

# 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 privatisation 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, privatisation has been on Turkey's agenda since 1984.

Privatisation 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-focused 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 privatisation

agenda. The involvement and participation of international investors is highly encouraged in the massive privatisation program. The privatisation 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, authorized agencies and other issues regarding privatisation are all set out in the Privatisation Law No. 4046, dated 1994.

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

- expands the scope of assets to be privatised,
- provides adequate framework, funds and appropriate mechanisms to speed up the privatisation and restructuring processes,
- establishes a social safety net for workers who lose their jobs as a result of privatisation,
- establishes the Privatisation High Council and the Privatisation Administration to facilitate the decision making process in the privatisation 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 privatisation, 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 privatisation applications through the arrangements that have been made to the Law No. 4046. These include arrangements that have been made to privatise 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 privatisation of Türk Telekom.

### **Bodies Responsible from Privatisation under Law No. 4046**

Under the Privatisation Law No. 4046, privatisation process is carried out by two bodies:

- Privatisation High Council
- Privatisation Administration

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

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

The Privatisation Administration (PA) is the executive body for the privatisation 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 privatisation portfolio and restructuring and rehabilitation of SEE's in order to prepare them for privatisation.

### **Privatisation Mechanisms**

#### **Privatisation Methods**

Companies within the privatisation portfolio are privatised 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.

### **Privatisation 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 privatise the above mentioned public service organizations through a transfer of ownership, separate laws should be adopted for each.

Other Governmental Bodies in charge of Privatisation

Privatisation of some specific sectors are undertaken by different governmental bodies. Namely, the privatisation 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 Privatisation

### 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 immovable 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 privatised 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 privatisation 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 privatisation, through a social safety net (employment guarantee)
- increasing participation in the privatisation implementations

- enhancing transparency of privatisation 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 privatisation of state banks.
- securing “public interest” through establishing “golden shares” in strategic enterprises.
- privatising natural resources exclusively through transfer of management rights.

## PRIVATIZATION IMPLEMENTATIONS IN TURKEY

Organisations that can take place in the Privatisation Portfolio:

- SEE's, their enterprises, associated corporations, operations, operational units and assets, as well as the public shares in their participants, e.g. Etibank, Sümer 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.)

Privatisation Implementations During Period 1985-2005

### Companies within the Privatisation Portfolio:

Since 1985, state shares in 243 companies, 29 energy generation and distribution units, 4 power generations, 22 incomplete plants, 6 toll motorways, 2 Bosphorus bridges, 1 service unit and 6 real estates have been taken into the privatisation portfolio. Later, 29 of the companies, 4 power generations and 4 real estates were excluded from the portfolio for various reasons. One of these was Türkiye Ö retmenler Bankası, which merged with Halk Bankası in May 1992 and Denizcilik Bankası which merged with Emlak Bankası in November 1992. Currently there are 28 companies in the privatisation portfolio.

### Finalized Privatisation Transactions

Privatisation 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, privatisation implementations have gained momentum and since then, 188 companies have been privatised where no more government shares exist in 176 of these.

Since 1985 until today, total proceed from the privatisation implementations is recorded as USD 10.4 billion. Total revenue generated from entities within the privatisation program between 1985-December 2004, together with USD 2.3 billion dividend income and USD 3.7 billion other income, has amounted to USD 14.3 billion. In the same period, total privatisation expenses were USD 13.9 billion. The largest item in privatisation

expenditures (with about 97%) is the transfer to Treasury and financing of the companies in the privatisation portfolio in the form of capital increases and loans.

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

- State completely withdrew from cement, animal feed production, milk-diary products, forest products, civil handling and catering services and petroleum distribution sectors.

- More than 50 % of the state shares were privatised in tourism, iron and steel, textile, sea freight and meat processing sectors.

- State has partially withdrawn from the ports and petroleum refinery sector.

- Privatisation 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 privatisation 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 PROGRESS OF TÜRK TELEKOM

Türk Telekomünikasyon A.Ş. (Türk Telekom) is the incumbent telecommunications operator in Turkey. The Company traces its origins to the General Directorate of Postal, Telegraph, and

Telephone (PTT), which was created in 1924. In 1995, as part of the division of the postal and telecommunications services, Türk Telekom was created as a joint-stock Company under the ownership of the Undersecretariat of Treasury of Republic of Turkey.

Türk Telekom provides integrated telecommunications services from PSTN to various other value added services. The company has a wide and modern network infrastructure covering the whole country and offers a wide variety of services to residential and commercial clients all over Turkey. Türk Telekom has demonstrated its inherent strength by producing a good performance and very positive financial results against the turbulent telecommunications market developments worldwide, for the last couple of years. Continuing strong cash flow, improving margins through operational effectiveness, strong dividend yields, and rapid expansion of mobile business especially after the recently completed mobile consolidation and margin improvement for value added services are only some of the indicators of Türk Telekom's promising outlook. The biggest domestic merger and acquisition deal to date has given birth to a new and strong entity, AVEA, creating remarkable operating and financial synergies.

Turkey has secured an investment friendly environment for privatisation with regulations matching European standards. With the enactment of law 5189, the foreign ownership restriction on the part of foreign investors is lifted, the scope of the golden share has been limited and the satellite business has been taken out of Türk Telekom to function as a separate public entity.

Turkish Government has undertaken a "tailor-made plan" for the privatisation of Türk Telekom. In this framework, an Informatory Process was



launched prior to the official tender announcement whereby, the Privatisation Administration has informed the interested parties about the forthcoming process and delivered information about the company and the sector at large. 11 national and international companies registered to the Process and were provided with operational, legal and technological data of Türk Telekom as well as the upcoming privatisation process.

Council of Minister Decree dated 15.10.2004 and no. 7931 stipulates that %55 of Turk Telekom shares will be sold block and the tender announcement shall be launched latest by December 31, 2004. The Decree also authorized the Türk Telekom Tender Committee to apply pre-qualification criteria to bidders during the tender process.

The formal tender process for the block sale of %55 of Türk Telekom commenced with the tender announcements on November 25, 2004. Four bids were submitted after a long and detailed due diligence process. The Tender Committee first evaluated the business plans and

all four bidders who received scores over 75 points from such evaluation, were invited to the opening of the financial bids on July 1, 2005. After the joint bargaining process, Öger Telecoms Joint Venture Group (composed of Saudi Öger and Telecom Italia ) submitted the highest bid, with 6.550.000.000 US Dollars.

The result of the tender has been approved by the Council of Ministers and published in the Official Gazette dated 02.08.2005 and has become effective. The Share Sale Agreement was signed on August 24, 2005 making the privatisation of Türk Telekom a milestone in Turkish privatisation history.