

# Turkish privatisation

## Turkish sales power up

**A**part from the ultimate (individual) legislations, which were the basis for the implementation of privatisation in terms of providing the transfer of concession rights in this particular sector, during the era of the Ottoman Empire and in the early years of the Republic of Turkey, the first legislation attempting to lift the state monopoly is Law Number 3096 on "Commissioning Establishments other than the Turkish Electricity Entity on Generating, Transmitting, Distributing and Trading Electricity".

Law Number 3096 enables the private sector to engage in the generation, transmission, distribution and trade of electricity with the prior approval by the Council of Ministers. During 1989 and 1990, certain private legal entities were commissioned to deal with the generation, transmission, distribution and trade of electricity in certain districts of Turkey under Law Number 3096. However, such commissioning has since been cancelled by a subsequent decision of the Council of Ministers for various reasons.

Subsequently, the Council of Minister again attempted to transfer the operation rights of TEDAS (Turkish Electricity Distribution Company) in certain districts. However, at that time, the private entities that were commissioned in 1990, took action before the Administrative Court to set aside the decision of the Council of Ministers. Therefore, the Council of Minister's later attempt was set aside by the Court.

### Law Number 4628 and implementations

Finally, on February 20 2001, the Electricity Market Law (Law Number 4628) was enacted in order to restructure

This article aims to examine the current legal environment with regard to the privatisation of the electricity distribution market, By **Yesim Bezem, Bezem & Partners**, and **Aykut Bakirci**, head of legal/counsel of the **Turkish Privatisation Administration**.

and reorganise the electricity market. The aim of the Law is (i) to ensure the development of a financially sound and transparent electricity market operating in a competitive environment under provisions of civil law, (ii) the delivery of sufficient, good quality, low cost and environmentally friendly electricity to consumers and (iii) to ensure the autonomous regulation and supervision of this market.

In order to achieve the above goals, Law Number 4628 has chosen to grant "operation licences" to the private sector for providing these services instead of concluding concession agreements under administrative law or private law agreements, as was done under previous legislation.

There is no doubt that the aim of the law cannot be achieved without the privatisation of the state entities in the market. Under Article 14 of the said Law, the Council of Ministers notifies the Privatisation Administration of its opinions and suggestions on the privatisation of TEDAS and EÜAS (Electricity Generation Company) and their enterprises, subsidiaries, establishments, affiliates, partnerships and assets.

Thereafter, the remaining privatisation process is to be handled by the Privatisation Administration under the "Law Concerning Arrangements for the Implementation of Privatisation and Amending Certain Laws and Decrees with the Force of Law" (Law Number 4046).

Law Number 4628 provides that an agreement for transfer of operational rights may be signed among TEDAS and the electricity distribution companies established to operate within the determined distribution regions save for the ownership of TEDAS on the facilities and assets that are required for the distribution activity and which are within TEDAS's field of operation.

The Law also states that foreign real persons and legal entities engaged in the market activities as defined by this Law within the scope of privatisation activities cannot

# The privatisation of **thermal power** plants will not **contradict the law**

have a controlling market share that will enable them to control the electricity generation, transmission and distribution sectors.

In other words, the implementation of the privatisation of TEAS and EÜAS and their enterprises, subsidiaries, establishments, affiliates, partnerships and assets has to be executed under Law Number 4046 by the Privatisation Administration, which was also established by Law Number 4046.

In this regard, the agenda and preparation procedure for the privatisation of the electricity market has been determined by the Planning High Council in its decision of March 17 2004 in "the Document on the Electricity Market Reform and Privatisation Strategy" (Action Plan). This document states that the privatisation process in this market is to be started with electricity distribution companies, followed by generation companies. In accordance with this strategy document, TEDAS has been taken into the Privatisation Administration portfolio with the Privatisation High Council decision numbered 2004/22 dated April 2 2004.

The Privatisation Administration has applied twice to the First Division of the Council of State (Danistay), which also has jurisdiction to state advisory opinions, to ask its advice, by submitting a proposal on the implementation of the privatisation of the electricity distribution market.

As a result of such applications, the First Division of the Council of State ruled that:

► Hydroelectric and steam electricity power plants generate electricity using water in their near vicinity. Water is a natural asset. Due to the proximity of such hydroelectric and steam electricity power plants to water, such power plants cannot be considered distinct from that natural resource and cannot be privatised by way of transferring the right of possession.

► Since there is no attachment between the ownership of thermal power plants and the natural resource used for such power plants (ie, such natural resource is not in the near vicinity of the relevant thermal power plant), the privatisation of thermal power plants by way of transferring ownership will not contradict the law.

► It would not be against the law to privatise (by way of share sale) a newly established company in each distribution district that possesses a licence for operation and distribution within its district for the next 49 years, and to transfer title to other assets (land, buildings, vehicles, fixtures, etc) beside the distribution facility to such newly established company.

In the light of the opinion set by the First Division of the Council of State, the Privatisation High Commission determined the model for the privatisation of the elec-

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tricity distribution market with decision number 2005/125 dated November 7 2005. In this decision it is concluded that "any distribution companies, which have and will have a distribution licence, operating under TEDAS within the distribution districts of TEDAS, will be privatised by way of block sale of each such company's shares".

In accordance with the later decision of the Privatisation High Council and the "Document on the Electricity Market Reform and Privatisation Strategy", 14 new joint stock companies have been established under Article 4 of Law Number 4046, to take over distribution facilities in 21 distribution districts, operated by TEDAS.

The so-called Istanbul Asian Side, acting as a co-ordinator, has also been converted to a joint stock company. Karaelmas Electricity Distribution Joint Stock Company and Kastamonu Electricity Distribution Joint Stock Company (subsidiaries of TEDAS) have merged into Baskent Electricity Distribution Joint Stock Company. Körfez Electricity Distribution Joint Stock Company merged into Sakarya Electricity Distribution Joint Stock Company. Kirsehir, Nevsehir, Nigde, and Aksaray electricity distribution establishments have been joined under the umbrella of Meram Electricity Distribution Joint Stock Company.

In this regard, the distribution companies owned by the Turkish Electricity Joint Stock Company and their operation areas are as follows:

Joint stock company (AS)	Operation zones (cities)
Akdeniz Elektrik AS	Antalya, Burdur, Isparta
Aras Elektrik AS	Erzurum, Agri, Ardahan, Bayburt, Erzincan, Igdır, Kars
Çoruh Elektrik Dağıtım AS	Trabzon, Artvin, Giresun, Gümüşhane, Rize
Dicle Elektrik Dağıtım AS	Diyarbakır, Sanliurfa, Mardin, Batman, Siirt, Sırnak
Firat Elektrik Dağıtım AS	Elazığ, Bingöl, Malatya, Tunceli
Gediz Elektrik Dağıtım AS	Izmir, Manisa
Göksu Elektrik Dağıtım AS	Kahramanmaraş, Adıyaman
Çamlıbel Elektrik Dağıtım AS	Sivas, Tokat, Yozgat
Menderes Elektrik Dağıtım AS	Aydın, Denizli, Muğla
Osmangazi Elektrik Dağıtım AS	Eskisehir, Afyon, Bilecik, Kütahya, Usak
Toroslar Elektrik Dağıtım AS	Adana, Gaziantep, Hatay, Mersin, Osmaniye, Kilis
Uludağ Elektrik Dağıtım AS	Balıkesir, Bursa, Çanakkale, Yalova
Vangözü Elektrik Dağıtım AS	Bitlis, Hakkari, Mus, Van
Yeşilirmak Elektrik Dağıtım AS	Samsun, Amasya, Çorum, Ordu, Sinop
Baskent Elektrik Dağıtım AS	Ankara, Kirikkale, Zonguldak, Bartın, Karabük, Çankiri, Kastamonu.
Bogaçiçi Elektrik Dağıtım AS	Istanbul European Side.
Istanbul Anadolu Yakası Elektrik Dağıtım AS	Istanbul Asian Side.
Meram Elektrik Dağıtım AS	Kirsehir, Nevsehir, Nigde, Aksaray, Konya, Karaman.
Sakarya Elektrik Dağıtım AS	Sakarya, Bolu, Düzce, Kocaeli.
Trakya Elektrik Dağıtım AS	Edirne, Kırklareli, Tekirdağ.

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Moreover, in order to prevent any obstacle during the planned privatisation of TEDAS, Law Number 5398 dated July 21 2005 has been enacted. The Law states that the ownership of any investment in this sector belongs to the public. The Tax Procedure Law has also been amended to annul vertical integration limits. In addition to the above, with Law Number 5496, dated May 24 2006, the legislations on "expropriation", "price equalisation mechanism" and "transition period agreements" have been made consistent with the aforementioned privatisation model.

During the preparation period, the balance sheets of the distribution companies have been restructured. For instance, fixed assets and receivables from government authorities and municipalities have been transferred to TEDAS, and any debts due to TETAS and TEIAS have also been transferred to TEDAS.

There is also an electricity sales agreement, dated June 21 2006, between EUAS/TETAS (on behalf of a portfolio generation group) and TEDAS for a five-year transition period. On July 24 2007, TEDAS and 20 electricity distribution companies concluded agreements regarding the transfer of operation rights. Following these agreements, the Energy Market Regulation Authority (EMRA), which is the regulatory body under Law Number 4628, has approved their tariffs and granted their distribution licences.

On August 31 2006, a tender for the privatisation of Istanbul Asian Side Electricity Distribution Joint Stock Company (AYEDAS), Sakarya Electricity Distribution Joint Stock Company (SEDAS) and Baskent Electricity Dis-

tribution Joint Stock Company (BASKENT) by way of share sale was announced. A total of 83 bids have been received (28 for AYEDAS, 25 for SEDAS and 30 for BASKENT) and 82 of such bids are viewed as satisfying the pre-qualification requirements.

During the tender process, the bidders will have an opportunity to visit the relevant company's premises and be given access to the electronic data room. Although the deadline for the last bid was January 19 2007, the tender was postponed on January 9 2007 to a future date by the Privatisation High Commission.

## Conclusion

Privatisation in the electricity market and especially in the electricity distribution market is a core element for compliance with the European Union Regulations and the aim of Law Number 4628 and its secondary regulations is, as stated in the Law, "to ensure the development of a financially sound and transparent electricity market operating in a competitive environment under provisions of civil law and the delivery of sufficient, good quality, low cost and environmentally friendly electricity to consumers and to ensure the autonomous regulation and supervision of this market".

It is very important (i) to complete the implementation of privatisation rapidly and positively in accordance with the above-mentioned procedure, (ii) to deal with the prevention of the loss of and use of illicit electricity, and (iii) to make the necessary investments in this market in order to create a competitive market which provides sufficient good quality service to consumers.

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