

PRIVATIZATION ENDEAVOR IN TURKEY

A strong and sustained commitment

The striking economic shifts of the 80's ushered a new era for the world economy, where privatization became one of the most essential and indispensable financial reforms on the economic agendas of many nations. As being one of the fundamental tools of the free market economy, privatization has been on Turkey's agenda since 1984.

Privatization in Turkey, not only aims to minimise state involvement in economic activities and to relieve the financial burden of State Economic Enterprises (SEE) on the national budget, but also contemplates the development of capital markets and the re-channelling of resources towards new investments.

Turkey, one of the fastest growing economies of the world has positioned itself as an attractive and promising investment environment through the implementation free trade principles and establishment of dynamic capital markets as well as offering liberal incentives facilitating transactions for international investors and exporters.

The fundamental transformation in Turkish economy has moved the country from an inward-focussed import substitution model towards an export led growth and industrial one. The East-West expansion of the world's geopolitical horizons has opened up a new era for Turkey with many promising opportunities for international investors. The investment opportunities in Turkey are particularly attractive in the framework of country's ongoing ambitious privatization agenda. The involvement and participation of international investors is highly encouraged in the massive privatization program. The privatization process in Turkey with a view of relieving the burden of state economic enterprises on the national budget, has proved to be an important source of funds for the government and brought tangible results and progress within this philosophy. Although this task has not been easy, many state-owned companies have passed to the private sector.

THE LEGAL FRAMEWORK

The principles, procedures, authorised agencies and other issues regarding privatization are all set out in the Privatization Law No. 4046, dated 1994.

The Privatization Law in essence, regulates the principles of privatization namely; to improve productivity in the economy and to reduce public expenditures. This Law,

- expands the scope of assets to be privatized,
- provides adequate framework, funds and appropriate mechanisms to speed up the privatization and restructuring processes,
- establishes a social safety net for workers who lose their jobs as a result of privatization,
- establishes the Privatization High Council and the Privatization Administration to facilitate the decision making process in the privatization endeavour.

The ‘Law Regarding Making Amendments in Some Laws and in the Decrees With The Force of Law Dealing With Establishment and Duties of the General Directorate Turkish National Lottery’ numbered 4971, prepared in order to speed up privatization, has been put into effect by being published on the 15th of August 2003. In the framework of the aforementioned Law, stipulations have been placed in order to accelerate privatization applications through the arrangements that have been made to the Law No. 4046. These include arrangements that have been made to privatize the Turkish National Lottery by way of handing out licenses for the planning, organizing and arranging of the draws of the games and those enabling the utilization of convertible bonds in the privatization of Türk Telekom.

Bodies Responsible from Privatization under Law No. 4046

Under the Privatization Law No. 4046, privatization process is carried out by two bodies:

- Privatization High Council
- Privatization Administration

The **Privatization High Council (PHC)** is the ultimate decision-making body for privatization in Turkey. The Council, headed by the Prime Minister, is composed of four ministers.

PHC nominates the organisations for privatization through taking state-owned economic enterprises in and out of the privatization portfolio and is responsible from the methodology and timing of the privatization procedures by approving the final transfer procedure of the organizations to real people or/and legal entities.

The **Privatization Administration (PA)** is the executive body for the privatization process. It is a legal public entity with an exclusive budget, reporting directly to the Prime Minister.

PA’s major duties include the execution of PHC's decisions, advising the PHC in matters related to the transfer of SEE's into or out of privatization portfolio and restructuring and rehabilitation of SEE's in order to prepare them for privatization.

Privatization Mechanisms

Privatization Methods

Companies within the privatization portfolio are privatized through the use of one or more of the methods mentioned below;

- **Sale:** Transfer of the ownership of companies in full or partially, or transfer of shares of these companies through domestic or international public offerings, block sales to real and/or legal entities, block sales including deferred public offerings, sales to employees, sales on the stock exchanges by standard or special orders, sales to investment funds and/or securities investment partnerships by taking into consideration the prevailing conditions of the companies.
- **Lease:** Grant of the right of use of all or some of the assets of the companies for a defined period of time.
- **Grant of Operational Rights**

- **Establishment of Property Rights other than Ownership**
- **Profit Sharing Model and other Legal Dispositions Depending on the Nature of the Business.**

Privatization of Public Services

Notwithstanding with the provisions of Law No. 4046, governing the strategic sectors, the operational rights of the following can be transferred;

- Administrations with national and supplemental budgets and their properties, (dams, lagoons, highways, hospitals, ports, etc.)
- Public Economic Enterprises offering public services as a monopoly
- Enterprises with national and supplemental budgets that are in the form of an exclusive monopoly and/or Public Economic Enterprises that serve within the framework of their original establishment tasks

In order to be able to privatize the above mentioned public service organizations through a transfer of ownership, separate laws should be adopted for each.

Other Governmental Bodies in charge of Privatization

Privatization of some specific sectors are undertaken by different governmental bodies. Namely, the privatization of Turk Telekom is undertaken by an independent Tender Committee, Ministry of Transportation issues mobile licences and that of state banks are to be accomplished by the Banking Regulation and Supervision Agency.

Value Assessment and Tender Phases of Privatization

Value Assessment Commissions

Value Assessment Commissions are established before each tender according to the provisions set out in Law No. 4046. Value Assessment Commissions employ at least three value assessment methodologies using various criteria regarding the organization such as its industrial, commercial and social features, service distinction, sector and market specifications, potential future cash flows, production methods, technological structure, movables and immovables and quotation of its stocks in the several exchanges.

Tender Commissions

Tender Commissions are established before each tender according to the provisions set out in Law No. 4046. The Tender Commission may decide to employ one or more of the tender methods listed below:

- Sealed Bid
- Negotiation
- Public Auction
- Sealed Bid Among Designated Bidders.

Competition Issues:

A pre-notification to the Competition Authority is made in advance of the announcement of tender conditions;

- where the market share of the entity to be privatized exceeds 20%
- where the turnover of the same entity exceeds 20 trillion Turkish Liras
- even though the aforesaid limits are not exceeded, where the entity to be privatized does have judicial or de facto special rights.

In addition to this, the company which takes over any entity shall obtain a permit from the Competition Board before beginning its activities where;

- acquiring parties' total market share in the relevant product market exceeds 25%
- acquiring parties' turnover exceeds 25 trillion Turkish Liras.

THE PRINCIPLES AND PRIORITIES OF PRIVATIZATION IMPLEMENTATIONS

PA undertakes privatization with attaching utmost attention to the expectations and requirements of the public and investors. Within this framework PA aims;

- easing the negative effects of unemployment due to privatization, through a social safety net (employment guarantee)
- increasing participation in the privatization implementations
- enhancing transparency of privatization activities
- protecting free market from anti-competitive mechanisms and preventing negative effects of possible monopolies
- enhancing the diffusion of capital into the layers of the society and deepening of the capital markets by increasing the number of participants.
- prioritising the privatization of state banks.
- securing “public interest” through establishing “golden shares” in strategic enterprises.
- privatizing natural resources exclusively through transfer of management rights.

PRIVATIZATION IMPLEMENTATIONS IN TURKEY

Organisations that can take place in the Privatization Portfolio:

- SEE's, their enterprises, associated corporations, operations, operational units and assets, as well as the public shares in their participants, e.g. Etibank, Sumer Holding and Turban,
- Public shares and shares in commercial organisations that are not SEE's but those where the majority shares rest with the state.
- Public shares and shares that belong to the Treasury
- Organisations producing goods and services with national and supplemental budgets and their assets (dams, lagoons, highways, hospitals, ports, etc.)

Privatization Implementations During Period 1985-2004

Companies within the Privatization Portfolio:

Since 1985, state shares in 241 companies, 29 energy generation and distribution units, 4 power generations, 22 incomplete plants, 6 toll motorways, 2 bosporus bridges, 1 service unit and 5 real estates have been taken into the privatization portfolio. Later, 22 of the companies, 4 power generations and 4 real estates were excluded from the portfolio for various reasons. One of these was Türkiye Öğretmenler Bankası, which merged with Halk Bankası in May 1992 and Denizcilik Bankası which merged with Emlak Bankası in November 1992. Currently there are 38 companies in the privatization portfolio.

Finalized Privatization Transactions

Privatization implementations have started in 1984 with the transfer of incomplete plants of the SEE's to the private sector for completion. In this juncture, 6 plants were sold to different investors and 9 plants were transferred to municipalities or to state enterprises on book value.

In 1986, privatization implementations have gained momentum and since then, 174 companies have been privatised where no more government shares exist in 162 of these.

Since 1985, total proceed from the privatization implementations is recorded as USD 8.9 billion. Total revenue generated from entities within the privatization program between 1985-December 2002, together with USD 2.1 billion dividend income and USD 1.9 billion other income, has amounted to USD 11.2 billion. In the same period, total privatization expenses were USD 11.2 billion. The largest item in privatization expenditures (with about 97%) is the transfer to Treasury and financing of the companies in the privatization portfolio in the form of capital increases and loans.

Considering the privatization implementations for the last 15 years, one will observe that ;

- State completely withdrew from cement, animal feed production, milk-diary products, forest products, sivil handling and catering services and petroleum distribution sectors.
- More than 50 % of the state shares were privatized in tourism, iron and steel, textile, sea freight and meat processing sectors.
- State has partially withdrawn from the ports and petroleum refinery sector.
- Privatization of public banks has commenced with Sümerbank and continued with Etibank, Denizbank and Anadolu Bank. The international and domestic offering of the 12.3 % state shares in İş Bank in May 1998, has been the largest public offering in Turkey until that time and recorded as one of the largest privatization proceeds among the emerging European markets.
- Public shares in Netaş and Tofaş were issued to foreign investors through international public offering for the first time, which served as a driving force of the integration of Istanbul Stock Exchange's (ISE) with foreign capital markets.
- Public shares in many companies were issued to the public, particularly in the beginning of this decade and this enhanced the institutionalisation of Istanbul Stock Exchange.

Privatization Implementations within the Tender Phase:

KÜTAHYA-AMASYA-KAYSERİ SUGAR FACTORIES:

Tender announcement for the block sale of 56% PA shares in Kütahya, 15% PA shares in Amasya and 10% PA shares in Kayseri Sugar factories has been made on April 1, 2004. Last bidding date is May 11, 2004.

ETİ CHROME & ETİ SILVER INC:

Tender announcement for the sale of 100% PA shares in Eti Chrome and Eti Silver has been made on March 15, 2004. Last bidding date is April 26, 2004.

ET VE BALIK ÜRÜNLERİ A.Ş. (Meat-fish-poultry)

Tender announcement for the asset sale of 4 meat processing units and 2 real estate of EBAŞ has been made on February 17, 2004. Tender for one of the meat processing unit has been cancelled. Final negotiations for the others have been held.

SAMSUN GÜBRE

Tender announcement for the block sale of public shares in Samsun Gübre on February 16, 2004. Highest bid has been given by ERKAN İnş. as 54.150.000 USD.

TÜPRAŞ (Petroleum Refining):

TÜPRAŞ has the highest petroleum refining capacity in the Balkans and in Eastern Europe. Among all European refining companies, it ranks seventh in size. In 2000, TÜPRAŞ carried out its second public offering, which went on record as the biggest public offering ever undertaken in this country. As a result of this offering, the Company's shares are now being traded on both the Istanbul and London stock exchanges. With the total processing capacity of all refineries in Turkey amounting to 32.0 million tons/year, TÜPRAŞ, on its own possesses some 86% of the country's total refinery capacity. The Company is also ideally positioned from the standpoints of infrastructure, location, and logistical support for the importation of crude oil, LPG, and other petroleum products.

Tender announcement for the block sale of 65.76% public shares in Tüpraş has been made on June 7, 2003. Final negotiations were held on January 13, 2004. Highest bid was given by Efremov Kautschuk GMBH as 1.302.000.000 USD and the bid has been approved by PHC:

SUMER HOLDING (Textile):

Tender announcement for the sale of 5 premises of Sümer Holding has been made on March 29, 2004. Last bidding date is May 4, 2004.

Another tender for the sale of 5 other premises has been made on April 19, 2004. Last bidding date is June 8, 2004 for 1 premise and May 25, 2004 for the other 4.

PRIVATIZATION PROGRESS OF TURK TELEKOM

The privatization of Turk Telekom has been a major focus not only of the liberalization of the Turkish telecommunications sector but also of the overall economic reform in the country. Turk Telekom, the incumbent telecommunications operator of Turkey, is providing a variety of telecommunications services from basic voice telephony (PSTN) to several value added services like mobile telephony, Cable TV, satellite services, Internet, data and payphone services. Turk Telekom privatization process is undertaken by two separate committees, -Value Assessment and the Tender Committees consisting

representatives from three related governmental agencies; the Privatization Administration, the Ministry of Transportation, and the Undersecretariat of Treasury.

The first tender for the company was announced during June 2000, for the %20 stake of the company. The underlying aim behind this attempt was to couple the global telecommunications operator's expertise and know-how with that of Turk Telekom in order to support the company during its commercialization process. Although a number of Turkish groups showed interest, the tender could not be finalized and cancelled. In order to increase investor interest to Turk Telekom privatization, a new tender structure was designed where a more attractive set of managerial rights were attached to 33.5% stake. This second tender was opened on December 13, 2000. However, the second tender was challenged on several legal grounds and respite by the 6th Ankara Administrative Court.

Abreast of factors attributable to the specifics of these tenders, such as the inadequacy of the shares offered and the problem of full management control, it is mainly the conjunctural factors that complicated the tenders; especially the global telecom operators' huge financing problems after the 3rd Generation Boom. Pertaining to the difficulties encountered in the previous tenders, a new law (No. 4673) was enacted during May 2001 to facilitate the privatization process. Under this new law;

- apart from one golden share reserved for the state, 100% of Turk Telekom was freed up for privatization, where foreign ownership in the company is limited to 45%,
- Turk Telekom's exclusivity rights were set to expire even prior to 31.12.2003, if the shares of the state falls below %50.
- Satellite services were taken out of Turk Telekom's scope and are to be carried out by a separate legal entity,

After this legal amendment, new Valuation and Tender Committees have been established and commenced working for the revaluation and privatization of Turk Telekom in the dynamics of the local and international telecommunications markets.

Due to change in dynamics of the telecommunications sector, a Council of Ministers Decree empowering the revaluation of Turk Telekom has been approved during May 2002. In this respect, a new Value Assessment Committee has been established for the revaluation of Turk Telekom. As of April 2003 a Council of Ministers Principal Decree has been passed which stipulates that the preparations as to the minimum %51 block sale and IPO of the company will be undertaken

simultaneously. In this respect, market analysis for Turk Telekom privatization have been completed and the Council of Ministers Decree divulging the new privatization strategy has been issued on November 13, 2003. According to this Decree, minimum %51 of Turk Telekom shares will be privatized through block sale, while tender announcement for such sale will be launched latest by May 31,2004. Following the block sale, remaining shares will be offered to public. Preparations regarding the hiring of transaction advisors for Turk Telekom privatization are underway.