. The legal cases are unsuccessful; the EU commission's decision remains unchanged.
If nobody appeals the decision in front of the European Court of Justice (ECJ), legal certainty will exist. CNBG would not have to fear any recovery orders then.
2. The legal cases are successful, the decision will be declared void.
In this case the recovery order of incompatible state aid will revert to CNBG.

For the second case there is an exit clause in the purchase contract. Should it occur, CNBG and the Russians behind it would hardly want to put almost 500 Million € on the table to balance the mismanagement of the government of Rhineland-Palatia. Instead they will rather withdraw from the purchase contract.

However, should CNBG trigger the closing by paying the 45 Million €, there is no escape route anymore in case the legal cases are successful. No business man will enter such a risk.

Assessment

So far, the Russian investors have participated in the operational side only, which means the running business. There they had to fight the resistance of Getspeed. Nevertheless good contracts have been signed for the next three years. Within this timeframe there won't be a lot of changes. What will come thereafter, however, is completely unclear.

Only the legal cases in front of the European Court of "Ja zum Nürburgring" and NeXovation stand between the Russian investors and the property change. Should the Russians trigger the closing – be it with or without legal certainty – we will see happen exactly what the state government had always disputed.

Minister of Inner Affairs Roger Lewentz (SPD) had said only last year that it is not desirable if an oligarch from Russia or Near East would buy the Nürburgring (Source: dpa).

The result will be exactly this.

An evidence of the state government's incapacity, which had driven the Nürburgring from a rather stabile state first into insolvency in unprecedented inability, as well as the insolvency administrators, who squandered the Ring to a buyer without necessary funds just to play it into the hands of Russian investors in a highly questionable second sale afterwards.

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