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## **PRIVATIZATION IN TURKEY: FULL STEAM AHEAD**

Over the last few years, economic and legislative reforms – as well as a newly established macroeconomic policy that includes a serious privatization program – have built up a strong private sector in Turkey.

The Prime Ministry Privatization Administration (“PA”) supervises authorization of organizations in the privatization program, with the aim of minimizing state involvement in commercial activities and allowing free enterprise to grow quickly. Such freedom has led to the recovery and stability of the Turkish economy, especially visible in the privatization achievements between the years 2002-2008. Since 1986, Turkey has generated USD 38,170,024,019 in income from privatization, and USD 6,297,123,974 of this accrued in 2008 alone.

The PA and government officials make clear that the privatization program will proceed with the aim of establishing free competition, economic development and stability in different sectors, including but not limited to infrastructure, energy, transportation, ports and banks. Despite the current global financial crisis, which is retarding privatization, in the coming two years the PA envisages many privatization achievements, including the National Lottery; designated highways and bridges including two bridges of Istanbul – Bosphorus Bridge and Fatih Sultan Mehmet Bridge – spanning the Bosphorus strait and thus connecting Europe and Asia; ports; and the sale of remaining assets related to the tobacco product manufacturing business of Tütün, Tütün Mamulleri, Tuz ve Alkol İşletmeleri Anonim Şirketi (“TEKEL”), and Sigara Sanayii İşletmeleri ve Ticareti A.Ş. (“**Sigara Sanayi**”), an affiliate of TEKEL.

### **Privatization of the National Lottery (“Milli Piyango”)**

Several national and foreign companies are keeping a close eye on the long-awaited privatization tender of Turkey’s state-owned lottery company, the annual turnover of which is USD 683 million with a net profit of USD 189 million. Although the National Lottery has been included in the privatization program and portfolio since 2003, the latest attempt at its privatization began with publication of the tender announcement in the Official Gazette on 6 November 2008. For this purpose, the Parliament enacted the Law on Public Finance Management and Control<sup>1</sup> and its Regulation on the Issuance of Gambling Licenses<sup>2</sup> (“**Regulation**”). The National Lottery is to be privatized through transfer of license for a period of 10 years. During the tender process, although five applicants<sup>3</sup> met the qualification criteria for the National Lottery tender, according to the announcement of the PA on 15 April 2009 only two bids were made – one by the OPAP-DAF Araştırma Geliştirme A.Ş.<sup>4</sup> Consortium, and the other by Şans Oyunları Yatırım Holding A.Ş., a subsidiary of Turkish GSM operator Turkcell. Finally, the tender was conducted on 7 May 2009 with great hopes and expectations. However, this last attempt at privatizing the National Lottery ended with cancellation, since these bidders did not raise the floor price of USD 1.6 billion set by the PA in the auction. According to the press, the reason for the withdrawal of two bidders was the critical global financial environment. Nevertheless, despite the unsuccessful attempts thus far, it seems there is light at the end of the tunnel. The President of the PA

has announced the launch of another tender process that includes more reasonable and favorable conditions, and has indicated that the privatization of the National Lottery is expected to be completed by the end of 2009.

### **Privatization of Highways and Bridges**

It seems the PA is steadfast about crossing the bridge and reaching the highway to new horizons of privatization. That is why the period for completion of the strategy report for the privatization of bridges and highways – as mentioned in the Budget – was accelerated and is now concluded. Following the review of the PA, certain laws regarding the privatization of bridges and highways need to be amended. With parliamentary approval of these laws, the breathtaking tender process will commence.

Highways and bridges included in the scope of the privatization are: (i) Edirne-Istanbul-Ankara Highway, (ii) Pozantı-Tarsus-Mersin Highway, (iii) Tarsus-Adana-Gaziantep Highway, (iv) Toprakkale-İskenderun Highway, (v) Izmir-Çeşme Highway, (vi) Izmir-Aydın Highway, (vii) Gaziantep-Şanlıurfa Highway, (viii) Intercity Highways of Izmir and Ankara, (ix) Fatih Sultan Mehmet Bridge, and (x) Boğaziçi Bridge. The operation rights for Fatih Sultan Mehmet Bridge and eight highways will be transferred by concession agreements for a period of 20-25 years and the expected income from this privatization is approximately USD 5-6 billion. According to the Turkish press, all of the above-listed highways will be privatized in one package except for the Istanbul Boğaziçi (Bosphorus) Bridge.

### **Privatization of TEKEL**

The privatization of the tobacco assets of TEKEL, concluded in 2008, is the largest asset sale conducted through privatization in Turkey to date. The PA announced the tender for TEKEL and Sigara Sanayi on 26 October 2007, and it was awarded to British American Tobacco, which agreed to pay USD 1.72 billion in cash for the assets of TEKEL and Sigara Sanayi. With the execution of the asset sale agreement on 24 June 2008, the privatization of TEKEL and Sigara Sanayi's assets was completed with great success and attracted a great deal of attention. This success has motivated the PA to perform more privatizations, this time for TEKEL's affiliates, and on 25 November 2008, the PA publicly announced the privatization of 51% of the public shares of TEKEL held in Türk Tütün Endüstrisi Limited Şirketi, established in Northern Cyprus. The deadline for submitting offers was postponed to 24 July 2009, and this tender appears tempting to potential bidders.

### **Privatization of Electricity Distribution Facilities**

With respect to the energy sector, the tender for the sale of 100% of the shares of Meram Elektrik Dağıtım A.Ş. (“**Meram**”) has been awarded to Alsim Alarko Sanayi Tesisleri ve Tic.A.Ş. in return for USD 440 million. The tender for Aras Elektrik Dağıtım A.Ş. (“**Aras**”) went to Kiler Alışveriş Hizmetleri Gıda Sanayi ve Ticaret A.Ş. in return for USD 128,500 million on 25 September 2008. The High Council of the PA approved the privatizations of both Meram and Aras. However, the Council of State is suspending execution of the Aras privatization due to the bidding process's non-compliance with the law and lack of competition.

### **Privatization of Ports**

Turkey is surrounded by seas on three sides: the Aegean to the west, the Black Sea to the north and the Mediterranean to the south. There are approximately 290 shore facilities in Turkey, including ports, fishing harbors, docks and yacht harbors. In recent years, Turkey's state-owned and operated ports, which are in the possession of both the Turkish Republic State Railways ("TCDD") and the Turkish Maritime Administration (TDI), have also entered the privatization portfolio. Under the privatization portfolio, there were seven ports – Samsun, Haydarpaşa, Derince, Bandırma, İzmir, Mersin, and Iskenderun – owned by TCDD which are strategically important, as seven railways connect to these ports. The PA initiated the privatization process of Mersin Port by transferring operation rights for a period of 36 years. On 12 August 2005 the tender was awarded to PSA-Akfen Joint Venture Group for USD 755 million. After the approval of the Council of State, the Concession Rights Agreement was signed. Today, the Port of Mersin is one of the most elegant and well functioning ports of Turkey.

The privatization of Iskenderun Port had a disappointing finale, as the High Council of the PA cancelled the tender. However, according to the press, Iskenderun Port is still in the privatization queue.

The tender for the transfer of rights to operate İzmir Port for a period of 49 years was completed on 3 May 2007, and the port was awarded to a joint venture group led by Hutchison Whampoa (Hong Kong) for USD 1.28 billion. Additionally, the tenders for transfer of rights to operate Derince, Samsun and Bandırma Ports for a period of 36 years have been finalized. However, none of these privatizations has been accomplished, as the mandatory approval process of the Council of State with respect to the relevant concession agreements has not been completed. The Council of State has predicted – not unreasonably – that funding complications for such ports will ensue after approval as a consequence of the economic crisis. We trust that the current opacity in the world economy will dissipate soon, so that these tenders will be concluded as successfully as the one for Mersin Port. Accordingly, the ultimate target of the privatization – which is the establishment of the free competition, economic development and stability in several sectors – will be achieved.

*by Hergüner Bilgen Özeke*

<sup>1</sup> Published in the Official Gazette dated 6 August 2008.

<sup>2</sup> Published in the Official Gazette dated 15 October 2008.

<sup>3</sup> (i) Doğan Şirketler Grubu Holding A. S. - Lottomatica S.p.A Joint Venture Group, (ii) Intralot S. A Integrated Lottery Systems and Services, (iii) OPAP S. A-DAF Araştırma Geliştirme A.Ş. Joint Venture Group, (iv) Österreichische Lottrien Gesellschaft mbH, and (v) Şans Oyunları Yatırım Holding A.Ş.

<sup>4</sup> DAF Araştırma Geliştirme A.Ş. consists of Doğu Holding, Alarko Holding and Fina Holding.