

SECTION  
**03**  
CHAPTER  
**15**

# TURKEY'S ENERGY MARKET – OPPORTUNITIES FOR PRIVATE INVESTORS

By Yeşim Bezen and Simge Harmanyeri, Bezen & Partners

Turkey's energy consumption has increased substantially, due to the increase in population and growth in industry. However, Turkey cannot meet growing domestic consumption due to lack of state funds. Accordingly, it is in need of private investment to meet such demand.

It is projected that Turkey's energy consumption will increase at a steady 8% per year in the forthcoming years. The government is projecting more than 50% increase from 2007–20 in electricity consumption per person (see Table 15.1).

**Table 15.1: Energy consumption in Turkey, 2007–20P (GWh)**

Year	Gross demand (GWh)	Net demand (GWh)	Industry (GWh)	Domestic (GWh)	Transport (GWh)	Agriculture (GWh)	Consumption per person gross (GWh)
2007	190,700	154,200	76,025	72,500	1,260	4,415	2,558
2008	206,400	168,600	83,558	79,050	1,377	4,615	2,722
2009	223,500	184,400	91,823	86,250	1,507	4,820	2,897
2010	242,020	201,652	100,882	94,093	1,651	5,026	3,085
2011	262,000	220,600	110,665	102,900	1,810	5,225	3,299
2012	283,500	240,700	120,786	112,500	1,982	5,432	3,527
2013	306,100	262,000	131,682	122,500	2,168	5,650	3,763
2014	330,300	284,100	142,853	133,000	2,372	5,875	4,011
2015	356,200	307,071	154,940	143,430	2,593	6,108	4,274
2016	383,000	330,900	168,110	153,600	2,835	6,356	4,548
2017	410,700	355,600	182,087	163,800	3,100	6,613	4,827
2018	439,600	381,700	197,431	174,000	3,388	6,881	5,114
2019	469,500	408,000	212,438	184,700	3,703	7,159	5,405
2020	499,490	434,565	227,767	195,302	4,047	7,449	5,692

Source: T.C. Enerji ve Tabii Kaynaklar Bakanlığı – istatistikler – Genel Enerji Sektörel Talebi (Ministry of Energy and Natural Resources – Statistics – General Electricity Demand in Turkey) [www.enerji.gov.tr/istatistik\\_belge/enerji\\_istatistikleri/projeksiyonlar](http://www.enerji.gov.tr/istatistik_belge/enerji_istatistikleri/projeksiyonlar)

## Turkey's energy landscape

Turkey's energy landscape has changed over the years. This has been due to various factors, such as Turkey's increased dependency on other countries' energy sources and the (non) availability of such, as well as the country's intensification of economic and industrial performance. Nevertheless, recent statistics show that Turkey is still largely dependent on fossil energy sources in the generation of electricity. In 2007, 80.9% of electricity was generated from fossil energy sources, 18.7% by hydroelectric plants and the contribution of renewable energy sources to the total production was 0.4%<sup>1</sup>, as shown in Table 15.2. However, recent developments vis-à-vis renewable and nuclear energy generation demonstrate that Turkey's intentions are to decrease dependency on non-domestic energy sources.

<sup>1</sup> EMRA – Publications – Reports – Annual Activity Report – Energy Market Regulatory Authority 2007 Activity Report, p.21, [www.epdk.gov.tr/yayin\\_rapor/yillik/2007/2007.pdf](http://www.epdk.gov.tr/yayin_rapor/yillik/2007/2007.pdf)

**Table 15.2: Sources of energy, 1970–2006**

Year	Coal (per 1,000 tons)	Lignite (per 1,000 tons)	Asphaltite (per 1,000 tons)	Petro- leum (per 1,000 tons)	Natural gas (10 <sup>6</sup> m <sup>3</sup> )	Hydraulic + Geo thermal (GWh)	Geo thermal heat (per 1,000 tons)	Wind (GWh)	Sun (per 1,000 tons)	Wood (per 1,000 tons)	Animal + plant (per 1,000 tons)	Bio- fuel (per 1,000 tons)
1970	4,573	5,782	36	3,542	-	3,033	23	-	-	12,816	9,253	-
1975	4,813	9,150	456	3,095	-	5,904	56	-	-	14,562	10,495	-
1980	3,598	14,469	558	2,330	23	11,348	60	-	-	15,765	12,839	-
1985	3,605	35,869	523	2,110	68	12,051	232	-	-	17,368	11,039	-
1990	2,745	44,407	276	3,717	212	23,228	364	-	28	17,870	8,030	-
1995	2,248	52,758	67	3,516	182	35,627	437	-	143	18,374	6,765	-
2000	2,392	60,854	22	2,749	639	30,955	648	33	262	16,938	5,981	-
2005	2,170	57,708	888	2,281	897	39,655	926	59	385	13,819	5,127	-
2006	2,319	61,484	452	2,176	907	44,338	1,081	127	403	13,411	4,984	2

Source: T.C. Enerji ve Tabii Kaynaklar Bakanlığı – İstatistikler – Birincil Enerji Kaynakları Üretim (Ministry of Energy and Natural Resources – Statistics – Primary Energy Sources Production), [www.enerji.gov.tr/istatistik.asp](http://www.enerji.gov.tr/istatistik.asp)

As of the end of 2007, 49.1% of installed capacity belonged to the state-owned Electricity Generation Corporation (EÜAŞ), as shown in Table 15.3. The share of private companies active in the sector was limited. Accordingly, there is still scope for increasing the share of the private sector in the generation of electricity. Hence, Turkey's energy market is attracting not only domestic but international private investment.

As regards domestic private investment, in recent years many large domestic corporations have sold off assets to generate cash for investment purposes. The primary goal of such corporations is to invest in Turkey's energy sector, either on their own or together with an international partner, depending on the size of their investment. International players are either entering or increasing their share in Turkey's energy market through joint ventures with domestic players or through their Turkish subsidiaries.

**Table 15.3: Installed capacity (MW, %)**

	MW	Installed capacity %
EÜAŞ (Electricity Generation Corp.)	20,041.2	49.1
Affiliate Partnerships of EÜAŞ	3,834.0	9.4
Ankara Do al Elektrik A.Ş	141.3	0.3
Plants of which the operating rights are transferred	650.1	1.6
Mobile Plants	262.7	0.7
Build – Operate Plants	6,101.8	15.0
Build- Operate – Transfer Plants	2,449.0	6.0
Private Production Companies	3,683.7	9.0
Autoproducer and Autoproducer Groups	3,613.7	8.9
<b>Total</b>	<b>40,777.3</b>	<b>100.0</b>

Source: EPDK – Yayınlar – Raporlar – Yıllık Faaliyet Raporları – Enerji Piyasası Düzenleme Kurumunun 2007 Yılı Faaliyet Raporu (EMRA – Publications – Reports – Annual Activity Report – Energy Market Regulatory Authority 2007 Activity Report), [www.epdk.gov.tr/yayin\\_raporu/yillik/2007/2007.pdf](http://www.epdk.gov.tr/yayin_raporu/yillik/2007/2007.pdf)

## Past liberalisation efforts – Legislator v Judiciary<sup>2</sup>

Until 1984, the Turkish electricity market was controlled by the state. The state used to deal with the generation, transmission and distribution of electricity as a public service. The Turkish Electricity Authority (TEK) was the only player in the market, which was later to be replaced by the Turkish Electricity Generation and Transmission Corporation (TEAŞ).

Turkey's intention to open the market to the private sector led to a battle between Turkey's Supreme Courts and Turkey's governments. The Constitutional Court, as the guardian of the Turkish Constitution, had already expressed its view on this matter in 1974. It had ruled that providing electricity is a public service and foreign investors must not take part in the supply of electricity.

In 1984, Law No. 3096 welcomed the private sector to the market. The law introduced the generation, transmission and distribution of electricity by the private sector alongside TEK.

<sup>2</sup> Serdar Bezen (co-author), 'Not all plain sailing', IFR Special Report, Energy Issue, 2002, pp. 21–22

Once Law No. 3096 was enacted, the Constitutional Court softened its stance but found that under Law No. 3096 the nature of the agreements between the state and the private sector were concession agreements. Accordingly, such agreements could not be governed by private law but must be governed by administrative law and submitted to the jurisdiction of the Council of State (Danıştay).

In 1994, Law No. 3996 was enacted. Law No. 3996 deals with private sector investments in certain areas, including electricity by means of Law No. 3096, under build-operate-transfer (BOT). In terms of the electricity sector, the law redefines the type of agreements between the state and private sector as private law agreements instead of concession agreements. However, despite the government's efforts in amending the then existent legal framework to further private investments, the Constitutional Court ruled that such provision of the law, which aimed at redefining the legal relationship between the public and the private sector, was against the Constitution, since public services can only be provided by the state. If the state wished to transfer these services to the private sector, it could be done by way of concession agreements only.

The government saw only one way out: to initiate the amendment of the Constitution to counter further legal challenges. Finally, in 1999, the Constitution was amended. By the amended version of Article 47 of the Constitution, the legislator has been given power to determine which services can be conducted by the private sector under private law.

Following the constitutional amendment, the Constitutional Court fairly changed its view in favour of private investors. In recent decisions the Court ruled that performing public services by the private sector under private law provisions is no longer against the Constitution. In a decision of the Constitutional Court, (E 2002/47, K2006/1) which was published on 7 October 2006 in the Official Gazette, the Court presented its new liberal approach. The case before the Court was about the setting aside of Article 15 of the Privatisation Law (Law No. 4046). The provision simply states that public services can be performed by the private sector under private law. The Council of State (Danıştay) also confirmed the latest view of the Constitutional Court in a number of judgments.

The constitutional amendment also meant that disputes between the state and the private sector could henceforth be settled by international commercial arbitration. Accordingly, in 2001, the United Nations Commission on International Trade Law (UNCITRAL) Model Law was adopted as the Turkish International Arbitration Law by Law No. 4501, paving the way for such disputes to be settled by arbitration.

In 2001 there were further major legal developments for the liberalisation of the Turkish electricity market.

The first was the enactment of Decree No. 2026 which provided for the creation of three new joint stock companies to replace TEAŞ. These were:

- ▶ Turkish Electricity Distribution Company (TEDAŞ) – responsible for distribution and transmission;
- ▶ Turkish Electricity Generation Company (EÜAŞ) – responsible for generation;
- ▶ Turkish Electricity Trade and Undertaking Company (TETAŞ) – responsible for wholesale and hence concluding and executing electricity sale agreements.

The second development was the enactment of the Electricity Market Law (Law No. 4628) – the main legislation. The aim of the law is to ensure:

- ▶ The development of a financially sound and transparent electricity market operating in a competitive environment under provisions of private law;
- ▶ The delivery of sufficient, good quality, low cost and environmentally friendly electricity to consumers;
- ▶ The autonomous regulation and supervision of the market.

The Electricity Market Law states that any legal entity can operate in the market, subject to obtaining a licence within the provisions of the law. The application procedure, rights and obligations of the companies and other details regarding the licences are determined by the Electricity Market Licensing Regulation, which was published in the Official Gazette on 4 August 2002. It should be noted that the Electricity Market Law employs some restrictions in order to protect the idea of competition in the market. The most distinctive restriction is about the share of the players in the market. According to the Electricity Market Law and the

Electricity Market Licensing Regulation, the generation of electricity by a company cannot exceed 20% of total electricity generation of the country in the previous year. This percentage is 10% for wholesale companies.

Since its enactment, the Electricity Market Law has been amended on many occasions. It is now due to be amended again. All investment incentives and tax exemptions included in the current draft amendment law have been withdrawn by the Ministry of Energy and Natural Resources. The draft is to apply an excise tax relief only for a temporary period in respect of energy plants that will use fuel-oil.<sup>3</sup>

## Legal amendments gaining momentum

Other legal amendments have also gained momentum in 2008. For instance:

- ▶ The Nuclear Energy Law No. 5654 and the Regulation on Establishment of Nuclear Power Plants which lays out the requisite principles and procedures and incentives for the purposes of Nuclear Law No. 5654 have entered into force by publication in the Official Gazette dated 19 March 2008, paving the way for the construction of nuclear power plants and generation of nuclear energy;
- ▶ The Build-Operate-Transfer (BOT) Law No. 3996 was amended<sup>4</sup> to take account of the Council of State's (Danıştay) recent decision, to counter any further legal challenges and hence to further privatisation;
- ▶ The Public Procurement Law No. 2886 is due to be amended. The draft amendment extends the use of the bargaining method and opens the way for invitation-based tenders for investments that require expertise and high technology, including nuclear power stations. According to the proposed changes, only those "who may experience losses due to the result," and those who "are willing or may be willing" to win the tender may appeal against any concluded tender. The appealing party is obliged to present evidence supporting the claim<sup>5</sup>;
- ▶ In 2006, the government established a committee to draft Turkey's first Public-Private Partnership Law (the PPP Law). The PPP Law will be an umbrella legislation for existing investment models regulated under various current laws, such as Law No. 3096 (regarding energy investments), Law No. 3465 (regarding motorway construction) and Law Nos. 3996 and 4283 (regarding the application of the Build-Operate-Transfer (BOT) model for energy projects). Under the current draft, a joint stock company will be established for conducting the relevant project. The life of the project cannot exceed 49 years. Turkish law will apply to the contract to be signed with the state; however, recourse to arbitration is possible. The draft is currently with the Prime Ministry. Upon approval, the draft will be submitted to Parliament for enactment.

## The key players in the Turkish electricity market

The key players in the Turkish electricity market are the Ministry of Energy and Natural Sources (MENR), the Energy Market Regulatory Authority (EMRA), state-owned energy enterprises and private sector companies.

MENR is responsible for the preparation and implementation of energy policies in co-ordination with regulating bodies. MENR supervises and controls all exploration, development, production and distribution activities for energy and natural sources.

EMRA is the regulatory body. It has the authority and the duty of regulating the electricity, natural gas, petrol and liquefied petroleum gas (LPG) sectors in Turkey. The decision-making body of EMRA is the Energy Market Regulatory Board. Any lawsuits against decisions rendered by EMRA's Board are initiated before the Council of State (Danıştay).

The current state-owned energy enterprises are:

- ▶ Turkish Electricity Distribution Corporation (TEDAŞ) – responsible for distribution (previously, also responsible for transmission, which is now undertaken by TEİAŞ – see below);
- ▶ Turkish Electricity Generation Company (EÜAŞ) – responsible for generation;

---

<sup>3</sup> TEBA, 17 March 2008, [www.teba.com.tr](http://www.teba.com.tr)

<sup>4</sup> Official Gazette dated 21 May 2008 and numbered 26882

<sup>5</sup> Turkish Daily News, 19 May 2008, [www.turkishdailynews.com.tr](http://www.turkishdailynews.com.tr)

- ▶ Turkish Electricity Transmission Corporation (TEİAŞ) – responsible for transmission;
- ▶ Turkish Electricity Trade and Undertaking Company (TETAŞ) – responsible for wholesale and hence concluding and executing electricity sale agreements.

Article 3 of the Electricity Market Licensing Regulation defines a generation company as “any legal entity, except for autoproducers and autoproducer groups, engaged in generation of electricity and in the sale of electricity it has generated” and an autoproducer or autoproducer group as “any legal entity engaged in electricity generation primarily for the need of its affiliates”.<sup>6</sup>

The private sector is operating energy assets/facilities under different investment models – for instance, transfer of operational rights (TOR), build-operate-transfer (BOT) and build-own-operate (BOO)/build-own-operate-transfer (BOOT) models.

Under the TOR model, a private entity operates an existing facility belonging to the public sector for a set period, not exceeding 49 years. Such existing facility is transferred back to the public sector at the end of the concession period. The private entity is not authorised to use the facility as security. TORs in the pipeline are the following electricity distribution companies: Region 9: Başkent Elektrik Dağıtım AŞ; Region 14: İstanbul Anadolu Yakası Elektrik Dağıtım A.Ş.; and Region 15: Sakarya Elektrik Dağıtım AŞ.

A variation of the TOR model is the transfer of operational rights-backed share sale model (TSS). Under TSS, the investor will be the sole owner of the shares of the distribution company and granted rights to operate the distribution network pursuant to a TOR agreement. The distribution company is the unique licensee in the designated region and has no ownership of distribution network assets and other assets. Such ownership remains with TEDAŞ.

Under BOT, the private entity constructs a new facility and operates it for a set period. The facility is transferred to the public sector at the end of such concession period. The private entity may be granted usufruct rights over the land/facility and is able to grant security over such land/facility.<sup>7</sup> Completed BOTs are the following natural gas combined cycle power plants: Birecik HEPP; Trakya Natural Gas Combined Cycle Power Plant; Esenyurt Natural Gas Power Plant; and Bozcaada Wind Power Plant.

Under the BOO/BOOT model, the private entity is granted the right to develop, finance, design, build, own, operate, and maintain a facility. The operating revenue risk and all of the surplus operating revenue is with the private entity. The private entity owns the facility outright during the operating period, at the end of which ownership (and operational and financial control) is turned over to the public sector. Completed BOO/BOOTs are the following natural gas combined cycle power plants: Adapazarı (770MW); Gebze (1,540MW); and İzmir (1,540MW).

## Licensing

Under the Electricity Market Law and Electricity Market Licensing Regulation, EMRA is the only authority that is entitled to grant licences in the Turkish electricity market. The activities that can be realised by legal entities holding a licence are:

- ▶ Generation;
- ▶ Transmission;
- ▶ Distribution;
- ▶ Wholesale;
- ▶ Retail sale;
- ▶ Retail sale services;
- ▶ Import and export.

### Obtaining a licence

In order to obtain a licence, a legal entity must comply with the following conditions<sup>8</sup>:

- ▶ All legal entities are required to have been established as joint stock or limited liability companies in accordance with the provisions of the Turkish Commercial Code (Law No. 6762). In a joint stock company, all shares of the company, except in the case of autoproducers, must be

---

<sup>6</sup> Article 3 of the Electricity Market Licensing Regulation, Official Gazette dated 4 August 2002, numbered 24836.

<sup>7</sup> This is a civil law concept. Certain rights *in rem* of limited duration on the property of another are granted to the person using the property. Accordingly, the person using the property has the right to receive profits from the property.

<sup>8</sup> Electricity Market Law and Electricity Market Licensing Regulation.

registered shares. However, a joint stock company, whose shares are not fully registered, may still be granted a licence on the condition to convert its shares to fully registered shares and to amend its articles of association accordingly prior to EMRA's Board decision;

- ▶ Except for autoproducer licence applications, real persons who have a direct or indirect shareholding of 10% or more in the legal entity in question (in listed companies this ratio is 5%), members of the Management Board (i.e. the General Manager, the Assistant General Manager and other executives who are entitled to represent the legal entity at the level of Assistant General Manager or at a higher rank) and auditors of the company shall neither have been sentenced for infamous crimes, such as heavy imprisonment or imprisonment for more than five years, embezzlement, conspiracy, extortion, bribery, theft, swindling, forgery, fraudulent bankruptcy, breach of trust, nor have been convicted of smuggling, fraudulent acts in tenders, sales and purchases, tax fraud, money laundering and betrayal;
- ▶ For all generation, autoproducer and autoproducer group licence applications, the applicants are required to submit to EMRA a work schedule prepared with due regard to the features of the generation facility to be licensed and that covers the period up to the completion of the facility, and the completion date indicated in that work schedule needs to be approved by EMRA;
- ▶ For all generation, autoproducer and autoproducer group licence applications for the establishment of a generation facility to generate electricity from domestic natural sources, such as lignite, hard coal, bituminous schist, asphalt, geothermal, wind, waves, tide and solar energy, the applicant is required to satisfy certain additional conditions. For lignite, hard coal, asphalt, bituminous schist and geothermal sources, the applicant shall demonstrate that it has signed the fuel supply agreement regarding the energy source to be used or has acquired the right of use for the energy source or other real rights (real property rights) or that such rights have been guaranteed by the authorised real persons or legal entities. For hydraulic sources, the applicant shall demonstrate that it has signed the Water Usage Right Agreement or that it has been granted the right to be eligible to sign the Water Usage Right Agreement with The Directorate General of State Water Works.

The licence applicants are also required to submit documents indicated in the 'List of Information and Documents to be submitted during Licence Application' as defined by EMRA's Board decision together with their licence application forms. Such documents are, among others, corporate documents, a commitment letter as set out in Annex 2 of the Electricity Market Licensing Regulation, detailed technical specification regarding the power plant project and regarding the source to be used in the power plant, and detailed personal information about shareholders (real or legal persons) of the company.

In 2007, a total number of 274 licences were granted. Nine were granted to public companies. 205 of these licences were production licences, nine were autoproducer licences, three were wholesale licences and 57 were organised industrial zone (OIZ) distribution licences.<sup>9</sup>

### **Conditions attached to licences**

Licences for generation, transmission and distribution are granted for a period of between 10 and 49 years. Legal entities holding a licence cannot display activities in other fields except for legal entities holding generation and autoproducer licences. Licence holders are obliged to keep separate accounts for each licence they are holding and to supply to EMRA any and all information and documents requested. All records, accounts and facilities should be open for investigation and audit by EMRA. Licence holders are also required to insure their generation, transmission and distribution facilities for "all asset risk" coverage against natural disasters, fires and accidents.

Licences cannot be freely transferred. Accordingly, the following transactions concerning legal entities holding a licence are subjected to the approval of EMRA's Board<sup>10</sup>:

- ▶ Share transfer;
- ▶ Granting voting rights;
- ▶ Share pledge;
- ▶ Granting or releasing privileged rights over shares;

---

<sup>9</sup> Source: EPDK – Yayınlar – Raporlar - Yıllık Faaliyet Raporları – Enerji Piyasası Düzenleme Kurumun 2007 Yılı Faaliyet Raporu (EMRA – Publications – Reports – Annual Activity Report – Energy Market Regulatory Authority 2007 Activity Report), p. 26, [www.epdk.gov.tr/yayin\\_rapor/yillik/2007/2007.pdf](http://www.epdk.gov.tr/yayin_rapor/yillik/2007/2007.pdf)

<sup>10</sup> Article 15 of the Electricity Market Licensing Regulation

- ▶ Issuing redeeming shares;
- ▶ Merging with two or more legal entities.

### **Sanctions for breach of licence conditions**

EMRA's Board has the power to impose fines and sanctions on legal entities operating in the market. Article 11 of the Electricity Market Law states that such sanctions and fines vary from pecuniary penalties to licence cancellations.

The acts which are sanctioned by pecuniary penalties can be summarised as follows:

- ▶ Information provided upon request by EMRA's Board is false, insufficient or misleading;
- ▶ A legal entity is in breach of laws, regulations, communiqués issued by EMRA's Board, the legal entity is warned to remedy the breach within 30 days and such breach is not remedied;
- ▶ A legal entity fails to comply with any of the general terms or any of the responsibilities set out in its licence, the legal entity is warned to correct the same within 30 days;
- ▶ Violation of prohibitions on 'affiliate relations' (i.e. intra-group activities);
- ▶ A legal entity is engaged in activities not covered by its licence.

The licence of a legal entity can be revoked under the following circumstances:

- ▶ The licensing qualifications have been lost during the term of the licence or have never been present;
- ▶ A legal entity has committed the same violation more than once within the last two years and the total amount of fines imposed reach 10% of the gross income stated in the previous financial year's balance sheet of the legal entity in question;
- ▶ Misleading information or fictitious documents relating to licensing conditions are presented during the licence application process or if changes that affect the licensing conditions occur during the term of the licence and EMRA's Board is not notified about such changes;
- ▶ A legal entity fails to comply with any of the general terms or any of the responsibilities set out in its licence or misleading information or fictitious documents have been submitted and such violations are considered as high degree violations by EMRA's Board.

It should be noted that any sanctions or fines imposed by EMRA's Board can be challenged before the Council of State (Danıştay) as the court of first instance. The Council of State considers such filings against EMRA's Board decisions as an urgent matter.

### **Current electricity market tariffs**

The Electricity Market Law also states the procedures and principles regarding tariffs. The tariffs proposal is prepared by the legal entity in accordance with provisions of the Electricity Market Law and the licence granted for application in the following year. The proposal must be submitted to EMRA's Board's approval before the end of 31 October of every year. When EMRA's Board determines that such application conforms to the provisions of the applicable licence, it approves these applications before 31 December of the same year.

EMRA Board approval also contains adjustments to be made by the licence holder in respect of the applicable tariffs during the following year based on monthly inflation and any other provisions defined in the licence. Formulas relating to such price adjustments are set forth in each licence issued by EMRA in accordance with provisions of the Electricity Market Law.

EMRA introduced on 1 July 2008 a directive providing for a new automated pricing system and which is expected to encourage investment. The mechanism will set prices based on the cost of oil, inflation and currency.

## Opportunities for private investors

### Privatisation

Under Law No. 4046, the privatisation process is carried out by two bodies: the Privatisation High Council and the Privatisation Administration. The Privatisation High Council is the decision-making body; the Privatisation Administration is the executive body.

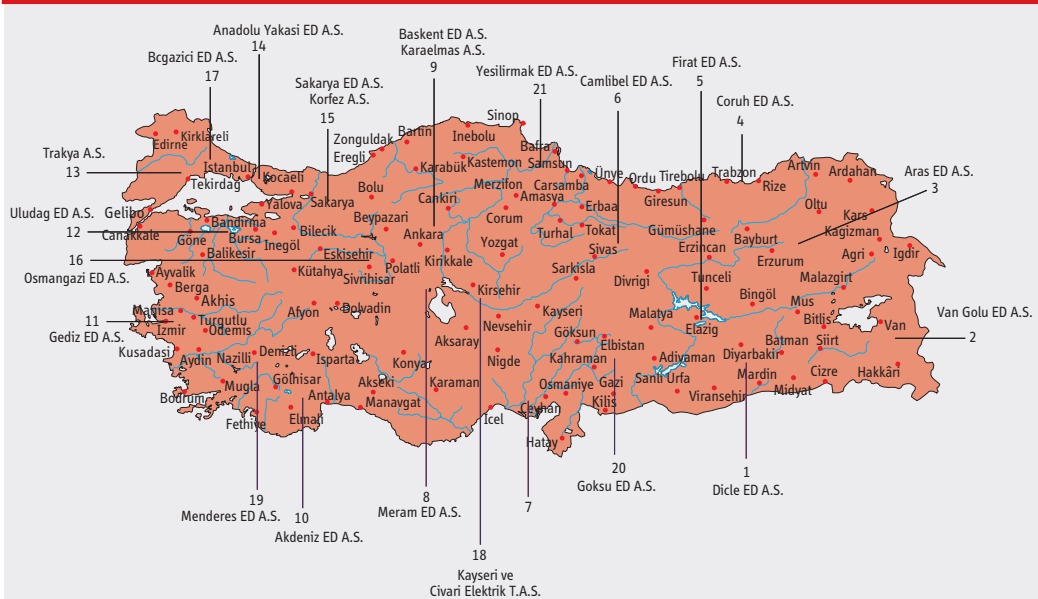
### General

Turkey's electricity industry has been dominated by large publicly owned companies. However, with the government's aggressive privatisation policy this situation is changing. In 2004, as a guideline for liberalisation and privatisation of the market, an Electricity Market Reform and Privatisation Strategy Certificate (the Strategy Certificate) was published. This defines the procedures for privatisation of the distribution and generation facilities, the precautions for the transition period and the safety of supply.

### Privatisation of distribution network

In line with the Strategy Certificate, 20 distribution areas were created, as shown in Figure 15.1.

**Figure 15.1: Turkey electricity distribution areas**



Source: Republic of Turkey Prime Ministry Privatization Administration - "Opportunities in Turkey Privatization" cengiz bucak - [http://www.bdi-online.de/Dokumente/Internationale-Maerkte/DTKR\\_05\\_Praes\\_Privatiz\\_Administ.pdf](http://www.bdi-online.de/Dokumente/Internationale-Maerkte/DTKR_05_Praes_Privatiz_Administ.pdf)

As the owner of the distribution assets, TEDAŞ has assigned its operational rights over the assets to the distribution companies established in the 20 areas. The operation licence obtained in the name of each joint stock company is for 49 years. In other words, only operational rights of such licence-holding companies are transferred for a limited period – currently 49 years. The Privatisation Administration published on 30 April 2008 the announcement of the tender towards privatisation of Meram Elektrik Dağıtım A.Ş. and Aras Elektrik Dağıtım A.Ş. by way of block sale. The bidding deadlines are 15 September 2008. Bids have already been received for Başkent Elektrik Dağıtım A.Ş. and Sakarya Elektrik Dağıtım A.Ş.

### Privatisation of generation companies

The Privatisation Administration has invited bids to select the consultant for the privatisation of the power generation sector. Around 20–25 local investment banks, included in the portfolio, were invited to submit bids by 26 May 2008. Among the studies to be carried out by the consultant will be the determination of the fixed and movable assets of the power plants to be privatised, and detailed evaluation of the financial balance sheets. The consultant will also provide technical support in the evaluation of the international bids to be collected. The efficiency ratios of the power plants will be increased by carrying out rehabilitations amounting to TL2.5bn prior to launching the privatisation. Out of a total of 436 rehabilitation projects, 254 have been completed, 82 are ongoing, and 100 are at contract-award stage. EÜAŞ has been continuing with the rehabilitation of the existing power plants for three years, a process which is to be completed by the time the privatisation tenders are launched in 2009.

An independent study<sup>11</sup>, in connection with the privatisation of the power sector, has recommended that EÜAŞ's existing thermal and hydroelectric power plants be privatised in the form of groups. Accordingly, it was decided that such power plants are privatised in the form of six portfolio groups:

- ▶ Ambarlı gas-fired, Ambarlı fuel oil-fired and Çatalağzı hardcoal-fired thermal power plants, and Beyköy, Yenice, Gökçekaya, Sarıyar, Kapulukaya, Kesikköprü and Hirfanlı;
- ▶ Yatağan, Yeniköy and Kemerköy thermal power plants and Demirköprü, Adıgüzel, Kemer, Karacaören 1, Gezende and Çatalan;
- ▶ Soma, Tunçbilek and Kangal lignite-fired power plants and Hopa fuel oil-fired power plant and Mercan, Özlüce, Tercan, Kuzgun, Kürtün, Doğankent, Çıldır, İkizdere, Tortum, Kılıçkaya, Çamlığöze and Almus, Ataköy, Köprüce;
- ▶ Aliğa diesel oil-fired, Bursa gas-fired, Denizli geothermal, Orhaneli lignite-fired power plants, Hasan Uğurlu and Suat Uğurlu;
- ▶ Hamitabad gas-fired, Seyitömer lignite-fired, Çan lignite-fired power plants, Altınkaya and Derbend;
- ▶ Afşin-Elbistan A lignite-fired, Afşin-Elbistan B lignite-fired power plants, Ceyhan, Aslantaş and Karkamış.

#### **Pros and cons of privatisation**

Although obstacles in respect of privatisation have decreased within the last decade, there are still certain difficulties for investors to overcome. The main obstacles can be summarised as follows:

- ▶ Judiciary challenges which investors may face at every stage of the privatisation process;
- ▶ Slow-moving bureaucracy;
- ▶ Unexpected last minute political decisions regarding postponement of the process (as was the case in respect of the four distribution companies in 2007).

However, investors that are determined to overcome the above obstacles can obtain the asset/facility in question at below market value. This entitles such investors to sell such asset/facility at a premium to other investors that were not willing to participate in the privatisation process.

#### **Rehabilitation**

Some of the publicly held power stations, distribution and transmission lines are fairly out of date in terms of technology. Currently, there are many rehabilitation projects on the agenda. The following is a list of past and current rehabilitation projects:

- ▶ EÜAŞ's Afşin-Elbistan A thermal power plant rehabilitation project;
- ▶ EÜAŞ's Keban HEPP rehabilitation project;
- ▶ TEDAŞ's project for the rehabilitation of electricity distribution networks;
- ▶ EÜAŞ's project for the rehabilitation of Tunçbilek thermal power plant electro-filters;
- ▶ EÜAŞ's project for the rehabilitation of electro-filters in Çatalağzı thermal power plant.

Major players (engineering firms and contractors) are competing for the tenders for rehabilitation projects. If one considers that these plants are state-owned and require maintenance, the private sector is regarded as a partner by the public sector to undertake such maintenance, due to lack of funds in the public sector to maintain these on its own. The Privatisation Administration also favours rehabilitation prior to privatisation, since the facility in question becomes a more attractive asset and is likely to attract a higher bid.

#### **Other opportunities**

Turkey is increasingly looking for other opportunities to generate more electricity for domestic consumption. One recent legal development – the enactment of the Nuclear Energy Law – has led to the launch of a tender for Turkey's first nuclear power station. The Turkish Electricity Trading and Contracting Corp (TETAŞ) has launched a tender to identify the entity that will

---

<sup>11</sup> A report by Deloitte & Touche on the privatisation of the Turkish power sector, commissioned by the General Directorate of Electricity Generation Corporation (EÜAŞ) in 2005.

establish and operate the nuclear power plant in Mersin-Akkuyu and that will generate nuclear energy to be sold to the public. Leading players (both domestic and international) have already purchased the tender specifications.

In addition, applications for renewable energy generation licences are on the rise, especially in view of the incentives provided by the state. Turkey's geographic suitability for the generation of electricity from renewable energy sources has attracted domestic and international players to apply for renewable energy licences – notably wind energy power plant licences. EMRA issued 19 wind energy power plant licences in May 2008 alone.

Private investors, who do not wish to participate in public tenders due to the procedural hurdles and judicial challenges, are looking to acquire energy interests from players that have acquired such by way of privatisation. They are willing to pay a premium for such energy interests since they have not sat through the time-consuming privatisation process. Increasingly, international investors are looking to acquire a minority interest in project companies. However, depending on what such international investors are seeking in terms of minority rights, domestic players are more interested in finding a 'true partner' – i.e. a partner that not only provides the cash but is willing to take on certain risks and/or provide certain technical assistance.

## **Conclusion**

Turkey is in need of private investment to meet its increasing energy consumption. Turkey is also in need of technologically advanced new power plants. In the last two decades, major international players have entered the Turkish energy market. Recently, new players have entered or expressed an intention of entering the Turkish energy market. This demonstrates that opportunities for energy investors (domestic or international) are great, not only in terms of financial contribution but also in terms of logistical/technological assistance, provided that investors are patient enough to overcome procedural hurdles and possible judicial challenges in their Turkish ventures.