

Comment: After the Closing



The ADAC Zurich 24h race 2016 is right ahead of us, the most significant race of the year on the Nürburgring and especially on the North Loop. A good opportunity to consider the options for the future of the Nürburgring.

On April 25, 2016, Capricorn Nürburgring Besitzgesellschaft (CNBG) had paid the part of the purchase price to the sellers of the Nürburgring that led to the closing of the contract. Thus the power of control over the race tracks of the Nürburgring and the related assets has been transferred to the buyer. The press agency of the insolvency administrators was quick to announce “legal and planning security”. The question is, however, for whom.

Two cases continue to exist at the European General Court challenging the decision of the European Commission (COM) to classify the sales process as conformant to EU law.

Let us have a closer look at the current situation after the closing then.

In short words:

- The owner of the Nürburgrings is CNBG through a subsidiary called NBR Holding GmbH & Co KG.
- The buyer has waived its right to withdraw if the court cases are successful, unless the purchase contract has been amended recently.
- As far as we know, the complaint filed by NeXovation Inc continues to proceed unaltered.
- The complaint filed by “Ja zum Nürburgring” definitely continues to proceed unaltered.
- The buying company bears the risk in case the complaints will be successful. In that case, it may have to pay back almost 500 million € of incompatible state aid.

Who owns the Nürburgring now?

For some time, the ownership of the Nürburgring has been in the hands of a NBR Holding GmbH & Co KG. Very simply said, CNBG had owned 95% of that company already before the closing. The remaining 4.9% were under control of a trustee. The trustee had the power of control.

After paying the 45 million (composed from 39 million in cash and 6 million paid for lease in 2015) the remaining 4.9% have been transferred to CNBG as well, together with full power of control. As this is a transfer of corporate shares only, the property transfer tax doesn't have to be paid a second time, as had been necessary during the transfer to the trustee company.

Now CNBG owns two subsidiaries, the NBR Holding GmbH & Co KG holding the property, and the CNB with the lease contract. That contract has become redundant now, of course. We expect simplifications of the corporate structures soon, e.g. by merging companies.

Thus, CNBG has full power of control now, and it can at any point in time sell, donate, restructure etc a part or the whole of the assets. Whether or not the name rights for the brand “Nürburgring” or even the ownership of the entire property will continue to be in the hands of a Germany-based corporation in a couple of months is unpredictable.

The purchase contract is valid and executed, there is no way back anymore. The Russian investors have apparently waived their right to withdraw, which they had until the closing for the case the complaints turn out to be successful.

The status of the court cases

This is an area where speculations run wild right now. However, the facts are quite simple.

NeXovation, Inc. has just filed another comprehensive set of documents with the EC in mid-April. The Russian investors are expected to approach NeXovation now to negotiate a withdrawal of the complaint. So far, there are no tangible signs for a withdrawal at all though.

The complaint of “Ja zum Nürburgring” continues to proceed without changes, too. As reported before, we are still following the written procedure. An oral proceeding may occur still within this year, no later than 2017. There have been no considerations regarding a withdrawal of the complaint at all, not within the association, nor with the member organizations.

What will be the impact of the closing on the legal cases?

Nothing. There has been a shift in risk only.

The cases challenge the part of the European Commission’s decision to classify the sales process as EU-legal despite all complaints. The result of this proceeding can be one out of two decision options only:

- the COM’s decision will remain valid
- the COM’s decision will be declared void or changed

Whoever holds the ownership of the Nürburgring assets at a particular moment is meaningless for the legal cases.

The risk connected to the legal cases

If one or both complaints succeed, the sales process will be classified as incompatible with European law. This will immediately resurrect the recovery order of incompatible state aid of almost 500 million Euro. The Russian investors, or whoever might be the owner then, will have to face this recovery order then.

In the press it was stated that the new owners expect the cases to eliminate themselves, or that they will take so long that the result won’t matter anymore. We consider this as a rather optimistic assessment, and we don’t share it.

Parties in both cases are JzN vs. COM in one case, and NeXovation vs. COM in the other one. Nobody else is participating besides that. Even the insolvent corporations of the Nürburgring, who had entered the case as interveners to help the COM, have withdrawn completely from the proceeding in the meantime. Hence the list of parties that could in fact influence the proceeding in a legal way has become very short indeed. The new owners are not on this list.

It would be a mistake to speculate about the success chances of particular complaints. But an example shows that the proceedings do not necessarily have to extend over a decade:

If the European General Court rules in favor of the petitioners JzN or NeXovation, the question will arise who would have a significant interest to appeal the decision in front of the European Court of Justice at all. The losing party would be the COM, for whom the classification of the sales process might be of minor importance with regard to the

entire decision. Much more important was the decision that defined the incompatible state aid, and nobody touched that one.

If the ruling is very clearly in favor of the plaintiffs the option may exist that the COM will not seek an appeal. And besides the COM there is nobody else who could trigger that appeal. Without an appeal, the proceedings would end after the EC ruling, and that could be as early as 2017.

And this would constitute legal security indeed, which the actual owner would have to face then.

As said, this is only an example for one of the many ways the proceeding could take. Experience tells us that the situation at the Nürburgring keeps changing every couple of months, hence there is nothing but watch and wait. In the meantime, operations including races and tourist drives should continue in one form or the other, although many signs point to changes.

After decades of political misconduct of the worst kind the Nürburgring is no longer serving the good of the region. We will continue on our way that aligns exclusively with the benefit of the Nürburgring, which is one of the world's birthplaces of motorsports and a central automotive cultural asset.

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