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PROCESS OF LIBERALIZATION & PRIVATIZATION IN THE ENERGY/TELECOMMUNICATIONS LAW A COMPARISON BETWEEN THE EU AND TURKISH SYSTEM

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INTRODUCTION

Functions of the state should be determined again to be able to provide better services due to changing economical, social and technological conditions. Privatization proceedings, one of the most important tools in this direction, have started to be applied widespread in countries which adopted the market economy in 1980s and in old socialist countries in 1990s.

In most of the developed and developing countries, the state interferes with some markets since those markets do not function effectively. The state interference appears to be both as the operation of some sectors by the state itself in many countries till the end of the 1970s and as the regulation of private entities in the USA.

Today, the government interference in economy is seriously questioned. In fact, it is observed that legal arrangements are decreased and efforts to set markets free have been started to be applied. Especially, important efforts have been made to realize the public infrastructure investments and services by the private enterprises

The importance of regulating role of the government in sectors like electricity and telecommunications has come to the picture in Turkey in recent years. The reason behind the emergence of this subject in the agenda is that many public services in Turkey have been carried out by governmental monopolies until these days. Now, the transfer of possession of these monopolies to private sector is in the agenda. In this situation, it might be the case that the governmental monopoly may turn into the private monopoly. After the transfer of the possession, it is essential to be regulated by the government to prevent the monopolist behaviours of those private entities.

One of the important characteristics of this kind of sectors is that some of the basic services in the sector offer a natural monopoly. Namely, the cheapest service is obtained only if it is provided by only one company. Consequently, when these services are in question, the competition is not a mechanism of effective source distribution. Therefore, in many cases, this is the basic reason of both market disorganization and the necessity of the government interference. Certainly, with the technologic changes in last 20-30 years, these facilities have

lost their natural monopolist characteristic. Therefore, the competition might be created in these sectors by means of increasing the number of the companies. On the other hand, if in a section of the sector the characteristic of natural monopoly continues to exist, then the sector which is opened to competitive approaches cannot run its facilities being independent of that section. In this case, it might be essential to regulate the competitive sections and natural monopolist sections of the sector and the relations with that dominant company.

CHAPTER 1
PRIVATIZATION

1.1. PRIVATIZATION: A GENERAL APPROACH

After 1980s, one of the reforms required by the new world is the privatization reform. The developments in the direction of the free market economy in the whole world have made essential the re-construction of the public sector. If the decrease of the government role in the national economy is aimed, the most effective tool in this direction is privatization. Privatization is in general the establishment of the free market economy via terminating the facilities of the state in economic life.[1] Privatization covers all applications which will make the free market economy functional. From a limited point of view, it is the transfer of the public businesses which means the transfer of the management and possession of state economic enterprise (SEE) emerged as a result of the appearance of the government in the economy as an enterprising. The privatization notion must be dealt with a wide point of view. For example, the decrease of the regulations and controls of government in economy is also a privatization method and this method is an effective tool to make the market economy efficient. Therefore it is necessary not to understand the privatization as the sale of the public economic entities. With this point of view, the fundamental logic of the privatization is based on the liberal idea.[2] Liberal idea defends the market economy as the economic system. Consequently, restricted government understanding of the liberal thought is the basic logic of the privatization.

Privatization, ahead of a simple transfer of possession or management, is the turning of a whole economic organization into a structure functioning in accordance with free market mechanism. And all these elements exist in the privatization description with a wide understanding. Besides the transfer of the possession, rental of this kind of enterprises to private sector, provision of the finance by the private sector for the goods and services produced by the public entities, transfer of the management to the private sector, removing the public monopolies in the goods and services production and organizational liberalization exist in the privatization understanding. In these circumstances, privatization, as a whole, is a notion of the restriction of the governmental economic facilities and increasing the influences of the market actors. For instance, in Turkey, removal of the tea and tobacco monopolies,

[1] AKIN, Koray, "Türkiye'de Özelleştirme" Boğaziçi Yöneticiler Vakfı Merkezi Beyin Fırtınası Meclisi Toplantı Notları, 9 Mayıs 2000, p. 28
[2] TANDIRCIOĞLU, Haluk, Geçiş Ekonomilerinde Özelleştirme, Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, Vol. 4, 2002, p. 198

establishment of the related laws and regulations to provide the participation of the private sector in this field are in total an example of the privatization with a wide point of view. Also, tendering the certain works in public organizations (cleaning, food and even some works related with production) to private sector is a kind of privatization in this meaning. The methods like the transfer of the both the competency and the management, rental method, income partnership method etc. are also covered by the privatization concept in a wide meaning.[3]

Privatization with a wide meaning covers the sale of the assets of the public, giving the special privilege to the private bodies to provide the production and distribution of goods and services, transfer of the ruling or application competency to the independent regulating organizations or deregulation of production and distribution of goods and services which are organized with certain rules by the competent public authorities.[4] The transfer in the narrow meaning of the privatization occurs via either the sale of the share certificates belonging to the enterprise or the sale as a whole (block sale).

The second type of the privatization, legal-organizational liberalization, roughly, covers the permission of the private sector provision of a service which is monopolized by the government.

The notions of sectoral liberalization and the competition have been argued commonly especially after the 1980s, in sectors of natural monopoly especially the electricity sector. The liberalization might be described as process of the removal of the legal barriers related to the entrance to and exit from the sector and opening of the sector to the competition. However, with the liberalization it is essential to clarify the questions like "to which point the competition will be possible and meaningful, will the continuation of the activities of the natural monopolies structured with vertical integration happen via either keeping the integration or dividing it into the divisions, whether a regulation will be required or not and what kind of relation can be established between the regulation and the competition."[5]

[3] ÖZTÜRK, Nursel, Özelleştirme Ders Notları, Ankara, 2001, p.2
[4] OCAKVERDİ, Eren, Türkiye'de Özelleştirme Süreci, Görüş Dergisi, Vol. 60, September - November 2004, p. 60
[5] AMSTRONG Mark, COWAN Simon, VICKERS John, Regulatory Reform: Economic Analysis and British Experiences, The MIT Press, London 1994. p. 100

According to Robert BAILEY, there are four political initiatives which can be described with the privatization in existing public management in the world and none of them can be separated from the others:[6]

*First of these, can be named as "transferring towards the private sector". This is the oldest and the most used notion related with the privatization. According to a simple description, it is the transfer of a service or an activity from the public entities to the private entities. Health services are given as a classical example all the time.

*The second description is based on the latest arguments in West Europe and not much related with the mentioned situation in USA. In the most of the rest of the first and third countries and in Europe, the state owned enterprises (SOEs) exist. These enterprises are belong to the state as a whole or partially. The point making different these enterprises from the enterprises with the same structure is that most of these state owned enterprises are established to provide the equity in the society. Namely, they produce the raw materials or similar other products which will be shared by enterprises not owned by the state. Many of the airlines in the world are belong to the public enterprises having private investing shares.

*The third description is the sale of the possession as an added notion to the privatization concept recently. In the presidency of Reagan, it was aimed to liquidation of some of the federal state holdings to increase the incomes and to finish the public investments. As a best example for this subject, the sale of the Conrail Railways in Northeast and petrol fields in the West. The main aim expected from these privatization applications is the liquidation of these properties with cash values. But still, the determination of market values of liquidified properties is a problem.

*The fourth privatization description is based on an agreement. The privatization concept at this point is rather ambiguous and not much known. It is a kind of privatization practice completely. The traditional responsibility of the state continues but the management is achieved by the private sector. The government is responsible with the financial success and policy of the private company. The traditional source of this kind of privatization is to provision of the social services.

[6] BAILEY, Robert, Uses and Misuses of Privitization, Prospects for Privatization, New York: The Academy of Political Sciences, 1987, p.138-139

In the agreement system, the government continues to finance the service but calls for the private sector to increase the number of companies to keep the service in accordance with the agreement provisions.[7]

All these descriptions have been filtered and each of them presents certain little differences. The focus point of the subject is related with the practice rather than being ideological.

1.2. REGULATION AND PRIVATIZATION RELATIONSHIP

In most of the countries, public enterprises operate as public corporations established legitimately. That's why they are open to political interferences. One of the results of interfering often with political aims, in contrast with the commercial targets, forcing the enterprises to buy the products of that country or controlling the price levels of that enterprise. This situation is also felt with the quality of the goods and services produced and presented to the consumer since in the absence of the pressure to increase the efficiency and the effectiveness then there will not be a motivation towards the increase of the quality of the services. As a result of the state interference to the economy, expected targets could not have been achieved and the dominant position of public enterprises in the production facilities which is the basic reason behind the collapse of the socialist block in 1989 has been subject to very serious criticisms.[8]

However, creation of the competitive markets is not achieved by themselves. Being independent of the stage of the economic development, when markets are not controlled they do not work efficiently. In this case it is observed that the state interferes with the markets. The fundamental reason for the public enterprises and public regulations is that some sectors exhibit a natural monopolist characteristic. In fact, the reason behind the monopolist characteristic of a market or even if it is not the case, the reason behind the idea of harmful effects of competition to the society is the existing technology in that particular market. With the development of the technology, natural monopolies were also started to be argued, the policy makers had to scrutinize the state interferences which are costing a lot to the society and had to make various reforms. Because of this reason, regulating rules and organizations have been established. But to be able to realize the regulating rules and organizations, first it is necessary to realize the privatization mostly.

[7] BUTLER, Stuart M., Privatization for Public Purposes, The University of Wisconsin Press, London, 1991, p. 56

[8] ARDIYOK, Şahin, Doğal Tekeller Ve Düzenleyici Kurumlar, Türkiye İçin Düzenleyici Kurum Modeli, p.40

The regulation is the most efficient mechanism which will be used to realize the transfer from the public monopolies to competitive markets with the protection of the important social values. As a matter of fact, in OECD economies, the parts of the many important sectors which are not belong to the state are subject to heavy regulation rules since these sectors are natural monopoly or have a social and strategic importance.[9]

Another formation observed worldwide after the deregulation term is the realization of re-regulation, privatization and re-regulation activities at the moment. While some sectors are regulated again or scrutinized because of this kind of necessity, a fast deregulation process is observed especially in the telecommunications sector in which technologic improvements are realized a lot. The reasons of this tendency are explained as following in an OECD report:[10]

- ❖ Unsuccessful state interferences in terms of their targets
- ❖ Low performance in the interfered sectors
- ❖ Proceedings in labor market (for instance, interferences turned into employment support)
- ❖ Difficulties dealing with the budgets and the help coming from the privatization for the completion of the budgets
- ❖ Occurrence of new political targets (for example in United Kingdom, the "public capitalism" ideology)
- ❖ And finally, re-valuation of the question of why markets are not functioning under the lights of changing technologies.

This new tendency expresses a new liberalization process. At this point, competition policies coincide with the privatization and, according to some people, democracy.

1.3. PURPOSES OF THE PRIVATIZATION

There are five purposes of the privatization practices:[11]

- ✓ Provision of the efficiency in the distribution of the resources subject to privatization,

[9] OECD Committee on Competition Law and Policy, *Relationship Between Regulators and Competition Authorities*, Paris, 1999 p. 9
[10] OECD Committee on Competition Law and Policy, Ibid, pp. 17-21
[11] MASKIN, E.S., "Auctions and Privatization", (ed) H. Siebert, Institut für Weltwirtschaft an der Universitat Kiel, 1992, p. 117

- ✓ Preventing the intensities to help the establishment of the competition in the market via the privatization,
- ✓ Obtaining a good income in terms of public finance policies,
- ✓ Appropriate distribution of the risk among the economic actors,
- ✓ Provision of the efficiency in the re-distribution of the income obtained by the privatization.

The most efficient distribution of the assets subject to privatization, instead of the sale of them with the highest price, in contrast to the thoughts of many people, is the most important purpose among the ones summarized above in short. The reason for the importance of the efficiency in privatizations is that secondary markets for the subjects are not sufficiently developed according to the structure and size of the privatization subjects. These conditions make the provision of the most efficient distribution at the stage of first sale of the subject in terms of social prosperity.[12] Similarly, in accordance with the Maskin, also the answer for the question of which method will give result to most efficient values is not much important in places where developed capital markets exist since secondary markets, finally, will correct the mistakes in the first sale of the subject. [13]

In the decision with the number of 953 and the date of October 3, 1990, European Council Parliaments Assembly, the purposes related with the privatization, can be explained as "increasing the efficiency, decreasing the prices, provision of the efficient distribution of the sources, decreasing the state budget, increasing the incomes, decreasing the number of workers in public sector and to decrease the power of the labor unions which are extremely monopolist".[14]

With the expansion of the purposes expected by privatization, the privatization is recently used for the ideological and political purposes. Ideological purpose is raised from the thought of the dependency of political independency to the private proprietorship since via the minimization of the state interference to the economy and so that making the state smaller, state interferences towards the personal freedom of people will decrease.[15]

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[12] KRISHNA, V., PERRY, M., "Efficient Mechanism Design", Pennsylvania State University, April 1998, p. 3
[13] MASKIN, E.S., Ibid, p. 116
[14] Nursel ÖZTÜRK, Ibid, p.5
[15] BEESLEY, Michael / LITTLECHILD, Stephen, "Privatization: Principles, Problems, and Priorities", *Privatization & Economic Performance* (ed) BISHOP, Mattew/KAY, John/MAYER, Colin) London, 1992, p. 16

It is certain that the purpose of this kind of operation will not be composed of only the income which is obtained by public from the transfer. Otherwise, taking into attention the enterprises subjected to privatization which are in general natural and/or legal monopolies, the transfer will only mean that the public monopoly will be replaced with the private monopoly and it is clear that this kind of situation will give into worse results compared with the previous situations. Increasing the economic efficiency via the transfer of the market in which privatized enterprise is operating to a more competitive structure is one of the most important purposes of the privatization as a tool of economy policy. This is the fundamental purpose for the application of competition rules. To realize this purpose via the privatization it is required to use a group of tools which can be gathered under the heading of "re-structuring" which are the removal of the legal regulations creating barriers for the entrance to the market, transfer of the enterprise seperately which is subject to privatization dividing into parts if possible, keeping the "golden share" (privileged share) in the hands of public, creating a regulatory body. The form and content of these regulations are determined by characteristics of the privatized enterprise.[16]

Previously we have said that the main reason behind the privatization is the provision of the removal of the state from the field of management of the economy. On the other hand, without improving the stock exchange and capital markets it is not possible to talk about a healthy development in economy of Turkey. And the improvement of the capital market is possible only with the directing the more amounts of savings to the financial markets and creation of an economic structure which will make it possible to direct the funds obtained in this way to the capital markets. Appraising from this point of view, with the privatization practices, both the creation of new sources directing the local and foreign savings to these markets which do not directed towards the financial markets and therefore towards the capital markets and on the other hand preventing the negative pressure on the financial market which is troubled because of the demand of the public sector on the funds are aimed.

The distribution of the proprietorship via the privatization among the foreign and national investors like among the public and private sector, changes according to the purposes of the governments. Especially in case of foreign investments, governments keep a substantial amount of shares of the privatized company and the right of veto in decisions related with the activities of the company and also in some cases put some restrictions on the voting and in the management of the company with the foreign capital. Governments taking into attention the

[16] KARAKELLE, İsmail Hakkı, Elektrik ve Telekomünikasyon Sektörleri Bağlamında Özelleştirme ve Rekabet, p.1

management experience, the ability to bring know-how and increase the efficiency in the economy in general of the foreign investor, especially prefer the foreign investors in those privatized sectors.[17]

1.4. THE PHILOSOPHY OF THE PRIVATIZATION

The main philosophy of privatization is to confine the role of the state in the economy in the areas like health, basic education, social security, national defense, large scale infrastructure investments; provide legal and structural environment for free enterprise to operate and thus to increase the productivity and the value added to the economy by ensuring more efficient organization and management in the enterprises that should be commercialized to be competitive in the market.

Without the privatization philosophy, the privatization will not serve the realization of the long term purposes in the economy. The privatization should never mean the discharge of public assets. On the other hand, the privatization should not be understood as a method of getting out of debts. The essence of the privatization is to structure the economy in long term based on the long term efficiency. Therefore competition and efficiency premises cannot be abandoned. Just like public sector monopolies, the private sector monopolies are also harmful in terms of the prosperity of the public and the efficiency of the economy.[18]

1.5. THEORICAL UTILITIES OF PRIVATIZATION

Political interference results in ineffectiveness in the economy. State monopolies create ineffectiveness. They cannot create innovations and they remove the consumer dominance. The privatization saves from the political interference and provides independence. The privatization that provides a consumer independency in large scale takes the competency from the bureaucrat and gives to the consumer. Thus better quality and lower price are obtained and the efficiency in the source distribution is provided.[19]

After the privatization finance of the public organizations is provided by the private sector. Thus the burden on the Treasury is removed. The unbalanced budgets because of the public

[17] KARABALIK, Hakan, Orta Avrupa Ülkelerinde Yabancı Sermaye Yatırımları ve Özelleştirme, Dış Ticaret Müsteşarlığı, Dış Ticaret Dergisi, April 1998, p. 53
[18] www.oib.gov.tr
[19] YAŞAR, Süleyman, Özelleştirme, Creative Yayıncılık, 1997, p. 49

management are prevented. Public budgets are balanced and sources for the budgets might be provided.

If shares are transferred to the people from the state with privatization, then the number of enterprises will increase resulting with the strengthening of the democratic enterprises.

By means of privatization, international competitiveness might increase.

1.6. HISTORICAL DEVELOPMENT OF PRIVATIZATION

Many countries' governments in a time of more than last fifty years exhibited important activities and undertaken comprehensive functions. These functions undertaken are intensified mostly on the macro economic planning and management subjects. In addition, public sector activities have increased compared with the private sector activities. This increase occurred because of the excessive increase of the public infrastructure investments and public services besides the fast increase in the prosperity programs and military expenditures. Even, many less developed countries (LDC), where it is thought that the state will provide the development via either operating industries made national or interfering with the market, accept the notion of state as the locomotive of the development and enlargement to such a point that they accept the state as an enterprising power.[20]

In most of the developed and developing countries, it is required to interfere with some markets due to market problems by the state. This interference applied in many countries as the monopolist operation of some sectors by the public till the end of the 70s and in contrast in USA as the regulation of the private enterprises. The natural monopolist characteristic of some industries like energy, communication, gas and water is the reason of the application of the public management and regulation. In the USA in 1930s, thinking that competition is not beneficial for the society industries requiring high first investment cost are included in the scope of the regulation. However, it was seen that these practices did not provide the social prosperity in 1970s.

The reason for the natural monopolist characteristics of some markets and the thought of the harmful effects of the competition to the social benefits in some markets even there is no natural monopoly is the technology in that market. Gradually increasing technologic

[20] HANKE, Steve H. "The Privatization Option: An Analysis." *Economic Impact*, Vol:55, 1986, p.14

improvements in recent years provided the competition come to many markets which were thought as the natural monopoly. In this process, globalization, increasing amount of democracy and privatization gained some certain importance. Due to economic and political initiatives, in many countries till the 1980s, nationalizations were achieved except some individual applications. From the 1980s to these days, the privatization became the most important subject in countries.

Privatization practices in the world have started after 1970s. At the beginning, the privatizations applied in United Kingdom and USA had been applied in East European Countries separated from the communist block and in developing countries.

It is known that, capitalism as a system experienced two big and extensive collapses besides the various regional and periodic crises. First of them was realized in 1929 and the second one in mid-1970s. In the construction of the system affected very much by the 1929 crisis, public enterprising were championed as a solution suitable for the system. Truly, 1929 economic crisis led people even the most liberal ones, to suspect about the direction of the market mechanism to the economy in a balanced and spontaneous manner.[21] To get rid of the crisis and to liven up the economy, classical economy theory interrogated and the Keynesian approach commenced to be taken into account as the financial policy resulting in the increasing role and impact of the state in the economic life. The increasing role of the public sector in the economy is also a result of the First and Second World Wars.

After the World War II, public enterprising went to the fore again. After the war, attempts to liven up the economy by the public efforts applied in almost all European countries widespread resulted in the investigation of the place of the state mechanism in the social organizations again and the establishment of the social prosperity state notion.[22] In the period between 1950 and 1970, since Western countries experienced the brightest years in terms of economic growth and improvement they could achieve the realization of the social state understanding.

It must be mentioned that, the social state principle will be criticized seriously beginning from the mid-1970s. The social state understanding which found a wide field of application in

[21] KEPENEK, Yakup, 100 Soruda Türkiye'de Kamu İktisadi Teşebbüsleri (KİT), İstanbul, Gerçek Yayınevi, p.21
[22] BERBEROĞLU, İbrahim, "Kamu İktisadi Teşebbüslerinin Özelleştirilmesi ve İngiltere Uygulaması", Maliye Yazıları Dergisi, Issue: 6, April-May/1987, p.16

Europe after the World War II, after the 1970s, will be evaluated as the reason of the economic and social crisis experienced by the countries. It must be this reason that, those years ruled by the social state will be named as the "thirty victory years".[23]

The most characteristic properties of this period are composed of economic growth with a high rate, a stabilized economy and continuously enlarging public sector. In this positive atmosphere, no government could think to limit the public expenditures and public sector growth and no oppositions from the doctrine came to the picture for the growth of the public sector. In this process continued till the mid-1970s, especially in the developing countries, public enterprises were used as an important tool for the application of development policies and technology transfers and capital movements from the developed countries were realized via the public enterprises mostly. Thus the percentage of the added value produced by public enterprises reached 17% in South Africa Countries, 12% in Latin American Countries and 15% in Asian Countries in average at the beginning of 1980s.[24]

With the economic crisis started in 1970s, Keynesian policies, public interferences and public enterprising commenced to be interrogated seriously. In developed countries, new understandings for the commenting on the classical economy theory with a new approach appeared. These understandings concluded in the existence of components preventing the healthy operation of liberal economy as the reason of the crisis and championed to restrict the role and place of the state in the economic life. One of those understandings, neo-liberal policy consists of privatization, liberalization, tax, employment and industry policies.

The trend of privatization of public enterprises commenced after the late 1970s in United Kingdom and affecting other countries developed very much and became widespread. With the increasing tendency to think that the control of the state in the main industries is limiting the private enterprising resulting in the artificial developments in the market movements and forcing the tax increases and damaging the balance of the budget the privatization practices increased in other countries also. With these developments, the collapse of the Berlin Wall in 1989 was the beginning sign of the end of the cold war and a new economic system in which the centralized planned economies and public enterprising replaced with liberal economy and private enterprising.[25]

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[23] GÖZLER, Kemal, Türk Anayasa Hukuku, Ekin Y., Bursa, p. 165
[24] ÖZTÜRK, Nursel, Ibid, p.1
[25] VİRAVAN, Amuay, Özelleştirme: Mali Seçenekler ve Fırsatlar, Maliye Dergisi, Issue:104. September-October 1991, p.45

Reforms realized in USA appeared as the deregulation of the markets by one by, and as the opening of the some parts of some markets accepted as the natural monopoly dividing into parts vertically. And reforms realized in United Kingdom, appeared as the privatization of the public enterprises. After the successful privatizations in United Kingdom, privatization studies in many countries have been commenced. The privatization which started with relatively small enterprises changed its scale with the privatization of the British Telecom (BT) in 1984.[26]

The privatization is a very fast developing concept in all parts of the world. In USA, private companies achieve many works. Cities like Phoenix, Arizona have even private fire brigade organizations and the privatization in La Mirada city (with a population of 40.000) of California developed so much that city administration hires only 55 personnel and on the other hand private sector serves in sixty different municipality services.[27]

Privatization is developing in other parts of the America Continent too. The government in Canada is taking measure to sell the shares in the state owned airlines and in other transportation sectors and a special governmental commission is studying to privatize many "Royal Enterprises". Mexico sold dozens of enterprises which were nationalized previously and planned to sell the state owned companies with a number of more than 200.

Many Asian countries also tend to the privatization. For instance, the state in the Republic of Korea sold already five big banks, one petrol company and other many enterprises. Malaysia is planning to privatize harbors, railways and hospitals. Bangladesh is giving those textile enterprises which were nationalized previously back to the old owners. Japan passed through important stages to make the Nippon Telegraph and Telephone, which is a telephone enterprise, an independent enterprise and soon will start to sell the share certificates to public.[28]

The second country in which privatization is realized widespread in Europe is France. After the 1986, even the enterprises which were nationalized previously were privatized in France

[26] ÇAKAL, Recep, Doğal tekellerde özelleştirme ve regülasyon. Ankara: DPT.İSKGM, June 1996, p.2
[27] DOĞAN, Yahya, Kamu İktisadi Teşebbüsleri ve Özelleştirme, İzmir Fakülteler Kitapevi, 1993, p.156
[28] BUTLER, Stuart M., Ibid, p. 56

where the public sector is quite large. This change in the understanding occurred in the J. Chirac government.[29]

In addition to the changes occurred in the approaches of the academic environment and international organizations about the economic development, various factors accelerated the application of the privatization policy in less developed countries from a practical point of view.[30]

- IMF Stability Policies directed many countries to decrease the public expenditures and to adopt and apply policies which will be helpful to support the sources and as a result the growth. In most of the situations, the privatization is the most rationalist method to achieve the demands of the IMF.

- Programs of both the World Bank and AID are gradually more and more open to the expectation of privatization in partial or full. Even though this openness resulted in no benefits it only led to the creation of an environment of encouraging the privatization and did not slow down the privatization activities of the principle international organizations.

-The change in the ideas about the sectors having a fatal importance for the economic development resulted in the encouragement of the thinking on the privatization preference even though it did not encourage starting privatization. For example, instead of focusing on the policy creation to maintain foreign currency, protecting the local industry from the foreign competition, this new approach resulted in the emphasis of the subject of increasing the foreign currency incomes via both the growth and the increase of the exportation for the many less developed countries. This situation resulted in a tendency to spend some efforts including the privatization for the less developed countries to open their economy to competition in international markets.

- The privatization came to the picture in many times as the result of dramatic change on the attitudes about the functions of the multinational companies. Now on it is clear the multinational companies bring some other things with investment capital. Multinational companies have important impact on the transfer of the technology, management abilities, knowledge, entering to the markets and enterprising abilities.

[29] AKTAN, Coşkun Can., KİT ve Özelleştirme, p.155
[30] HANKE, Steve H. Ibid, p.14

Let us see the British experience since it is the first one.

1.6.1. Privatization In The United Kingdom

In 1980s, for the first time, implementations of privatization were experienced in United Kingdom, Chile, Argentina and Mexico. Although in the other 3 countries privatization is evaluated as a measure towards the unbalanced budgets and external debt payments, in United Kingdom, the main aim of the privatization is to make competition rules dominant in economy and to prevent the extravagance in public sector.

As a result of the realized privatization practices, only in the period of Margaret Thatcher of being the prime minister USD 75 billion income of privatization was obtained.[31]

The privatization initiative in large scale commenced by United Kingdom was observed in other countries with envy. Almost in a ten years period, to decrease the existence of the state in the public less than a half of it and to create a certain amount of income to the Treasure were accepted as a true success. But, there are some suspects about the completion of the purposes of the government in terms of the privatization. Besides the positive thoughts stating that privatized companies has a better performance, increased the amount of profit of the enterprises and a clear stage have been completed for the widespread of the capital there are some opposite thoughts.[32]

In the process of privatization till the 1984, it is seen that the sale of the rather small companies which facilitate in the competitive sectors was common. After the 1984, companies like British Telecom, British Gas, and British Airports having important market power were taken into the list of the privatization.[33] To prevent the access of the people and enterprises which are not appropriate according to the state to the shares or to adopt the company management to the private sector in the privatization process to give some opportunities, the golden share application commenced to be applied. Golden share application which is a privilege share gives a right to interfere by the state even if in those public companies public shares or management of the public enterprises are transferred to the private sector.

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[31] VİRAVAN, Amuay, Ibid, p.45
[32] KİLCİ, Metin, KİT'lerin Özelleştirilmesi ve Türkiye Uygulaması, Ankara, DPT Uzmanlık Tezleri, DPT Yayınları, 1994, p.53
[33] RUHİ, Emin, 1982 Anayasası Çerçevesinde Sosyal Devlet ve Özelleştirme, p.116

1.6.2. Privatization in Turkey

Turkish economy never left to exactly to the market powers between 1923 and 1980. The principle of the state not to be a part of the economic life unless it is essential and the principle of the transfer of the state owned economic activities to the private sector in time exist in the first years of the Republic and transfer of the public enterprises to the private sector was written even in the government programs in 1950s. However, in the beginning years of the Republic, insufficient capital accumulation forced the state to initiate the industrialization policies. In between 1930-1946 statist applications are due to the 1929 economic crisis and unsuccessful liberal economic policies and the necessities of the period required this situation. Local industry was protected and via taxing and price policies, it was aimed to transfer the sources from the agriculture to the industry. The state acted in the economic life as an investor and producer factor also. After 1960s, with the planned period, as a result of the adoption of the import replacement industrialization and mixed economy model the role of the public enterprising in the economy increased day by day.[34]

In 1933, with the Law No. 2262 Sümerbank, In 1935, with the Law No. 2805 Etibank, Mine Research Works and Studies Administration and Electricity Works Studies Administration, in 1935, Turkish Sugar Factories TAŞ, 1936, Malatya Textile and Thread Factories TAŞ, in 1938, Halkbank, in 1936, Güven Insurance, in 1937, Turkey Iron and Steel Enterprises and in 1941, Petrol Office were founded.[35]

Public Enterprises in Turkey were founded to realize a fast industrialization due to the insufficient private capital accumulation inside the country for this aim. After 1960s, with the planned period, in the direction of the import replacement strategy both their numbers and roles in the economy of the country increased. Public Organizations with the circumstances of the duties given to them according to the economy policies followed at that time were used as a tool direct the economy by the state and on the other hand they functioned as the producer since the country could not have any production capacity with the low level of the capital and they contributed to the capital accumulation and improvement of private sector with their investment and price policies.[36]

[34] http://www.ydk.gov.tr/Genel_Rapor_2000/IG.htm, p.2
[35] ÖZTÜRK, Nursel, Ibid, p.8
[36] http://www.ydk.gov.tr/Genel_Rapor_2000, p. 3

With the First Five Years Development Plan (1963-67) mixed economy model was adopted. The profit rates kept low and exports prohibitions applied in foreign trade. But we see that in this period foreign debts are increasing.

As a result of the adoption of the liberalism with the globalization, Turkey economy entered into a structural transformation period starting with the January 24, 1980 decisions in the direction of the stability measures package and structural harmony credits signed with World Bank. With this transformation, a transfer from an economic structure closed to the foreign impacts relatively and based on the import replacement to an economic structure of competition and based on the industrialization towards the exportation was aimed. Till the transformation movement beginning in 1980s, public enterprises functioned with direct investment and management and contributed to the development of the private sector. The privatization plays an important role for the transfer to the liberal economy as a policy aiming the decrease of the state interference in the economy. In this period, the privatization under the circumstances of studies on the liberalization of the economy and re-structuring of the public sector was in the political and economic agenda of Turkey as a method for the purposes like provision of the efficiency in the public sector, decreasing the role in the economy, decreasing the unbalanced sides of budget and etc. [37]

In the period following the January 24 Decisions, as a short term solution prices of the public enterprises left free to remove the burden on the state budget and as a long term and permanent solution the privatization was put in the agenda and beginning from the 5 Five Years Development Plan the privatization started to enter in the development plans as a target.[38]

In the 5th Five Years Development Plan (1985-89) it was adopted as a policy that some companies of Public Enterprises will be open to the public selling the shares, new investments will not be realized in the field where private sector is sufficient. In 1983, studies on privatization have started and with a legal regulation in 1984, the foundations of the first practicing enterprise (Mass House and Public Partnership Administration) In 1986, a master plan for the rehabilitation and privatization of public enterprises. Master plan foreseen the

[37] http://www.ydk.gov.tr/Genel_Rapor_2000, p.2
[38] ÖZTÜRK, N., Ibid, p.2

necessity of the fast realization of privatization in Turkey was under the circumstances of strategic planning. [39]

In the 5th Five Years Development Plan, the state focused on the infrastructure (energy, mining, transportation, communication sector) rather than privatization. In the 6th Five Years Development Plan (1990-94), the main policy about the public enterprises was to "increase the economic efficiency and to realize privatization plan fast which started to provide the widespread the capital to general people". In the 6th and 7th Five Years Development Plans, under the circumstances of social state principle, it was decided to direct the public investments towards the education and health sectors and to decrease the regional differences and to give importance to traditional public services on the other hand to remove the role of the public from the production industry.[40]

With the 8th Five Years Development Plan, the increase in the role of the private sector in the infrastructure investment, and in this scope, focus on the Built-Operate-Transfer model for the finance of the investments and services requiring high technology and high amount of sources, the transfer of the appropriate ones among the infrastructure completed by the state or the management by the private sector, being parallel to the privatization practices in the production industry, the principles of decreasing the portion of the public sector investments in the total investments are adopted. [41]

Another important regulation related with the transition to the liberal economy is the removal of the status of some public organization having a monopolist status. For example, the tea production and distribution monopoly of Çaykur in 1984, cigarettes production and distribution monopoly of TEKEL in 1991 and sugar production and distribution monopoly of the Sugar Factories have been removed in 1995. State Investment Bank (DYB – Devlet Yatırım Bankası) which is an important regulation to create a source for public enterprises structured with a new formation but in 1987 reorganized as Turkey Import Credit Bank (Türkiye İhracat Kredi Bankası – Eximbank). With this formation, the mission of the organization to finance the investments of public enterprises and to serve for technical consultations on this subject was finished. Eximbank's duty will be to spread wide the capital

[39] SARISU,Ayhan, Dünyada Ve Türkiye'de Özelleştirme, Genel Bir Değerlendirme, p.11
[40] http://www.ydk.gov.tr/Genel_Rapor_2000, p.4
[41] Uzun Vadeli StratejiVe Sekizinci Beş Yıllık Kalkınma Planı 2001-2005, p.39

to the general people, to develop the capital market, to encourage the importation and to strengthen the capital structures of incorporated companies. [42]

In 1980, when the Turkey economy management adopted the neo-liberal restructuring model the management had a public enterprise system having a wide range of sectors, producing the very big portion of the total production of mining and energy and producing the 30% of the industrial added value in the production industry. Since the investments reached an excessive amount they had to add some facilities reluctantly to this system. Aliağa Petrochemical Complex, Aliağa and Kırıkkale refineries, ISDEMIR and SEKA Akdeniz facilities are examples of these facilities.[43]

Functions of privatization with respect to globalization must be thought in global-national-local level. It is required in Turkey that a powerful economy and social structure must be formed whether accession to European Union is realized or not. In a world of increasing regional polarization, it is necessary to cause Turkish economy to meet a much more dynamic structure. Therefore, policies to be developed must be to create a healthy competitive economy. Turkey, evaluating the opportunities about both globalization and regional development tendencies, must decide on the strategy to be followed in medium and long term. Turkey economy has a structure trying to unite with the liberalized world economy. Turkey being a party to Western political and economic organizations like NATO, OECD, etc. is also a party to or has a close relationship with some political and economic organizations of Islam World like Islam Conference. On the other hand, Turkey is a party to some regional establishments like Black sea Economic Corporation. Beside these, being in the accession period to European Union, Turkey prepared its national program. However, without having a healthy economic structure, Turkey cannot benefit enough from these participations. Neither globalization nor regional unification can be seen as the main alternatives to solve the development problem of a country. Turkey needs to follow medium and long term strategies to unify with the world economy and to establish macro economic balance. In the integrity of the world economic system, in case of the improvement of the Turkey economy without damaging its natural structure and in case of establishment of a healthy balanced structure in itself then Turkey can have a more healthy foreign relationship. That's why the target is the

[42] ÖZTÜRK, Nursel ibid, p.14
[43] TÜREL Oktar, Özelleştirme Üzerine Notlar, Bağımsız Sosyal Bilimciler-İktisat Grubu, 2003, p. 1

realization of accumulation of private capital under the inspection and supervision of the state and technologic progress.[44]

1.6.2.1. Legal Regulations in Turkey

The Codes No **2983, 3291 and 4046** can be mentioned related with privatization. These laws in question regulating the subjects related with privatization in general, in the process from the 1980s to 2001, because of the legal reasons arising from, separate regulations achieved in energy and telecommunications field and in addition, some legal changes realized to make the facilities of private sector available in some public production fields (like tea and tobacco) having a monopolist property in the direction of the liberalization of the economy. Besides these three main laws in question, in the **Decree Law No 233** regulating the foundation and activities of public enterprises mainly consists of some articles about the privatization.

Privatization proceedings are carried out by three main establishments like Privatization Administration (according to the Code No 4046), Ministry of Energy (according to the Code No 3096) and Ministry of Transportation (according to the Code No 4161 regulated as an addition to the Code No 406.

Now let us see the laws on which privatization proceedings are based.

1.6.2.1.1. The Code No 2983

The first legal regulation related with the privatization is the Code No 2983 dated on February 29, 1984. The code determined a wide movement field related with privatization applications and created the organizational mechanism of privatization. In these circumstances, privatization methods were described as income partnership certificate, share certificate and transfer of the right of management and Mass House and Public Partnership Board, Mass House and Public Partnership Administration and Public Partnership Fund were established. Later, with the Code No 2985, establishing the Mass House Fund and the relationship of the Fund with Mass House and Public Partnership Board and Mass House and Public Partnership Administration were described. The decision competency related with privatization was given

[44] SARISU, Ayhan, Ibid, p.10

to Mass House and Public Partnership Administration. The articles related with Public Partnership Fund were cancelled with the Code No 4568. [45]

The privatization in the law is mentioned as the economic tool providing the source which will accelerate the public investments.

In the descriptions of the Code No 2983, only income partnership certificates importation is allowed for public assets like bridge, highway, dam, electricity power plants. This law is still in effect. Some parts related with the sale of public enterprises are not put in practice because of the new law.

1.6.2.1.2. Decree Law No. 233

The second regulation related with the privatization was achieved with the Article 38 in the Decree Law No. 233 in 08/06/1984. With this article, the decision competence related with privatization was given to Economic Affairs High Coordination Board and the operation mission was left to Mass House and Public Partnership Administration. This is not the first regulation related with public enterprises but since others are not valid today we do not mention about them. Public enterprises are still ruled with the provisions of Decree Law No. 233.

With the Decree Law No. 233, public enterprises were divided into four main groups as economic state enterprises, public economic organization, institution and dependent partnership. Adopting the separation of public economic organization and economic state enterprises which were regulated in the Decree Law No. 60 for the first time, the ones based on trading, active in the economic field are described as economic state enterprise, the ones with the dominant characteristic of public service and established to produce goods and services with monopolist characteristics are described as public economic organization. In the law, it is foreseen that economic state enterprises should work with the efficiency principles in conformity with economic requirements and that public economic organizations should work in conformity with the economic and social requirements with the efficiency principle. In this

[45] KİLCİ, Metin Türkiye'de özelleştirme uygulamaları (1984-1998). Ankara: Devlet Planlama Teşkilatı. Yıllık Programlar ve Konjonktür Değerlendirme Genel Müdürlüğü. Finansman Dairesi Başkanlığı, 1998, p.6

way, it could be possible for organizations established to produce monopolist goods and basic goods and services to work only for social purposes. Although the laws with numbers 3291 and 4046 related with the privatization after the Decree Law No. 233 came to force, Article 38 did not change at all except the changes in the structure and the name of the Public Partnership Board and Coordination Board.

1.6.2.1.3. Tea Code No. 3092 and the Code No. 3096 (Electricity)

On the other hand, in 1984, with **the Tea Code No. 3092**, agriculture, production, processing and sale of the tea were set free. With the law no. 3096 on December 4, 1984 the regulations allowing the private sector to produce, transmit, and distribute the electricity. With these regulations, the provisions preventing the entrance of private sector into the economic activity fields of state monopolies were removed. [46]

1.6.2.1.4. The Code No 3291

It is the first regulation in large scale related with the privatization in Turkey. It is not only about the privatization applications but also arranged as a text changing 7 different laws and besides the Tobacco Monopoly Code No 1177 was invalidated with the same regulation. With this law, the privatization word was mentioned for the first time in our legislation and even if they are not sufficient, some regulations related with the scope and the process of the covering of the privatization, and social security rights of the personnel of the privatized organization. Duty and competences about the privatization competence of the enterprise, dependent partnership, organization and organization units which was given to the Economic Affairs High Coordination Board previously was again transferred to the Mass House and Public Partnership Board (TKKOK) with this law. Decision competence related with privatization of public enterprises was given to the Council of Ministers. Public Partnership Administration was charged about the operation of the privatization program.[47]

According to the Article 13 of this law, public enterprises and dependent partnerships which will be privatized will be directly connected to Prime Minister and enterprise, organization and organization units will be connected to Prime Minister after becoming a company incorporated and finishing the relationship with the relevant ministries.

[46] Metin KİLCİ, Ibid, p. 6

[47] ÖZTÜRK, Nursel, Ibid, p. 19

1.6.2.1.5. Amendments to the Codes No 3291 and No 2983:

These amendments were to remove the troubles experienced but they resulted in nothing but a harder situation in general.

1.6.2.1.5.1. Decree Law No 304

Abolishing the Mass House and Public Partnership Board and Economic Affairs High Coordination Board, duty and competences given to these boards were left to High Planning Board.

1.6.2.1.5.2. Decree Law No. 414 and 412

Mass House and Public Partnership Administration which was described as the execution unit in the Code No 2983, was re-described as two separate entities connected to the Prime Minister as Public Partnership Administration and Mass House Administration with Decree Laws No 414 and 412. With the previous regulations achieved via Decree Law No. 414, duties and competences given first to mass House and Public Partnership Enterprise and then High Planning Board, this time was given to Public Partnership Administration directly, with the Articles 14 and 15 of the Law No. 3291, decision competence about the operations done related with activities, management and inspection of enterprises in the scope of privatization was left to High Planning Board. [48]

Leaving the competence of such an important subject like decision taking about the privatization to the president of the Public Partnership Administration was criticized.

1.6.2.1.5.3. The Code No 3701

The law no. 3701 removed the competence of the Public Partnership Administration but did not put any other regulation replacing the previous one. The absence of the provision was covered by giving the competence of decision right about the privatization to the High Planning Board again.

1.6.2.1.5.4. Decree Law No 437

The Code No 3701 was annulled with the Decree Law No. 437 dated on July 17, 1991. Duties of the High Planning Board were re-described with Decree Law No. 470 dated on December 20, 1991. With the Decree Law No. 473 on December 20, 1991, creating the Public

[48] Metin KİLCİ, Ibid, s.7

Partnership High Board, competence of decision taking about the privatization and Public Partnership Fund was left to this board. [49]

The practice continued as follows since the decision competence, which was given to High Planning Board with the law no. 3291, related with activities and methods of organizations to be privatized had no change at all;

-decision for the privatization of public enterprises will be given by Council of Ministers and of other units covered by the law no. 3291 by Public Partnership High Board,
-approval of tender results by Public Partnership High Board
-decisions related with activities of organization in the program will be given by High Planning Board. [50]

1.6.2.1.5.5. Arrangements done in the scope of the competence Code No 3987

Because the absence of some necessary legal regulations became evident in time and general competence laws and decree laws came to force according to these laws were cancelled by Court of Constitution, it was required to achieve a regulation covering only arrangements about privatization taking into attention the cancellation grounds. In this direction, with the Code No 3987 dated on May 5, 1994, the competency for three months to prepare a Decree Law in the subject of privatization was given to the government. The Decree Laws No 530, No 531 and No 532 on May 30, 1994 and the Decree Law No 546 dated on June 13, 1994, important regulations towards the solution of privatization and employment problems related with it.

The absence of legal regulations on this point occurred because of the annulment of these Decree Laws by the Court of Constitution and according to the decision of the Council of Ministers, the previous legislation came to the force again.

1.6.2.1.5.6. The Code No. 4046 of November 24, 1994

Since the Court of Constitution annulled the Decree Laws about privatization legislation it was required to prepare some extensive regulations taking care of those grounds of annulment. Thereupon, The Law No. 4046 on November 24, 1994 on the Regulation of Privatization Applications and Changes in Some Laws and Decree Laws" came into force.

[49] SARISU, Ayhan, Ibid, p.13
[50] ÖZTÜRK, Nursel, Ibid, p.20

The Code No 4046 regulated the annulled provisions of the Law No 2983 taking care of the grounds of annulment.

1.6.3. PRINCIPLES OF PRIVATIZATION

With the Law No. 4046, privatization principles in the privatization legislation were determined for the first time. According to the provision of the Article 2 of the Code, principles are as follow,[51]

Article 2 – In the Privatization implementations the following principles are taken into attention;

a) Delivery of "Job Loss Compensation" in addition the compensations foreseen in the existing laws and job agreements related with the possible employment decreases,

b) Determination of privatization method according to the properties and conditions of the enterprises,

c) Not to use the incomes from privatization implementations in the general budget expenditure and investments,

d) Prevention of the negative effects of a possible monopolist structure,

e) Procurement of common group which can undertake the management responsibility and competency besides the procurement of widespread prosperity,

f) Provision of the fast privatization of public banks including them in the list of the enterprises taking precedence in the privatization in the circumstances of privatization applications,

g) In strategic subjects, preparation of privileged share which will belong to the state,

h) Privatization of natural sources via only the delivery of the right of operation for some certain time,

ı) Execution of privatization procedures including the fixing of the price in publicity,

i) In the privatization applications, not to transfer an enterprise to public enterprises and organizations except in case national security and public benefits require so.

Priorities in the decision to be taken according to the abovementioned purposes and principles and grounds and methods related with privatization applications on which those priorities will be based will be determined by the Privatization High Board taking care of conditions of organizations and the economy of the country. (Art. 2)

[51] Law dated 24.11.1994 no. 4046 regarding the amendment to the Law about Privatization Practices.

The first special and extensive regulation related with the privatization was achieved with this law. We can summarize the changes done as follows:

* **"Privatization High Board"** was established. .(Art.3)

* **"Privatization Administration Presidency"** was established. **.**(Art.4)

* The payment of **job loss compensation** was foreseen for unemployed people because of privatization applications. (Art.10)

* **"Privatization Fund"** was established. (Art.9, 10)

* It was decided to execute the privatization process including the fixing of the price **in publicity**. (Art.18)

* **The scope** of the privatization was expanded. Regulations allowing the privatization of other public enterprises and organization besides the economic state enterprises and shares and enterprises belonging to these were prepared. (Art. 13)

* **Early retirement** was encouraged and related regulations were prepared.

* It was decided to meet the payment of the **social help rise** for the personnel working in privatized enterprises by the Privatization Fund. **(**Art. 10)

* Furthermore, detailed provisions exist in the Law related with the **protection of the competition and consumer** and practices because of the privatization applications. (Art.16)

* Arrangements related to **employment activities** to **unoccupied positions** at state institutions and organizations for those who have been unemployed due to the implementations of privatization were done.(Art.10)

* It was decided not to use **incomes for the general budget expenditures and investments** obtained by privatization implementations.

* **The subject of Privileged Share** was regulated. According to the Law, all enterprises including the strategic ones will be able to be privatized. The privileged share (golden share) belonging to the state was foreseen to kept in only strategic enterprises. In this respect, aimed at the prevention of the monopoly mainly and protection of the national benefits related with the economy and security, the privileged share which will keep the share in the management and the right of approval in decisions taken in the competent boards of these enterprises in case of the lowered share of public below 50%, determination of the rights given to the state with these shares and change of them if necessary was foreseen. (Art.13)

The law determined five of economic state enterprises as strategic and left the determination of others' situation to the evaluation of the Privatization High Board. These are Turkish Airlines (THY), Ziraat Bank, Halk Bank, Türkiye Petrolleri Anonim Ortaklığı (Turkey

Petroleum Incorporated Company) and Türk Mahsülleri Ofisi Alkoloid Müessesesi (Turkish Crops Office Alkaloid Enterprise). Accordingly, in case of a decision of privatization of 49% of these enterprises by Privatization High Board then the decision of keeping a privileged share is inevitable. (Art. 13)

* **Five privatization methods** are foreseen in the Law. (Art. 18/a) These are the sale, renting, transfer of the right of managing, establishment of the right of prosperity and income partnership. The sale method also can be realized with different ways. These are selling to the people, selling as a block, selling to personnel, selling in the stock exchange, stocks and bonds, investment funds or selling to the partners.

1.6.3.1. Amendments to Privatization Code No. 4046

Since the application of the Law No. 4046 some amendments and regulations achieved in the Laws No. 4105, 4108 and 4046. Article 18 of the Law No. 4046 covering the privatization methods, and methods for the fixing the price and tender was annulled by the Court of Constitution in April 9, 1997 with the claim of incongruity with the Article 7 of the Constitution. The article in question was re-structured in the Law No. 4232 in conformity with the Constitution and came into force publishing in the Official Gazette in April 8, 1997. [52]

In addition, according to the temporary Article 8 of this Law existing in the Article 10 of the Law No. 4046, the statement of "except the transfers to the Public Partnership Fund, no source can be transferred to general budget from the Privatization Fund" was changed with the Law No. 4568 that came into force in May 26, 2000 as "excessive amount of cash from the Privatization Fund transferred to Treasury accounts to be used in the local and foreign payments of the Treasury". The temporary Article 8 was annulled. [53]

1.6.3.2. Amendments made with the Code No 4971

The Code No 4971 on "Achievement of Changes in some Laws and Decree Law on Foundation and Missions of General Directorate of National Lottery Administration" prepared to accelerate further the privatization proceedings came into force publishing in the

[52] SARISU, Ayhan, Dünyada Ve Türkiye'de Özelleştirme- Genel Bir Değerlendirme, 2003, p.14

[53] SARISU, Ayhan, Ibid, p.14

Official Gazette in August 15, 2003. In the circumstances of the Law in question changes achieved and new regulations applied can be mentioned as follows:[54]

1) In the chairmanship of the Prime Minister, the Privatization High Board (the Board) was established with four ministers determined by the Prime Minister. The Board gathers with the participation of all members and decisions are taken with full consensus. Secretary services of the Board are executed by the Presidency of the Privatization Administration. (Art.1)

2) Regulations about the formation of the **Privatization High Board** and the determination of the Ministry to which the Presidency of the Privatization High Board will be connected. Although, previously, the member Ministries of the Privatization High Board were specified in the Law, after the amendment the competency to determine the members of the Privatization High Board. In this way, it is possible to choose the related ministers to participate in the Privatization High Board in accordance with the sector or the subject in case of macro privatizations.

3) Related with the prohibitions in the Article 7 of the Law No. 4046 the **participation of the workers to the privatization implementations in a manner to the sale to people was provided**. Previously, the participation of the workers to the sales to people was never possible after the amendment the prohibition level was limited to the managers.

4) It was regulated to evaluate through the application of at least two methods of fixing the price methods and usage areas of the Privatization Funds. In addition, tenders which will be realized with closed offer method among certain tenderers were re-arranged. Previously, some difficulties were faced with during the fixing the price of the building lands and idle enterprises but after the amendment technically the subject is much more comfortable anymore.

5) Re-arranging the Article related with the **transfer of the personnel** working in the enterprises the problems faced with during the applications could be removed. Meanwhile, an arrangement related with the article of the **additional retirement bonus** payment and it was aimed to remove the problems encountered during the applications annulling the article

[54] SARISU, Ayhan, Ibid, p. 15

related with the **social aid rise** payment. Problems encountered previously related with employee rights, position and representation compensations, retirement bonuses, social aid rises, length of service compensations and permanent staff matters of personnel to be transferred.

6) Regulations related with the privatization through **the delivery of the license** to plan **the lottery** and to organize the draw and preparation of the lottery were achieved by the General Directorate of National Lottery Administration. The National Lottery Administration was transformed from an executive enterprise to regulating enterprise. Lottery activities will be held more assorted and more powerful via the private sector and foreign capital through the delivery of the license.

7) Regulations related with the determination of the strategy for the privatization of Turkish telecommunication company, T. Telekomünikasyon A.Ş. The regulation which will allow **the sale of the Telecom shares via the bonds which can be transformed to share certificates** was achieved.

Furthermore, regulations providing the acceleration of the applications were achieved.

1.6.3.3. Special Regulations Related to Some Sectors

The legislation related with electricity and telecommunication sectors will be explained in the future sections.

1.6.3.4. The Constitution and the Privatization

Due to the absence of any provision about the privatization in the Constitution, the Court of Constitution appraised some laws and / or law articles regulated related with privatization and submitted for their examination with claim of incongruity to the Constitution according to the "privatization is opposite to the Nationalization in the Constitution" comment and some of the related articles were subject to annulment according to this comment. On the other hand, descriptions and comments of the Court of Constitution related with the "public service", provisions preventing the validity of the decisions of international courts, and provisions forcing for the examination of privilege agreements by Council of State created important problems in the privatization of infrastructure investments which require especially high technology and huge finance, and some regulations removing the public monopoly in sectors like energy and telecommunications were annulled by the Court of Constitution. The

discussions related with the validity of international courts have started with the privatization applications in energy sector. [55]

Authorities finding the solutions of problems in changing the Constitution, in 1999, made the Law No. 4446. With this Law, Articles 47, 125, and 155 were re-arranged.

1) With the modification made in the Article 47 of the Constitution, the side heading of "Nationalization" was modified as "Nationalization and privatization" and two clauses were added to the end of the article.

The provisions of "Grounds and methods related with the privatization of enterprises and assets belong the prosperity of the state, public enterprises and other public entities are determined with the Law.

Which investments and services executed by the State, public enterprises and other public entities can be executed by private persons or entities with private law agreements" were appended.

2) At the end of the first clause of the Article 125 related with the judgment supervision on the operations and activities of the Administration,

The following provision was added: "It can be foreseen in the privileged contracts and agreements related with the public services the solution of the disputes arising because of these agreements via the national or international dispute courts. International dispute courts can be used only if a dispute consists of a foreign intervention.

3) The second clause of the Article 155 regulation the formation and competences of the State Council was modified as,
"The State Council is in charge of hearing the cases, submitting his opinion about the draft laws sent by Prime Minister and Council of Ministers, privileged contracts and agreements on public services in two months, examining the draft regulations, solving the administrative disputes and other duties determined by the law"

[55] http://www.ydk.gov.tr/Genel_Rapor_2000, p.14

Examining the modifications achieved, we can say that:

It was foreseen that which of the investments and services executed by public entities can be executed by or transferred to private persons or entities will be determined by the Law through the legislative power. Thus it became possible with this provision to handle some services which were described as special privilege by the Court of Constitution with private law provisions instead of administration law. With the modification in the Article 125, a regulation related with the solution of disputes arising from privilege agreements by national or international dispute courts was hold. But the international dispute courts can be used only in case of foreign intervention. With the modification in the Article 155, the examination competency of the State Council on the privilege agreements was changed as the competency of the opinion notification.[56]

Being parallel to the Constitution changes;

-With modifications in the Law No. 4493 and the Law No. 3996 on "Realization of Some Investment and Services via Built-Operate-Transfer Model", the scope of the law was extended as including the activities of "transmission, distribution and trade of the energy". In addition, with the provision of "the agreement signed between the Administration and capital company or foreign company and determined by the High Planning Board is ruled by private law provisions" it was specified that investments and services in the scope of the law will be realized with private law agreements.

-With the law No. 4492 published in the Official Gazette No. 23913 in 21.12.1999, some articles of "the State Council Law and Administrative Judgment Law" were changed and the examination competency of the State Council on the privilege agreements of public services was limited with the agreements which do not foresee the use of international dispute courts.[57]

-Finally, with the validity of the Law No. 4501 on "the Principles to be followed in case of applying for the use of International Dispute Courts in Disputes Arising from Privilege Contracts and Agreements Related with Public Services", grounds and methods to be followed in the privilege agreements related with public services, while preparing agreements

[56] EMEK, Uğur, Kamu Hizmeti İmtiyazı Sözleşmeleri ve Uluslararası Ticari Tahkim, Thursday Conferences, 1999, p. 19
[57] Law No. 4492

in case of the solution of disputes through the international dispute courts were determined. Furthermore, with this law it is possible to be evaluated by the Council of Ministers in case of application for the shift from the existing privilege agreements to private law statute or keeping the privilege statute and possibility of using the international dispute court. [58]

1.6.4. EUROPEAN UNION (EU)

Privatization represents a reversal of the process of nationalization begun early in this century. In most communist countries, a wave of nationalizations ensued shortly after communist governments assumed power in the aftermath of World War I and World War II. In Western Europe, the nationalization process stretched over several decades, but essentially took hold in the 1930s. At the time, European governments of divergent political views were largely in agreement over the benefits of a strong state role in their domestic economies.[59]

Privatization is a truly global phenomenon in recent economic and financial history and countries belonging to the (enlarged) Europe have had a major impact on this process. A glance at the aggregate data clearly confirms this fact. Overall, from 1977 to 2003, the countries belonging to the European Union have implemented 43 percent of the 3,836 global transactions and raised 49.6 percent of total US$1,220bn privatization revenues. In the ranking by regions, the EU ranks first both in terms of total transactions and proceeds, followed by Central and Eastern Europe and the former Soviet Union, Asia and Latin America.

In the immediate post-war period, the European Union was neutral on the ownership of industry, accepting the mix of state and private sector industry across Europe. Then most European countries believed that state monopolies were necessary in the public utility sectors to ensure universal service and network economies. Yet the Treaty of Rome, which governs the European Union, emphasized the importance of free trade. Competitive markets are now favored, but "EU policy intervenes only when government policies are seen to be in conflict with free and fair trade within the EU."[60]

The Single European Act of 1986 aimed to remove the remaining non-tariff barriers to free trade within the EU by the end of 1992. This had implications for public utilities, which were generally protected from competition. Utilities remain governed by national legislation and

[58] Law dated 22/01/2000 and No. 4501
[59] http://www.itcilo.it
[60] PARKER, David, "Privatization in the European Union: A Critical Assessment of Its Development, Rationale and Consequences," *Economic and Industrial Democracy*, Vol. 20, No. 1, Feb. 1999, pp. 9-38.

regulatory rules, "but following the Single Market Agreement, the European Commission has applied pressure on member states for utility markets to be opened up to competition."[61] Member states are reluctant to give up their autonomy, and as a result of some national opposition, the European Commission has not yet proposed EU-wide regulation. The EU directive regarding opening up railways to competition met with fierce resistance from the railway unions, especially in France.[62]

At a Barcelona meeting of the EU in March 2002, France said that it would accept a partial privatization of energy markets in line with the EU goal to become the world's most "dynamic economy" by 2010.[63] But its agreement was conditional on keeping traditional public services off-limits to free enterprise. Prime Minister Jospin and President Chirac said they would agree to open gas and electricity markets across Europe to competition by 2004 for businesses, but not for private citizens. They sought guarantees that governments would retain control over some services.

Some governments have sold some or all of their stakes in national airlines and power and telecommunications companies. The European Commission is pushing for more privatization. Their 1995 White Paper said that progress is required in the areas of insurance, intellectual and industrial property, public procurement, new technologies and services and freedom of movement. Moreover, progress has been slow in the extension of the single market to telecommunications and energy, while the internal market in transport remains incomplete. Furthermore, additional progress is necessary in reinforcing competition rules, reducing State aid and reducing the role of the public sector. Privatization, to the extent that Member states judge it compatible with their objectives, could further the progress already made in this direction.[64]

The major involvement of Europe in this process can be ascribed to three main factors: a larger size of the State-owned enterprise sector; an earlier start with respect to the other areas of the world; finally, the exceptional weight of the British privatization program, a rather unique experience not only in terms of the number of deals, but also in terms of methods and results.[65]

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[61] PARKER, David, Ibid, pp. 22
[62] MANDELL, Betty Reid, The Privatization of Everything, New Politics, vol. 9, no. 1,p. 33, Summer 2002
[63] WIELAARD, Robert, "France yields on privatization at EU economic summit," *Boston Globe*, Mar. 16, 2002, p. A20.
[64] European Commission, "Broad Economic Policy Guidelines," *European Economic Policy* 60 (1995), p. 15
[65] BORTOLOTTİ, Bernardo, Privatization in EU: a Brief Historical Sketch, Privatization Barometer Newsletter, No. 1, July 2004, page 9

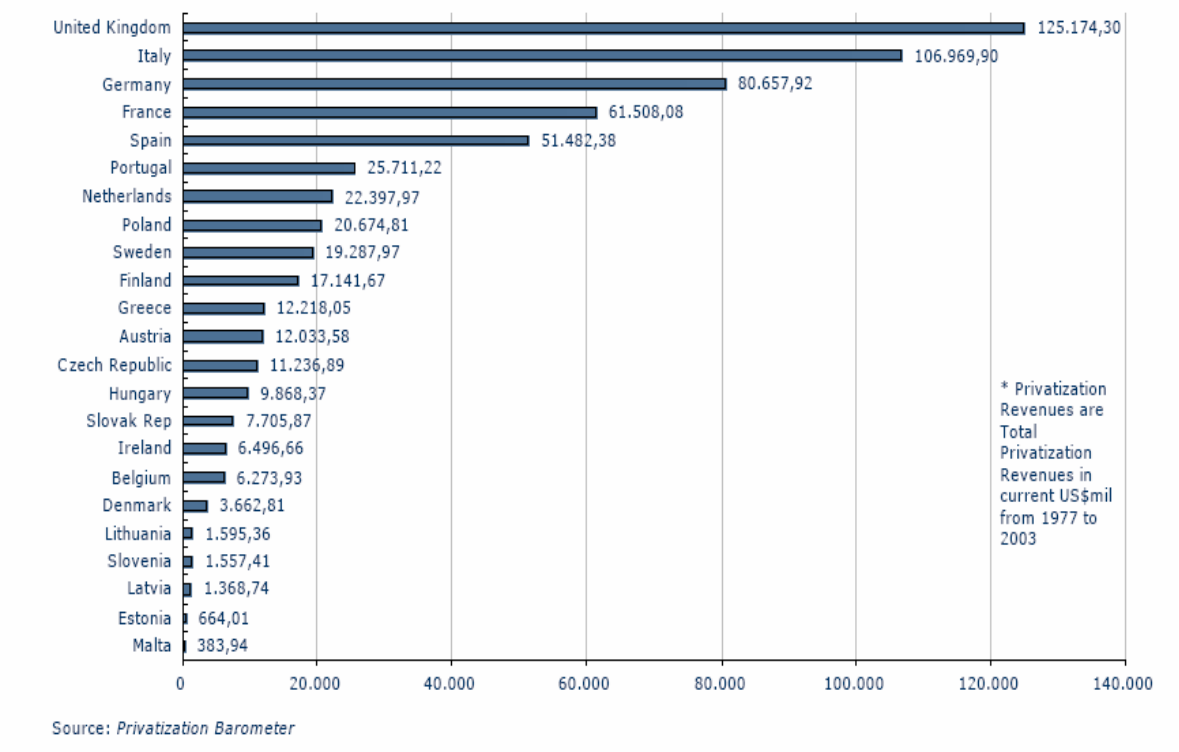
Not surprisingly, western European countries accounted for the lion's share of privatization activity, representing more than 90 percent of revenues. However, the contribution of the ten new accession countries on the number of transactions is far from negligible, accounting for 38 percent of the total. The United Kingdom leads the ranking by total revenues. Privatization was one of the key features of the Thatcherite revolution, which dramatically shrank the size of SOE sector during the 1990s. The 1977 public offer of British Petroleum (BP) is usually considered the first large-scale privatization in modern times, after the failed attempts in the 1950s by the Adenauer government in Germany.[66]

Privatization started to spread out in Continental Europe in the mid-1980s in France with the highly politicized (re)privatization of financial institutions by the conservative government elected in 1986, and in Italy with the start of the long lasting process of de-nationalization of IRI, the State holding company. Privatizations brought more than $100bn of revenues to state coffers, and Italy boasts the second position in the ranking by revenues, followed by Germany, France, and Spain.

Portugal and Turkey reported their first truly large-scale sales in 1993. Through the 1990s privatization also spread to Belgium, Greece and Ireland. In 1999, the process peaked in terms of revenues, largely due to the privatization of Enel in October (the largest IPO in history), and a subsequent private placement of the first Italian electric generation company (Genco) in November. By the end of 1999, the trend started declining: three years later the number of privatizations more than halved and 2002 showed a decrease in revenues of about 63 percent with respect to 1999. Hungary and Slovenia kicked off privatization in New Europe in 1989, followed by Poland in 1990, Czechoslovakia in 1991, and Estonia in 1994. Interestingly, Poland raised the largest total proceeds in the area (36 percent of the total), surpassing several countries of Old Europe such as Sweden, Greece, Austria, and Belgium.[67]

[66] BORTOLOTTİ, Bernardo, Ibid, p. 10
[67] BORTOLOTTİ, Bernardo, Ibid, p. 10

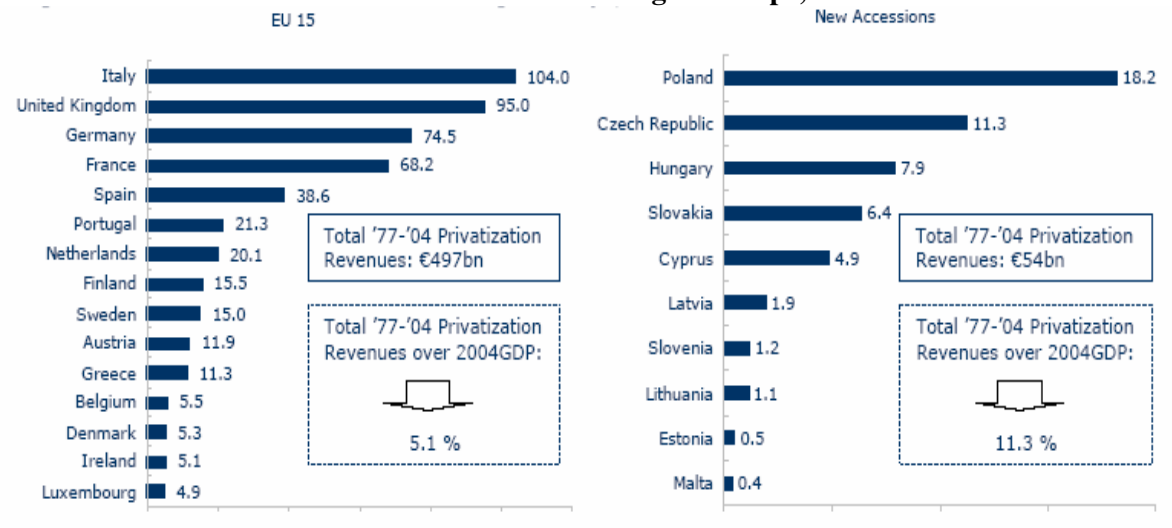
Country Ranking by Revenues *



Only few countries, notably the UK and Spain, have fully privatized strategic sectors such as energy, telecommunications or transport. In the majority of countries, both in Old and in New Europe, governments have transferred ownership rights, but retained direct or indirect control rights in SOEs. As a consequence, the privatization process in several industries has been partial and incomplete. The challenges that European governments will face in the future are either to accomplish such a process, or to prove that even in a globalized economy large shareholdings by the State represent an efficient pattern of governance.[68]

[68] BORTOLOTTİ, Bernardo, Ibid, p. 11

Privatization Revenues in the Enlarged Europe, 1977-2004



Source: Privatization Barometer, newsrun, Lehman Brothers' estimates. Privatization revenues relate to the 1977 – 2004 period and are restated at current purchase power parity

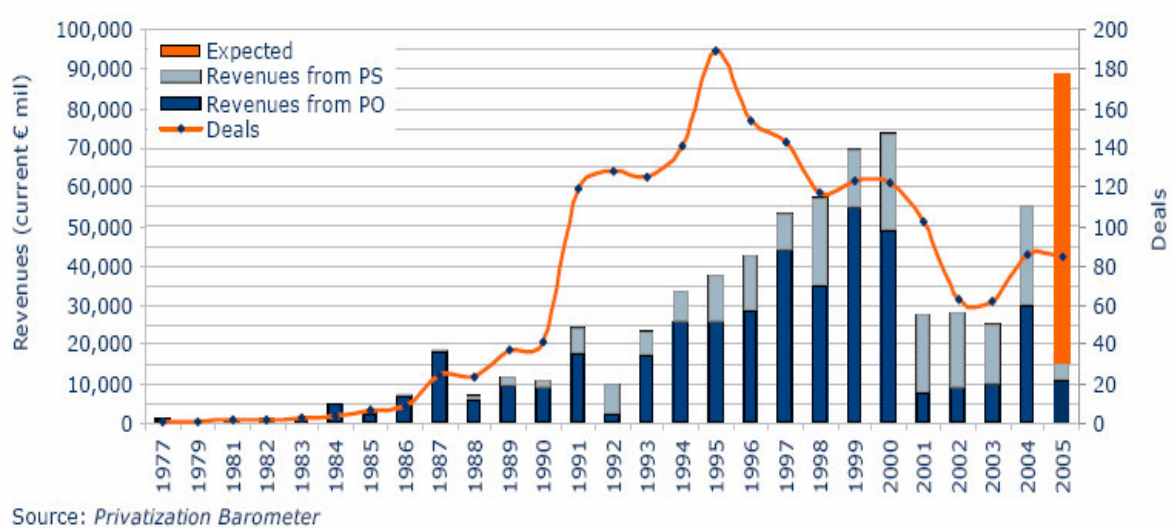
1.6.4.1. The Single Market

The European Commission aims to create a single market for all aspects of trade and commerce by 2010. The size and power of a single EU market would be comparable to that of the US and, with the prospective addition of future member states, has the potential to be even greater. A key step in achieving a unified EU market is the development of liberalized energy markets. Compared with other energy sources such as coal, electricity or even nuclear power, the use of gas on a large scale is a relatively new event in Europe. Virtually all national gas markets in Europe were established on the basis of nationalised industries with the associated features of high prices and very restricted participation by private companies. A legislation-led approach to market liberalization is being implemented with the passing of the EU Gas Directive and subsequent implementation in the legislation of member states.[69]

The European Union's long-term energy strategy aims to ensure the well-being of its citizens and the proper functioning of the economy through the uninterrupted availability of energy products on the market at affordable prices for all consumers both citizen and industrial, while respecting environmental concerns and the need to ensure sustainable development. European Commission, Directorate General for Energy and Transport, Enlargement and European Union Energy Policy, MEMO

[69] Power Economics, Oct 2002 http://www.findarticles.com /p/articles/mi_qa3888/is_200210/ai_n9094600

Privatization in the Enlarged Europe: Total Revenues and Transactions 1977- 2005



Source: *Privatization Barometer*

These long-term objectives are supported by two cross-cutting strategies. The first is the tenyear Lisbon Strategy which aims for the EU "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." 2 Lisbon Presidency Council Conclusion, March 2000These goals have been largely endorsed by the new Barroso Commission, which has placed competitiveness and prosperity at the head of its work agenda.

The second strategy is the longer term Sustainable Development Strategy which – among other things – aims to ensure that economic growth, environmental quality and social inclusion go hand in hand, thereby increasing citizens' welfare. To achieve this, the strategy puts major emphasis on coherent policy making and management of trade-offs between conflicting objectives and interests.[70]

Another area of concern of the European Commission is security of energy supply. There are two angles to this: availability of energy resources to the Members of the Community and the adequacy and reliability of networks/supply grids. Commission of the European Communities, Green Paper "Towards a strategy on security of supply", COM (2000) 769 The European Union has steadily increased its energy consumption over the last 20 years and has increased its dependency on imports of fossil fuels. It is expected that on present trends the EU's overall dependency on imports of oil and gas will rise to 70 percent of total need in the

[70] Commission of the European Communities, Commission Staff Working Paper, Public Consultation, Review of the Sustainable development strategy, July 2004

next 20 to 30 years. Through international activities - EU-Russia dialogue, the European Energy Charter Treaty, the Euro-Mediterranean dialogue etc - the Commission is seeking to manage the risks associated with dependence on foreign energy sources.

The electricity sector is exposed to this import dependency for primary fuels since demand for electricity has historically increased at a much higher rate than overall demand for energy. This trend is expected to continue. Electricity consumption is expected to increase at twice the rate of total energy demand over the next 20 years, requiring up to 40% more generation capacity.[71]

Creation of a *single market* is a key priority of the European Community and a part of the EU energy policy. The aim is to create the most effective, safest and most competitive energy market in the EU. An important step in this process was adoption of Directives in 1996 and 1998 on common rules for electricity and gas respectively. These Directives ensured the free movement of electricity and gas within the Community. Liberalization of the electricity and gas markets was opened up to major consumers in 1999 and 2000 respectively. In March 2001 the Commission adopted a set of measures to open the gas and electricity markets up fully by 2005.

There are three main strands to the process of opening up Europe's energy markets: free access to networks, as guaranteed by the separation of transportation from the production and sale of energy; freedom of choice for final customers; and competition among producers. Considerable progress has been made thus far.[72]

1.7. PUBLIC SECTOR AND NATURAL MONOPOLIES

1.7.1. Economic Properties Of Public Services

Electricity and gas services which are the basic economic public services can be provided by both single public companies and also private companies or companies of private-public partnerships. In the provision of public services, delivery of the competency of provided service or realization of the production to a single company separates the provision of these services from others. Although the provision of services by public or private companies depends on the economic, social and political situation and preferences of countries, it is seen

[71] Energy Market Inspectorate Annual Report 2002
[72] http://www.gascentre.unece.org/ungcpubdb/IT_0.html

that the provision of these services is realized through the inspection of the state or an independent regulation organization.[73]

The demand flexibility of the public services is low and they show a monopolist characteristic and are open to external economies. They are separated from other services with these characteristics. Not let us see these characteristics:

1.7.1.1. Demand Flexibility in Public Services

The demand for the public service does not change with the same proportion to the price of the service and income level of the consumer in general. According to the two fundamental principles on which market theory is based, public services have a low demand flexibility. First fundamental principle expresses the degree of the reaction of the demand amount for a kind of good against the change in the price of that good. And this is called as the demand price flexibility (the proportion of the change in percentage in the demand to the change in percentage in the price). The second fundamental principle defined as the demand income flexibility (the proportion of the change in percentage in the demand to the change in percentage in the income) is used to measure the sensitivity of the demand amount to the change in the consumer income. As the consumer income level increases the consumption of the ordinary goods will increase or the consumption of the basic goods will be replaced with the consumption of the luxurious goods. However, when the interaction between the demand - price or demand – income for especially some goods and services is very low or uncertain then the stabilization of the market system will be slow.[74]

The necessity of the electricity services for the society and its impossibility of replacement relatively weaken the relationship between the electricity energy demand and price and also between the electricity energy demand and household income level. For example, to which level the household income level decreases or to which level the price of the service increases, a reasonable level of energy level will be realized since this demand is essential for the physical and social existence. Similarly, depending on the income increase or electricity price decrease, the demand level will increase reasonably but this increase will not be indefinite. All these show that the energy demand price and income flexibility is very low.[75]

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[73] KULALI, İhsan, Elektrik Sektöründe Özelleştirme Ve Türkiye Uygulaması, DPT Uzmanlık Tezi, 1997, p.10
[74] KULALI, İhsan, Ibid, p.10
[75] ERNST, John, Whose Utility? The Social Impact of Public Utility Privatization and Regulation in Britain, Open University Press, Buckingham 1994, p.45

1.7.1.2. Natural Monopolist Characteristic

Natural monopolist theory, as a concept not as a description is seen in the "Principles of Politic Economy" of John Stuart Mill, British economist, published in 1848. Mill, emphasizing that the natural gas production in London does not fit with a competitive industrial structure, says that:

"It is apparent that quite a lot saving in labor might be obtained if the supply of services in London is achieved with a single natural gas or water company instead of many companies as it is the case at the moment... A single company might offer lower prices while keeping the profit rate it achieves today"[76]

Natural monopoly is one of the reasons resulting in market failures and forcing the requirement for the public production. The reason not to see the competitive characteristics in these markets is the decrease in the average production cost with the production increase. In this situation, economic efficiency requires the existence of a limited number of companies. The Industries in which increasing production is important and activity of only a singly company is required in the region are called natural monopolies.[77]

Classical understanding explains the natural monopoly concept with the existence of scale economy. In the descriptions of OECD, natural monopolies are defined as: "technologies of certain industries and related services have such characteristics that, to provide the services to the consumers with the least cost or with the maximum benefit, only a single or a certain number of selected companies can operate. If the production is obtained with the least cost only if a single company becomes active in that sector then natural monopolies are observed.[78]

Baumol, Panzer and Willig define the natural monopoly as following[79]: *"If a cost function of one company is less than the total of costs of several companies along the whole production range then that industry is a natural monopoly."*

[76] LOWRY, "Justification for Regulation: The Case for Natural Monopoly", Public Utilities Fortnightly, 1973, p. 17-23
[77] STIGLITZ, The Economics of Privatization, 1994, p. 227
[78] OECD, Regulatory Reform, Privatization And Competition Policy, Paris 1992. p. 12
[79] BAUMOL, W., PANZAR, J., and WILLIG, R., Contestable Markets and Theory of Industry Structure, 1982, p.17

The basic difference between the classical approach and modern approach is the point that whether the natural monopoly should operate in the range of scale economy or not. In the OECD description, the operation of the monopoly is expected in the positive scale economy range, in the second approach, it is assumed that the operation of the monopoly increases the social prosperity in the fields of negative scale economies till the ability of two companies operation with the less cost with the market expansion. But according to this approach, if the entry to the market is not prevented with the law then natural monopoly cannot exist.[80]

1.7.1.3. Characteristics of Natural Monopolies

In natural monopolies, in general, first investment cost is high. That's why the constant costs are high too. Electricity, natural gas and water networks, railways and till the recent years telecommunication are the industries with high first investment and constant cost values which are known as natural monopolies.

Gilbert, Kahn and Newbery emphasized the natural monopolist characteristic of electricity and typical characteristics of natural monopolies are determined as follows:[81]

-Scale economy and capital intensified,
-Various demand and cannot be stocked,
-Settlement characteristic creating a settlement profit,
-Necessity or obligatory characteristic for the society,
-Direct connection with the consumer.

Services supplied by natural monopolies are in general not able to be stocked. That's why extra capacity is required when the consumer demand is high to compensate the demand. On the other hand, natural monopolist services are supplied via pipelines or cable lines. In this situation, provision of the service with the second pipeline or cable line will be an inefficient work resulting in line duplication. Thus, due to the economic and practical reasons, it is essential to supply this kind of services via one network.[82]

[80] ÇAKAL, Recep, Ibid, p. 14
[81] GILBERT, R. J., and KAHN, E. P., International Comparisons of Electricity Regulation, Cambridge University Press, Cambridge, 1996 p. 23
[82] KULALI, İhsan, Ibid, p. 12

Today in which the limits of the natural monopoly is interrogated, while evaluating the natural monopolist characteristics of public services like electricity, water, telecommunication and gas, the difference between the production and presentation of these services is not emphasized enough. Generally, it is put forward that production of infrastructure services like electricity, gas, water does not consist of theoretical characteristics of a natural monopoly since it is championed that in the production of this kind of services it is possible to provide the competition and to decrease the unit costs allowing the entry of new companies in the production.[83]

However, in recent years, it is observed that some developments are challenging the monopoly of trading and distribution of electricity services. It is seen that several electricity distributors are competing via a common distribution system to sell the electricity. With the technologies, individual consumers are able to buy the electricity from the company they would like to with the best conditions or to change the company taking care of the offers of the companies. Furthermore, electricity consumers are able to form groups and with these groups they can bargain on the conditions of the price and conditions of the service with the electricity sellers. In this way, although the natural monopolist situations still exist it is possible to open the distribution to the competition with the technologic improvements.[84]

1.7.1.4. Externality

The externality having an important place in the market problems occurs because of the horizontal and vertical integration situations of public services in the provision of public services or the characteristics of the activities. The externality is the concept of the possibility for the decision of production and / or consumption of an individual or company to be influenced positively or negatively by the decision of production and / or consumption of other individual or companies without any payment.[85]

If the benefits provided by the market actors outside the company without any payment are not taken into account then positive externality is observed. On the other hand, if the negativities occurred during the production process are bore without any charge and if the production is carried out independent of these cost then negative externalities occur. For example, if wastes of the water and sewerage system or production establishments are

[83] TRAIN, K.E, Optimal Regulation, MIT Press, Cambridge MA 1991, p.6
[84] ERNST, John, Ibid, p.47-49
[85] LISEVEY, Frank, Dictionary of Economics, Pitman Publishing, London 1993, p.85

released to the river or the sea then negative externality will occur if beneficiaries of natural environment are affected negatively. On the other hand, with the registration of further subscribers to the existing telephone network, if the communication abilities of the existing subscribers increase then positive externality occurs.[86]

External economies lead to the failure of the market and production and consumption decisions which are not optimum socially since only individual benefit and costs are taken into attention. Although the establishment of prosperity rights makes markets available for the external economies, this might not be the case always. Various solutions are produced to increase the economic efficiency in markets of external economies. These are the arrangements like quantity restriction and standards, application of taxes transforming external economies into internal economies, establishment of prosperity rights (the sale of the rights of polluting by the state). In cases of positive external economies, tools like property establishment rights (patent and intellectual rights) and subvention are used.[87]

The types of negative externality observed at most in economic life are noise and environment pollution. That's why another field requiring the regulations is the removal or lowering of negative externalities. It is necessary to give an example for the positive externality. If a person is taken ill by an infectious illness and cured immediately then both he / she will protect his / her health and he / she will be useful socially preventing the infection of other individuals, meaning the occurrence of positive externality.[88]

1.7.2. LIBERALIZATION AND COMPETITION

In the OECD Council in 1979, the proposal for the improvement of the competition in the protected markets in economy intervening legally was accepted. Since that time, most of the member countries commenced to transfer the state monopolies and let to compete in the protected sector previously. Although it is very early to be able to evaluate these proposals finally, according to the report of the OECD Committee of Experts on Restrictive Business Practices, some of the proposals in question had shown positive effects on the prices and efficiency. In the report, the proceedings with respect to economic developments in five main

[86] AKDEMİR, Erkan, Liberalization and Privatization of Telecommunications: Recent Implementation in Selected Countries and Lessons for Turkey, University of Colorado Faculty of Graduate School, MS Thesis, 1995, p. 6
[87] ÇAKAL, Recep, Ibid, p.9
[88] ARDIYOK, Şahin, Ibid, p.11

sectors of transportation, postal service and telecommunication services, radio and television broadcast services, energy and banking are analyzed. The Committee continues to examine legal institutional deregulation and privatization with respect to competition policy taking into attention the factors which can restrict the policies related to these measurements and to which point economic activities can be improved with special measurements.[89]

Some enterprises are very important for the country. So there is a tendency to execute these enterprises by the public organizations. But in recent years some changes in this tendency have been experienced and many countries tended to apply the legal institutional applications. What meant with the legal institutional deregulation is not the removal of all regulations. It is the lowering of these regulations and removal of them if necessary and preparing the regulations enabling the occurrence of a competitive structure. Previously it was mentioned that the privatization is another type of legal institutional deregulation.

Sectoral liberalization and provision of the competition were commenced to be discussed widespread in natural monopolist sectors mainly the electricity sector especially after the 1980. The liberalization can be defined as the process of removal of the legal barriers in front of the entry and exits for the sector and opening of the sector to the competition. But it is necessary to solve the following problems: To which point the competition in the sector will be possible and meaningful with the liberalization; will the activities of natural monopolies structured as vertical integration continue keeping the integration or dividing into parts; will regulations be required or not; what kind of relationship can be established between regulation and competition.[90]

The problem of what kind of structure will take the place of the existing structure after the privatization is important. Two alternatives might be thought at the first glance: In the first alternative, the dominant company is prevented to be active in the activities which can be opened to competition, and new companies are allowed to deal with these activities. In this model, the use of services of the dominant company from the new companies is probably regulated to prevent the misuse of the dominant situation. This alternative can be called as vertical separation. In the other alternative, while allowing the new entries into the activities which can be opened to competition, the activity of the dominant company in those activities

[89] ROBERT, Okun, Legal Institutional Deregulation and Privatization, p.1
[90] AMSTRONG, Mark, COWAN, Simon, VICKERS, John, Regulatory Reform: Economic Analysis and British Experiences, The MIT Press, London 1994, p. 100

is also allowed. This alternative can be called as vertical integration or liberalization. In this alternative all prices of the dominant company might be subject to regulation. Some factors making the separation superior might be mentioned in terms of social prosperity. The most important one of these is to favoring of close companies by the dominant company in the activities open to the competition or the misuse of the dominant situation in different ways if there is no separation. Moreover, the dominant company may prevent the entries of the new companies via the subvention inside the company and can limit the competition. Therefore the separation can encourage the increase in the competition in the activities open to competition. Besides, the separation may lead to obtain a more transparent account of the dominant company preventing the subvention ability of the dominant company so that regulating institution can decide better with more suitable information medium.[91]

If the market is appropriate to competition and the market actors are willing to have this competition, maintaining competition in such markets is realized within general policies of competition. However, in some markets neither competition is desired nor the market is suitable to competition. Even though the rules which prevent entering and leaving the relevant market which is naturally in a status of monopoly are abolished, is still difficult to provide active and effective competition. A strong company might prevent its rivals' entering the market where competition is not suitable but only desired. In this case, there is a need for some regulations (different from the regulations of natural monopolies like the control of prices) required for maintaining and supporting the competition in that market. On the other hand, in circumstances where competition is not desired but suitable, liberation may cause too much competition. Such a competition may cause harms. For instance, in circumstances where the most profitable works are carried by the market actors, maintaining competition for such works will be hindered.[92]

Integration might be, of course, defended to be more appropriate in terms of social welfare under some conditions. For example, it may be suggested that a vertically integrated structure can effectively work well under intense uncertainty and that a separated structure can cause serious coordination problems. Rising competition will have some sharing problems and

[91] ATİYAS, İzak, Doğal Tekellerin Regülasyonu ve Rekabet, Thursday Conferences, December 1999, p.55
[92] AMSTRONG Mark, COWAN Simon, VICKERS John, Ibid, p. 102

available material assets and contracts will partially lose value and thus some companies will lose.[93]

1.7.2.1. Vertical Integration

Integration is considered to be one of expansion strategies of companies and it is defined as gaining more sources or producing more goods and services by means of joining in the activities of other companies.[94] In vertical integration the company carries out some activities in one or more processes regarding supplying raw material or delivering services to consumers.

In a broader meaning, development of companies is provided by means of vertical and horizontal integrations. In horizontal integration the company is trying to develop within the same field of activity or within the framework of the same product chain. On the other hand, in vertical integration the company activities are considered to be an attempt to develop the company in the direction of arriving to costumers or supplying raw materials.[95]

Vertical integration is not to be considered as a inevitably entrance hinder because it cannot be an element to increase costs of entrance to the market unless it is effective. In vertical integration there are stations with much bigger sizes and a need for capital and high level of investments are required for those stations.[96]

It was implemented as a public policy to maintain vertical integration in public services until 1980s. However, today implementations for continuing vertical integration are being questioned and many countries, such as mainly England, have directed to liberation in competitive activities within integration. In this case, it is discussed whether the monopoly should be in liberated sector or in a vertical separation. When vertical integration is protected, there might be problems caused by lack of information between the company which is in the status of monopoly and other companies. The tariff to access to the network should be clearly defined as to be considered on marginal costs of the monopoly or on fixed costs of the

[93] HELM, DIETER and TIM JENKINSON "The Assessment: Introducing Competition into Regulatory Industries", OERP, 1997, p. 14
[94] LIVESEY, Frank, Ibid, p.101
[95] KULALI, İhsan, Ibid, p.25
[96] YANIK, Mehmet, Rekabet Hukukunun Hakim Durum Ve Hakim Durumun Kötüye Kullanılması Uygulamalarında Piyasa Giriş Engelleri, Ankara 2003, p.35

network. Although it is observed that the monopoly acts in a way that it destroys competition, it is defended that vertical integrations are more effective in production.[97]

1.7.2.2. Prevention Of Entrance To Markets

Monopoly or oligopoly markets are the ones with a single company or companies with limited number. The natural structures of the markets show an attribute that entrances and exits are not easy. This circumstance might be understood that the effective competition is not easily maintained in every market due to the reasons caused by the nature of the market. As a result of such predictions, some natural and legal monopolies have been separated within deregulation policies began after 1980. These developments called as the separation and decrease of market power is encountered in the implementation of privatization. One of the aims of such disintegrations is to open up new enterprises of the markets and to eliminate elements that may constitute hindrances to the entrance to the market. In this way, due to new companies in the market potential rivals appear to companies already established and attitudes against competition are limited by this suppression of competition; therefore, effectiveness in distribution of resources and production is maintained.[98]

In circumstances where competition is not appropriate but is desired, the company or companies that are dominant in the market have some advantages and they may make use of these advantages to prevent those who are willing to enter the market. Among the threats utilized for hindering the market are bankrupted costs, devastating price policies and pricing of access to the network.[99]

Obstacles such as the need to required capital to effectively enter the market, government policies, technology and technological change do not appear as a result of the competition in the market. Similar obstacles may be present before a company enters the relevant market. It is indeed difficult to overcome such obstacles. However, there are second type of obstacles to enter the market which appear after a company enters the relevant market. These are product differentiation, customer dependence, cost advantages, costs for changing sellers or brands by customers, and great promotion campaigns and etc. If the company which is to newly enter the market is able to ensure required resources, it may overcome these obstacles.[100]

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[97] AMSTRONG, Mark, COWAN, Simon, VICKERS John, Ibid, pp. 135-136
[98] YANIK, Mehmet, Ibid, p.7
[99] KULALI, İhsan, Ibid. p.26
[100] STAHL, M., Entry Barriers and Market Entry Decisions, Quorum Books, New York, 1991, p.149

CHAPTER 2
PRIVATIZATION
IN THE
ENERGY SECTOR

2.1. INTRODUCTION

The result derived from the discussions we have mentioned so far is that neither regulation nor competition is alone enough for maintaining effectiveness. Indeed, these discussions show the way to the process which is called reform in regulation during last two decades, or namely the approach which requires both regulating some parts of industries which have a natural attribute of monopoly and implementing competition in the remaining structure. Therefore, it is explicitly observed that studies related to restructuring of the industry in regulation economy have rapidly increased. As vertical and horizontal relationships between companies show great differences, the issue must be analyzed and investigated with a limited approach based on each sector.[101]

Although competition has been maintained in electricity sector in all stages including sales from the producer to the consumer, the transmission (higher voltage) and distribution (lower voltage) activities of this sector are still in the status of natural monopoly. In many countries electricity sector is utilized in the forms of national or regional vertical integration and it is generally operated by public sector. In some countries electricity services are only provided by means of private sector while in some countries they are only provided by public sector; it is also observed in some countries that these services are provided under a combined structure composed of public, municipality and private sectors.[102]

Issuing a directive dated on 19/02/1997 with the aim of providing a free structure for electricity energy market in terms of free circulation of goods, persons, services and capital within the domestic market, both the Parliament and Council of European Union required that the member states should gradually maintain a free competition in electricity sector within a certain period.[103]

[101] PAŞAOĞLU, Ömür, Doğal Tekellerde Regülasyon ve Rekabet Bir Örnek: İngiliz Elektrik Sektörünün Yeniden Yapılandırılması, *Uzmanlık Tezleri Serisi*, Ankara, 2003, p.40
[102] KULALI, İhsan, Ibid. p.51
[103] Almanya'da Elektrik Enerjisi Üretim Ve Dağıtımının Serbest Rekabete Açılması, *Hazine Dergisi*, July 1998-Issue 11, p. 35

2.2. PLACE AND SIGNIFICANCE OF ENERGY IN ECONOMY

Economic, cultural and scientific levels of countries are measured by the amount of energy that they produce and use. Energy is a driving force of economic development.[104] Therefore, the use of energy within the whole country must show certain integrity within the country, which in return requires the establishment of regular transmission and distribution network widespread in the country. When considered that there are essential consumption centers such as schools, hospitals, houses and etc. in every region of the country, the transmission of electricity energy to all regions in the same way without any consideration of physical size is a necessity. This is a significant indicator that electricity energy is primarily a good with its service-oriented aim.[105]

During last 2-3 decades it is observed that parallel to economic developments in all countries, the consumption of general energy and electrical energy has suddenly increased. It is therefore important to increase energy supply in order to ensure economic developments of world's countries in the coming years. Thus, this situation reveals the fact it is indispensable for energy sector to be in harmony with economic developments.[106]

The use of electricity energy has a great significance in the economic development processes of countries. This significance is caused by a fundamental structural relationship of electricity with other sectors of economy. It is observed that while the correlation between the demand of electricity and economic development is strong in developing countries, it is quite weak in developed countries. Although the use of electricity in developing countries is quite lower than the international standards, the demand for electricity has already increased due to industrialization efforts, increase in incomes, and widespread use of electrical household appliances in those countries.[107]

Recently, while gross national product (GNP) is increasing in developed countries, total energy consumption rate is gradually decreasing.

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[104] ATILGAN, İbrahim, Gazi Üniv. Müh. Mim. Fak. Der. Cilt 15, No 1, 2000, p.31
[105] YİĞİT, Ali, 2.Enerji Sempozyumu, 1998, p.161
[106] KULALI, İhsan, Ibid, p.29
[107] GLEN, Jack D., Private Sector Electricity in Developing Countries, Supply and Demand, IFC Discussion Paper 15, Washington, D.C.1992, p.3

2.3. ENERGY SECTOR IN TURKEY

When we analyze the situation of OECD countries in general, we observe that energy density is gradually decreasing in those countries. Energy density is the amount of primary energy consumed for per gross national product and it is widely used as a measurement unit for monitoring and comparing of energy efficiency. However, energy density in our country is higher than the OECD average. More importantly, it shows a trend of increase contrary to other countries' densities. Indeed this depicts the fact that energy is not efficiently used in our country and activities are carried out in a way that energy is denser. In evaluations of energy savings studies, it is found that there is a loss around the amount of USD 3 billion per year in our country. The presence of a higher energy density in our country than OECD countries also confirms the existence of this loss.

In addition to this, the value of 1,07 TEP/person for Turkey in virtue of total primary energy supply for per person is also lower than values of OECD and other countries in the world. When the consumption of electricity energy is taken into consideration, this gap becomes greater; as the average consumption of electricity energy for per person is around 2,280 KWatt/Hour for the whole world and 7,841 KWatt/Hour for OECD countries, this value is 1,473 KWatt/Hour for Turkey.[108]

The use of electricity has a universal characteristic. In some fields of electricity use, it is possible that other energy resources can be substituted for electricity. For instance, residence of a house can use other alternative energy sources for some areas such as hot water, heating and cooking and industrial users for heating and traction. Nevertheless, there is no full substitution of electricity.[109]

The correlation between electricity energy and the GNP is stronger that the relationship between general energy and the GNP.[110] General energy and specifically electricity energy have been of the major problems of our countries for many years. It can be recognized that the difficult situation, which we are experiencing in terms of energy now, will continue in the following years too. Environment friendly or green energy types are the future energy resources. Criteria for protection of environment and measurements related to environmental

[108] http://www.tubitak.gov.tr/btpd/btspd/ platform/enerji/bolum4.html
[109] TRADALETE, A., "The Role of EC Competition Policy in the Liberalization of EU Energy Markets" (Unpublished Article), Directorate General for Competition, European Commission, Brussels, 2000, p. 15
[110] TES-İŞ, Enerji Sektöründe Özelleştirme Sorunu, Ankara 1993, p.35

protection are now beyond any national borders; they have an international sense. The use of energy is shaped and developed based on three great factors: namely, the validity of market conditions, protection of environmental health and technological innovations.[111]

Energy Statistics for Turkey

Mtoe	1990	1995	2000	2002
Production	25.95	26.52	26.71	24.06
Solid fuels	12.41	12.08	13.29	11.64
Oil	3.71	3.51	2.75	2.41
Gas	0.17	0.15	0.53	0.31
Nuclear				
Renewables	9.66	10.78	10.14	9.69
Other				
Net Imports	27.27	36.76	50.87	51.19
Solid fuels	4.21	4.48	9.25	8.05
Oil	20.44	26.68	29.28	28.53
Gas	2.68	5.67	12.05	14.34
Electricity	-0.06	-0.06	0.29	0.27
Renewables				
Derived heat				
Inland Consumption	52.28	62.03	77.35	74.95
Solid fuels	16.92	16.62	23.28	19.59
Oil	22.91	28.91	31.00	30.66
Gas	2.86	5.79	12.64	14.74
Nuclear				
Renewables	9.66	10.78	10.14	9.69
Other	-0.06	-0.06	0.29	0.27
Elec. Generation (TWh)	57.54	86.25	124.92	129.40
Coal (TWh)	20.18	27.41	37.33	31.43
Oil (TWh)	3.94	5.77	10.46	10.74
Gas (TWh)	10.19	17.22	45.92	53.22
Nuclear (TWh)				
Renewables (TWh) (*)	23.23	35.85	31.15	34.01
Other (TWh)			0.05	
Final Energy Demand	31.25	37.79	54.14	52.88
by fuel/product				
Solid fuels	8.04	6.67	10.69	9.39
Oil	17.79	22.30	22.97	22.82
Gas	1.16	2.64	4.91	5.23
Electricity	3.87	5.60	8.24	8.73
Renewables	0.39	0.58	7.34	6.70
Other				
by sector				
Industry	11.95	13.16	20.18	19.46
Transport	9.35	11.89	12.17	12.55
Households	7.35	8.99	17.00	14.83
Commerce & other	2.59	3.75	4.79	6.05
Non-Energy Uses	2.77	3.75	3.50	3.90
CO_2 Emissions (Mt) (**)	126	150	198	193
Energy intensity (toe/M€95)	473	479	492	477
CO_2 intensity (tCO_2/toe)	2.41	2.42	2.56	2.57
Import dependency, %	52.03	59.09	65.43	67.82
Energy per capita (kgoe/cap)	930	1006	1147	1076
CO_2 per capita (kg/cap)	2244	2439	2940	2764

Source: Eurostat (*) not including pumping (**) without maritime bunkers

Turkey with 23,4 GWh established power of electricity energy has a share of 2% in the total established power of OECD countries. The rate of Turkey's established power compared to the EU countries is around 4%.

Turkey that has a share of 2% in the total established power of OECD countries has a share of 1,2% in the total electricity energy produced by these countries. The rate of Turkey's electricity production compared to the EU countries is around 4.6%.

The net increase in the production of electricity in Turkey during the years 1999 and 2000 is higher than the average rate of production of electricity in OECD countries but the increase in electricity production in Turkey is lower than those of OECD countries due to mentioned insufficiency in the production of hydraulic electricity within the period of first 10 months of 2001.

During the year prior to 2000, Turkey was the country of which electricity energy demand was in a sudden increase after Greece and Italy, the consumption of electricity energy was

[111] ATILGAN,İbrahim, Gazi Üniv. Müh. Mim. Fak. Der. Vol. 15, No 1, 2000, p.31

significantly decreased due to the economic crisis experienced in 2001. While the amounts of consumption of electricity for per person in OECD and the EU are respectively 7,227 kWh and 5,848 kWh in 1999 and this amount is 1,840 kWh in Turkey and 1,964 kWh in 2000 and 1937 kWh in 2001.

2.3.1. Main Energy Potentials in Turkey:

2.3.1.1. Hydroelectric energy:

It is a type of energy produced by transforming the potential energy of water into kinetics energy. When available rainfall intensity and the situation of rivers in Turkey are taken into consideration, our rate of safe utilization of this resource with full capacity may be only 65%.[112]

Hydroelectric energy provided with 12% of total energy production and 12% of total production of electric energy in 1995. Furthermore, this energy supplied 12% of the total production of electric energy in 1997. The hydraulic potential is 433 billion kWh and the rate of technically usable potential is 212 billion kWh. However, only 30% of this potential can be utilized today. This type of energy does not cause environmental pollution and the investment can be also used for irrigation. However, the investment costs of this energy are too high.

2.3.1.2. Lignite:

It provides 40% of domestic energy production. Reserves of lignite are 8.3 tons. This amount is equivalent to 1.7 billion TEP. This amount of reserves can be increased by 2-3 times if a well-planned search is implemented.

2.3.1.3. Anthracite:

Although Turkey has a reserve of anthracite with the amount of 835 million TEP, the production of anthracite is continuously decreasing in Turkey. The annual anthracite production can be raised to the level of 10-20 TEP in a short time by means of technological investments.

[112] Tubitak-Ttgv, Tubıtak-Ttgv Enerji Teknolojileri Politikası Çalışma Grubu 1998, Ankara 1998

2.3.1.4. Petroleum:

The production of petroleum in Turkey, which constitutes 46% of total energy consumption, is only 13% of this need. The necessary search activities of petroleum are not carried out and if they are realized, it is possible to increase petroleum production to a few times higher than today.

2.3.1.5. Natural Gas:

Although the potential of natural gas is too low in Turkey, the total share of natural gas in the total imported energy is also increasing and much effort is spent to further increase.

While the consumption rate of natural gas is 6.7 billion m3 in 1995, it is projected that its share would be raised to the rate of 37% in the total energy consumption with 51 million TEP in the year 2010.

2.3.1.6. Geothermal, Wind and Solar Energies:

There are sudden developments in the production technologies of electricity energy from solar, wind and geothermal resources. Although it is possible to increase the share rate of energy production from renewable resources compared to total energy production to the level of 22% in 2010, the use of such resources is still neglected. Today rate of energy produced by such resources is around 2-3% of the total.

Our country is the first 7th country in the world in terms of the country's geothermal resources. There are around 140 resources with a surface heat above 40° C. Furthermore, 136 of these resources are appropriate to central heating, greenhouse and household heating and industrial use as well; it is reported that only 4 of them are available for producing electricity in terms of technical and economic aspects. The evaluation of all our resources shows that their value is equivalent to petroleum with the amount of 9 billion dollar/year.[113]

Wind energy can be defined as a transformed solar energy. The energy to be produced from wind is completely dependent on the speed and duration of wind.

[113] Tubitak-Ttgv, Ibid, 1998

2.3.1.7. Nuclear Plants:

One of the applications that may increase the country's dependence on the foreign countries is the initiation of nuclear plants in the production of electricity. The share rate of 2 nuclear plants with 1000 MW power that are planned to construct by 2010 will be 2 % of the total established power of the country and the share rate of other 10 nuclear plants to be constructed by 2020 will be 10% of the total established power in the mentioned year. Therefore, even if we ignore their possible harmful effects on human life and environment for a while, the establishment of nuclear plants will contribute nothing to the production of electricity until the year of 2020. Turkey in any case can supply this 10% of increase in energy production by means of implementing available resources in the country. Neo-liberal politicians that seem to be determined to mortgage the country's energy policy to the international capital, insistently introduce nuclear plants which are more expensive than other types of plants for energy production in terms of initial investment cost and electricity production cost and are completely dependent on the foreign countries in terms of technology and fuel. When the tender bids for Construction of Mersin Akkuyu Nuclear Plant are taken into consideration, it will be clearly witnessed that the future of energy sector is gradually left to international capital.

1. AECL (Canada), Kuarner John Brown (the UK), Hitachi (Japan), Gür-İş, Gama, Bayındır (Turkey).

2. Westing house (the USA), Mitsubishi (Japan), Enka-MNG (Turkey).

3. NPI (France-Germany), Siemens (Germany), Framatome GEL-A (France-Germany), Campenon Bernard-Hoctief (France-Germany), Simko, Garanti Koza, STFA, Tekfen (Turkey).

Developed countries supply a significant part of their total electricity production from nuclear energy plants. Nuclear plants constitute 16% of the total rate of electricity demand in all around the world.

As a result of uranium search which was initiated by MTA [Turkish Mine Searching and Locating Institute] during 1960s parallel to the aim of establishing first nuclear plants in Turkey, total 9,000 tons of U_3O_8 reserve was found scattered around various regions of the country (i.e. (Manisa, Aydın, Uşak, Çanakkale, Yozgat, Giresun). Accordingly, uranium

(yellow cake) with the amount of 1,200 kg was produced in the pilot regions of Manisa Alaşehir and Uşak. Uranium (yellow cake) production flow charts were prepared for each ore in Turkey and their technical reports were issued. If Turkey does not want to be dependent on the foreign resources when a nuclear plant is to be established in Turkey in the future, the search for the country's ores must be correctly defined and planned.

Turkey is trying to continue investments related to almost all energy resources. The nuclear power plant with 2000 MW is also included in these investments. However, economic crises show that such assumptions and objectives do not have any meaning in practice. For instance, the nuclear power plant tender which was planned to be awarded in March 2000 was annulled and it is now certain that we will not produce electricity energy form nuclear power plants until the end of 2010. Similarly, the crisis experienced in February 2001 is one of the factors that prevent us reaching our objectives said before.

2.4.1. ENERGY SECTOR IN THE EU

EU members possess only approximately 0.6% of the world's proven reserves of oil and 2.0% of the world's natural gas reserves. The EU holds 19.5% of proven coal reserves, 17.8% of the world's capacity for refining crude oil into petroleum products, and 18.4% of the world's electric generating capacity.

The EU is a net importer of energy. According to a report published by the European Commission, two-thirds of the EU's total energy requirements will be imported by 2020.[114] Eurogas expects that the EU will also import up to 75% of its natural gas requirements by 2020. EU member countries import oil predominately from Russia, the Middle East, Africa and Norway.[115]

In 2002, the EU consumed 55.6 quadrillion British thermal units (Btu) of energy, 18% of the world's total energy consumption. In comparison, the United States consumed 97.6 quadrillion Btu (24% of world total) in 2002. In the same year, EU energy consumption consisted of 40% oil, 22% natural gas, 16% coal, 13% nuclear, 4% hydro, and 1% renewables other than hydroelectric power.

[114] European Union Energy Outlook to 2020
[115] http://www.eia.doe.gov/emeu/cabs/euro.html

Oil was the dominant fuel in 2002 for the EU, (see Table 2), accounting for 40% of total EU energy consumption. Over the past decade, natural gas has been the fastest growing fuel source in the EU (22% in 2002), mainly at the expense of coal, whose share declined from 20% in 1991 to 16% of the total energy consumption in 2002. Environmental concerns are a major reason for the decline in the use of coal, most evident in the EU's Directive 2001/80/EC, which seeks to limit air pollutants produced from large coal-fired combustion plants. The Directive requires all thermal power generators with at least 50 MW of capacity to reduce their nitrogen oxides (NO x) and sulfur dioxide (SO 2) emissions or face closure. Generators deciding not to comply will only be allowed to operate for 20,000 hours after the Directive comes into force in 2008. The EU carbon emissions trading scheme, effective in 2005, limits carbon dioxide (CO 2) power generators emit, further decreasing the probability of expanded coal use in current EU member countries. Other factors in coal's decline include the increased availability of natural gas supplies from Algeria , Norway , and Russia by pipeline, as well as through liquefied natural gas (LNG) imports from Nigeria . Poland produced 178 million short tons (mmst) of coal in 2002. Its accession to the EU will likely offset the decline in the use of coal. EU officials have indicated that the production of energy by coal could grow by as much as 30% as a result of Poland 's entry into the EU.

Nuclear power generation currently accounts for 13% of total EU energy consumption. The future of nuclear power in Europe is unclear: some countries have begun to move away from this source of energy, while others have launched programs to build new capacity. With no economical alternatives, Sweden decided to postpone the closing of its second reactor in 2003. Similarly, the Dutch government decided in May 2003 to postpone closure of its only nuclear power plant, Borssele, until 2013. Although Belgium decided in January 2003 to phase out its seven reactors by 2025 the government has faced opposition from industry. Conversely, Finland plans to bring a new 1,600-MW reactor online by 2009, and a new French reactor is being planned.

In 2002, hydroelectric power accounted for approximately 4% of total EU power consumption. Although other "renewables" (geothermal, biomass, solar, and wind) constituted only 1% of total EU energy consumption in 2002, wind power has made great strides over the last decade. At the conclusion of 2003, the EU had an installed wind capacity of 28,542 MW, according to the data published by the European Wind Energy Association (EWEA). Denmark 's 166-MW Nysted wind farm, the largest such development in the EU, started to produce electricity in December 2003. Wind energy is playing a critical role in EU

attempts to generate 22% of the region's electricity from renewables and to reduce carbon emissions by 2020, according to the EU Renewables Directive (2001/77/EC). EWEA expects installed wind capacity in the EU to reach 75,000 MW by 2010.[116]

2.5. ELECTRICITY

2.5.1. Characteristics Of Electricity Industry

Electricity bears a vital importance as a product in economics because of both input of production of nearly all products and services and end product consumed by households. Electricity has different features by comparing the other products so electricity industry does not resemble classical competitive industries. The restructuring period has started in electricity sector about twenty years ago. The countries are developing regulating techniques to adapt technical conditions and changing markets in spite of they begin this period in different times and different speeds and they make new arrangements to increase the competition and ensure traditional public interest aim in the frame of increasing competition. The most important title of countries' reform studies at the past ten years is the parts that are not natural monopoly restructuring. The new judicial regulations done at the production market and supply market separated from network to increase competition. It is aimed to create competitive environments formed by market conditions that are dependent on prices of supply and demand balance.[117]

Because of the easy to use, cleanness and not leaving wastes, the consumption share of electricity energy in general energy consumption compared with the other energy sources is increasing by years. Electricity energy share is over 35% in general energy consumption rate now in the world. It is expected that this share will increase to the level of 40-50% in the first quarter of 2000s. This increasing trend is an indication of the importance of electricity energy today and it will be more important in the future.[118]

The strong relationship between economical development and the use of general energy and especially of electricity energy brings electricity energy as an indispensable element of economics and social life.[119]

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[116] http://www.eia.doe.gov/emeu/cabs/euro.html
[117] AKÇÖLLÜ, Yeşim, Elektrik Sektöründe Rekabet ve Regülasyon,Rekabet Kurumu Uzmanlık Tezleri Serisi., 2003, p.1
[118] YİĞİT, Ali, 2.Enerji Sempozyumu, 1998, p.158
[119] KULALI, İhsan, Ibid, p. 78

Electricity is not generally hoarded product. The supply is affected by the changing demands in different times of day and year. Production is capital dense, sunk costs are to be taken into consideration.
The most important aim of electricity industry reforms is to decrease costs, and to increase the consumer prosperity and to encourage producers to make innovations.[120]

Some features of electricity make it different and difficult product. First of all, its storage is costly. The necessary technologies such as hydroelectric pump and battery to store electricity are not effective. For this reason the electricity demand and supply must be balanced at every second. Being less or more electricity is not only affected several customers and also it shall be put in danger whole electricity network. So, if the network operator makes reduction of electricity, the consumers who demand electricity are impossible to made supply/demand balance.[121]

Briefly, variability of demands, environmental-social costs, capital dense and sunk costs contrary to natural monopoly of production and wholesale and retail activities, distribution and conveyance and especially the need of vertical coordination between production and transmission appear to be most prominent economical features of this industry.[122]

If we summarize the other features of electricity industry:[123]

- Electricity is indispensable input of many production activities and at the same time it is a vital product for end user.
- Electricity can't be stocked.
- Electricity network has externality with an important ratio.
- The investments for electricity are not classified and they have their own characteristics.
- As demand and supply must be continuously balanced a close coordination is needed.
- Scale and scope economies are fairly effective.
- The build up of electricity network needs fairly long time.

[120] OECD, "Regulatory Reform in Network Industries: Past Experience and Current Issues", OECD Economic Outlook, Paris, 2000, p. 43
[121] BORENSTEIN & BUSHNELL, "Electricity Restructuring: Deregulation or Reregulation?" *Regulation*, Vol: 23, No: 2, 2000, p. 48-49
[122] PAŞAOĞLU, Ömür, Ibid, p.45
[123] GUASCH, J. Luis/SPILLER, Pablo, Managing the Regulatory Process: Design, Concepts, Issues, and the Latin America and Caribbean Story, World Bank Publishings, Washington D.C., 1999, p. 32

- The supply and demand of electricity show great fluctuations.
- The cost flexibility of demand for the use of electricity is too low.

2.5.2. The Technological Structure Of Electricity Supply Industry

Electricity industry is composed of four vertical stages. They are production, transmission, distribution and supply to the end user.

Electricity production is the process of transforming energy in other forms into electricity. Electricity is generally produced at large scale power plants that are founded far away from the places where consumers reside. So the produced energy must be transferred to distribution centers by transmission lines. The electricity in transmission lines is not convenient to use directly. High voltage is used in these lines to reduce costs. The high voltage electricity is converted to low voltage at transformer centers before transmitting to consumers.[124]

2.5.2.1. Electricity Energy Production

Production is the process of transforming energy in other forms into electricity. When the problems experienced, costs and vital importance of electricity energy are considered during electricity energy is produced, the selection of production technology must be done very carefully because it is very expensive to return to realized investments.

The electricity production is carried out based on the demand that is changing daily and yearly at different times. Supplying this demand from one power plant is cheaper than supplying each from different power plants.

The plants used for production of electricity energy are divided into three categories as thermal power plant, nuclear power plant and hydroelectric power plant. The heat energy in fuels such as coal, natural gas and fuel oil is used at thermal power plants. The potential energy in water converted into electricity energy at hydroelectric power plants. The heat energy achieved by nuclear fusion (splitting big atom nucleus into pieces) is used at nuclear power plants.

[124] KULALI, İhsan, Ibid, p.35

Capital dense is changing according to energy sources. The great amount of capital is essential to the foundation period of nuclear power plants but its standing life time is long and low operating costs are less.
The permanent capital amount is many at the beginning at hydroelectric power plants. But it has low variable costs.

At thermal plants contrary to hydroelectric plants have lower permanent costs and much more operating costs are in question. Especially the plants operating with coal have higher input costs make necessary to follow least cost line and to operate them when the demand is high. But innovations at production technology are facilitated combined gas circulation plants depending on natural gas. The preference reasons can be fixing in a short time and the capital costs are lower than other technologies.

If we talk about another type of production technology, it is possible to produce electricity using the waste heat originated from the process of energy by applying co-generation technologies. Although the efficiency gained from producing electricity in this method may vary among companies, the average efficiency of thermal plants which is around 40-46% can be raised to the level of 85-88%.[125] However, this does not mean that large quantity of electricity will be produced but it has many benefits.

2.5.2.2. Transmission of Electricity Energy

Transmission indicates transmission of electricity energy by means of transmission lines with an electricity voltage level higher than 36 kV.[126] In other words, transmission is the conveyance of electricity produced at electricity power plants over high voltage lines to distribution lines or consumers directly linked to transmission lines.

Generally, transmission bears an attribute of natural monopoly.

[125] GLEN, Jack D., Private Sector Electricity in Developing Countries, IFC Discussion Paper 15, Washington D.C. 1992, p. 7
[126] Electricity Market Importing and Exporting Regulation, 2001, p. 4

The transmission of electricity is fairly costly. At the transmission system there are costs for wiring of lines and building of transformers and costs from loss of electricity as well. The loss ratio is determined as a rising function of net power flow at the transmission lines.[127]

To establish interconnection system, the transmission must be connected to production and transmission must take electricity from production. The transmission is not only responsible for conveying electricity process and also has role of "waist bone" of the electricity supple industry. When the producers who are at different places supply electricity transmission to network, they are also responsible for supply safety (appropriate voltage and frequency for electricity, not fall down system etc.). The transmission has bear scale economics and network externality characteristics. For example the investments made on transmission resulting increasing the reliability and decreasing the costs, everybody at interconnection system will have utility. Being impossible of both physical and financial thought of building up second transmission line brings the result of natural monopoly characteristic of transmission. OECD/IEA (2001, 20) rejects this thought. It clarifies that it is possible to establish two transmission lines nearly parallel in a same network economically and at the interconnection network system to increase reliability it is applied to connect two point different ways each other frequently. So it depends on an interconnection network the transmission service ensured by different persons.[128]

2.5.2.3. Distribution and Supply

Distribution: It expresses transmission of electricity energy over the lines with voltage level higher than 36 kV. In other words, distribution is the transport of low voltage electricity. Transmission bears natural monopoly characteristic.

Supply is the process of selling electricity to the end user.

Discussion on whether the production of electricity is monopoly or not are focused on its not being monopoly. But, despite the technological progresses there are no evidences about the changing opinion of scale economics that is in favor of monopoly on transmission and

[127] PAŞAOĞLU, Ömür, ibid, p. 43
[128] AKÇÖLLÜ, Yeşim, Ibid, p.7

distribution. In other words, it didn't achieve supporting results to provide increasing efficiency destroying the monopoly structure on transmission and distribution.[129]

Although electricity is a universal product, do we expect that the companies that produce/transport/market this universal product organize in the same way within the international arena? Although there is no answer of this question, if it is looked at the applications of countries there are various similarities and differences stand out. The reason of the similarities is using the same inputs and similar technologies. Differences are resulted from national, political culture and past experience differences.[130]

2. 6. IMPLEMENTATIONS OF PRIVIZATION IN TURKISH ELECTRICITY SECTOR

2.6.1. Electricity Sector In Turkey

2.6.1.1. BOT (Build Operate Transfer) Model

In a broader sense the BOT model can be defined as the realization of a public infrastructure or a public service by a private company that financed the relevant service or infrastructure; the company operates it for a period defined by the Public and sells the goods produced or services to public institutions on rates mutually defined by parties and after the expiry of the agreed period is terminated the company transfers the facilities to the public with a condition that all plants are maintained, complete and ready to operate. Indeed the implication of this model is not unfamiliar to us. During the last periods of the Ottoman Empire some franchise agreements done with foreign companies resemble to this model in many ways.[131]

2.6.1.2. Historical Development of Turkish Electricity Sector

The electricity power plant in Turkey was first constructed and operated by a Swiss-Italian group in Tarsus in 1902. Turkey, however, had only found the opportunity to introduce electricity sector only by the construction of a power plant in Silahtarağa, Istanbul by Ottoman Electricity Ltd. Co. jointly established by Ganz Ltd. Co., a Hungarian Company and

[129] POLLITT, Michael G., Ownership and Performance in Electric Utilities: The International Evidence on Privatization and Efficiency, Oxford University Press, New York 1995, p. 185
[130] GILBERT, KAHN & NEWBERY Ibid, p. 23
[131] İMRE, Erol, Türkiye'de YİD Modeli Yasal Çatısı, p.5

Banque de Bruxellese and Banque Generale de Credit in 1913. Ottoman Electricity Ltd. Co. was then nationalized on July 1, 1938.[132]

The production and distribution of electricity energy in Turkey Especially before the Republic was carried out regionally by private corporate entities. The first Code on franchise which was passed in 1921 allowed private institutions to carry out their activities to flourish technology and employment in the country. This issue continued until 1953 and the implementation was carried out regionally and restricted.[133] The first domestic company was Electricity Turk Ltd. Co. for Kayseri and Its Surroundings in 1926.

In 1939 foreign companies' rights of franchise were bought by the State and these services were transferred to municipalities. An epoch with multi voices and a lack of central authority was introduced in 1935 by establishing institutions such as MTA, Etibank, EIEI, Iller Bankası and DSI Genel Müdürlüğü [134] Between the years 1938 and 1944 all electricity partnership with foreign capital and privileges were nationalized except to Electricity Turk Ltd. Co. for Kayseri and Its Surroundings.

The monopoly of TEK and DSI on establishing power plants was abolished with the passing of the Code No 2705. This Code ensures that private sector may establish electricity production plants without any time limitations and sell the electricity that they produce to TEK. However, in this model transfer of any power plant to the State is not available. Within this framework, the incomes of Keban, Karakaya dams and some other dams were presented to the benefit of people by means of income sharing bonds. Except for income sharing bonds which are a kind of domestic loan, no other models were implemented [135]Between the years 1952 and 1956 the establishment of four business corporations was allowed and regional privileges were issued to them. Among these companies, in 1953 Çukurova Electricity Ltd. Co. was issued the privilege for the production of electricity, distribution of this electricity to consumption areas and wholesale activities regarding the Seyhan Dam and Hydroelectric Plant and in 1956 Antalya Region Electricity Plants Ltd. Co. was issued the privilege of establishing a hydroelectric plant in Kepez, Antalya and the production of electricity, distribution of this electricity to consumption areas and wholesale activities regarding the

[132] ZENGİNOBUZ, Ünal, OĞUR, Serhan, Türkiye Elektrik Sektöründe Yeniden Yapılanma, Özelleştirme Ve Regülasyon, 1999, İstanbul, p.15
[133] ARABUL, Hüseyin, 2.Energy Symposium, 1998, p. 203
[134] DDK Research Report, Volume: 2003/6, 2003, p. 18
[135] KULALI, İhsan, Ibid, p. 93

plant to be established. However, Northwest Anatolian Electrification Company which was issued the privilege for the production of electricity, distribution and sales of this electricity to North Anatolia regarding the Sariyer Dam in 1952 was a failure and thus liquidated in 1960. All the works of this company were transferred to newly formed Etibank Electricity Services Company. Ege Electricity Company which was issued the privilege for the production of electricity, distribution and sales of this electricity to regional towns regarding the Gediz Demirkopru Dam and Hydroelectric Plant in 1955 was also a failure and thus liquidated in 1971.[136]

In 1970 TEK was established with the Code No 1312. Upon this Code all power plants previously operated by Etibank, DSI, İller Bankası, and municipalities were transferred to TEK. The privileged electricity partnership was abandoned but the existence of Çukurova Electricity Company, Kepez and Antalya Region Electricity Plants Company and Electricity Turk Ltd. Co. for Kayseri and Its Surroundings which were actively operating was maintained.

Turkish electricity industry displayed the characteristic of a vertical integrated monopoly structure within the property of the public entity until the year of 1984. In 1984 with the Code No 3096, foreign and domestic companies were allowed to carry out activities in the production, transmission, distribution and trade of electricity, which means all these activities would be performed outside the realm of public property. In 1989 the assignment for production of electricity and, relevant transmission and distribution services regarding the city of Kayseri and some counties and villages of Sivas was given to Electricity Turk Ltd. Co. for Kayseri and Its Surroundings for a period of 70 years. Also in 1990 the assignment for production of electricity and relevant transmission and distribution services regarding the cities of Adana, Mersin, Hatay was given to Çukurova Electricity Company and the assignment covering the same services for the city of Antalya was issued to Kepez and Antalya Region Electricity Plants Company and Electricity Turk Ltd. Co. In the same year Aktaş Electricity Company was given the duty for production of electricity and, relevant transmission and distribution services regarding the Anatolian side of Istanbul for a period of 30 years.[137]

[136] ZENGİNOBUZ, Ünal, OĞUR, Serhan, Ibid, p.17
[137] ZENGİNOBUZ, Ünal, OĞUR, Serhan, Ibid, p.18

In 1993 upon the Resolution of the Cabinet No 93/4789, TEK was separated into two entities as Turkish Electricity Production and Transmission Ltd. Co. (TEAŞ) and Turkish Electricity Distribution Ltd. Co. (TEDAŞ). In 2004 the distribution offices dependent on the TEDAŞ were grouped into 21 distribution companies with their branches. Between the years of 1994 and 1997 many laws were passed to provide investments and services within the framework of Build-Operate-Transfer (BOT) and Build-Operate (BO) models. In 1999 the constitutional amendment related to arbitration was passed with the Code 4446 and the Code No 4501 allowing parties to apply for arbitration in case of any disputes with the franchise agreements for public services (including electricity services) was in force in 2000. Furthermore, with the Resolution of the Cabinet, No 2000/131, TEAŞ was separated into three independent bodies as Turkish Electricity Production Ltd. Co. (Production Ltd. Co.), Turkish Electricity Transmission Ltd. Co. (Transmission Ltd. Co.) and Turkish Electricity Trade and Undertaking Ltd. Co. (Trade Ltd. Co.).[138] Besides, Code on Electricity Market, No 4628 was in force in March 2001.

2.6.1.3. Status of Assigned Companies In Accordance With the Code No 3096

Among the companies which were operating as privileged companies, Aktaş Electricity Trade Ltd. Co. and Çukurova and Kepez Electricity Company were nationalized except for Electricity Turk Ltd. Co. for Kayseri and Its Surroundings.

The Council of State's 10th Department annulled the privilege agreement between Aktaş Electricity Ltd. Co. and TEDAŞ for carrying out electricity distribution services in the Anatolian side of Istanbul, claiming that the agreement was against the public interest[139]

The Cabinet also abolished the provisions which described ÇEAŞ and KEPEZ as Assigned Companies respectively specified in Sections (a) and (b) of the Resolution of the Cabinet No 89/14305 dated on 23 June 1988 with the Resolution No 2003/5712 dated on 12 June 2003.

In the decision of the Council of the State it was stated that Kepez which was solely established for the production and distribution of electricity was gradually turned out to be a "finance company" like ÇEAŞ which was owned by the Uzan Group and that much of

[138] KULALI, İhsan, Ibid, p. 95
[139] http://anadolu-yakasi.tedas.gov.tr/tarihce.htm

electricity sold by this company was not produced by the company but bought from the state and the revenues of Kepez were transferred to the Uzan Group rather than reserving for further investment. Therefore, it is claimed that the annulment of the agreement and the decision of confiscation was not illegal.[140]

2.6.1.4. Code No 4628 for Electricity Market

As a requirement of the process of unison with the standards of the EU and the integration with the global economy as well as the increasing demand of energy in our country, the Code No 4628 for Electricity Market was passed on March 3, 2001 with the aim of forming a new market which requires a free competition. [141]

With the introduction of the Code No 4628, privileged agreements of public service is substituted with license system in the privatization of the production, transmission and distribution of electricity energy. Every natural persona and corporate entity can operate in the market by obtaining a license. The prices of energy are to be determined within the market based on the relationship between supply and demand.

The new Code is projected the establishment of an independent Electricity Market Regulation Institute. With the Code No 4646 for Natural Gas Market, Electricity Market Regulation Institute was changed into Electricity Market Regulation Institution (Institution) as Energy Market Regulation Board (Board). The responsibility for the Regulation of natural gas was covered in the duties of the Institution as well as regulation of electricity sector.

Prices will be determined on the reel costs. This means that subsidies are ceased to be in effect. A transparent market mechanism will be constituted. It is projected to provide a surplus of supply in the market and thus to maintain an equilibrium in prices in a free competition atmosphere. Based on these, it is predicted production and sales activities are predicted to be carried out within the market in a free competition atmosphere. It is also projected that all users will be able to receive services without any discrimination.

[140] 'The Uzan Family Had Unjust Gain Of Around Trl 342 Trillion From Kepez' MILLIYET, 21 March, 2004
[141] Türkiye Vakiflar Bankasi T.A.O., Sektör Araştirmalari Serisi/No:26, p,14

In the anticipated structure the transmission system is separated from both the distribution and production systems. Therefore, the transmission system is to become an independent service system [142]

The electricity market which had been a vertical integrated structure and within the monopoly of the public was liberated by this Code. While some parts of electricity industry are opened to competition, the other parts of this industry are projected to be regulated. The transmission lines will be held by the monopoly of the public and production and distribution facilities are to be gradually transferred to private sector by means of privatization. Transmission and distribution markets are subjected to regulation whereas production, wholesales, and retail sales markets are to be opened to competition.

In the new structural sector activities are categorized into four groups as production, transmission, distribution and wholesales. According to the Code, in the electricity market at the production stage, there will be Electricity Production Ltd. Co. owned by the Public and private sector production companies and auto-producers; at the transmission stage Electricity Transmission Ltd. Co.; at the distribution stage TEDAŞ and private distribution companies; at the marketing and sales stage, Turkish Electricity Trade and Undertaking Ltd. Co. and private sector companies which may carry out wholesales, retail sales and import activities.

2.6.2. Market Activities

2.6.2.1. Production Activity

Apart from auto-producers, production activities of electricity energy are carried out by Electricity Production Ltd. CO. and its joint partnerships and private sector production companies. Corporate entities with a license of production can establish production plant and they can sell their produced electricity energy and/or capacity to persons with wholesales licenses or persons with retail sales licenses and free consumers through mutual agreements without any limitations of region. Regarding the production of electricity, a new institution has been appeared as **Turkish Electricity Production Ltd. Co.** (EÜAŞ). The EÜAŞ will keep and operate properties of all electricity facilities owned by the public and if necessary

[142] SEVAİOĞLU, Prof. Dr. Osman, Elektrik Sektöründe Rekabet Ve Yeni Elektrik Piyasası Kanunu, Thursday Conferences, March 2001, p.56

will be able to establish new production plants in accordance with production capacity projection approved by the Board considering the investments made by private sector.[143]

According to temporary article 6 of the Code, electricity energy produced at the plants of the EÜAŞ will be determined by the Board and produced energy will be sold only to TETAŞ for a period no more than 5 years; after the expire of this period energy sales can be made to other coopered entities and/or free consumers in the market.

In the new Code, It is projected that no project will be given guarantee of the Treasury except for 29 BOT projects certified by the DPT. (Temporary Article 8). Moreover, it is also projected that if any of the above mentioned BOT projects will not be started up by the end of 2002 their guarantee of the Treasury will be annulled.

Production Companies

Private sector power plants are composed of BOT hydro electric, BOT natural gas, and BOT wind and thermal and natural gas power plants with BO operating rights. Besides, there are auto-producers that produce electricity for their needs and sell some of their produced electricity and groups of auto-producers.

Auto-producer and the group of auto-producers are defined in the articles 1/25 and 26 of the relevant Code. According to the articles the auto-producer is 'a corporate person who is primarily involved in the production of electricity to meet his electricity energy needs' and the group of auto-producers 'indicates a legal person who is involved in the production of electricity energy to meet its partners' needs of electricity energy.'

In 2003 the total electricity production of Turkey was produced by thermal resources with a percentage of 75 which was equivalent to 105101 million kWh, and hydroelectric resources with a percentage of 25 equivalent to 35330 million kWh. Total electricity energy production at thermal plants was supplied by coal with the amount of 22.9%, liquid fuels with 6.5% and

[143] T.C.Cumhurbaşkanlığı Devlet Denetleme Kurulu Sayı: 2003/6, Tarih: 21/07/2003 Elektrik Enerjisi Üretimi Alanında Sürdürülen Yap-İşlet-Devret (Yid), Yap-İşlet (Yi) Ve İşletme Hakkı Devri (İhd) Uygulamaları Hakkında Araştırma Raporu Özeti, p.25

natural gas with 45.2%. In 2003 the total electricity production of Turkey was supplied by EÜAŞ, Its Dependent Partnerships and Plants under the scope and program of privatization with a percentage of 44.8 equivalent to 63097 million kWh. The share of Built-Operate-Transfer and Build-Operate and Free Production companies was 32.3% and the share of mobile plants was 1.8%; the share of 16.5% supplied by Auto-Producers and Groups of Auto-Producers; and the share of 3.1% [144]

DISTRIBUTION OF THE COMPANIES IN THE PRIVATIZATION PORTFOLIO ELECTRICITY SECTOR*

Turkish Electricity Distribution Inc
Yeniköy Electricity generation and Trade Inc
Kemerköy Electricity generation Inc

1	Çatalağzı Lignite Generation Plant*	16	Suatuğurlu Hydroelectric Generation Plant*
2	Orhaneli Lignite Generation Plant*	17	Kılıçkaya Hydroelectric Generation Plant*
3	Seyitömer Lignite Generation Plant*	18	Çamlıgöze Hydroelectric Generation Plant*
4	Ambarlı Lignite Generation Plant*	19	Ataköy Hydroelectric Generation Plant*
5	Ambarlı Fueloil Lignite Generation Plant*	20	Köklüce Hydroelectric Generation Plant**
6	Hopa Lignite Generation Plant*	21	Almus Hydroelectric Generation Plant
7	Aliağa K.Ç.G.T. Lignite Generation Plant*	22	Sarıyar Hydroelectric Generation Plant*
8	Bursa Gas Lignite Generation Plant*	23	Oymapınar Dam Hydroelectric Generation Plant**
9	Jeotermal Lignite Generation Plant*	24	Gökçeada Hydroelectric Generation Plant*
10	Altınkaya Hydroelectric Generation Plant*	25	Yenice Hydroelectric Generation Plant*
11	Hirfanlı Hydroelectric Generation Plant*	26	Beyköy Hydroelectric Generation Plant*
12	Kesikköprü Hydroelectric Generation Plant*	27	River Plants*
13	Derbent Hydroelectric Generation Plant*	28	Electricty Distribution Inc. (TEDAŞ)****
14	Kapulukaya Hydroelectric Generation Plant*		
15	Hasanuğurlu Hydroelectric Generation Plant*		

* Has been taken into the portfolio on May 30, 2003
* * Has been taken into the portfolio on September 03, 2003 and transfered to Eti Aliminium
*** Has been taken into the portfolio and program on August 13, 2003
****Has been taken into the portfolio and program on April 02, 2004

2.6.2.2. Transmission Activity

Transmission activity is the only area in the electricity energy sector in which the monopoly of the public is still prevalent and this activity is carried out TEİAŞ, a public sector company. TEİAŞ that owns the assets of transmission (facilities) is also operating as both system operator and market operator; within this scope this company is responsible for operating National Load Distribution Centers and Regional Load Distribution Centers which are dependent on National Load Distribution Centers and Market Financial Negotiating Center as well as for carrying out transmission activities.

[144] www.teiaş.gov.tr
* Source: http://www.oib.gov.tr

2.6.2.3. Distribution Activity

In the new market order distribution activities are carried out by TEDAŞ and its dependent partners and private sector distribution companies at the regions specified by their licenses and as a monopoly for the duration of their licenses. Distribution license is issued for minimum 10 and maximum 49 years.

Privatization works have been already commenced by transferring sales, leasing, operating right which belonged to TEDAŞ together with providing all necessary judicial supports for them. Privatization works are to be carried out within the framework of the resolution of Supreme Planning Board No 2004/3 and dated on March 17, 2004 based on "the Document for Electricity Energy Sector Reform and Privatization Strategy" mutually agreed with the World Bank. The Strategy Document not only includes privatization of the distribution of electricity but also privatization activities in electricity sector and reform works; it also defines which institution is responsible for which work to be completed. Ministry of Energy is responsible for coordination. ÖİB, EPDK and the Ministry of Energy are jointly working. Within the action plan covered in "the Document for Electricity Energy Sector Reform and Privatization Strategy" approved by the resolution of Supreme Planning Board No 2004/3 and dated on March 17, 2004, preparation works for the privatization of Turkish Electricity Distribution Ltd. Co. are still in progress. Within this scope, 14 new companies have been already established regarding 21 Regions of Duty specified in the annex of the resolution of Supreme Planning Board to be turned to be company areas within the framework of the article 4 of the Code No 4046 and Karaelmas Electricity Distribution Ltd. Co. and its subsidiary Kastamonu Electricity Distribution Company, which were initially dependent partners of

CORPORATIONS	PROVINCES
Akdeniz Elektrik A.Ş.	Antalya, Burdur, Isparta İl sınırları
Aras Elektrik A.Ş.	Erzurum, Ağrı, Ardahan, Bayburt, Erzincan, Iğdır,Kars
Çoruh Elektrik Dağıtım A.Ş.	Trabzon, Artvin, Giresun, Gümüşhane, Rize
Dicle Elektrik Dağıtım A.Ş.	Diyarbakır, Şanlıurfa, Mardin, Batman, Siirt Şırnak
Fırat Elektrik Dağıtım A.Ş.	Elazığ, Bingöl, Malatya, Tunceli
Gediz Elektrik Dağıtım A.Ş.	İzmir, Manisa
Göksu Elektrik Dağıtım A.Ş.	Kahramanmaraş, Adıyaman
Çamlıbel Elektrik Dağıtım A.Ş.	Sivas, Tokat, Yozgat
Menderes Elektrik Dağıtım A.Ş	Aydın, Denizli, Muğla
Osmangazi Elektrik Dağıtım A.Ş.	Eskişehir, Afyon, Bilecik, Kütahya, Uşak
Toroslar Elektrik Dağıtım A.Ş.	Adana, Gaziantep, Hatay, Mersin, Osmaniye, Kilis

Uludağ Elektrik Dağıtım A.Ş.	Balıkesir, Bursa, Çanakkale, Yalova
Vangölü Elektrik Dağıtım A.Ş	Bitlis, Hakkari, Muş, Van
Yeşilırmak Elektrik Dağıtım A.Ş.	Samsun, Amasya, Çorum, Ordu, Sinop
Başkent Elektrik Dağıtım A.Ş.	Ankara,Kırıkkale,Zonguldak,Bartın, Karabük,Çankırı, Kastamonu.
Boğaziçi Elektrik Dağıtım A.Ş	İstanbul ili Rumeli Yakası.
İstanbul Anadolu Yakası Elektrik Dağıtım A.Ş.	İstanbul ili Anadolu Yakası.
Meram Elektrik Dağıtım A.Ş.	Kırşehir, Nevşehir, Niğde, Aksaray, Konya,Karaman.
Sakarya Elektrik Dağıtım A.Ş.	Sakarya, Bolu, Düzce, Kocaeli.
Trakya Elektrik Dağıtım A.Ş.	Edirne, Kırklareli, Tekirdağ.

Source: http://www.oib.gov.tr, 2005

TEDAŞ, were united within the body of Başkent Electricity Distribution Ltd. Co. and Körfez Electricity Distribution Ltd. Co. was united with one body as Sakarya Distribution Ltd. Co. and Kırşehir, Nevşehir, Niğde, Aksaray Electricity Distribution Companies were attached to Meram Electricity Distribution Ltd. Co.[145]

Infrastructure works related to the privatization of electricity distribution regions are almost completed and "sales based on operating rights" are predicted for the issue of the method of privatization. Within the framework of the Strategy Document accepted last year as a result of works jointly carried out by the World Bank it is projected that tender for privatization of electricity distribution regions will be made by March 31, 2005. However, due to the fact that necessary works have not been completed there is a delay in this projected schedule. The World Bank and the economy management announced that such a delay did not bring any problem; the World Bank also stated that privatization would be commenced in a few months' time. According to the information that Reuters received from authorities, the works for forming companies in distribution regions composed of 20 regions have already been completed except for a company with a special status in Kayseri. Each distribution region was turned into a limited company with a corporate entity. According to this, reminding that the method of privatization of distribution regions was discussed at the meeting of Economy Coordination Board (EKK) which was held last week, an authorized officer stated that there is a common consensus on this method but some details must be determined. The authorized officer expressed that there are some necessary changes in the Code for Electricity Market in order to implement sales of shares based on operating rights and that relevant institutions evaluated this issue in EKK meeting. It is projected that relevant tender activities for electricity distribution regions will be commenced as soon as the judicial amendments are completed. These amendments will be dealt with as a most urgent reform bill in the agenda of the Prime Ministry and the Parliament. An authorized officer made the following comments

[145] http://www.oib.gov.tr

related to this issue: “We are not at the stage of completing this preparation process though with some delays. There are some minor revisions and missing parts to be completed. Recently the necessary works have been done regarding the judicial amendments for the model on which a general consensus was arrived by the Ministry of Energy, ÖİB, EPDK and other institutions. After the completion of these judicial changes we will be at a very significant stage for the infrastructure of privatization of electricity. There is no need for a very comprehensive judicial change. There are only a few issues to be amended.” As relevant officers have already announced, the model of privatization indicates sales of shares based on operating rights. Within this framework, the shares of 21 companies that have been already established will be privatized. However, these companies will only own the operating rights of the electricity distribution network at their region of duty, not the property rights of that network. So the shares of the companies will be privatized not the right to operate. The balance sheet of each company will reveal long term operating right at the left column for assets as well as other assets of that company. This will be operating right to be taken from TEDAŞ or the public property. These operating rights will be given and licensed to entities within this framework. The fundamental difference from other privatization activities is that it will not be the right to own the network but the right to operate for a long term. While explaining this method, an authorized person stated that, “Thus the distribution infrastructure will be still hold by the public but it is also a method which allows privatization. The relevant institutions and entities have already discussed this method. Negotiations were made with the World Bank regarding this method. It is certain that the sale of assets is more practical and easily projected but this model is developed due to difficulties of the previous method.” The same authorized person highlighted that there was a discussion of “sales of assets vs. transfer of operating right” in the past and that international undertakings also emphasized and showed the sales of assets as a method in privatization but it was eventually concluded that this method was not appropriate and that this model of operating right was different from the operating right defined in the Code No 3096. Announcing the fact that there were some details on the model that were still unclear, the authorized person informed that after the Ministry of Energy, ÖİB and EPDK bring the issue to a certain level of maturation, it will be left to the decision and approval of the political will. Moreover, it was informed that preparations such as specifications, promotion booklet and draft contracts have been almost completed within the process of tender for electricity distribution. Stating that the priority of regions to be privatized has not been determined yet, the authorized person explained that, “We have not made our decision if tendering many regions at the same time or following a

certain order of tender for these regions. This decision should me made. Our preparations are in progress for all regions. We are almost ready for 7-8 regions." Another authorized person, stating that the Council of the State was requested to comment on the privatization of electricity distribution in advance, concluded that, "We requested consultative comments on the projected model in the end of 2003 and the Council of the State also sent its consultative comments on this issue. Based upon the opinion of the Council of the State, the Constitution and other regulations, this model was further studied." It was informed that the Competition Board (RK) has not submitted its evaluation of electricity distribution to ÖİB yet. Firstly, the Competition Board will submit its opinion on this issue to ÖİB and in return ÖİB will submit its opinion to the Competition Board; the final decision of the Competition Board will be shaped after this process. While the opinion of the Competition Board is expected to be completed any time within this month, its opinion is found to be necessary before commencing the relevant tender activities. According to our sources, forming of companies and separating their financial accounts of the distribution regions which were required to be completed until the end of the last year, were realized with a delay of 3 weeks[146]

Emphasizing that they were at a very good status related to the privatization of electricity distribution, Kilci stated that, "we envisaged some judicial changes on the issues such as how the private sector would carry out its investment and accounting issues. We are still working with the Ministry of Energy on this issue. The Ministry has already submitted the initial work to the Prime Ministry, negotiations on this work are still continuing." Stating that these privatizations will commence in this year if the necessary judicial actions are to be completed in this year, Kilci concluded that, "we are carrying out works primarily on 7-8 companies." Kilci also stated that a mechanism of tariffs would be determined as "TEDAŞ has nothing to do in terms of its maintaining below or above the tariffs to be set. Works between TEDAŞ and EPDK are still in progress. If there is any rise in the input that directly affects the tariffs, it will be reflected in the tariffs, which means rise in the tariffs.[147]

2.6.2.4. Wholesales Activity

Companies with licenses of wholesales can sell electricity energy and/or capacity to wholesales market and directly free consumers. According to the law, the wholesales activity

[146] AYDOĞDU, Hatice & COŞKUN, Orhan, ANKARA, 2005, http://www.isbank.com.tr/reuters-haber-
[147]http://www.sesonline.net/php/index.php?KategoriX=ekonomi&KategoriBaslik=EKONOMİ 2005-05-11)

is carried out by Turkish Electricity Trade and Undertaking Ltd. Co. (TETAŞ) and private sector wholesales companies. According to article 2/d (2) of the Code No 4628, the market share of private sector wholesales companies cannot be more than ten percent of the total amount of consumed electricity in the previous year.

2.6.2.5. Retail Sales Activity

These services are carried out by retail sales companies and distribution companies with licenses of retail sales. Companies with licenses of retail sales can import electricity energy and/or capacity on the condition that sales of electricity energy and/or capacity to consumers and retail sales services are covered in their licenses.

Retail sales companies can operate in all distribution regions without any regional restriction. Consumers who are not free can make their choice among retail sales companies that operate in their distribution region. On the condition that distribution companies receive licenses of retail sales, those companies can carry out retail sales in their regions as well as other regions by declaring their licenses. If there is no retail sales company in their region, distribution companies must carry out retail sales activities regarding the customers at that region.

2.6.3. Tariffs

In the new market model, the tariffs for transmission and distribution activities which have a natural monopoly and the tariffs for sales of electricity energy and/or capacity to non-free consumers and providing retail sales services are under the regulations carried by EPDK (Energy Market Regulation Board). Furthermore, the wholesale tariff of TETAŞ is also approved by the same Board. It is one of the fundamental principles of the Code and the relevant regulations that tariffs should be cost-based and any cross subvention is not allowed.

The Article 1 of the Code which is titled as Objective, scope and definitions has defined some new terms and provided definitions of markets

1/14. Wholesale: Selling of electricity for re-sale;

1/15. Retail sale: Selling of electricity to consumers;

1/19. Free consumer: Natural and corporate person who is able to choose his supplier due to consuming electricity energy more than the amount of electricity energy specified by the Board or being directly connected to a transmission system;

('Strategy Document' in many issues contradicts the Code No 4628 on Electricity Market as the document itself defines the following principles of privatization: According to 'the Document for Electricity Energy Sector Reform and Privatization Strategy" declared by the Minister of Energy on March 18, 2004, 'Only distribution companies can carry out sales activities to consumers who are not free.'; 'The limit for free consumer will remain as 7.8 GWh until the beginning of 2009.'; 'The first implementation period of tariff will be a period of 5 years.' Only distribution companies can sell electricity to us who are not able to annually consume electricity with the amount of 7.8 GWh and thus not being a 'free consumer' and retail companies that are the actors of the market cannot enter the market until the year of 2009. AS the free consumer limit will remain fixed until 2009, no competition between wholesales and retail sales companies will be maintained. However, according to the EU regulations all consumers will be free consumers by June 2007. Contrary to this, according to the prepared 'Strategy Document' all consumers can only be free consumer in 2011 [148]

1/20. Non-free Consumer: Natural and corporate person who is able to purchase electricity energy and/or capacity from the distribution company with a license of retail sales or retail sales companies at his region;

1/23. Wholesales company: Corporate body that is involved in wholesales, export, import, sales to free consumers and trade activities regarding electricity energy and/or capacity;

1/24. Retail sales company: Corporate body that is involved in retail sales activities electricity energy and/or capacity to those who are not directly related to import and transmission of electricity energy and/or capacity and to other consumers.[149]

According to the Code, if any agreement to which the guarantee of the Treasury is issued will not be started up by the end of 2002, the guarantee of the Treasury for such agreements will

[148] KÜNAR, Arif, Bir Özelleştir(eme)me Hikâyesinin Hazin Sonu)EMO Magazine, 2003, Volume 422, p. 287
[149] Law No. 4628

be annulled (Temporary Article 8). No guarantee of the Treasury is given to new projects after the Code is in effect except for the ones awarded by the guarantee of the Treasury before the Code was in effect. Therefore the state does not take any risks in the electricity industry any more. The protocol signed on October 24, 2001 between the Ministry of Energy and Natural Resources and the Undersecretary of the Treasury required that privilege agreements based on BOT model must be revised under the new guarantee conditions. Accordingly, if the companies are to be started up by the end of 2002, these companies will be issued the guarantee of the Treasury with a period of ten years. The issuing of guarantee to the companies that signed IHD agreements in the production and distribution markets but their transfers have not been fully completed will not be possible. Transfer agreements will be signed with the companies that accept changes annulling all guarantees. [150]

2.7. NATURAL GAS

Natural Gas, which was introduced for extensive usage in western countries 210 years ago, was used in Turkey, primarily in Industry, on the discovery of the first reserves in the 1970s. Natural Gas discovered in the Kumrular Region in 1970 and the Çamurlu Region in 1975 was introduced for use in Pınarhisar Cement Plant in 1976 and Mardin Cement Plant in 1982 respectively. However, limited reserves restricted the development of consumption.[151]

Importation and distribution of natural gas to the cities is undertaken presently by BOTAŞ. In order to reduce dependence on single country for natural gas, which has become an important resource strategically, natural gas agreements have been signed recently with Iran, Nigeria, Algeria, Egypt and Turkmenistan.

Botaş, Petroleum Pipeline Corporation was established as an affiliated company of Turkish Petroleum Corporation (TPAO) on August 15, 1974 in order to transport Iraqi crude oil to the Gulf of Iskenderun. In 1995, the company was restructured as a State Economic Enterprise (SEE) considering the company's task at present and in future.

Botas's business in transportation of crude oil by pipelines has expanded to cover the natural gas transportation and trade activities since 1987.[152]

[150] AKÇÖLLÜ, Yeşim, Ibid, p.66
[151] www.igdas.com.tr
[152] www.botas.gov.tr

Hence, the company has gained a trade company identity. Monopoly rights of BOTAS on natural gas import, distribution, sales and pricing under the Decree No. 397 have been abolished by the natural Gas Market Law No 4646 that was enacted on May 2000. This initiates the liberalized natural gas market in Turkey and BOTAS, having over twenty seven years' experience in the business steps further and accelerates the studies on re-structuring natural gas market in the country.

Under the Law, BOTAS will competitively tender and release the import contracts to new private entrants until its import share falls below 20% by the year 2009.

Natural Gas Pipeline System

The company must auction at least 10% of its gas purchase rights per year beginning from the enactment date of the Law. BOTAS will be restructured as trade, transmission and storage companies after the year 2009.[153]

BOTAS makes its projections and investment programmes in order to supply gas to the customer in continuous and qualified way under fully competitive, transparent market The Law covers import, transmission, distribution, storage, marketing, trade and export of natural gas and the rights and liabilities of all real and legal bodies relating to these activities, the

[153] www.botas.gov.tr

establishment of Natural Gas Market Regulatory Agency and its terms and conditions. This law is to re-structure BOTAS more professional and competitive.

The natural gas market in Turkey has been liberalized and monopoly rights of Botaş have been abolished by the Natural Gas Market Law No 4646. But that is why the customers can not choose their suppliers in the sector, it is not possible to talk about a full liberalization regarding natural gas sector in Turkey. Also there is no intention of privatizing the SOEs in the sector at the moment.

2.8. PETROLEUM

In general, Turkish oil consumption has increased in recent years, although the country's recent economic recession plus price deregulation measures (which have raised the price of many oil products) since June 1999 appear to have interrupted this trend for the time being. During 2002, for instance, Turkish oil consumption and imports were down approximately 30,000 barrels per day (bbl/d) from 2000 levels. In the long-run, Turkish oil demand and imports are expected to resume steady growth (during 2004, Turkish oil demand increased by about 30,000 bbl/d, to around 685,000 bbl/d). Oil provides over 40 percent of Turkey's total energy requirements, but its share is declining (as the share of natural gas rises).

Around 90 percent of Turkey's oil supplies are imported, mainly from the Middle East (Saudi Arabia, Iran, Iraq, Syria) and Russia. Turkey's port of Ceyhan is a major outlet for Iraqi oil exports, with optimal pipeline capacity from Iraq of about 1.5-1.6 million bbl/d, but oil flows have been only sporadic since late March 2003, following the outbreak of the Iraq war. On March 8, 2004, Iraq issued a tender for Kirkuk oil via the Turkish port of Ceyhan, the first such sale from Iraq's northern oil fields in a year. Since then, flows through Ceyhan have been erratic as the Baku-Ceyhan line has been subject to frequent attacks.

Three companies account for the majority of Turkey's oil production -- the Turkish State Petroleum Company (TPAO), and foreign operators Royal Dutch/Shell (Shell) and ExxonMobil. Smaller companies include Petrom of Romania (produces around 2,600 bbl/d in the Selmo block) and Aladdin Middle East (480 bbl/d in Siirt and Gaziantep). TPAO alone accounts for about 80 percent of the country's total oil output (currently around 43,000 bbl/d, down from 90,000 bbl/d in 1991). Turkish oil fields are generally small, and scattered around the country. Oil fields in the country's southeast (specifically the Hakkari Basin, Turkey's main oil producing area) are old and expensive to exploit. In addition to the Hakkari Basin,

Turkey contains oil prospects in its European provinces, in the Black Sea shelf region, and in other oil basins in southern and southeastern Turkey. Potential oil reserves in the Aegean Sea have not been explored due to conflicting Greek claims over the area. In December 2003, TPAO stated that it was planning large-scale exploration for oil and gas in the Black Sea, Mediterranean, and Aegean Seas (plus southeastern Turkey). Since 1961, only 1,400 exploration and appraisal wells have been drilled in Turkey. In July 2003, Australia's Amity Oil reported a commercial discovery at its Adatepe #1 well in the Thrace Basin.[154]

In December 2003, a petroleum market reform bill was passed by Turkey's parliament. The Petroleum Market Law aims to remove state controls on the sector, to liberalize pricing (and domestic content purchase requirements) of oil and oil products, end restrictions on vertical integration, and integrate pipeline, refining, and distribution functions. Tupras (Turkish Petroleum Refineries Corporation) and POAS (Petrol Ofisis, Turkey's major petroleum product retailer) are to be privatized as well. Also, as a result of this Law, price ceilings and import quotas on petroelum products were lifted in early 2005.

2.8.1. TÜPRAŞ

Under a series of reorganizations of Turkey's state-owned enterprises in 1983, which was aimed at rationalizing their activities and making them more productive, it was decided to bring the country's government-owned refineries under the control of a single entity. On 25 October 1983 at an extraordinary general meeting of İPRAŞ (Istanbul Petroleum Refinery Inc.), which had been in operation since 1961, the Company's articles of incorporation were amended and its name was changed to TÜPRAŞ. (Turkish Petroleum Refineries Corporation). The new company was formally registered and announced on 16 November 1983. Under the new charter, the Izmir and Batman refineries that had previously belonged to Turkiye Petrolleri A.O. and the Kirikkale Refinery (which was then under construction) were turned over to TÜPRAŞ, which was at that time operating the İzmit Refinery that it had built.

TÜPRAŞ IN BRIEF	
Date of incorporation	16 November 1983
Head Office	Körfez-Kocaeli/Turkey
Registered capital	TL 500 trillion
Paid-in capital	TL 250.4 trillion
2001 Profit (after tax)	TL 188.6 trillion
Shares offered to public	34.2%
Refining capacity	27.6 million tons/year
Petrochemical Production capacity	153 thousand tons/year

[154] http://www.eia.doe.gov/emeu/cabs/turkey.html

Crude oil storage capacity	2.0 million m3 (gross)
Storage capacity for oil products (finished & intermediate)	2.7 million m3 (gross)

Source: www.oib.gov.tr

When it was founded, TÜPRAŞ had a crude oil processing capacity of 17.2 million tons a year. With the completion of the last phase of the İzmir Refinery Debottlenecking Project in 1984, total capacity was increased slightly to 17.6 million tons/year. Investments since then, such as the completion of the Kirikkale Refinery (5.0 million tons/year) in 1986 and the commissioning of an expansion project at the Izmir Refinery in 1987, TÜPRAŞ/s crude oil production capacity reached 27.6 million tons/year. 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.[155]

TÜPRAŞ has the highest petroleum refining capacity in the Balkans and in Eastern Europe. Among all European refining companies, it ranks seventh in size. The Company quickly overcame the effects of the disastrous earthquake of 1999 thanks to accurate business strategies and in 2000 it completed its restructuring, defining for itself a new vision and mission in the process. In the same year, 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.[156]

On 10 July 1990, the decision was made ordering TÜPRAŞ's privatization and the Company's capital was turned over to the Privatization Administration of the Prime Ministry. In 1991 the initial public offering took place and 2.5% of TÜPRAŞ's "Class A" shares were offered. At the end of 1999, about 3.58% of TÜPRAŞ's shares was being traded on the Istanbul Stock Exchange while all of the remaining shares were still under the control of the Privatization

[155] www.tupras.com.tr
[156] Privatization Endeavor In Turkey, United Nations Online Network In Public Administration and Finance (UNPAN), 2004, p. 6. http://www.unpan.org

Administration. With the completion of the second public offering, "Class A" shares, which have been traded on the Istanbul Stock Exchange and the GDRs on the London Stock Exchange, reached to 34.24% of the total capital in April 2000.

As per High Planning Council decision no. 91/2 dated 08 January 1991, the company shares are offered publicly in May 1991. In this IPO 1.64 % shares of the Company were sold. Later on, as per High Planning Council decision number 99/68 dated 12.10.2000, 30.7% additional State shares are launched in domestic and international markets in April 2000. Thus, TUPRAS became 34.24 % privatized.

The tender announcement has been made for the strategic sale of 65.76% of Tüpraş shares in June 7,2003. Bidding deadline has been extended to October 24,2003. Having completed the negotiations with the bidders, the Tender Comission has been finalized the tender and announced that Efremov Kautschuk Gmbh gave the highest bid amounting USD 1.302.000.000,-Bid has been approved by the Privatization High Council. The Sale and Purchase Agreement negotiations with the buyer have been commenced.

The OİB has declared that the negotiations regarding the Sale and Purchase Agreement should be finalized within 60 (sixty) days starting from February 16, 2004. Even though the negotiations with the Bidder has been commenced, have not been completed. Therefore, the period that has been given to finalize the negotiations was extended May 28, 2004.[157]

10th Regional Administartive Court has cancelled the Tender Commission Decision regarding the block sale of the 65.76% of stake in TÜPRAŞ due to the accusation of the Labour Union called Petrol-İş. (Türkiye Petrol Kimya Lastik İşçileri Sendikası).

The OİB did appeal the Court of State for the decision of the 10th Regional Administrative Court.

The Administrative Court has cancelled the Tender Commission Decision regarding the block sale. The PA lodged an appeal with the Council of State. The Council of State has approved the cancellation decision of the Administrative Court.

[157] www.oib.gov.tr

In March 2005, Turkey's government sold a 14.56 percent share in Tupras for $446 million. In April 2005, Turkey's privatization board announced its intention to open a new tender for the remaining 51 percent of the company. In May 2005, the board also said that whoever buys Tupras will not be forced to maintain the Korfez petrochemical complex, which has been losing money. In mid-June 2005, Spain's Repsol submitted a 1-billion-euro bid for a 51 percent stake in Tupras. Other entities reportedly interested in Tupras include the Indian Oil Company, Lukoil, Eni, OMV, PKN Orlen and the Turkish military pension fund, OYAK.[158]

CURRENT CAPITAL STRUCTURE OF TÜPRAŞ

Shareholders	Class	Type	Paid in Capital(TL)	Percent
Privatization Administration	A	Bearer	127.713.792.220.920	51,0
	C	Registered	1.000	
Open to Puplic	A	Bearer	122.705.407.778.080	49,0
TOTAL			**250.419.200.000.000**	100,0

The market value of TÜPRAŞ is USD 4,108 billion by the end of August 2005 just before 02.09.2005, the deadline for submitting the bids for the tender of sale of 51 percent stocks owned by OİB.

2.8.2. PETKİM PETROKİMYA HOLDİNG A.Ş.

The petrochemical industry that entered to Turkey in 1960's has demonstrated a great development within a very short time. Petkim was established in 1965 to start and develop a petrochemical industry in the country.

The first petrochemical complex of Petkim was established at Yarımca and started up in 1970. Due to the rapidly growing domestic demand, Yarımca Complex had started to become insufficient to meet the increasing demand although the production capacities of most of the plants that exist in Yarımca Complex were expanded by 100 %. The second complex of Petkim was established at Aliağa by using optimum capacities and modern technologies of those days and started up in 1985.[159]

[158] http://www.eia.doe.gov/emeu/cabs/turkey.html
[159] www.petkim.com.tr

Most of the plants in Yarımca Complex were closed in the period 1993-1995 because they had completed their economic lives and had lost their competitiveness. Petkim transferred Yarımca Complex with its 5 plants (SBR, CBR, CB, BDX, PS) in operating position to TÜPRAŞ Turkish Petroleum Refineries Corporation on November 1, 2001 for USD 60 million.[160]

Petkim, as the sole producer of basic petrochemicals and the biggest producer of thermoplastics and intermediates, is the leader company of Turkish petrochemical industry. Apart from Petkim, the other petrochemical companies in Turkey are SASA (240 000 tons/year DMT), TÜPRAŞ (33 000 tons/year SBR, 20 000 tons/year CBR, 40 000 tons/year CB, 33 000 tons/year BDX, 27 000 tons/year PS) and Başer Petrokimya (40 000 tons/year PS).

The demand for petrochemical products in Turkey has been increasing faster than that of the developed countries and world average level. On the other hand, domestic supply does not increase at the same rate. In order to meet the rapidly growing demand, Petkim realizes expansion and modernization investments that increase its capacities significantly. However, these capacity increases are very insufficient to meet the rapidly growing domestic demand. The share of the domestic production in consumption has been decreasing rapidly, and the import of petrochemical products of Turkey has also been increasing rapidly. Petkim was able to meet only 30% of domestic petrochemicals demand in 2003. This situation negatively affects the competitive strength of Turkish petrochemical industry and causes the high added value of petrochemicals to remain abroad.[161]

PETKİM has been taken to the privatization portfolio in September 11, 1987 by the Board of Ministers, Decree No. 87/12184. The tender process of the minimum 88.86 % of the shares of Petkim announced by January 20, 2003. 5 bids have been received on due date April 2, 2003. On June 6, 2003, 3 proposals were taken to the final tender. Following the auction on June 6, 2003, Standart Kimya Pet. Doğ. San. Tic. A.Ş. has won the tender process of PETKİM for the block sale of 88.86% of PETKİM shares.

[160] www.oib.gov.tr
[161] www.petkim.com.tr

However, due to failure of Standart Kimya to fulfil the obligations in certain period of time required by PHC, PETKİM tender process has been cancelled and the bid bond of Standart Kimya which is the amount of 10 million US Dollar has been forfeited.

The tender process of 88.86% of the share of PETKİM Petrokimya Holding A.Ş. via a block sale has re-opened on August 26, 2003 Due to insufficient number of bids the tender was cancelled.

Following the block sale endeavors, secondary public offering of PETKİM shares for 34.5 % has been completed on April 2005 and 287.7 million USD has been raised.

The shareholder structure of PETKİM at the moment is;[162]
-54,36 % Privatization Administration
-7 % Pension Fund
-38,64 % Traded on ISE

2.8.3. PETROL OFİSİ A.Ş. (POAŞ)

Petrol Ofisi was founded in 1941 with a capital of TL 2.5 million. Its goal was to meet the petroleum product needs of end users as well as public and private enterprises with activities that included purchasing, importing and stockpiling petroleum products in various parts of the country. In 1983, with a capital of TL 3.7 billion, the Company was incorporated and on September 5, 1990, it was placed under the authority of the Prime Ministry Privatization Administration for full privatization.

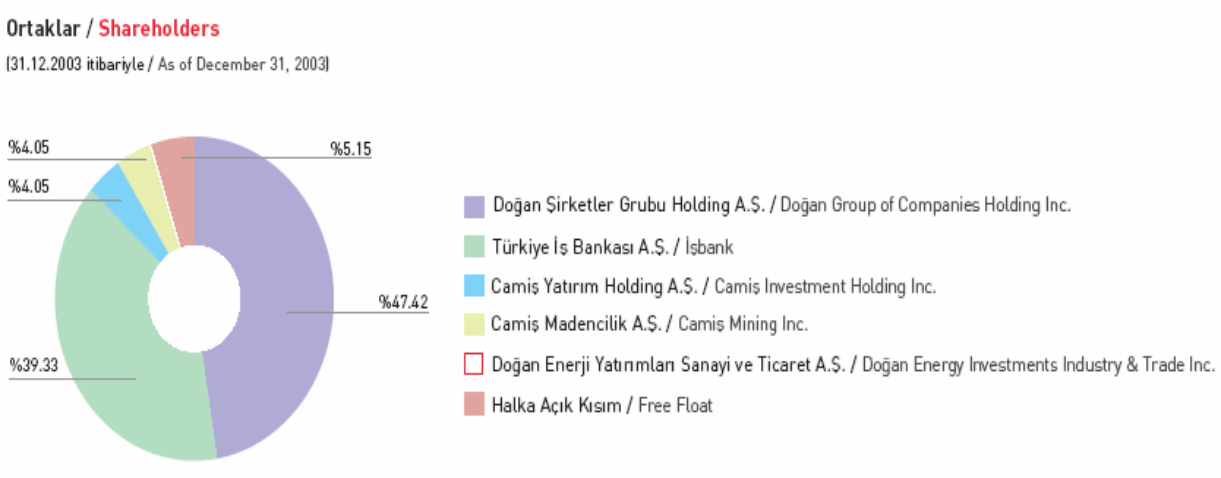
On July 21, 2000, Petrol Ofisi became one of Turkey's largest privatizations to date, with 51% of its shares purchased by Ortak Girişim Grubu (Joint Venture Group) made up of Türkiye İş Bankası and Doğan Holding, for US$ 1,260 million.

The state owned refining company, Türkiye Petrol Rafinerileri A.Ş. (TÜPRAŞ), has been one of the most important privatization in the governments' privatization program of 2003. The

[162] www.oib.gov.tr

privatization and tender process of Tüpraş was initiated in 2003; 65.67% of the public share was sold in early 2004.[163]

Current Shareholder Structure of POAŞ



Source: www.poas.com.tr

Privatization of POAŞ has been highly criticised. Those who criticise it claim that the price was too low for such a well-organized company all over the country. Also the last tranche of the privatization amount was tried to be adjourned by İş-Doğan Consortium and an agreement was signed with OİB to shift the debt. But that agreement was cancelled by the Ankara 10. Regional Administrative Court. The criticisers allegedly claim that the consortium wanted to pay the purchase amount of POAŞ with the own income of POAŞ.

2.9. COAL

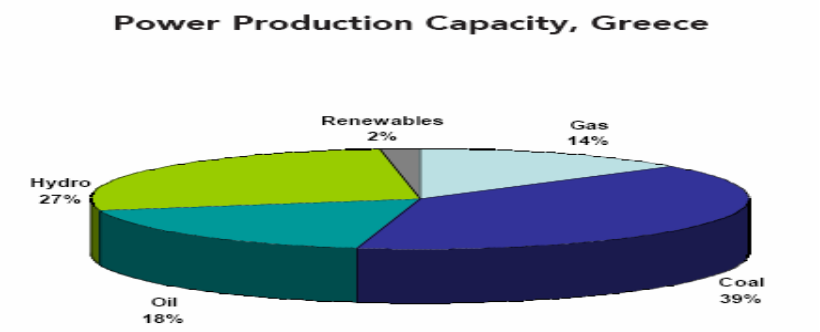
Turkey has hard coal (anthracite and bituminous) reserves of around 1.1 billion short tons, plus lignite reserves around 8 billion short tons. Around 40 percent of Turkey's lignite is located in the Afsin-Elbistan basin of southeastern Anatolia, while hard coal is mined only in one location - the Zonguldak basin of northwestern Turkey. Turkey's state-owned coal company, TTK; produces, processes, and distributes hard coal, while Turkish Coal

[163] POAŞ, Annual Report 2003, page 8

Enterprises produces most of Turkey's lignite. In addition, Turkey's Electricity Generating Authority produces lignite for three power plants, between 1990 and 2000; the number of workers in Turkey's coal sector fell from 63,993 to 35,665. Turkish coal, which is used mainly for power generation, is generally of poor quality and highly polluting.[164]

The government desire to make privatizations in the sector but cannot find a buyer for the industry at any price and seeks to shut it down. That was also the recommendation made by the Morgan bank to Turkey. According to Dartan, this is a mistake. Coal is Turkey's only strategic energy reserve and is unsaleability to the private sector is no reason to close it down, regardless of the potential savings in subsidies, which may anyway prove false in the long-term. Moreover, evidence shows that world coal reserves will outlast other fossil fuel, adding further to the case for retention of Turkey's coal producing capacity.[165]

The figure below proves us how effective our neighbour Greece which does not have natural sources such as oil and natural gas same as Turkey uses its coal reserves:

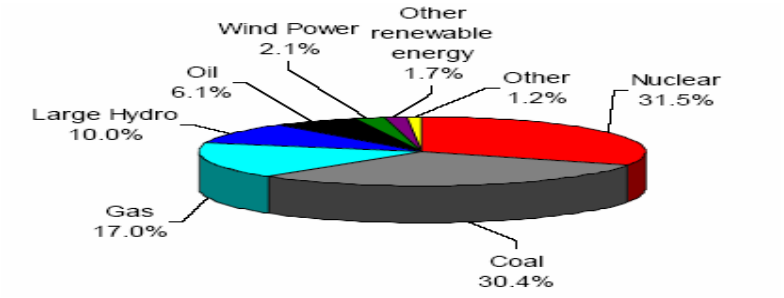


Source: The Western European Electricity Market Outlook

And the below figure shows what the coal industry means to the EU, nearly one third of the electricity production is realised by coal:

EU-25 Electricity Production Mix 2002

[164] http://www.eia.doe.gov/cabs/turkey.html
[165] DARTAN, Muzaffer, Privatization in the UK and Turkey with particular reference to the Coal Sector, Marmara University EC Institute, 1996, p. 187.



(Source: IEA World Energy Outlook 2004; EWEA)

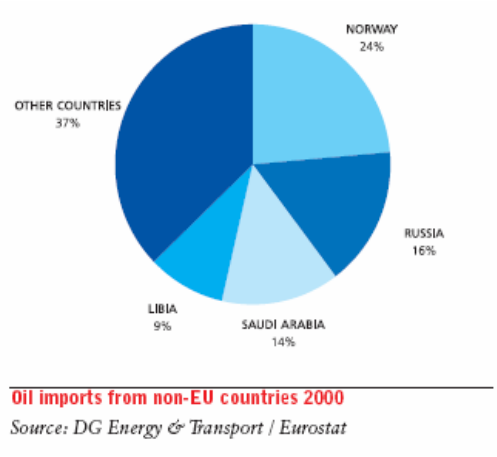
In 2003, two SOEs from the industry have been taken to privatization portfolio: Kömür İşletmeleri A.Ş. and Yeni Çeltek Kömür ve Madencilik A.Ş. Preparations for privatizing both of the companies are still going on.[166]

2.10. LIBERALIZATION & PRIVATIZATION IN THE ENERGY SECTOR IN THE EU

2.10.1. Energy In The EU

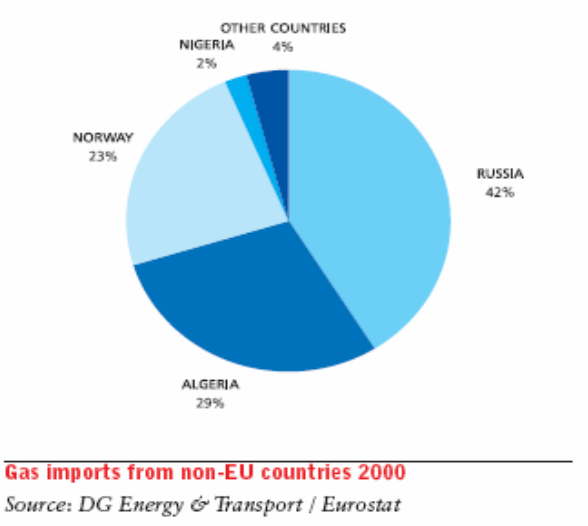
EU members possess only approximately 0.6% of the world's proven reserves of oil and 2.0% of the world's natural gas reserves. The EU holds 19.5% of proven coal reserves, 17.8% of the world's capacity for refining crude oil into petroleum products and 18.4% of the world's electric generating capacity. So the EU is a net importer of energy. According to a report published by the European Commission, two-thirds of the EU's total energy requirements will be imported by 2020.[167] Eurogas expects that the EU will also import up to 75% of its natural gas requirements by 2020. EU member countries import oil predominately from Russia, the Middle East, Africa and Norway.

[166] www.oib.gov.tr
[167] European Commission, DG Transport and Energy, European Union Energy Outlook to 2020. Special Issue-November 1999, p. 12



Oil imports from non-EU countries 2000

Source: DG Energy & Transport / Eurostat



Gas imports from non-EU countries 2000

Source: DG Energy & Transport / Eurostat

In 2002, the EU consumed 55.6 quadrillion British thermal units (Btu) of energy, 18% of the world's total energy consumption. In comparison, the United States consumed 97.6 quadrillion Btu (24% of world total) in 2002. In the same year, EU energy consumption consisted of 40% oil, 22% natural gas, 16% coal, 13% nuclear, 4% hydro, and 1% renewables other than hydroelectric power.[168]

Oil was the dominant fuel recently for the EU, accounting for 40% of total EU energy consumption. Over the past decade, natural gas has been the fastest growing fuel source in the EU (22% in 2002), mainly at the expense of coal, whose share declined from 20% in 1991 to 16% of the total energy consumption in 2002. Environmental concerns are a major reason for the decline in the use of coal, most evident in the EU's Directive 2001/80/EC, which seeks to limit air pollutants produced from large coal-fired combustion plants. The Directive requires all thermal power generators with at least 50 MW of capacity to reduce their nitrogen oxides (NO x) and sulphur dioxide (SO 2) emissions or face closure. Generators deciding not to comply will only be allowed to operate for 20,000 hours after the Directive comes into force in 2008. The EU carbon emissions trading scheme, effective in 2005, limits carbon dioxide (CO 2) power generators emit, further decreasing the probability of expanded coal use in current EU member countries. Other factors in coal's decline include the increased availability of natural gas supplies from Algeria, Norway and Russia by pipeline, as well as through liquefied natural gas (LNG) imports from Nigeria. Poland produced 178 million short tons (mmst) of coal in 2002. Its accession to the EU will likely offset the decline in the use of

[168] http://www.eia.doe.gov

coal. EU officials have indicated that the production of energy by coal could grow by as much as 30% as a result of Poland's entry into the EU.[169]

Nuclear power generation currently accounts for 13% of total EU energy consumption. The future of nuclear power in Europe is unclear: some countries have begun to move away from this source of energy, while others have launched programs to build new capacity. With no economical alternatives, Sweden decided to postpone the closing of its second reactor in 2003. Similarly, the Dutch government decided in May 2003 to postpone closure of its only nuclear power plant, Borssele, until 2013. Although Belgium decided in January 2003 to phase out its seven reactors by 2025, the government has faced opposition from industry. Conversely, Finland plans to bring a new 1,600-MW reactor online by 2009, and a new French reactor is being planned.[170]

In 2002, hydroelectric power accounted for approximately 4% of total EU power consumption. Although other "renewables" (geothermal, biomass, solar, and wind) constituted only 1% of total EU energy consumption at the moment, wind power has made great strides over the last decade. At the conclusion of 2003, the EU had an installed wind capacity of 28,542 MW, according to the data published by the European Wind Energy Association (EWEA). Denmark's 166-MW Nysted wind farm, the largest such development in the EU, started to produce electricity in December 2003. Wind energy is playing a critical role in EU attempts to generate 22% of the region's electricity from renewables and to reduce carbon emissions by 2020, according to the EU Renewables Directive (2001/77/EC). EWEA expects installed wind capacity in the EU to reach 75,000 MW by 2010.[171]

2.10.2. Public Utilities (Electricity & Gas)

2.10.2.1. Historical Background of Liberalization of Public Utilities in the EU

The electricity and gas sectors have had a history of development based on integrated monopolies. Monopolies have been more strongly entrenched in the electricity sector than in the gas sector (which competes with oil and electricity for some customers). Trade between consenting monopolies has been possible for many years. However, both sectors now have to deal with demands for access by "third parties", i.e. they must allow independent generators

[169] http://www.eia.doe.gov
[170] European Commission, DG Transport and Energy, Ibid, p. 18
[171] European Commission, DG Transport and Energy, Ibid, p. 19

and traders access to the network, so that they can serve the monopolies' existing customers. These demands create interesting conflicts and challenges.[172]

Since the late 1980s significant changes have occurred within the electricity and gas industries. In Western Europe energy planners and free-marketeers have the ideological aim of creating a single electricity market across Europe, a trend which has been replicated across the world. As this occurs there have been far reaching social, environmental and economic consequences. In the short term it will impact particularly on the type of power stations chosen by utilities, in respect both to current usage and future construction.[173]

EU policymaking in the energy sector is aimed at creating an internal market for natural gas and electricity, based around abolishing national monopolies, removing barriers to the cross-border establishment of gas and electricity undertakings and to cross-border supplies of gas and electricity, and creating uniform conditions of competition throughout the EU. In addition, the decline forecast in indigenous natural gas production has caused security of supply to become an increasingly important policy consideration.[174]

2.10.2.2. The Directives

The liberalization process in the EU started in the early 1990s with the adoption of two Directives concerning the transparency of gas and electricity prices charged to industrial end-users (Directive 90/377/EEC of 29 June 1990) and the transit of electricity through transmission grids (Directive 90/547/EEC of 29 October 1990). The adoption of these Directives marked the first phase of the liberalization of the electricity sector.

In 1992, the European Commission submitted a proposal for a Directive to the Council of the European Communities, aiming at a gradual and partial liberalization of the electricity market. That process involved a three-fold approach based on overall competitiveness, security of energy supply and environmental protection, and culminated in the adoption of Directive 96/92/EC*, which sets out common rules for the internal market in electricity and is

[172] SHUTTLEWORTH, Graham, Opening European Electricity And Gas Markets, 15 November 2000, p. 2
[173] EU Enlargement Watch, The Liberalization and Privatization of the Gas and Electricity Sectors in Current and Prospective Member States of the European Union, December 2002, p. 5
[174] Freshfields Bruckhaus Deringer, EU Law In New Member States, Wien, 2003, p. 27
* The reasons for the protracted negotiations were the degree of disagreement that existed between Member States on the extent of the Directive and its introduction timetable. (EU Enlargement Watch, Ibid, p.7)

considered as the second phase in the liberalization process (the Electricity Directive). The due date for implementation of the Electricity Directive in all Member States has now passed.[175]

The European electricity directive (96/92/EC) entered into force on 19 February 1997 and was to be implemented by most Member States within two years. (Belgium and Ireland received an additional year for implementation, and Greece two years.) The directive required Member States (MSs) to allow third party access (TPA) to national transmission and distribution networks or to set up arrangements for a "single buyer" that would have the same effect as TPA. (MSs immediately abandoned attempts to define such a single buyer.)

A similar discussion for a Directive for the Gas market was begun in late 1996. The Directive 98/30/EC concerning common rules for the internal market for natural gas was not however agreed to until 1998 with national transposition of the Directive due in August 2000. The majority of Member States have implemented the requirements of the directive, but Portugal and Greece were granted some derogations as "emerging markets".[176]

Both directives have since been transposed into national legislation. Some ofthe main features of the directives regarding the liberalization process of these markets can be summarised as follows:[177]

- ✓ Gradually opening the energy markets for electricity and gas;
- ✓ Establishing of rules concerning access to the transmission and distribution network – regulated third party access (rTPA); negotiated third party access (nTPA); or the 'single buyer' model;
- ✓ Establishing requirements for national dispute settlement authority but not as an independent regulatory body;
- ✓ Providing two options for the construction of new generating infrastructure: a tendering procedure and an authorisation procedure;
- ✓ Ensuring management unbundling of the transmission system operator (TSO); and
- ✓ Ensuring accounting separation of transmission and distribution activities from other parts of the companies.

[175] SHUTTLEWORTH, Graham, Ibid, p. 3
[176] EU Enlargement Watch, Ibid, p.7
[177] Speck, Stefan & Mulder, Machiel, CPB Document Competition on European Energy Markets, July 2003, p. 1

The Gas Directive abolished the national supply monopolies in the EU member states and provided for a gradual, partial opening up to competition of the gas market. This was achieved by identifying a group of customers who were free to choose their supplier (so-called eligible customers), which expanded at different stages of the liberalization process. A minimum guaranteed level of market opening for each member state was achieved by adopting mandatory percentages of the market to be opened up at each stage.

The Gas Directive also abolished the barriers within the gas market to the free movement of goods, persons, services and capital between the member states and favoured the interconnection and interoperability of systems. In doing so, it established a general harmonised regulatory framework within which the production, supply, transmission and distribution of gas were to take place in the member states. Implementation of the Gas Directive in the member states had to take place by 10 August 2000 (with extra time for Finland, Portugal and Greece). Most member states have now liberalized their markets in accordance with the Directive.[178]

European Commission Single Market Directive, which entered into force in February 1999, obliged EU Member States to gradually open their power sectors to competition; to vertically unbundle the sector; and to ensure non-discriminatory access to the transmission network. In practice, the minimum standards set by the European Commission have led to a process of "competitive liberalization" across the EU, as most of the countries are going far beyond the minimum. In parallel, the trend towards privatization is gathering momentum, as an increasing number of EU governments are withdrawing from operational involvement in the sector.[179]

2.10.2.3. The Latest Directives in the Sector

The new EU Directives (2003/54/EC and 2003/55/EC respectively) have departed from Directives 96/92/EC and 98/30/EG they superseded in two major areas:[180]

[178] Freshfields Bruckhaus Deringer, Ibid, pp. 27-28
[179] JENTSCH, Daniel Müller, The Development of Electricity Markets in the Euro-Mediterranean Area – Trends and Prospects for Liberalization and Regional Integration. 2001. p. 121
[180] LIEB-DOCZY, Enese & TUGENDREICH, Bettina, The new German Energy Law: green light for competition?, European Electricity Review 2005, p. 32

■ The new Directives have sharpened unbundling requirements: If a distribution or transmission system operator is part of a vertically integrated undertaking, it has to be *independent at least in terms of its legal form, organisation and decision making from other activities not relating to* distribution/ transmission (e.g. Articles 10 and 15 of Directive 2003/54/EC);

■ The new EU Directive sets out the minimum set of competences, which the regulatory authorities in all Member States should share.

2.10.2.3.1. Electricity Directive 2003/54/EC

The Electricity Directive is complemented by Directive 2001/77/EC of 27 September 2001 on the promotion of electricity produced from renewable energy sources. On 26 June 2003, the third phase in the liberalization of the electricity sector was launched with the adoption of two new pieces of legislation: Directive 2003/54/EC (the Acceleration Directive), which will replace the Electricity Directive and will accelerate the liberalization process and Regulation 1128/2003 on conditions for access to the network for cross-border exchanges of electricity. The Acceleration Directive came into force on 4 August 2003 for a functioning and competitive electricity market leading to affordable energy prices for private consumers as well as for the industry and an energy supply which does not harm the environment and the climate[181] and was required to be implemented in the Member States by 1 July 2004, on which date both the Electricity Directive and Directive 90/547/EEC was repealed. The Regulation on cross-border exchanges does not require implementation; it has direct legal effect in the Member States as of 1 July 2004. EU aims at a complete opening of the electricity markets in the year 2007.[182]

The Electricity Directive provides for the appointment of a transmission system operator (TSO) in each EU member state. The TSO is responsible for the operation, maintenance and, as appropriate, development of the transmission system in a given area.

As with the Gas Acceleration Directive, the New Electricity Directive introduces the principle of legal unbundling. TSOs that are part of a vertically integrated undertaking must by then be

[181] SCHMITT, Helmut, Functioning of the EU electricity directive, World Wind Energy Association Position Paper, Bonn, 27 July 2005, p. 1
[182] European Parliament, Background Information, Gas and electricity: one step closer to a real single market, May 2003, p. 3

separated legally from the production and supply activities of that undertaking and converted into separate legal entities. The Directive explicitly provides, however, for the possibility of a combined transmission and distribution system operator.[183]

The Electricity Directive liberalizes the supply of electricity. From 19 February 2003 onwards, customers accounting for around 33 per cent of the total electricity consumption in each and every member state had to be free to choose their supplier. The New Electricity Directive will open up the market further in two stages: from 1 July 2004 all non-households are free to choose their supplier (unless an exemption is granted) and from 1 July 2007 the entire market will be opened up. The New Electricity Directive will, in addition, extend the scope of public service obligations that member states can impose, not only for supplies to customers connected to the distribution grid but also for customers connected to the transmission grid.[184]

The table below summarizes the process achieved by the two electricity directives:

Towards the European Electricity Market

	Most common Form pre-1996		1996 Directive	2003 Directive
Generation	Monopoly	→	Authorisation → Tendering	Authorisation
Transmission Distribution	Monopoly	→	Regulated TPA Negotiated TPA Single Buyer	Regulated TPA
Supply	Monopoly	→	Accounting separation	Legal separation from transmission and distribution
Customers	No Choice	→	Choice for Eligible Customers (=1/3)	All non-household (2004) All (2007)
Unbundling T/D	None	→	Accounts	Legal
Cross-Border Trade[13]	Monopoly	→	Negotiated	Regulated
Regulation	Government Department	→	Not specified	Regulatory Authority

Source: Council of European Energy Regulators (CEER) 2004

[183] Freshfields Bruckhaus Deringer, Ibid, p. 31
[184] Freshfields Bruckhaus Deringer, Ibid, p. 32

2.10.2.3.2. Gas Directive 2003/55/EC

Just after the electricity directive, Directive 2003/55 Concerning Common Rules for the Internal Market in Gas was accepted on 26 June 2003. The directive includes the following provisions: the obligatory unbundling of the networks from the companies using them; regulated network access; the establishment in each country of a regulatory authority for gas and electricity, independent of companies and the interests of the two sectors; and the right from 1 July 2007 for all customers to choose their supplier (1 July 2004 in the case of non-domestic customers).[185]

The Directive has now introduced the fiercely debated principle of 'legal unbundling'. From 1 July 2004, vertically integrated undertakings has been required to separate legally their network activities from their production and supply activities and convert them into separate legal entities that are independent in terms of management and decision-making. Legal unbundling of distribution activities will become mandatory from 1 July 2007 (with certain limited exceptions). The Directive explicitly provides, however, for the possibility of an integrated undertaking combining transmission, storage, distribution or the operation of an LNG facility. Legal unbundling does not imply that companies with downstream transportation activities cannot have common ownership with producers or suppliers, nor that the ownership of the transportation network must be transferred.[186]

The Gas Directive does not regulate the supply of gas, but provides that member states may impose a (public service) obligation on companies to supply customers in a given area and/or of a certain class. In addition, the Directive requires member states to protect final customers and to implement a high level of customer protection – in particular for vulnerable customers. It also further extends the scope of public service obligations that member states may impose.[187]

[185] http://www.gascentre.unece.org
[186] Freshfields Bruckhaus Deringer, Ibid, p. 28
[187] Freshfields Bruckhaus Deringer, Ibid, p. 29

Both the newly adopted gas security of supply Directive and the similar Directive proposed for electricity Member States to have a transparent policy relating to measures associated with the balance of supply and demand. Possible measures are as follows:[188]

- development of liquid wholesale markets,
- role of transmission system operators in ensuring balance, even at times of highest demand,
- incentives to new investments,
- possible tenders for new capacity,
- obligations on suppliers relating to, for example gas storage or reserve generation capacity.

All these are aspects of "market design" which need to be clarified by regulators in each Member State in order to create a stable investment climate.

Liberalization of the energy sector is also achieved through the application of the EU competition rules (articles 81, 82 and 86 of the EC Treaty). The application of competition rules is essential to achieve the full benefits of liberalization, in particular by ensuring that the liberalization process is not undermined by market conduct aimed at protecting the existing market position of the incumbent providers. In recent years, there has been a considerable increase in activity to enforce these rules, both from the regulator and by third parties keen to enforce their rights of access in the market.[189]

Since 2001, the Commission has carried out a detailed evaluation of the situation in the electricity and gas sectors relating to market opening through the Benchmarking reports on the Implementation of the Internal Electricity and Gas Markets. These reports have been compiled using information collected from market players and government agencies following a detailed survey. Beyond the institutional features of the opening of the market related to proper transposition of Community legislation by national governments, what also matters is the impact of the opening of the market in terms of the real number of consumers that have changed supplier. The report issued in March 2004, indicates an average figure of only around 15 to 20% for large users that changed suppliers since market opening within the

[188] European Commission Directorate general for Energy and Transport, Ibid, p. 4
[189] Freshfields Bruckhaus Deringer, Ibid, p. 32

EU, with a range of figures from 0% for Greece, 5 to 10% for Belgium towards more than 50% for Nordic countries and the United Kingdom.[190]

According to the March report, the situation is approximately the following:

Level of competition	Electricity	Gas
Not functioning	Greece, Estonia, Latvia	All new Member States, Finland, Portugal, Greece
Initial steps only	Belgium (fr)[3], Luxembourg, Portugal, Poland, Czech Rep., Slovenia, Slovakia, Lithuania	Germany, Luxembourg, Sweden, Belgium (fr)
Some progress	Germany , Spain, Belgium (nl), Ireland, Italy, France, Hungary	Austria, Belgium (nl), France, Italy, Denmark
Well developed	Austria, Netherlands	Netherlands, Ireland, Spain
Complete	UK, Sweden, Finland, Norway, Denmark	UK

As can be seen from the table above, the degree to which national markets are open to competition (i.e. simply domestic competition between different energy producers within one state) varies considerably from one country to another. This situation is of major concern in most Member States and to most market operators. Unless new measures are taken, it is feared that this situation will continue and that genuinely fair conditions of competition will not emerge in the single market.[191]

In October 2004, eighteen Member States had to be sent a letter warning that they had still not fully notified to the Commission the legal measures taken to transpose the latest Directives. This delay is unsatisfactory since it is now clear that the provisions of the previous Directives have not been adequate to achieve the objective of competition, even for larger users. Such customers would normally be expected to negotiate with suppliers on a regular basis. After five years of competition for electricity and over three years for gas, fewer than 50% have switched supplier in most Member States. In addition, many are unsatisfied with the range of services being offered.[192]

In some Member States the introduction of competition in electricity and gas has been made more difficult by the existence of companies with an excessive degree of market power at

[190] European Commission Directorate General for Energy and Transport, Towards a competitive and regulated European electricity and gas market, Opening of the Internal Energy Market: progress so far, MEMO, 2004, p. 2
[191] European Parliament, Ibid, p. 4
[192] Annual Report of the Commission on the Implementation of the Gas and Electricity Internal Market Brussels, January 2005, COM(2004) 863 final, page 5

national or regional level. The Commission has regularly drawn attention to this issue in its benchmarking reports and in the recent Communication on Energy Infrastructure and Security of Supply. This is a problem that Member States must tackle and there are a number of means available such as measures to promote cross border exchanges and improve inter-connection.[193]

Summary of main obstacles to competition*

		Customer switching: Large Users
a. No major issues	SE, FI, DK, NO, UK,	>50%
b. Unbundling \ Regulation	LU, AT, DE	range 10% (LU) -35% (DE)
c. Market Structure or Lack of Integration	FR, BE, GR, IE, ES, NL, LT, IT, SI, CZ, SK, LV	range 0%(GR) - 35%(NL)
d. Long term PPAs\ Regulated end-user prices	PT, EE, PL, HU,	range 0% (EE) - 25% (HU)

Although much process has already been made in terms of unbundling of network operators and the introduction of regulated third party access, there are still certain aspects which remain unsatisfactory. A fully independent transmission system operator is crucial for a well functioning market. Likewise distribution system operators need to be adequately separated from supply companies to ensure cost reflective tariffs and the removal of any cross subsidies. The independence of regulators is crucial in this respect in order to ensure fair network access in terms of tariff levels and structure. In this respect the gas sector is measurably behind that for electricity.

A final group of issues which may tend to be an obstacle to the internal market is the continued existence of a regulated end user prices for electricity and gas alongside the competitive market and associated long term power purchase arrangements (PPAs). Although such controls are a valuable transitional measure during the initial phase of market opening,

[193] COM/2003/743 Communication from the Commission to the European Parliament and the Council on Energy Infrastructure and Security of Supply

* In this table the most important obstacle for each Member State is identified. However this does not mean that other obstacles do not exist.

there are risks that such an approach will stifle competition, constrain investment and confuse and contradict unbundling measures.[194]

Electricity Liberalization Timeline

Year	National Legislation	National Regulation	EU Directive etc.
1988			White Paper
1989	England & Wales	England & Wales	
1990	Norway		Transit + Price Transparency
1991	Portugal	Norway	
1992			
1993			
1994	Spain		
1995	Portugal, Finland	Finland, Spain	
1996		Portugal, Italy	
1997	Spain		1st Electricity Directive
1998	Germany, Netherl.	Netherl.	1st Gas Directive
1999	Ireland, Belgium, Italy, England & Wales	Ireland	
2000	Luxembourg, France	Greece, France, Belgium	
2001	Luxembourg		
2002			
2003			2nd Electricity Directive, 2nd. Gas Directive, Regulation Cross Border

Source CEER (2004)

2.10.2.4. The Impacts of the Directives in the Sector

Electricity prices have fallen by around 20% on average for major industrial consumers in nearly all Member States since the electricity directive was implemented. In general, the biggest price reductions have happened in Member States which have opened their markets above and beyond the minimum required by the legislation and whose markets are exposed to genuine national or foreign competition.[195] In Germany, for instance, one of the most competitive markets in the EU, prices fell by about 20 percent for households and up to 60 percent for industrial users. European cross-border mergers and acquisitions amounted to more than Euro 20 billion in 1999 alone—more than in any other region of the world. In response to competition and new market opportunities, energy companies are restructuring, cutting costs, and offering improved services to customers. Modern power markets and innovative trading instruments are being developed across the continent and previously

[194] Annual Report of the Commission on the Implementation of the Gas and Electricity Internal Market Brussels, January 2005, COM(2004) 863 final, page 5
[195] European Parliament, Ibid, p. 5

segmented national markets with a combined annual turnover of Euro 170 billion are integrating rapidly.[196]

Development of electricity prices and demand

	Change in retail price 1995-2001			1995-2001	Change in consumption 1995-99
	Industry		Households		
	without tax (%)	with tax (%)	without tax (%)	with tax (%)	% change
Austria (1)	- 8	7	-7	2	7
Belgium	- 3	-3	-4	-3	9
Denmark	29	31	29	40	3
Finland	- 17	-8	-9	1	14
France	-15	-17	-9	-11	9
Germany	-29	-25	-5	2	3
Greece	0	-8	-13	-20	20
Ireland	5	5	8	8	27
Italy	46	28	5	3	10
Luxembourg	-18	-12	5	10	10
Netherlands (2)	8	37	2	18	14
Portugal	-19	-19	-5	-5	25
Spain	-25	-21	-19	-15	26
Sweden (3)	-6	6	-25	-24	1
UK	9	9	-11	-13	9
Norway	-2	0	19	29	4

Notes: price changes are expressed in nominal terms; (1) Households 1996-2001, Industry 1995-1999; (2) 1995-2000; (3) 1996-2001.
Source: European Commission (2001a).

For gas prices, the situation is less clear because the impact of opening up markets has been greatly distorted by oil price rises and shifts in the euro/dollar exchange rate. Until there is real competition in the gas industry prices will not accurately reflect supply and demand. There are huge disparities between Member States and this situation is liable to create market distortions for energy-consuming industries. In addition, small firms are often disadvantaged as regards prices in relation to major industrial consumers, especially if they are captive clients with no choice of supplier.[197]

2.10.2.5. Lessons from the Italian black-out

On the night between Saturday 27th and Sunday 28th September, a transmission line in Switzerland touched a tree causing the black-out in the whole of Italy. Italy imports 24 % of its electricity requirements at night periods, mainly from France. This is by far the highest

[196] JENTSCH, Daniel Müller, Ibid, p. 121
[197] European Parliament, Ibid, p. 6

level of import dependency of any EU country. It results from a combination of the decision to close down Italy's nuclear plants following a referendum in the 1980's and lack of new capacity investment in the latest years.

The reason for the black-out in Italy was an operational failure. A cascade of events started with a heavily loaded line touching a tree in Switzerland. After twenty minutes a second line could not handle the extra electricity and tripped. Soon after all interconnection lines importing electricity to Italy were disconnected, and in a couple of minutes the whole of Italy lost its electricity supply. There was enough time after the first line tripped to take the emergency measures planned for this incident, but these measures were not taken. The Italian blackout affected about 50 million people and it took up to 20 hours to restore the power in the whole country.

The black-out in Italy revealed lack of co-ordination between the transmission system operators. Emergency practises had been agreed between the system operators after previous incidents in the network. This was, however, not sufficient. Each network operator needs to know better the overall situation in key parts of the network. This incident is independent from the creation of the EU internal market. It is important to note that the Swiss grid remains operated by vertically integrated monopoly companies.[198]

2.10.2.6. Privatization Process In The Electricity & Gas Sectors

As the guardian of the European Single Market and the Union's antitrust authority, the European Commission has played a critical role in the liberalization of infrastructure sectors. It does not have a mandate to get involved in ownership issues, such as privatization, but most of its liberalization policies have accelerated the transfer of public assets to the private sector.[199] Nowhere in the directives is there any requirement to privatize. This would be impossible, as it would be contrary to the basic principle in the founding treaty of the European Union, which forbids legal discrimination between the public and private ownership.[200]

[198] Energy infrastructures: increasing security of supply in the Union, European Commission Directorate General for Energy and Transport, December 2003, p. 2
[199] http://www.ppmi.org
[200] HALL, David, EU Electricity Directive: does not require separation of vertically integrated utilities into separate companies; does not require privatization, October 2000, page 2

Because of this reason, state-owned enterprises such as EdF-GdF of France, Vattenfall of Sweden, etc. have the lion's share of electricity & gas market in the EU. Those SOE's also bought the shares of other electricity & gas companies of other SOE's in different member states in the privatization process and became energy giants all over the EU. There are plenty of cases against them that they are claimed to abuse their dominant position in the market.

The below table shows the markets not only in the EU but all over the world that France electricity giant EdF performs in:

Company	Owner	Region	Countries
EDF	France, state, 100%	Europe, West	Austria, Finland, France, Germany, Italy, Portugal, Spain, Sweden, Switzerland, UK
		Europe, Central & Eastern	Bulgaria, CzechRepublic, Hungary, Poland, Romania, Russia, Slovakia, Ukraine
		Africa	Central African Republic, Coted'Ivoire, Egypt, Gabon, Ghana, Guinea, Guinea-Bissau, Mali, Morocco, Mozambique, Senegal, SouthAfrica
		America, North	Canada
		Latin America	Argentina, Brazil, Mexico
		Asia	China, Thailand, VietNam

Source: PSIRU database

When finishing the deal about public utilities, let us have a look at the latest privatization activities in the EU area:

PRIVATIZATIONS IN PUBLIC UTILITIES SECTOR IN THE EU AREA SINCE 2001

Date	Year	Company Name	Country	Area	Sector	% for Sale	Value of Transaction in US$ million	Method of Sale
	2001	Elektrownia Skawina SA	Poland	New Europe	Utilities	35	24.8	PS
	2001	Zielona Gora SA	Poland	New Europe	Utilities	45	45	PS
2001-01-05	2001	VEW Waldeck Frankenberg	Germany	Old Europe	Utilities	46	70.11	PS
2001-01-16	2001	Tallinna Vesi	Estonia	New Europe	Utilities	50.4	83.28	PS
2001-01-17	2001	Saevsjoe Energi AB	Sweden	Old Europe	Utilities	50	2.05	PS
2001-02-01	2001	Parnu Soojus	Estonia	New Europe	Utilities	99.95	1.8	PS
2001-02-15	2001	Bialystok Power Plant	Poland	New Europe	Utilities	45	44.96	PS
2001-02-17	2001	Acegas	Italy	Old Europe	Utilities	41.85	140.3	PO
2001-03-28	2001	Stadtwerke Solingen GmbH	Germany	Old Europe	Utilities	49.9	112.8	PS
2001-03-29	2001	Enel SpA - Rome Network	Italy	Old Europe	Utilities	100	500.5	PS
2001-04-12	2001	Prazske Vodovody A Kanalizace	Czech Republic	New Europe	Utilities	66	162.63	PS
2001-04-16	2001	Rybnik Power Plant	Poland	New Europe	Utilities	35	120	PS
2001-04-19	2001	MEC Koszalin	Poland	New Europe	Utilities	31	3.88	PS
2001-05-01	2001	Kaerntner Elektrizitaets AG	Austria	Old Europe	Utilities	49	840	PO
2001-05-02	2001	SNET (Societe Nationale d Electricite et de Thermique)	France	Old Europe	Utilities	30	310.03	PS
2001-06-29	2001	Katrineholm Energi AB	Sweden	Old Europe	Utilities	100	47.19	PS
2001-07-20	2001	Noesiwag (Niederoesterreichische Siedlungswasserbau GmbH)	Austria	Old Europe	Utilities	100	50.35	PS
2001-08-02	2001	Stadtwerke Bielefeld GmbH	Germany	Old Europe	Utilities	49.9	405.27	PS
2001-08-16	2001	Teplaren Handlova	Slovakia	New Europe	Utilities	100	0.16	PS
2001-08-30	2001	Thessaloniki Water	Greece	Old Europe	Utilities	25.45	14.4	PO
2001-09-24	2001	Elettrogen SpA (ENEL)	Italy	Old Europe	Utilities	100	3197.55	PS
2001-09-30	2001	Latvijas Gaze	Latvia	New Europe	Utilities	5	59.33	PO
2001-10-18	2001	Suffolk Waste Disposal Co Ltd	United Kingdom	Old Europe	Utilities	100	12.44	PS
2001-12-03	2001	ZEC Zlotow	Poland	New Europe	Utilities	70	1.35	PS
2001-12-06	2001	Norrtalje Energi AB	Sweden	Old Europe	Utilities	100	39.08	PS

2001-12-08	2001	Public Power Corporation SA	Greece	Old Europe	Utilities	15.09	391.7	PO
	2002	Elektrocieplownia Torun SA	Poland	New Europe	Utilities	45	10.6	PS
	2002	Latvijas Gaze	Latvia	New Europe	Utilities	3	97.95	PO
	2002	Stoen SA	Poland	New Europe	Utilities	85	375	PS
	2002	Stredoslovenska Energetika	Slovakia	New Europe	Utilities	49	158	PS
2002-01-10	2002	Stadtwerke Duesseldorf AG	Germany	Old Europe	Utilities	29.9	378.53	PS
2002-01-30	2002	Kungsbacka Energi AB	Sweden	Old Europe	Utilities	100	19.27	PS
2002-02-28	2002	Obragas Holding NV	Netherlands	Old Europe	Utilities	90	301.52	PS
2002-03-18	2002	Chemes	Slovakia	New Europe	Utilities	38.3	0.99	PS
2002-04-29	2002	Transpetrol	Slovakia	New Europe	Utilities	49	72.36	PS
2002-05-16	2002	Transgas	Czech Republic	New Europe	Utilities	96.99	3701.48	PS
2002-05-17	2002	AB Lietuvos Dujos	Lithuania	New Europe	Utilities	35.8	38.18	PS
2002-05-31	2002	Eurogen SpA (Enel)	Italy	Old Europe	Utilities	100	3562	PS
2002-06-12	2002	Elektrownia Skawina SA	Poland	New Europe	Utilities	35	24.8	PS
2002-09-05	2002	Zapadoslovenske Energeticke	Slovakia	New Europe	Utilities	49	330	PS
2002-09-06	2002	Stadtwerke Frankfurtan der Oder GmbH	Germany	Old Europe	Utilities	49	42.45	PS
2002-12-08	2002	Public Power Corporation SA	Greece	Old Europe	Utilities	10	323.9	PO
	2003	Transgas	Czech Republic	New Europe	Utilities	3.01	46.08	PS
2003-01-12	2003	Vychodoslovenske Energeticke	Slovakia	New Europe	Utilities	49	130	PS
2003-02-10	2003	Stadtwerke Weisswasser GmbH	Germany	Old Europe	Utilities	74.9	30.55	PS
2003-02-17	2003	Stadtwerke Cuxhaven	Germany	Old Europe	Utilities	74.9	70.57	PS
2003-03-25	2003	Meta SpA	Italy	Old Europe	Utilities	24	61.1	PO
2003-04-01	2003	CEPS AG	Czech Republic	New Europe	Utilities	51	487.95	PS
2003-04-01	2003	Ceskoslovensko Elektrarna Pocerady	Czech Republic	New Europe	Utilities	100	1203.48	PS
2003-04-24	2003	PEC	Poland	New Europe	Utilities	55	0.67	PS
2003-05-29	2003	Gdansk Przedsiebiorstwo	Poland	New Europe	Utilities	75	49.66	PS
2003-06-07	2003	Siciliacque	Italy	Old Europe	Utilities	100	325.61	PS
2003-06-21	2003	HERA	Italy	Old Europe	Utilities	38.68	429.3	PO

2003-07-25	2003	Rybnik Power Plant	Poland	New Europe	Utilities	15.83	48	PS
2003-10-08	2003	AGEA	Italy	Old Europe	Utilities	42	55.68	PS
2003-10-25	2003	Public Power Corporation SA	Greece	Old Europe	Utilities	15.7	714.3	PO
2003-10-30	2003	Enel	Italy	Old Europe	Utilities	6.6	2519.6	PO
2003-11-28	2003	Rybnik Power Plant	Poland	New Europe	Utilities	35	108.4	PS
2003-12-31	2003	EnergiGruppen Jylland A/S	Denmark	Old Europe	Utilities	64	69.75	PS
2004-01-19	2004	Egaz	Hungary	New Europe	Utilities	35.46	54.74	PS
2004-03-25	2004	AB Lietuvos Dujos	Lithuania	New Europe	Utilities	34	35.4	PS
2004-03-30	2004	SNAM Rete Gas SpA	Italy	Old Europe	Utilities	9.5	793.2	PO
2004-04-05	2004	Azienda Servizi Ambientali	Italy	Old Europe	Utilities	NA	12.12	PS
2004-04-29	2004	Austrian Power Vertrieb GmbH	Austria	Old Europe	Utilities	100	9.99	PS
2004-05-01	2004	APS	Italy	Old Europe	Utilities	100	268.34	PS
2004-06-14	2004	Zespol Elektrocieplowni	Poland	New Europe	Utilities	85	89.1	PS
2004-06-22	2004	Elektrocieplowy Brzeze	Poland	New Europe	Utilities	36.3	68.09	PS
2004-06-23	2004	Terna (ENEL)	Italy	Old Europe	Utilities	50	2054	PO
2004-07-23	2004	Fernwasser Sachsen-Anhalt GmbH	Germany	Old Europe	Utilities	100	26.35	PS
2004-09-13	2004	SNET (Societe Nationale d Electricite et de Thermique)	France	Old Europe	Utilities	35	149.7	PS
2004-10-22	2004	Enel	Italy	Old Europe	Utilities	19.6	9520.6	PO
2004-11-15	2004	Azienda Elettrica Municipale	Italy	Old Europe	Utilities	8.8	347.1	PO
2004-12-08	2004	Slovenske Elektrarne	Slovakia	New Europe	Utilities	66	1089	PS
2005-03-30	2005	Terna (ENEL)	Italy	Old Europe	Utilities	13.86	736.36	PO
2005-06-24	2005	SPE	Belgium	Old Europe	Utilities	51	919.6	PS
2005-07-02	2005	Enel	Italy	Old Europe	Utilities	9.3	4920	PO
2005-07-07	2005	Gaz de France	France	Old Europe	Utilities	17.47	4050.51	PO

Source: Privatization Barometer, 2005

2.10.3. Coal Industry

In Western Europe, coal production is concentrated, with the United Kingdom and Germany accounting for roughly four-fifths of total production and Spain and France accounting for most of the remainder. Until recently, European coal producers benefitted from protected markets and from an extraordinary array of generous subsidies, allowing European coal mines, which had become vastly inefficient by world standards, to remain in operation. In Germany, for instance, subsidies have until recently been financed by a 7.5-percent levy on electricity bills. As a consequence, domestic coal prices in Germany have been more than three times the import price.[201]

In turn, electricity prices in Germany are the most expensive in Europe, and 70 percent more costly than in the United States. However, the German coal industry has been shrinking in recent years in order to comply with European Union mandates and to remain competitive in a global market place.

The restructuring of Europe's coal industry is also due in part to a shift to alternative fuels. The proportion of Western Europe's energy consumption fuelled by coal fell from around 80 percent in the 1950's to 25 percent in 1994. In the future, European utilities are expected to move toward greater usage of increasingly available North Sea natural gas and away from coal.[202]

As a result of the continued elimination of coal subsidies and shift toward natural gas, the European coal industry has been declining. In 1994, coal production in the United Kingdom declined by over 60 percent from its 1980 level, while Germany experienced a decline of almost 40 percent in hard coal production. The larger reduction in coal output in the United Kingdom was in part due to the more forceful elimination of subsidies undertaken by the British government. Germany has been behind schedule in doing away with coal subsidies. For OECD Europe, hard coal production is expected to fall from 187 million metric tons in 1992 to 80 million metric tons in 2010.[203]

EU energy policy objectives are to promote the use of coal and make domestic production capacity more competitive to achieve a notable increase in solid fuel consumption. There are

[201] Energy Information Administration, U.S. Department of Energy, Privatization and the Globalization of Energy Markets, Washington, DC, October 1996, p. 58

202 Recent Trends in International Investment and Trade in Coal, http://www.itcilo.it

[203] OECD/IEA, Oil and Gas Supply Outlook, 1995

now virtually only three coal-producing countries left in the EU: UK , Germany and Spain . Large quantities of coal are being imported. Imported coal is significantly cheaper than domestic coal. The correspondingly large subsidies needed in Germany and Spain are meeting with increased resistance (from buyers, consumers and suppliers of other sources of energy). The question of whether the EU should permit the continuation of coal subsidies beyond 2006 and what level of production should be permitted for the coal-producing countries is currently the subject of controversy.[204]

In Germany, the coal industry is only in the private sector. Two former state-run companies were sold in 1993-1994. There are no restrictions for foreign ownership in the legal system. In the UK, British Coal held a monopoly until 1994. Following the adoption of privatization legislation, British Coal's mining business was sold to the private sector. Following privatization, a Coal Authority was established to administer the ownership of UK coal reserves, grant coal leases and licence viable mining operations. There are no restrictions for foreign ownership in the British legal system, too.[205]

2.10.4. Petroleum Industry

The oil industry in Europe is in the middle of a significant period of change. Although approximately one quarter of total world refining capacity is located in Europe, refining margins are very low are many refineries are operating at sub-optimal utilisation levels.

Retailing in Europe is carried out by two main groups, the oil majors, which historically operated as vertically integrated companies, and supermarkets, which purchase gasoline on the spot market and sell it at low margins through branded stations on their own sites to encourage consumers to refuel their cars whilst doing their weekly shopping.

Demand patterns are changing primarily due to environmental concerns and there is an increase in demand for lighter fractions such as gasoline and kerosene, which leads to imbalances in capacity. New oil production is coming on stream in other parts of the world, which increases pressure on oil refineries to be flexible in their choice of feedstock.

The industry is responding to these pressures on profitability in a number of ways. Marginal refineries are increasingly being decommissioned, rather than mothballed. Investment in new

[204] http://www.europarl.eu.int
[205] http://www.worldenergy.org

refinery technology is increasingly centred upon larger plants, which offer greater economies of scale. In order to meet the challenge of the supermarkets, a number of different strategies have been adopted, which include aggressive price-cutting by the majors, consolidation between the majors and the introduction of loyalty schemes.

Most importantly, a move towards a genuine single market in Europe has been accelerated with a single management structure, rather than a series of differentiated markets, as has historically been the case.[206]

2.10.4.1. Major Privatizations In the Sector

British Petroleum (BP) was founded as the Anglo-Persian Oil Company in 1909. In its early years, BP's primary producing properties were located in Iraq, Abu Dhabi, Kuwait and Qatar. Between 1914 and 1995, the British government maintained an interest in British Petroleum, and at times the government's holdings exceeded fifty percent. The privatization of BP began about 10 years ago when the British government sold about 32 percent of the company to the public. In 1995, the final 1.8 percent government share in BP was sold to the public, making BP a fully-privatized company.

British Petroleum is the twelfth largest producer of crude oil in the world. BP is also Britain's largest industrial company. BP's downstream operations are also sizable. BP is the world's fifth largest refiner, with BP's downstream operations largely based in Europe and the United States.[207]

Elf Aquitaine (Elf) was created in 1941 at the initiative of the French government, largely to exploit the Lacq oil and gas field in southwestern France. Elf is France's largest petroleum company. The French government initiated a privatization scheme in 1986 with the sale of 14 percent of Elf to the public. By 1995, the French government's share was reduced to 10 percent. Elf is predominantly an oiland gas-producing company, and most of its production comes from former French colonies among the African countries surrounding the Bay of Guinea. Elf has refining operations in Europe and West Africa. Elf is the seventh largest refiner of crude oil in Europe and seventh largest producer of North Sea crude.[208]

[206] http://www.worldenergy.org
[207] Energy Information Administration, U.S. Department of Energy, Ibid, p. 9
[208] Energy Information Administration, U.S. Department of Energy, Ibid, p. 10

Italy's ENI was nationalized by Mussolini in the 1930's and is currently Italy's largest industrial company. ENI's privatization has only been very recent. The first 14.7 percent of ENI was sold to the public in 1995 for $4.1 billion. ENI has a refining capacity of 933,000 barrels per day and is Europe's third largest refiner. ENI's crude oil production comes primarily from Libya, Egypt, Nigeria, the Congo, the North Sea, and Angola. ENI produces smaller amounts of crude oil in Tunisia and in the United States. ENI's China production began in 1992, although it currently amounts to only 1 percent of ENI's total crude oil production. Downstream, ENI has recently obtained a 17-percent interest of a consortium (including Conoco, and Royal Dutch/Shell) to reconstruct two Chinese refineries for a total investment of $480 million. ENI has also signed an agreement with Russia's Lukoil to jointly develop an oil field in western Siberia. ENI has recently attempted to diversify its ownership overseas. As an example, a large portion of ENI's recent public offerings were dedicated to U.S. investors. ENI has also greatly reduced its payroll in recent years from 124,000 in 1993 to 91,000 in 1995.[209]

Spain's Repsol was founded in 1987, when the Spanish government consolidated various domestic upstream and downstream holdings into a single company. The government sold a 24-percent stake in the company in 1987. The government sold off additional shares in later years, reducing the state's stake to 10 percent in 1996.[210]

The below table shows the latest privatization activities in the EU:

[209] Energy Information Administration, U.S. Department of Energy, Ibid, p. 11
[210] Energy Information Administration, U.S. Department of Energy, Ibid, p. 12

PRIVATIZATIONS IN PETROLEUM INDUSTRY SECTOR IN THE EU AREA SINCE 2001

Date	Year	Company Name	Country	Area	Sector	% for Sale	Value of Transaction in US$ million	Method of Sale	Market Area
2001-02-15	2001	ENI SpA	Italy	Old Europe	Petroleum Industry	5	2183.4	PO	Domestic & International
2001-07-16	2001	Irish National Petroleum Corp	Ireland	Old Europe	Petroleum Industry	100	100	PS	----------
2002-06-10	2002	SPP	Slovakia	New Europe	Petroleum Industry	49	2700	PS	----------
2002-06-14	2002	Fortum Oyi	Finland	Old Europe	Petroleum Industry	9.98	399.5	PO	Domestic & International
2003-05-30	2003	Hellenic Petroleum SA	Greece	Old Europe	Petroleum Industry	16.65	384.19	PS	----------
2004-02-17	2004	MOL Rt	Hungary	New Europe	Petroleum Industry	10.5	359.8	PO	Domestic
2004-03-01	2004	MOL Rt	Hungary	New Europe	Petroleum Industry	0.5	15.6	PO	Domestic
2004-04-28	2004	Unipetrol	Czech Republic	New Europe	Petroleum Industry	63	498.09	PS	----------
2004-08-17	2004	Hellenic Petroleum SA	Greece	Old Europe	Petroleum Industry	8.21	237.13	PS	----------
2004-09-29	2004	Total SA	France	Old Europe	Petroleum Industry	2.3	3170	PO	----------
2004-11-03	2004	MOL Rt. (gas assets)	Hungary	New Europe	Petroleum Industry	75	535.5	PS	----------
2005-03-06	2005	Fortum Oyj	Finland	Old Europe	Petroleum Industry	7.21	952.73	PO	Domestic & International
2005-03-29	2005	Kavernenanlage der Bundesrepublik Deutschland	Germany	Old Europe	Petroleum Industry	100	170.81	PS	----------
2005-04-18	2005	Neste Oil Corporation	Finland	Old Europe	Petroleum Industry	15	747.68	PO	Domestic & International
2005-06-06	2005	Grupa Lotos	Poland	New Europe	Petroleum Industry	30.78	302.25	PO	Domestic

Source: Privatization Barometer, 2005

CHAPTER 3
PRIVATIZATION
IN THE
TELECOMMUNICATIONS SECTOR

3.1. INTRODUCTION

Politically, many governments have viewed state ownership of strategically important industries such as telecommunications, oil or other natural resources as necessary, ones that could not be left in private or foreign hands. Strategical importance of telecommunications sector differs from the other industries by many ways. In recent years, many observers have regarded the development of less centralized and more dynamic telecommunications technologies as a key factor in the recent break-up of authoritarian economic and political systems. Even though dictators want to continue to control information, advances like cellular phones and satellites have made it increasingly difficult for them to do so. In China, for example, fax machines allowed the students who occupied Tiananmen Square to communicate with each other and the outside world.

Joseph Stalin once said that an open telecommunications system in Russia would inevitably become the tool of counterrevolutionary forces. Moreover, concern about the political nature of telecommunications has not just been limited to dictatorships: During World War I, the Bell system in the United States was nationalized temporarily to ensure it would not be subverted or infiltrated by enemy agents.

Universal service is another political imperative for the governments, paid for by cross-subsidization, or charging subscribers disproportionately in areas where phone service is economic to cover the costs of providing service to areas where service would not be economic. Although they are well-received by outlying areas, such programs are not necessarily popular, either with those who have to pay for them or with the companies themselves. State ownership allows governments to meet this objective, which can be regarded as a public good. Since they are shielded from competition, state-owned telecommunications firms have been able to extract profits from subscribers sufficient to allow them to subsidize not only universal telecommunications service, but postal and other systems as well as state treasuries.[211]

Recent developments in the sector, however, indicate that external factors are now playing a decisive role in setting government policies, leaving national authorities only limited room for maneuver. Technological breakthroughs-new wireless communications (cellular, microwave,

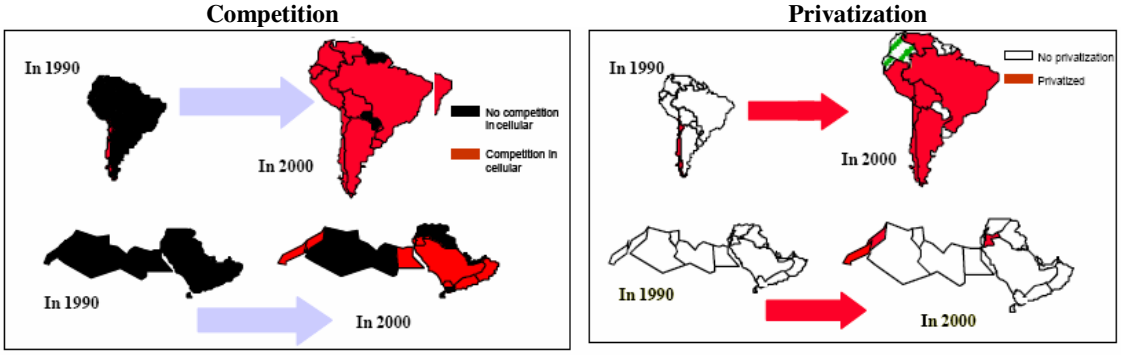
[211] ADAM, Peter S., Privatization in the Telecommunications Industry, Economic Reform Today, No. 2 1993, p. 41

radio), worldwide satellite and fiber-optic networks, expanding Internet access and services, vastly enhanced data compression techniques, and integration of communications and data processing-lead to much lower unit costs, fading of the distinction between voice and data transmission, and, more generally, a move toward highly competitive sector structures. This makes the retention of monopolies increasingly untenable.

These technological advances also underlie the globalization and diversification of the industry. Telephone companies are expanding toward other communications subsectors, such as cable television and data processing. New companies are providing services (cellular and satellite, for example) complementing those furnished by the fixed network. Enterprises from other sectors are entering the telecommunications sector; these include, on the one hand, companies with an existing fixed network that can be used (given certain investments) to transmit communications, such as cable TV operators, power and water companies, and railways; and on the other, media companies and other content providers.

In response to new developments, most countries are opening up their telecommunications sector. They have allowed or will soon allow increased competition through the issue of new wireless licenses, in some cases in competition and in others in collaboration with the fixed-network telecommunications company or companies.[212] The figure below shows this inevitable reality, even in the regions where mostly authoritarian regimes rule, which has occurred in a very short period such as a decade:

Privatization and competition in mobile networks per region*



[212] GUISLAIN, Pierre, The Privatization Challenge, A Strategic, Legal, and Institutional Analysis of International Experience, World Bank Regional And Sectoral Studies, January 1997, page 229

* Rossotto, Carlo Maria, Sekkat, Khalid, Varoudakis, Aristomene, Opening up Telecommunications to Competition and MENA Integration in the World Economy, July 2003, p. 7

The vast majority of Third World governments had failed utterly in providing even the most basic communications services. Typically, Third World telecom facilities also lacked the technical and managerial resources required to keep abreast of an increasingly complex industry. As recently as 1988 in Argentina, Egypt and Jamaica, potential subscribers had to wait over twenty years to have a telephone installed, while those in Poland, Pakistan and Tanzania faced a ten-year waiting list. Call completion rates of 50 percent or less and significant underutilization of existing capacity were common.

Such telecom authorities were being managed so unsound that they had 50 to 100 employees for every 1,000 telephone lines in service, compared to 0.2 employees or fewer for the same number of lines among telephone companies in the U.S., Europe and Japan.[213] Employment per unit of output was extremely high, even after adjusting for the lower productivity of workers in poor countries. One cause was the use of nationalized enterprise for patronage, but another cause was the perverse incentive structure that the budget process created for managers of nationalized entities. Whereas the budgetary process could starve capital investment funds without much short-term consequence, it could not starve operating funds to pay salaries without creating an immediate political backlash. Hence, the budget process gave managers an incentive to substitute labor for capital, which, in a capital-intensive industry like telecommunications, is extremely inefficient.[214]

In 1980 nearly every country in the world save those in North America had a state owned monopoly telecommunications provider and no separate regulatory authority outside of the ministry tasked with overseeing and running the sector. By 1999, according to the 1999 Report of the International Telecommunications Union (ITU), 90 countries around the world had at least partially privatized their telecommunications firms, and 95 had built separate regulatory authorities.

There is a competition in telecommunication sector in recent years. Technological race transformed competition in sector to strategic war. The sector which the place of the economical developments rapidly increase enter restructuring period at the same speed. The countries who understand the future of the sector will determine the future of economy. The countries that do not see this fact and do not have an international approach to this subject will

[213] ADAM, Peter S., Ibid p. 45
[214] NOLL, Roger. "Telecommunication Reform in Developing Countries," in ed: Anne O. Kreuger, Economic Policy Reform: The Second Stage, Chicago: University of Chicago Pres, 1999. p. 182

be classified as second class category. The telecommunication companies are the foundations that are in the monopoly of the public 10 years ago. But telecommunications companies had changed the sector to leave supplying traditional permanent telephone service by developing period for the technology named "new economy" such as mobile and cell phone, internet, cable TV, electronic commerce for both sector and companies to new structure. Telecom sector is main object to specify innovation at other sectors such as education, health and banking any more. There will be unbelievable technological instruments in both daily life and work life in coming ten years. Telecom sector must be structured as quickly as possible in correct way to see future beforehand and taking necessary infrastructure measures without loosing time. [215]

3.2. THE STATUS AND THE IMPORTANCE OF TELECOMMUNICATION IN ECONOMY

The order of the large scale worldwide companies from 1920s to the present ones had been listed and compared to other sectors informatics sector had received the most attention. But technology has continuing its development with an acceleration that is without durability of losing time with expressing the importance of the sector. Telecommunication sector faded into distance from the appearance of continuing development within itself, it becomes a status of backbone of nearly all markets. [216]

Interaction between societies gain speed by rapid changes in living technology and the importance of distances and boundaries have almost disappeared. This technologic developments affected directly the telecommunication sector that has dense technological character and the progresses at this sector are based the fields of economic, politic, social and cultural developments. So society's progress on telecommunication sector is an element specifies their developed level.

According to calculations for OECD countries Telecommunication sector is supplying mean 1% of employment and 1.5-3% of GNP created by oneself employment that is very important sector.

[215] Telekomünikasyon Sektöründe Reform, www.telekom.gov.tr
[216] TOPKAYA, Ferhat, Telekomünikasyon Sektöründe Erişim Sorunları Rekabet Kurumu Uzmanlık Tezleri Serisi, p.40

Telecommunication services are inseparable part of social life today and indispensable infrastructure of economic progress. The importance of telecommunication sector has increased by liberalism and globalization tendency observed at world economy in 1980s. Demand of telecommunication services that supply information transfer by transformation of world economy more liberal and it has varied. Telecommunication has become on of the most important element of competition at globalize world economy in last 10-15 years.

The efficient information transfer must be ensure to operate more efficient and productive of country economy against exist global competition. Developed countries effort to become an information society passed over the industrial society any more. Economies become information dense and increasing the information dense make the demand of telecommunication services more. It is predicted that increasing information dense in economies make more than 70% of employment depended on telephone. [217]

A Telecom-Information Sector approach 10 percentages at developed countries is taking share from GNP. It's only 3.5 percentage in Turkey. It is understood better that how much need of restructuring in this field to form Turkey's information society by thinking of the important role of this sector in social-economic development of countries. Telecommunication-communication net brings to developing countries the opportunities of developed countries. Besides the presentation of sector also working opportunities occur and the most important one is formed bridge of numeral sheer. [218]

The countries that see the tendencies of both world economy and telecommunication technologies on time are directed important reforms in telecommunication sector since the year of 1980s. Before 1980, the role of social, economic and national safety of sector and telecommunication services that were presented monopoly by the government in many countries and regulations started to reevaluate. Results of these evaluations telecommunication institutions that is in traditional monopoly of the government privatized in some countries and at the same time it is started to follow liberal policies ensuring the participant of special region to various segments of the sector in some countries. This change

[217] World Bank, Turkey: Informatics and Economic Modernization, World Bank Publication, Washington D.C. 1993.World Bank 1993, p.120

[218]Bilişim Şurası, 10-11 May 2004, p. 42

has resulted in telecommunication sector being one of the most profitable and productive investment areas. According to research results cover OECD countries in recent years [219]

° Telecommunication sector passed other sectors with the service incomes of telecommunication sector's annually average of 4.5 % growth

° The GNP share of telecommunication services is 1.8% in 1980 and it increased 2.3% in 1990.

° Telecommunication investment reached to the mean of USD 100 level in 1992 for per person.

° Productivity increase of loop usage reached 5% level.

° It realized mean 44% increase annually in beginning of 1990s at international traffic.

The competition in telecommunication sector ensured many innovations to consumers at this rapidly developing sector. Decreasing the monopoles encouraged the new technologies and the cellular subscriber number has increased 71 million in 1995 from 700 thousand in 1985 at OECD countries. After reforms the mean telephone service costs decreased as 63 % in England, 41% in Japan and 66% in Finland at long distance talking fees. [220]

Furthermore, the companies active on telecommunication sector have experienced bankruptcies because of the economic crises in the world recent years.

3.3. THE STRUCTURE OF TELECOMMUNICATION SECTOR

Telecommunication services are evaluated as public service in many countries through the 1980s and it was operated by means of monopoly of government. [221]

By means of the developments in technology, it is accepted wholly monopoly telecommunication sector is accepted only partially natural monopoly any more. Until recent years the word of telecommunication term used as a synonym of telephone meetings made by cables. The structure of sector is typical regulated monopoly of public or private sector. The demand of the subject of data transfer between specified points is resulted to occur expertise

[219] SÜREL, Hakkı Telekomünikasyon Sektöründe Özelleştirme Uygulamaları, Yayınlanmamış Notlar, DPT, Ankara 1995. p.16

[220] The OECD Report on Regulatory Reform, Volume II: Thematic Studies, Paris 1997, p. 49

[221] LEVY Brian & SPILLER Pablo T., Regulation, Institutions, and Commitment in Telecommunications, World Bank, 1994, p. 217

private sector attempt about loop matter. The developments about digital technological area to transfer voices with texts and images have changed fairly the conditions of competition in sector. Especially the technological development in cellular digital telephone area has increased potential competition of the sector. Technological developments resulted worn out of monopoly structure of sector and also changed economic structure of sector. previous technology has realized over analog signals and loop investments and cost of supporting loop are very high. Digital signals, computer operator systems, fiber optic cables, satellites and accessing micro wave signals are decreased costs of supporting loop and accessing loop. Now it is possible to access to loop in many places and it is not much more expensive long distance access costs than local access costs. [222]

Technological development in telecommunication sector affected monopoly structure of many departments efficiently. The developments of micro electronic area ensure opportunity of transferring without loop in great part of telecommunication and data and voice transfer with TV signals.[223]

The most important prominent development in telecommunication area in the world in recent years, specifying policy in question area is separating making managerial regulation and functions of administrative from each other and operating each function conform with the frame of principles of that function's characteristic. When the structure of sector in liberalized developed countries investigated;

• The governments that carry political responsibility specify sector policy in the frame of general principles and objectives,
• Autonomous independent authority is to carry out necessary administrative arrangements in technical attribute in activities,
• It is seen that administrative activities are realized in the frame of economic basis by commerce foundations. [224]

With the tendencies in telecommunication sector, the subject was taken up in the constitution of EU and DTÖ. In the frame of directives published by these foundations, the member

[222] EROL Mesut, ibid, p.52
[223] The OECD Report on Regulatory Reform Volume II: Thematic Studies, Paris 1997, p. 46-52
[224] SÜEL Hasan, Telekomünikasyon Sektöründe Serbestleşme ve Özelleştirme Çerçevesinde Devletin Rolünün Yeniden Belirlenmesi, TESEV Yayınları 19, 2000, p. 91

countries undertook the dates of opening to competition of their telecommunication sectors. The competition environment occurred by technological developments, privatization and liberalization had been incited to action and it is caused global rise trend of telecommunication sector.

Technologic developments were not bounded with only telecommunication at the same time informative technologies have very important developments and telecommunication services and information services integrated. In this frame the basic services performed from telecommunication loop as well as defined as added value services information dense services occurred and it is developed rapidly. All these developments caused the complexity and being difficulty of the duties of the foundations that supply these services. [225]

The telecommunication sector is classified as "basis services" (city or local services/intercity services/international services), "added value" services and "telecommunication equipments".

The important subject of telecommunication policies is determining the market structure in basic and added value service area and the infrastructure of supplying these services.

3.3.1. Basic Services

It is defined as supporting only bearing capacity services over a transmission line. Telephone, telegram is in the scope of such services. By this meaning the loops that perform these basic services are itself of the telecommunication systems.

The two basic elements of the telephone loop are consisting of named as telephone exchange and connection (line) structures. Each subscriber must first connect to the telephone exchange placed in their area to meet each other and transmission of voice, data, image etc over lines between the subscribers and telephone exchange conveyed to subscriber who is desired to access. In such manner the smallest network between the subscriber and the telephone exchange is called "local telephone loop". To connect the subscribers who are in other region, cities or countries there must be also connection between telephone exchanges. High capacity transmission devices fiber optic cables used in local, intercity and international lines to make

[225] ARDIYOK, Şahin, Rekabet Dergisi, Türk Telekomünikasyon A.Ş.'nin özelleştirilmesi: Sektörde doğum sancıları, sayı 5, 2001, p. 21

many meetings at the same time. It is generally used copper and coaxial cables that have limited capacity in local lines [226]

The basic unit of basic telecommunication service is local loop as the most important part consists of least income potential part because of applied for main administrator's mandatory universal service etc. responsibilities. It is accepted "narrow pass" part of the sector still as natural monopoly because of the feature of loop.

3.3.2. Add Valued Services

It can be served from the same or the separated telecommunication loop with basic services. Separation is resulted from the new features by basic service computer applications. Added valued services are defined as mobile telephone, call device, electronic mail and data transfer, interactive data services (banking form home, shopping from home, home office etc), VoIP (telephone service from internet), digital TV and interactive video services (Video on Demand-VoD) widespread used services nowadays.

3.3.3. Telecommunication Devices

The devices added to end of the loop such as telephone devices, mobile telephone devices, fax machines and computers. Device production was possessing national telecom monopolies in the vertical integrated structure because of the scope economy for long years. But device production does not show monopoly character. So, we don't give place to this subject in our study for ensuring the opening the competition firstly.

3.3.4. Roaming-Interim connection

It is called roaming that the mobile operator has transmitted its traffic over another mobile operator's infrastructure. The roaming matter especially carry importance fro the operators that enter mobile market newly to ensure reaching area in the base of country. This situation shall be beneficial for new players to be partner of competition ensure reaching in the base of country. It is need calculated in the base of cost fro efficient roaming. But it is not easy to calculate cost to make justly calculation it must be acceptable for all parties. The operators

[226] LAFFONT & TIROLE *"Competition in Telecommunicaitons"*, The MIT Press Cambridge, MA. London, 2000, p.11

that have efficient market power must specify roaming price to take out cost in the manner of acceptance of all parties. Roaming is very important for Turkey to complete and efficient usage of sources. To ensure interim connection between different loops there must be interim connection agreement between operators. The searches between permanent-mobile-permanent loops, the cost of permanent loop because of technical reasons is lower than mobile loop. At this point when calculating interim connection cost per minute it must pay attention to specify fees in the base of costs. The operators that are statute of leader make the agreements with the other operators they should not forget the condition of not to create separation between the operators.

3.3.5. Infrastructure of Telecommunication and Competition

To convey the service low cost and high quality the infrastructure of the telecommunication sector must be developed. But it doesn't seem that it is developed by the government. At this point the duty of the government, the necessity of transition from the administrative government to regulator government to serve the needed infrastructure the market environment must be created to result of utilizing from the technological developments in question country citizens in the level of utmost. At this point it is understood the important role of the competition policies from the experiences other countries. Because, theory of economy suggests that individual interests and social interest accord with in the contender environment that is depend on competition, so the environment that does not contain competition will be in danger of industrial activities without social interests. [227]

The competition in telecommunication services became possible to taking permission of access the loop that is accepted as natural monopoly over the local loop. In addition cable-TV, electricity, gas that is accepted as alternative of local loop became possible technically to serve telecommunication service from the other loops so it is provided inter loop competition. But although the developments in the monopoly structure of the market is going on, the basic services are still being supplied from monopolies 73% of world countries according to data provided by ITU in 1999 [228]

[227] TÜRKKAN, E. (2001), *Rekabet Teorisi ve Endüstri İktisadı,* Turhan Kitapevi, Ankara, p. 7
[228] Özge İÇÖZ, Ibid, p.41

3.3. 6. Privatization and Competition in Added Valued Services

As a first step in reformation and privatization in telecommunication services, postal and telecommunication services were separated as they lack a comprehensive economy. Indeed there is an increase in postal services after this separation [229]

As shown in the table public monopolies were mostly privatized in countries where there was a public monopoly in this sector. However, in some cases, implementation of golden share was preferred.

Especially services with value added such as mobile communication, cable-TV and internet service providers constitute the most competitive part of the sector. According to data supplied by ITU in 1999, more than 66% of the world's mobile communication and 85% of cable-TV market and 80% of internet service providers' market have a competitive structure.

The main problem to be encountered while maintaining competitiveness in value added services are the attitudes of dominant telecommunication companies which prevent competition. This is because of the need to use basic telecommunication infrastructure at some stages of providing value added services. Therefore, forming of a new regulating institution is now emphasized.

Most OECD countries were able to liberalization in the sector. Turkey, when compared to these countries, cannot catch up with them both in privatization and liberalization. Within this framework, Turkey is received attention with the condition that telecommunication sector has not developed with the required rate and the income for each line is really too low.

'Green Paper' issued by the European Union Electronic Communication Commission on December 3, 1997 clearly defined the regulation activities in the relationship between telecommunication, media and BT sectors. The competitive environment must be introduced to the sector by providing the share of local network both through voice services and wide band services. After this stage, when other countries' experiences are evaluated, it must be

[229] UTTON Michael, The Likely Impact of Deregulation on Industrial Structure and Competition in the Community**,** Office for Official Publications of EC - Luxembourg, 1987, p. 111

considered that a very appropriate platform will be formed for wide band services and that there is a sudden development related to this issue in the world. [230]

3.4. LESSONS LEARNED IN TELECOMMUNICATIONS PRIVATIZATIONS

- Almost all countries have emphasized foreign investors in their telecom privatizations as essential sources of technology, capital, developing new markets and services, and other aspects of managerial know-how.
- Steps to enhance the participation of employees and local investors, such as allocating blocks of shares, will make telecom divestitures more acceptable politically.
- Governments must put appropriate regulatory structures in place to guard against replacing a public monopoly with a private one. Measures must be taken to ensure sufficient competition, especially in newly developed market segments (e.g., cellular).
- Governments have considerable leeway in structuring the conditions of the sale and the performance targets, such as the number of new lines to be installed and other service improvements, that the newly privatized firms have to meet. However, governments must exercise flexibility in modifying these conditions if necessary, as undue rigidity in bidding or operating conditions may discourage potential investors.
- Along the same lines, governments should adopt a hands-off approach to the daily operations of newly privatized telecom firms. This approach will help maximize the efficiency gains derived from placing the firms in private hands.[231]

3.5. TELECOMMUNICATION SECTOR IN TURKEY

3.5.1. Development Of Turkish Telecommunication Sector

There was a great progress in the field of telecommunication in Turkey between the years 1983 and 1993. The dense of telephone which was very low increased suddenly and telephone services were widespread in many areas and the quality of these services were increased as well; the country's satellite system was established for communication and radio-television broadcasts and investments with great amounts were implemented to provide value added services in this sector. However, contrary to all these efforts mentioned above, Turkey is now

[230] http://europa.eu.int
[231] ADAM, Peter S., Privatization in the Telecommunications Industry, Economic Reform Today, No. 2 1993, p. 43

in a situation that the country is not able to catch up with new developments in this sector in the whole world [232]

Mobile communication was initially begun as analog in 1986 and as a positive development it was shifted to digital system in 1994. Furthermore, the sector that had a chance to launch its first satellite in the same year was introduced to Turkish National Internet Infrastructure Network (TURNET) in 1996. This initiative which was later to become a great failure was renewed with a new project of 1984 aiming at maintaining a nationwide internet [233]

Maintaining a free competition in telecommunication sector by 2004 is a result of undertaken given by the country based on the General Agreement which was implemented within the framework of DTO [234]

3.5.2. Privatization in Telecommunication Services

3.5.2.1. Process related to forming of judicial infrastructure

Telecommunication services were first operated by Postal Services, Telegram and Telephone Directorate, known as PTT in accordance with the Code 406 of 1924 for Telegram and Telephone and the Code 5584 of 1950 for Postal Services. Beginning with 1993, new significant changes were made related to its judicial structure.

The first regulation activity for the privatization of telecommunication services was the Cabinet Resolution of 509 to amend the Code of 5584 for Postal Services based on the Code of Authority No 3911. Upon this Resolution, services other than postal and telegram services were separated from Turkish Postal Services, Telegram and Telephone Directorate, or PTT and a new company known as Turkish Telecommunication Ltd. Co. was established to provide communication services. Therefore, the first step was taken to privatize telecommunication services by providing provisions for the status and management of this company as well as regulations for sales of the shares of the company and the issuing of operating rights of the company.

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[232] YILMAZ Kamil**,** Türk Telekomünikasyon Sektöründe Reform: Özelleştirme, Düzenleme Ve Serbestleşme, Thursday Conferences, February 2000, p.3
[233] EROL, Mesut L, Ibid, p.41
[234] DUCH, R. M. Privatizing the Economy: Telecommunications Policy in Comparative Perspective, The University of Michigan Press, 1991, p. 82

In 1994 the Code No 4000 was issued due to the annulment of the Cabinet Resolution by the Supreme Court of the State. Having similar and parallel provisions to the annulled Cabinet Resolution, the new code No 4000 resulted in some changes in the regulations of 406 and 5584. The following issues were decided:

-Services related to post and telegram and all operating works are given to Republic of Turkey Postal Services General Directorate and services of telecommunication are given to Turkish Telecommunication Ltd. Co. (TTAŞ);

-Sales of maximum 49% of the company's shares and determination of sales method and principles,

-Issuing of operating licenses and certificates for other value added services (i.e. mobile telephone, call devices, data network, and etc.) carried out by the Company.

The articles of the Code No 4000 related to regulating privatization were annulled as they were considered to be against the Article 7 of the Constitution due to the claims that "Ministry of Transportation was referred as the only authority to carry out works such as sales of the Company's shares, determining the sales method, the way they will be carried out, the share reserved for the postal administration, prices of sale and license and determining their use of field as well." Furthermore, such authorizing the ministry with such unclear and unlimited conditions was seemed to be reason for this annulment too. However, the court refused to the request for the annulment of the article which allowed the separation of postal and telecommunication services of PTT, which eventually opened the way to privatization.

After the annulment of the Code No 4000, the new Code No 4107 allowed appearance of new arrangements related to the privatization of Turkish Telecommunication Ltd. Co. and following provisions were included as specified below:

- Maximum 49% of the total shares of Turkish Telecommunication Ltd. Co. shall be transferred;

-10% of these shares shall be issued to Postal Services General Directorate without any charge;

-4% of shares which are under sales shall be reserved for the staff of Telecommunication Company by Postal Services General Directorate and 34% of shares under sales to be reserved for natural and corporate persons.

Furthermore, methodology and principles related to privatization were defined, and ÖİB and ÖYK were appointed with special duties and authorities related to these issues. It was also decided by the Code that 20% of the revenues from the sales of shares of Turkish Telecommunication Ltd. Co. was to be used for improving postal services and %20 of the same revenues for improving telecommunication services and that 20% of the revenues from the sales of licenses was to be used for improving telecommunication services and the remaining sum was to be transferred to the Treasury for paying debts.

On the other hand, the articles of the Code No 4107 related to methodology and principles of privatization and authorizing ÖYK and ÖİB were also annulled by the Supreme Court.

Following the court decision of the annulment, issues regarding the articles on privatization in the Code for Telegram and Telephone were redefined by the Code No 4161.

Within the frameworks of the Code No 4161, there was a need to reform in the sector during the works on defining sales strategies regarding the sales of the shares of Turkish Telecom Ltd. Co. and thus the Code No 4502 was initially passed in order to define the sector and the status of Turkish Telecom Ltd. Co. in the sector. It was decided by the Code No 4502 that Telecommunication Institution was established with an autonomous structure to regulate the sector and that Turkish Telecom Ltd. Co. was freed from the status of KİK and subjected to the provisions of special laws.

Within the framework of the Code No 4161, there were two tenders held for block sales of the amount of 20% shares of Turkish Telecom Ltd. Co. on the dates June 13, 200 and December 14, 2000. However, there was no participation due to unfavorable developments in telecommunication sector, percentage of sales, lack of administrative authority, and etc. Lastly, new arrangements were made by the Code 4673 of May 23, 2001 related to the sales of the shares of Turkish Telecom Ltd. Co. and forming commissions responsible for carrying out privatization activities.

3.5.2.2. The Present Structure and Implementation in the privatization of Telecommunication

According to articles of the Code for Telegram and Telephone No 406 amended and added by the Codes No 4000, 4107, 4161, 4502 and 4673, the implementation of privatization can be summarized as follows:

*The services carried out by Post, Telegram and Telephone General Directorate shortly known as PTT are redefined and services related to post, it is decided that services related to telegram facilities and operations shall be carried out by the Republic of Turkey Postal Operations General Directorate and telecommunications services by Telecommunication Ltd. Co. **(Code No 4000 dated on 10.6.1994)**

* With **the Code No 4502** issued in the Official Journal dated on **29.01.2000** resolutions made on the following issues:

-Forming an autonomous Telecommunication Institution which will include Radio General Directorate which is responsible for the duty of regulating telecommunication sector and inspecting entities that are involved in this sector,
-Determining of the general principles and foundations related to the sector policy based on the Ministry of Transportation, laws and government policy,
-Removing Turkish Telecommunication Ltd. Co. (TTAŞ) from the status of KİK and maintaining it as subjected to provisions of special laws,
-Carrying out all services of telecommunication qualified as Public Service by means of signing of privilege agreements or licensing according the characteristics of these services, and within this framework signing of duty agreement between TTAŞ and the Ministry of Transportation.

* With **the Code No 4673 to be in effect on the date of 23.05.2001** resolutions made on the following issues:

-TTAŞ will continue to provide telecommunication services until 31.12.2003 as a monopoly, and this monopoly right may be abolished before the date of 31.12.2003 on the condition that the public shares of the company will be dropped to the level below the rate of 50%,

-Selling of all shares of the company except for “one” privilege share reserved for the State proving the right to vote and make comments with the aim of protecting national interests related to economy and security including the disadvantages caused by the structure of monopoly upon resolutions made by the authorized boards of TTAŞ,
-The share rate of foreign natural and corporate bodies in TTAŞ will not exceed to the rate of 45% and such entities cannot directly or indirectly own the majority of shares of the company,
-Satellite services carried out by TTAŞ will be excluded from the scope of privatization and these services will be provided by a Public Service Corporation (KİT) dependent to the Cabinet Resolution No 233,
-All licenses in the telecommunication area will be issued by Telecommunication Institution rather than the Ministry of Transportation.

Issues related to transfer of the shares of the company are included in the Annex 17-21 Articles of the Code No 406 which is regulated again due to above mentioned changes. Resolutions made on the following issues:

-The whole shares of the company can be sold except the ones that are privileged shares;
-the shares of foreign natural and corporate persons shall not exceed 45% of the total shares of the Company;
-Processes related tot the method fort he sales of the share are to be carried out by ÖİB upon the framework of the Code No 4046;
-The value of the shares shall be determined and estimated by the valuation commission based on the valuation methods used by international finance and capital markets taking into consideration of the present economic conditions;
-Sales of shares shall be carried out as supply for the public, block sale, sales both in domestic/foreign capital markets, sales in stock exchange within the frameworks of stock exchange methods and principles, stocks and bonds investment funds and/or sales to the partners of stocks and bonds,
-In the sales of shares a 5% share will be reserved fort he staff of Turkish Telecom, Republic of Turkey Postal and Telegram Services General Directorate and this sale will be carried out as supplied to the public in accordance with capital market regulations,
-The amount of shares to be sold upon results of value determination and the type of sale method, the rate of selling 5% share to the public will be decided by the Cabinet upon the

proposal made by the Ministry of Transportation and final process of transfer in sales will be approved by the Cabinet,
-A determination commission will be established to define value of shares will be established and a tender commission which is responsible for carrying out sales and tender activities based on the share value approved by the Cabinet will be established; the commission will be composed of 5 members as two from OIB, two from the Ministry of Transportation and one from Undersecretary of Treasury and the Secretarial services of the commission will be carried out by ÖİB.

The Code 5189 of June 16, 2004 for Amendments in Various Codes was in effect to ensure that privatization of Turkish Telecommunication Ltd. Co. would be out of its real value with the most appropriate terms. Therefore, this Code was allowed to privatization of the Turkish Telecom and this process was now official.

The Code also allows foreigners to take part in the tender for the privatization of Telecom. Moreover, more than 50% of total shares will be possible on the condition that the necessary measures to protect national interests regarding national security are taken. Furthermore foreigners may have a share more than 49% at ports.

In addition to these the Code requires the establishment of Turksat Sattelite Communication and Operation Ltd. Co. (Türksat A.Ş.) to carry out satellite services as being subjected to the Code No 6762 for Turkish Trade and Private Laws.

The Code regulates that the fees for radio use and permits for cell phones by the operators to be transferred to Telecommunication Institution.

As required by the Code for Banks, in order to provide a guarantee to payments owned to the state from the companies of which administration and review are transferred to Saving Deposit Insurance Fund (TMSF), new arrangements are made to provide selling of these companies in a short time. According to this the managers of the Fund appointed by the Fund for managing and reviewing these companies may sell more than 49% of the relevant company to foreign natural and corporate persons directly or indirectly.
Within the framework of this decision, the renewal and change processes for any privilege agreement, licenses, permits of the companies involved in telecommunication, energy,

transportation, media and other sectors transferred to the Fund will be completed within two months. This arrangement actually facilitates the sale of privilege and permit of Telsim.

There is also another arrangement to ensure the Treasury to collect all debts from GSM operators in a short time.

Related to the shares to be paid to the Treasury by the operators due to the privilege agreements regarding licensing and operating GSM Pan European Mobile Telephone system, any the Ministry to which Undersecretary Treasury is dependent and the Ministry of Finance will be only authority to collect any unpaid parts of above mentioned with the interest rate shares before the date this Code in a way that they may negotiate with these GSM companies to make them pay their debts. Any agreements as a result of such negotiations will be effect by the resolution of the Cabinet.

3.5.2.3. Entrance to Telecommunication Market

No one can provide telecommunication services and/or establish and operate any infrastructure in telecommunication market unless they have a certificate of telecommunication or general permit issued by Telecommunication Institution or a duty and privilege agreement with Telecommunication Institution upon the Code No 4502 that regulates the entrances to this market. Therefore, the entities will apply for the entrance to the market only after the necessary arrangements are made regarding the terms and conditions of the agreements to be signed with Telecommunication Institution such as the type and conditions of the privilege agreement and type of the services to be covered by the relevant agreement. It is necessary for Telecommunication Institution that it must well define the scope of public service in the process of defining service types so that terms and conditions may enable free and effective competition [235]

According to the directive made by the European Council on licensing (Directive: 97/13/EC) it is requested that member states should issue licenses in a way that less restrictions will put on the companies to be newly entered to the market as much as possible.

[235] TOPKAYA, Ferhat, Ibid, p.46

3.5.2.4. Present Condition

The biggest entity in telecommunication sector as an operator was Turkish Telecommunication Ltd. Co. (TTAŞ) with 100% of state shares until July 2005. TTAŞ had the right of monopoly for cable phone (PSTN) operation upon the framework of the Code No 406. However, a new period was initiated after the tender carried out recently.

There is little real competition in the telecommunications sector, with the exception of mobile telephony, where two 900MHz concessions were awarded to Telsim and Turkcell in 1993 to provide GSM cellular services under a revenue-sharing basis with Türk Telekom. In April 1998, these two operators became stand-alone companies. A partially successful licence sale in April 2000 saw a third GSM licence, at 1800MHz, awarded to a Telecom Italia/IS Bank consortium, for US$2,525 million, although the government failed in its efforts to sell another licence. A further GSM 1800MHz licence was reserved for Türk Telekom, to be awarded after its privatization; with the collapse of the sale in 1998/99, the operator was awarded the licence. Nevertheless, establishing fair and transparent interconnection agreements with the market leaders, Telsim and Turkcell, proved more difficult to achieve than expected, and the IS/TIM business merged with Türk Telekom's GSM 1800 business in February 2004 to create Turkey's only nationwide GSM 1800 platform under the brand name Avea.[236]

Furthermore, a partial liberation was provided for the activities of the companies mainly operating with value added services such as cell phone sector. Within this framework, there are still three cell phone operators, namely Turkcell, Telsim and Avea (after Aria and Aycell joined into one body), actively involved in the mobile telecommunication sector today upon the licenses issued by the suggestion made by Turkish Telecommunication Ltd. Co. in 1988. Agreements on sales for 2 GSM licenses were signed in 1988 and the revenue of USD 1 billion was transferred to the budget. During the first quarter of the sale of the third GSM license was realized and the revenue of approximately USD 3 billion including VAT was gained. It is aimed that the competition in the mobile phone market is to be increased due to two licenses newly issued in 2000.

[236] Market Intelligence Report, August 2005, http://www.espicom.com

3.5.3. THE LATEST DEVELOPMENTS IN TELECOM SECTOR

The telecommunication sector that is very important statute in Turkish economy but it has much more potential has focused on liberalization. The monopoly of Turkish Telecom projected to abolish to liberalization of telecommunication sector in 1 January 2004. Private sector shall enable any service that is given by Telecom Company. The service quality shall be increased and it will enable variation and it will result in competition and cheaper of prices in the market. The whole market is waiting for these developments.[237]

It is ended monopoly of Turkish Telecom in January 2004 and it started issuing licenses on May. 43 New Operator that has taken three different type licenses, on one side going on infrastructure activities on the other side Turkish Telecom and Mobile Operators had become the stage of signing interim connection agreement. But 13 of them had signed interim connection agreement with Telecom Company.

It is mandatory to sign this agreement. But in this field although 13 operators started to work, it is not started to give tariff and services directly affected to consumer by the operators yet. The added value new services of markets players will be considered by 2005. The dominant opinion is that the 42 operators in market are difficult to going on their ways. It is expected to enter competition with Turkish Telecom to choose working together jointly operated companies that were taken license in 2005 in this field. So it is predicted that the number of operators shall be decreased in 10^{th} number. [238]

Dense studies were done on Reference Interim Connection Specification transmitted to New Operated prepared by Turkish Telecom. The items that especially the costs of interim connections, mandatory of establishment of 12 interim connection points in 11 different city specified by Turkish Telecom and the defining prices of 2 Mbps rent circuit tariff of voice circuits are meeting dense. The new operators that will start their activities over rent circuits to corporate customer or available internet lines will be operate Searching Card permanent services that addressed both individual customers and corporate customers by parallel of these services. [239]

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[237] KÜÇÜKKAYA, İsmail, Telekomünikasyonda Liberalleşme Başka Bahara mı?, Akşam, 15 August, 2003
[238] ANDAÇ, Şükrü, Gündem: Özelleştirme ve Birleşmeler... Milliyet 26 December 2004
[239] http://www.probil.com.tr

According to gossips in the market the mobile operator Telsim will be sold after privatization of Telecom Company. The underlying reason for this opinion is the possible selling of Telsim play role of decreasing value of Turkish Telecom or the opinion of obstacle on its sale. The serious candidate of Telsim mentioned European mobile operator Vodafone. In addition to two important selling in sector there are also studies must be done according to EU regulations. So, Turkey shall be enter application of conformity of the EU regulation term about the subjects of liberalization of market, independency of regulative authorities and their power, licensing, interim connection, local communication, universal service. So, after the liberalization term beginning in 2004 in the field of communication the missing studies shall be completed and the start of complete competition shall be enabled.[240]

3.5.4. The Privatization Of Turkish Telecom

The privatization of Turkish Telecom has started to be considered in the years of 1995-96, the value of USD 10 billion was determined for its price; it is considered that 20% of the company would be sold to strategic partner as a block, 1% to public both in domestic and international. Independent Telecommunication Institution (TK) formed to regulate sector in 2000. Two separate tender opened in June and December 2000 and tenders were annulled.

While the privatization of Turkish Telecom was not realized no important investment was done before the privatization in 2001. The Turkish Telecom investments that had increased to USD 1.2 billion in 1993 it decreased to the level of USD 556 million in 1999. While there was a 10% increase in 2000, the investment with the amount of USD 404 millions (TL 497.6 trillions) was done with a 34% decrease in 2001. Turkish Telecom announced that it planned to invest USD 354 millions (TL 602 trillions) in 2002.[241]

Türk Telekomünikasyon AS (Türk Telekom) is the incumbent fixed-line operator with a de facto monopoly over the provision of public voice services. The government had been trying to privatize Türk Telekom since 1993, but political instability and disagreements concerning the proportion of the divestiture continually delayed the issue. In June 1998, the Privatization Administration (OIB) selected a consortium of investment banks led by Merrill Lynch to advise on the privatization of Türk Telekom, which was planned at that time to start at the end of 1998 and finish in early-1999. However, the privatization was delayed by the elections

[240] ANDAÇ, Şükrü Gündem: Özelleştirme ve Birleşmeler... Milliyet, 26 December 2004
[241] ALPSAL, Sibel, Telecommunications Sector Analysis, February 2001, page 2

scheduled for April 1999 and the passage of legislation, prior to the establishment of a regulatory body to oversee market liberalization. The regulator, now known as the Telecommunications Authority (TA), became operational from April 2000.

The privatization effort was resuscitated in late-2000, and Arthur Andersen was appointed in October 2001 to advise on the restructuring of Türk Telekom prior to an initial public offering planned for 2002. However, these efforts also fell by the wayside and it was not until July 2005 that the sale was eventually completed. A consortium led by Saudi Arabia's Oger Telecom (Oger Tel) had submitted the highest bid, at US$6.55 billion. Telecom Italia and BT Telconsult are also part of the winning consortium, although the size of each investor's stake in the consortium had not been divulged at the time of writing. It should be noted that Telecom Italia, through its Telecom Italia Mobile (TIM) company, has a significant stake in Turkey's smallest but fast-growing cellular operator, Avea. Türk Telekom also holds a large stake in Avea, meaning that ownership of the cellular operator could well change later in 2005.[242]

Turkish Minister of Industry and Commerce Ali Coşkun, said that privatization applications might reach $15 billion at the end of this year if no legal obstruction comes out. Coşkun, who took part in the monthly assembly meeting of the Istanbul Chamber of Commerce, said "We exceeded $3 billion in the privatization last year. It is now at the level of $9 billion and we will exceed $15 billion at the end of the year if it is not cancelled by some circles of force." The biggest item of privatization this year is the sale the Turkish Telecom's 55 percent share to Oger Telecom Joint Initiative Group for $6, 55 billion.[243]

3.6. TELECOMMUNICATIONS SECTOR IN THE EU

3.6.1. Introduction

Telecommunication plays a major role in economic, social and cultural growth and development. EU intends to encourage conditions for broader access by community citizens, firms and institutions to the diverse aspects of the information society. The EU is working towards the goal of facilitating the development of a society where new technologies are widely applied. In this framework, the e-Europe Programme, aimed at spreading digital

[242] Market Intelligence Report, August 2005
243 http://www.turkishweekly.net

technology in order to ensure that all citizens are computer-literate, takes on great importance. This initiative finds its place within the sphere of policies directed at reinforcing the economic competitiveness of the EU.[244]

The telecommunications regulatory process in the European Union (EU) should be seen as part of the wider process of the economic integration of Europe initiated by the Treaty of Rome [Original Treaty on the European Economic Community, signed in 1957] . This process was accelerated through the European Community's internal market programme [Set up by the Single European Act, the first important reform of the Treaty of Rome, which entered into force on 01.07.1987] which since the mid-eighties has provided a firm basis inter alia for the development of a common regulatory framework for the telecommunications sector. The broader political framework of the Maastricht Treaty, the Treaty on European Union which entered into force in November 1993, has added an important new element to the legal basis for European integration in the area of telecommunications by means of a Treaty chapter on Trans-European networks.

Main objectives of privatization in the telecommunications sector are;

- establishment of Europe-wide integrated network;
- creation of the Information Society;
- defragmentation of national markets;
- abolition of regulatory inconsistencies among the Member States concerning tariffs, standards, access conditions, public procurement, etc.

The European telecommunications sector has historically been characterised by a strong public service monopoly tradition together with an industrial policy of creating 'national champions'. This environment has created a strong national orientation for the sector, and consequently the loss of the potential opportunities of a European-wide market.[245]

European telecommunications markets have been gradually liberalized since 1990 and a competitive future-oriented communications and network services industry has developed. At the same time consumers and other European companies have taken advantage of the innovative offers of products and services and of enormous price reductions. Since then the

[244] Web site of Italian Ministry of Foreign Affairs: http://www.esteri.it
[245] Status Report On European Union Telecommunications Policy, European Commission, Directorate General XIII, Joint Project on Telecommunications - European Union Document, Brussels, 7 May 1997

communications sector in Europe has been in a phase of continuous transformation. The telecommunications and information technology sectors are gradually converging. Among the infrastructure projects included in the quick start programme intended to stimulate economic recovery, and which constitutes the fulcrum of the European Growth Initiative, are three broad-band communications projects. These projects should accelerate the development of high capacity communications networks and aim at the reduction of the digital divide with more remote areas, by supporting research on mobile technology and boosting the "GEANT" network.[246]

Liberalization of the telecommunications sector in the EU is based primarily on two EU directives that were approved in 1990: the Telecom Services Directive, which established the deadlines for full liberalization and the Open Network Provision (ONP) Directive, which established the framework for access to and use of public telecom networks and services. The EU has approved various directives since 1990 to describe how these directives will liberalize voice telephone service and related infrastructure, the most important being the ONP Interconnection Directive, which is expected to receive final approval soon by the European Parliament and Council. By 1996, competition in basic telecom services was authorized in four EU countries: the United Kingdom. Sweden, Finland and Denmark. Netherlands did likewise on July 1, 1997, and five other EU member states are required to meet the EU deadline of January 1, 1998 -- Austria, Belgium, France, Germany, and Italy.[247]

Liberalization of the market culminated on 1 January 1998 with the complete liberalization of all telecommunications networks and services in almost all EU Member States. (Just Portugal and Greece benefited from derogations until 1 January 2000 and 31 December 2000 respectively.) The developments in technology, innovation in service offerings, lower prices and improvements in quality brought about by the introduction of competition have provided the basis for Europe's transition to the Information Society. The creation of a dynamic and truly competitive Information Society is vital for Europe's competitiveness. Information Society industries contribute around 15% to the EU's Gross Domestic Product; they are the driving force for economic growth and job creation. Already the Information Society creates 1 out of 4 new jobs in the European economy. The introduction and take-up of new communications services can also have a beneficial effect on economic and social cohesion;

[246] http://www.esteri.it
[247] Myles, Denny-Brown, Privatization and liberalization in the European Union - telecommunications industry - includes a related article on Germany, Business America, July 1997, p. 62

Information Society technologies can reduce regional disparities, and mean the "death of distance."[248]

On 1 January 1998 an extensive package of EU legislation entered into force. The 1998 'big bang' was the culmination of a decade-long process, which included the liberalization of data services in 1993 and that of satellite services in 1994. The 1998 package comprised the abolition of all exclusivity rights; licensing principles (transparency, non-discrimination, unlimited number of licenses); interconnection rules (interoperability, obligation to grant access to competitors at cost-related rates); guidelines for the provision of universal services; number portability (important for switching providers and thus sector competition); and it obliged member states to create independent telecom regulators. EU legislation also required governments to license at least four GSM operators per country. In 2001 local loop unbundling formally liberalized the last sub-sector, even though competition for local calls is only slowly gathering pace. The impact of these various policies has exceeded even optimistic forecasts. Within two years after the 1998 reforms, prices for many service categories and countries fell by 20 to 50 percent. Throughout the EU, the sector has witnessed a wave of privatizations, extensive restructuring of former state-owned companies, explosive traffic growth, unprecedented investments in infrastructure modernization, cross-border consolidation, and the creation of hundreds of new companies. Despite the significant difficulties that the sector has recently been experiencing after the bursting of the New Economy bubble, the reform measures implemented during the 1990s have yielded enormous benefits to European economies and consumers. To consolidate previous liberalization measures of the € 160 billion EU telecom market, the Commission issued streamlined regulations in 2001.[249]

The regulatory framework was updated by the EU in March 2002 which stipulates for all Member States of the EU must adapt national legislation implementing the new Directives by 24 July 2003.

The new directives are intended to provide a coherent and flexible approach to the regulation of electronic communication networks and services. The new policy framework takes account of the convergence of telecommunications, broadcasting and IT sectors and reinforces

[248] Regulatory framework for electronic communications in the European Union Situation in September 2003, European Commission Directorate-General for Competition, Brussels, 2004, p. 317
[249] http://www.ppmi.org/infrastructure_sector_reform.htm

competition in all market segments. The proposals provide a lighter regulatory touch where markets have become more competitive yet ensure that a minimum of services are available to all users at an affordable price and that the basic rights of consumers are protected. This framework does not cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services.

The legal basis of privatizing the telecommunications industries in EU is:[250]

- Articles 28-31 (30-37) (free movement of goods).
- Articles 43-55 (52-66) (freedom to perform services and the right of establishment).
- Articles 81, 82, 86 (85, 86, 90) (competition).
- Articles 95 (100a) (standardisation).
- Articles 154-156 (129b, c, d) (trans-European networks).
- Articles 157 (130) (industry).

of the EC Treaty.

The components of the EU electronic communications policy are:[251]

- **Framework Directive** - a common regulatory framework for electronic communications networks and services - addresses basic topics including the independence, procedures and transparency of national regulatory authorities, numbering, rights of way, co-location and facility sharing, and standardisation.

- **Access and Interconnection Directive** - guidance for national regulators on how to ensure interoperability and competition - harmonizes the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities. The aim is to establish a regulatory framework for the relationships between suppliers of networks and services that will result in sustainable competition, interoperability of electronic communications services and consumer benefits. Defines obligation of non-discrimination.

[250] European Parliament Fact Sheets, Telecommunications, 2001, p. 7
[251] http://www.internetpolicy.net/telco/

- **Authorisation Directive** - setting forth the rule that, except with respect to radio frequencies and numbers, the provision of electronic communications networks or services may only be subject to a general authorisation. An undertaking may be required to submit a notification, but may not be required to obtain an explicit decision or individual license or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, an undertaking may begin activity.

- **Universal Service Directive** - the aim of this Directive is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. Establishes the rights of end-users and the corresponding obligations on service providers. Defines the minimum set of services of specified quality to which all end-users have access, at an affordable price.

- **Regulation on Unbundled Access to the Local Loop** (2000) -- gives national regulators detailed guidance on how to give new entrants access to the copper wire "local loop" of the former monopoly service provider.

- **Consolidated Directive on Competition** in the market for communications services - addresses enabling the competitive provision of a full range of electronic communications services, including broadband multimedia and high-speed Internet.

- **Data Protection Directive** for the telecommunications sector - addresses the processing of personal data and the protection of privacy in the electronic communications sector.

These important changes are translated into seven central points:[252]

- A simplification of the EU telecom regulatory instruments;

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[252] Economics of Antitrust and Regulation in Telecommunications: Perspectives for the New European Regulatory Framework/ed. by Pierre A. Buigues and Patrick Rey. Cheltenham: Edward Elgar, 2004, p. 241

- A broadening of the scope of market regulation under 'electronic communications', which covers broadcasting networks, telecoms and cable TV network services;
- "*Technological neutrality*" of the regulator is achieved by considering the nature of services provided to end users, instead of looking at the different network infrastructures. Therefore, telecom networks (fixed and mobile) and broadcasting networks (cable, satellite and terrestrial) are different technologies providing the same type of services to users;
- An increase of the role of the European Commission by ensuring a better coordination with National Regulatory Agency. The objective is to ensure homogeneity between Members States regarding the implementation of the new regulatory framework;
- Regulators can now grant general authorisations, instead of the previous licenses, which means that any firm will be able to offer similar services, to build a network, and to enter into competition with other operators;
- The application of the principle of general competition will now prevail over previously sector-specific regulation. These changes will modify issues such as '*Significant Market Power'* (SMP), and therefore the concept of '*Dominance'* will be used as stated in the EU Competition Law. Furthermore, others factors will be considered such as '*the control of essential facilities'* and '*the absence of potential competition'* Therefore, a dominant position in a relevant market will be considered from the regulatory authority only if the operator's market share exceeds 40 per cent instead of the previous 25 per cent of SMP as stated in the 1998 Communications package (Article 82 of the EC Treaty); and
- The market analysis assessment will be performed more often by National Regulatory agencies in order to determine whether there is a need to implement ex-ante regulation in a relevant market.

At this point, let us have a look at the past and try to understand what kind of a route liberalization process of telecommunications sector has followed:[253]

[253] Web site of Irish Ministry of Communications, Marine and Natural Resources: http://www.dcmnr.gov.ie

3.6.2. Chronology of Telecommunications Liberalization and Regulatory Developments

28 June 1990

Council Directive 90/387/EEC on establishment of the internal market for telecommunications services through the implementation of open network provision (ONP Framework Directive) adopted. Commission Directive 90/388/EEC on competition in the markets for telecommunications services adopted. The framework Directive set out harmonised conditions in relation to access to public telecommunications networks. The Commission Directive provided for the liberalization of telecommunications services other than voice telephony.

3 March 1992

European Communities (Telecommunications Services) Regulations, 1992 (S.I. No. 45 of 1992) signed. These Regulations, which transposed the 1990 Directives into the law systems of Member States, provided for limitation of telecommunications monopolies' exclusive privilege in accordance with the Directives, required them to comply with the ONP rules and made further provision for the licensing by the Minister of telecommunications services outside TEs exclusive privilege, i.e. value-added services.

22 July 1993

Council Resolution adopted which, inter alia, supports Commission intention to prepare before 1 January 1996 the necessary amendments to the Community regulatory framework in order to achieve liberalization of all public voice telephony services by 1 January 1998. In order to allow Member States with less developed networks, i.e. Spain, Ireland, Greece and Portugal, to achieve the necessary structural adjustments, in particular of tariffs, these Member States are granted an additional implementation period of up to five years.

2 November 1994

European Communities (Leased Lines) Regulations, 1994, (S.I. No. 328 of 1994) signed. These Regulations, transposing Council Directive 92/44/EEC on leased lines into the law systems of Member States, laid down requirements on telecommunications monopolies regarding the provision of leased lines to other operators.

1 January 1996

Commission Directive 95/51/EC of 18 October 1995 regarding abolition of restrictions on the use of cable TV networks for the provision of already liberalized telecommunications services enters into force. Member States have 9 months to notify Commission of compliance.

16 February 1996

Commission Directive 96/2/EC of 16 January 1996 on mobile and personal communications enters into force. Member States to abolish restrictions on the establishment by mobile operators of their own networks and to allow direct interconnection of mobile networks with other mobile and fixed networks. Member States with less developed networks shall be granted on request an additional implementation period of up to five years to the extent justifiable by the need to achieve the necessary structural adjustments.

12 April 1996

Commission Directive 96/19/EC of 13 March 1996 on implementation of full competition in telecommunications markets enters into force. Member States may maintain exclusive rights for voice telephony and public telecommunications networks until 1 January 1998 but must ensure that all remaining restrictions on services other than voice telephony on alternative infrastructures are lifted by 1 July 1996. Member States with less developed networks shall be granted on request an additional implementation period of up to five years provided it is needed to achieve the necessary structural adjustments.

May 1997

European Parliament and Council Directive 97/13/EC on telecommunications licensing entered into force. Member States to transpose it into national law by end December 1997.

31 July 1997

European Communities (Telecommunications Infrastructure) Regulations, 1997, S.I. No. 338 of 1997, signed. These Regulations, which transposed Directives, 95/51 and 96/19 into the law systems of Member States provided for the licensing of networks for the provision of liberalized services and the removal of restrictions on the provision of liberalized services on cable TV networks.

August 1997

European Parliament and Council Directive 97/33/EC on telecommunications interconnection entered into force. Member States to transpose it into national law by end December 1997.

October 1997

European Parliament and Council Directive 97/51/EC amending the 1990 Framework and 1992 Leased Lines Directives entered into force. Member States to transpose it into national law by end December 1997.

March 1998

European Parliament and Council Directive 98/10/EC on voice telephony and universal service entered into force. Member States to transpose it into national law by end June 1998.

September 1998

European Parliament and Council Directive 98/61/EC providing for the introduction of number portability and carrier pre-selection adopted.

May 2000

Adoption of European Commission Recommendation on unbundled access to the local loop. Member States recommended to mandate by 31 December 2000 full unbundled access to the copper local loop by operators with significant market power in the public fixed network under transparent, fair and non-discriminatory conditions.

July 2000

Publication by European Commission of proposed new regulatory package for electronic communications, consisting of a proposed Framework Directive and 4 other Directives, a proposed Regulation on local loop unbundling, a proposed Europan Parliament and Council Decision on radio spectrum management and a draft Commission Decision, under Article 86(3) of the Treaty establishing the European Community, consolidating the Liberalization Directives.

December 2000

Regulation on local loop unbundling adopted imposing directly on operators with significant market power in the public fixed network the obligation from 31 December 2000 to meet reasonable requests for unbundled access to the local loop.

April 2002

Four European Parliament and Council Directives on Electronic Communications Networks and Services (Framework, Authorisation, Access and Universal Service) published in the Official Journal of the European Communities.

July 2002

European Parliament and Council Directive on Electronic Communications Data Protection published in Official Journal of the European Communities.

3.6.3. The Latest Situation concerning Implementation of the Directives

Despite claims by the European Commission 2004 Implementation Report that the electronic communications sector is 'characterised by an increasingly positive outlook', the fact remains that non-incumbent network operators and service providers continue to face severe market conditions and an unfavourable regulatory situation, characterised by the exercise of entrenched market power by the ex-monopolies. There is therefore a long way to go before the EU delivers a level playing field for all competitors in the market, thereby promoting innovation.

Although the Directives are now transposed in most Member States, it is clear that the European Commission shares the concerns also identified in the Kok report that without strict enforcement of the rules, there will not be sufficient competition to drive down prices and foster innovation for consumers and users.[254]

The Regulatory Scorecard report which was produced by Jones Day, Strategy and Policy Consultants Network (SPC Network) and ECTA, the European Competitive Telecommunications Association in May 25, 2004 finds that investment in telecommunications is much higher in those Member States where an independent regulator has most effectively implemented telecommunications regulation. In summary the report shows that;

- Regulatory effectiveness varies significantly across Member States even though the common objective, agreed by Member States in EU legislation, is supposed to be the creation of a single European market with a level playing field.

- Levels of total investment (by incumbents and new entrants combined) in telecoms vary significantly between Member States.

- There is a strong and positive relationship between levels of investment and levels of regulatory effectiveness.[255]

[254] KIEDROWSKI, Tom, A long way to go - Europe still doesn't have competitive telecom markets European Competitive Telecommunications Association, Brussels, 6 Dec 2004
[255] European Competitive Telecommunications Association, A single market in telecommunications?, Brussels, 25 May 2004, p. 2

To sum up the process is not complete yet. The European telecommunications market cannot yet be described as truly pan-European, although increasing numbers of operators are pursuing a pan-European business strategy. National licensing regimes vary widely from Member State to Member State, causing difficulties for pan-European operators (especially in the satellite sector). Incumbent operators remain dominant in their national markets, especially at the level of the local loop, where as yet new entrants have made only minor inroads into the incumbent's market share. Europe must address these issues so as to be able to consolidate and build upon the successes of liberalization.[256]

3.6.4. Major Telecom Privatizations In The EU Area

3.6.4.1. British Telecom (BT)

UK is a pioneer force in the EU because of its early liberalization and privatization processes in most of its sectors. Telecommunications sector is not an exception.

The UK telecommunications case is special for at least three reasons:

• It was the first country to liberalize telecommunications in Europe.
• It is among the few countries in Europe that totally privatized the sector.
• It was usually considered as the one model of the sector specific independent regulatory system.[257]

Until 1981, telecom in Britain was the responsibility of the Post Office, a state owned monopoly.[*] In 1981, the government passed the 1981 Telecom Act which separated the telecom and postal services and established British Telecom (BT) - a government agency. Based on the government commissioned Beesley Report, BT's monopoly over customer premise equipment with the exception of first phone was terminated and licensed network entry was allowed. This feature allowed the government to license Mercury, a subsidiary of Cable and Wireless, which was itself a part of the governments' privatization program, for

[256] European Commission Directorate-General for Competition, Regulatory framework for electronic communications in the European Union Situation in September 2003, Brussels, 2004, p. 317
[257] FINGER, Matthias & VOETS, Annelies, Comparative study on the effectiveness of telecommunications regulators, Ecole Polytechnique Federale de Lausanne, Lausanne, 2003, p. 26
[*] "When we first examined the nationalized British Telecom," said Lawson, "we discovered that, in true East European style, the corporation had not the faintest idea which of its activities were profitable and which were not, let alone any finer points of management accounting." Added David Young, "British Telecom was a total mess..." (Daniel Yergin & Joseph Stanislaw, Commanding Heights, 1998 ed., N.Y. p. 119)

providing network services in competition with BT. Mercury obtained its first license in 1982. Telecom services in UK operated predominantly under a duopolistic structure from 1982 onwards. In 1983, government announced its duopoly policy according to which, other than, BT and Mercury, no other operators would be allowed to offer public fixed-link voice telephone until the duopoly review in 1991-92. Value added services (VAS) were, however, liberalized and there were a few impediments to entry.[258]

The Telecommunication Act of 1984 initiated the privatization and liberalization process of the British telecommunications industry. This new Act introduced considerable innovations and reforms. It first initiated the privatization of BT by the sale of 50.2 percent of its equity and raised £3.9bn (5.77 billion €) for the government. Secondly, it confirmed Mercury as the sole competitor to BT until 1991. Thirdly, it created Oftel (Office of Telecommunications) as the regulator of the telecommunication industry.

The period between 1984 and 1991 is known as the 'duopoly policy' phase. This seven- year period was intended to give Mercury the time to build its own network and to become a solid competitor to BT. This strategy largely failed. In 1991, BT had lost only 4% of its market share mainly in the profitable international business segment. As a consequence, the government undertook the so-called 'duopoly review' which resulted in the liberalization of the local and long distance markets for cable television operators, access providers (voice and data), utilities companies (electricity), and international simple resale operators.[259]

In 1985, the first cellular operators BT Cellnet (now O2) and Vodafone began their commercial services. In 1993, two new operators, Orange and Mercury One to One were granted mobile licenses.

In 1990, the Broadcasting Act became effective. The Independent Television Commission (ITC) was given the powers to grant cable TV franchises and to monitor the broadcasting licenses.

In December 1991, the government sold 1,350 million BT shares and reduced it ownership to 25.8%. In 1993, the government sold its remaining shares in BT.

[258] JAIN, Rekha, Privatization of British Telecom: Lessons for India, Indian Institute of Management, Ahmedabad, 1997, p. 1
[259] FINGER, Matthias & VOETS, Annelies, Ibid, p. 43

In June 1992, the Competition and Services (Utilities) Act became effective and gave powers to the Director General of Telecommunications (DGT) of Oftel to set quality standards in telecommunications.[260]

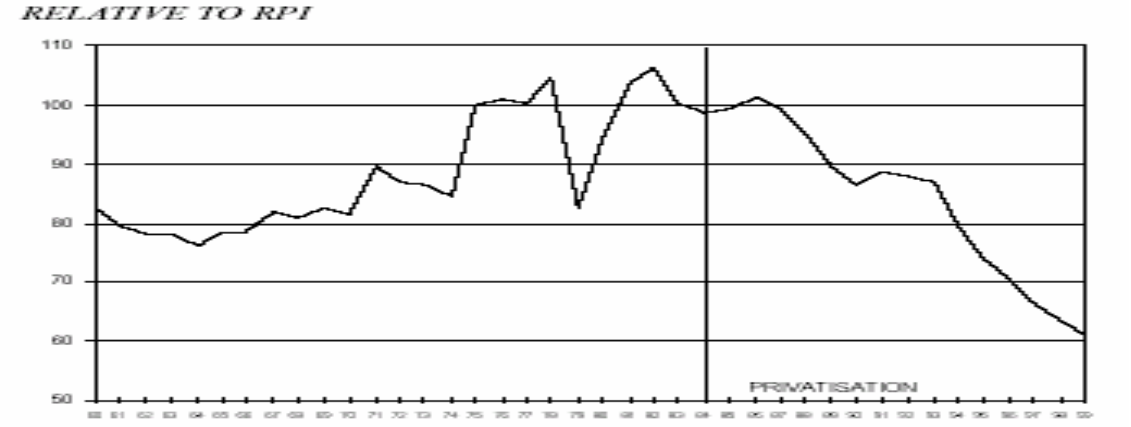
In 1998, the new Competition Act increased the powers of the DGT in regards to competition regulation. Oftel can give fines (up to 10% of a company's turnover in the UK), enter the premises of the operators for investigations and give binding directions. Until today the DGT never exercised its financial sanction power. This new act represented the first step toward a progressive shift from a sector specific regulation style to a more competition oriented one. Indeed, it gave concurrent powers to the DGT and the Director General of Fair Trading. In 2003, the Communication Bill should be enacted and create Ofcom, the new superregulator of the communication sector through the integration of five different regulatory authorities (see section 6.1.5) including Oftel.

Despite all those liberalization movements, relatively the market share of the companies did not change rapidly. At the end of 1996 there were 126 cable operators authorised to deal directly with the public. In 1995, for the first time ever, there was a fall in the number of domestic subscribers to BT, while competition was more ruthless in the business sector and for international calls. Even so, in 1997 British Telecom still had about 90% of the telecommunications market and 20 million subscribers (Mercury had 375,000, and many of the other licences were not operative).[261]

No matter how high the market share of BT compared to the others, competition showed itself in the prices:[262]

[260] GENOUD, Christophe, Comparative study on the effectiveness of telecommunications regulators in the UK, Ecole Polytechnique Federale de Lausanne, Lausanne, 2003, p. 3
[261] FLORIO, Massimo, The welfare impact of a privatization: the British Telecom case-history, Working Paper n.08., Dipartimento di Economia Politica e Aziendale, Università degli Studi di Milano, June 2001, page 3
[262] FLORIO, Massimo, Ibid, page 5

Telephone Price Index (1975=100)



3.6.4.2. Deutsche Telekom (DT)

Germany's first public telephone networks were set up in 1881, but the telephone business remained a part of the Deutsche Bundespost until 1989, when in a first step towards improving customer satisfaction and loyalty, the state organization was divided into three independent companies of postal, banking and telecommunications units: Postdienst, Postbank and Telekom.[263] Deutsche Telekom did not emerge as a state-owned joint stock company until 1995. Superb technological achievements and an unwieldy, bureaucratic structure, characterize the company's early history. Germany's business customers faced some of the highest long-distance and international calling prices in Europe, combined with poor service from a government organization that had little regard for commercial realities. The extent of customer discontent was measured in a 1995 survey, which found that more than 70% of German companies would switch some of their telecommunications business to another operator, given the opportunity.

Germany has one of the world's most technologically advanced telecommunications systems. Following the 1994 European Union (EU) meeting, Germany was quickest in embracing deregulation and privatization. As the largest telecommunications market in Europe, competitors, foreign and homegrown, scrambled to try to gain a piece of the newly deregulated market that once belonged solely to Deutsche Telekom. The government sold off 20% of its stake in DT in November of 1996 in a $13B IPO, with planned follow-on sales of stock in the years to come. With Dr. Ron Sommer, a former Sony executive, at the helm, and with competition flourishing in Germany, DT is working hard to lose its bureaucratic

[263] Deutsche Telekom, Making Tomorrow Happen – 10 years of Deutsche Telekom AG, 2005

image and reposition itself as a slimmer, customer-friendly organization by eliminating jobs, reducing rates, and offering discount plans. The company is organized around four business units: access, data and IP systems, consumer Internet and mobile.[264]

With a share of 28%, Germany is the single largest Telecommunication market in Europe and is fully liberalized since January 1, 1998. As a result of intensive capital expenditures since reunification, the formerly backward system of the eastern part of the country is being rapidly updated to the most advanced technology. Germany is served by an digitized switching system connected by modern networks of fiber-optic cable, coaxial cable, microwave radio relay, and a domestic satellite system. The fiber-optic cables build up the most dense network in the world. Cellular telephone service is widely available and includes roaming service to many foreign countries.

Up to July 1, 1989 the *Deutsche Bundespost (DBP*) was a largely autonomous administration on the federal level providing postal, telecommunication and banking services. The Federal Ministry of Posts and Telecommunications (*BMPT*) exercised regulatory functions for German telecommunications and simultaneously management functions for the enterprise DBP.[265]

On July 1, 1989, the first level of liberalization of the telecommunications market was implemented, through the Law for Restructuring the Postal Services and Telecommunications (Post Reform 1). The DBP was divided into three public enterprises that would provide the services of the former DBP: *Deutsche Bundespost Telekom, Deutsche Bundespost Postdienst, Deutsche Bundespost Postbank*. Most of the technically skilled employees in the field of telecommunications left the DBP to join the newly created Deutsche Bundespost Telekom.

In the same year, competition in the mobile market was introduced with the first license granted to the operator Mannesmann on February 15, 1990. The second wave of liberalization came in 1995, with the Post Reform 2 and resulted in Deutsche Bundespost Telekom being transformed into a publicly traded corporation with a first initial offering of 2 million shares in the fall of 1996. Its name changed to Deutsche Telekom AG (DTAG).

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[264] McKINNEY, Ryan, SPRAFKA, Brian, WALLACE, John, Non-Market Strategies in Mergers&Acquisitions: A Case Study of Deutsche Telekom, Northwestern University, Kellogg School of Management, Student Project, December 2000, p.2

[265] Telecommunication Infrastructure, http://www.american.edu/initeb/es0939a/Infrastructure.htm

Further steps of liberalization were taken on July 31, 1996 with the Telecommunications Act TKG (Post Reform 3). The Act provided the basis for the transformation of the German telecommunications market from a former state monopoly into a competitive environment. Real competition in all telephony markets was not introduced until January 1, 1998, the European deadline for liberalization of the telecommunications market. From that date, the RegTP superseded the former BMTP and competition entered in all telecommunications markets including the unbundling of the local loop.[266]

According to the July 2005 datas; shareholder structure of DTAG is about 63 percent free float, about 15 percent owned by the Federal Republic of Germany, about 22 percent owned by the KfW banking group.[267]

Although DTAG boasts a very impressive market share, it also has a large debt burden[*], like many other incumbent operators in the EU. DTAG's current debt burden approaches 64 billion € and has 4 main origins:[268]

- Modernization of its network in 1998 to remain competitive with new market entrants.
- Acquisition of foreign telecom operators such as Voicestream in the US and participation in the main Croatian telecommunications operator.
- Acquisition of 3G licenses in Germany, Austria, the Netherlands and the UK.
- Global economic slowdown of the German economy since 2001 and of the telecommunications sector worldwide.

3.6.4.3. France Telecom (FT)

The full privatization of France Telecom process required three steps. The first one was the transformation of the PTT administration into two para-statal entities – this has been done by an act voted on July 2, 1990 creating La Poste and France Telecom. A large scale public debate was organized beforehand by the Ministry of PTT to prepare the move. The unions were satisfied by the guarantees offered that the personnel would remain mostly public

[266] VOETS, Annelies, Comparative study on the effectiveness of telecommunications regulators in Germany, Ecole Polytechnique Federale de Lausanne, Lausanne, 2003, p. 3
[267] Web site of Deutsche Telekom, http://www.telekom3.de
[*] As of December 2004, the company's long term debt was 34.09 billion Euro and total liabilities (i.e., all monies owed) were 69.88 billion Euro. The long term debt to equity ratio of the company is 0.90. (Comparative Business Analysis: Deutsche Telekom, February 2005 - http://www.corporateinformation.com)
[268] Voets, Annelies, Ibid, p.4

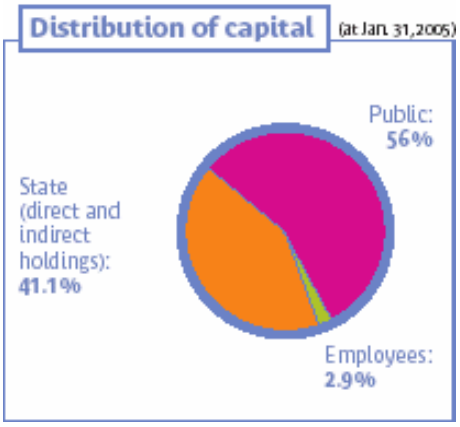
servants and that no further change was prepared, except for another act voted on December 29, 1990. This last act introduced the changes needed by the new European regulatory regime following the 1987 Green Book on telecommunications. However more changes were soon needed to cope with the decision, taken in 1993 at the European level, to have full competition in 1998 in the telecommunication sector. The French government, pushed by the top management of France Telecom, decided to make an initial public offering (IPO) of the company in 1995. The change of statute was mainly justified by the international ambitions of France Telecom, after several promising deals abroad (Argentina, Mexico, and above all a strategic alliance with Deutsche Telekom and Sprint). However, the IPO was delayed by protests of the trade unions and the many other social problems encountered by the government at that time. In 1995, after the elections, a new CEO was named (Michel Bon) with a clear mandate to manage the change of statute and the IPO. To prepare the introduction of full competition in 1998, a second telecommunications act was passed in 1996 to transpose European directives.[269]

Then the second step came out. The IPO was planned for the spring of 1997 and a lengthy internal communication process took place to overcome the strong opposition from the unions despite the promise of the government that the state would keep control of the firm. But the center-right Juppé government lost the legislative elections at that time and was replaced by the Jospin government (socialist). The new Prime Minister asked for a "social audit" of the whole process (the socialists being traditionally against privatization) but finally gave the green light to the IPO, understanding that the government was unable to finance the development of France Telecom in the new international competitive context.[270] The IPO took place in the Fall of 1997 and netted €29 bn. The state kept 75 % of the capital; 4 million individual shareholders asked 3 times the number of available shares and finally got 10.55 % of the capital. Financial institutions obtained 11.95 % (they had asked 20 times the number of available shares) and 70 % of the personnel of France Telecom bought 2.5 %. A second public offering took place in 1998 and netted €9 bn.[271]

[269] BERNE, Michel & POGOREL, Gérard, Privatization Experiences In France, Cesifo Working Paper No. 1195, Industrial Organisation, May 2004, p.7
[270] BERTOLUS J.J., CEDRO J.M. & T. Del Jesus, Who ruined France Telecom? Paris: Hachette, 2003, p.43
[271] BERNE, Michel & POGOREL, Gérard, Ibid, p.8

The partial privatization of FT provided capital and stock that allowed FT to make the acquisitions and other necessary investments to become a truly global operator (customers in 22 countries). In fact, FT earns 36% of its revenues from outside of France and 10% of its shareholders are non-French. FT's mobile division, Orange, has subsidiaries in every EU member state except Spain.[272]

The last step will happen when the state sells its last share of France Telecom. Yet the state has still a great deal of share. According to the FT Shareholder's News Letter No. 9 March 2005, the structure of shareholders is as shown in the below figure:



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The table below shows the latest privatization activities done in the EU area:

[272] BERNE, Michel & POGOREL, Gérard, Ibid, p.9

PRIVATIZATIONS IN TELECOMMUNICATIONS SECTOR IN THE EU AREA SINCE 2001

Date	Year	Company Name	Country	Area	Sector	% for Sale	Value of Transaction in US$ million	Method of Sale
	2001	Globtel GSM	Slovakia	New Europe	Telecommunications	36	180	PS
	2001	SiMobil	Slovenia	New Europe	Telecommunications	75	138	PS
2001-01-12	2001	Antenna Hungaria Rt.	Hungary	New Europe	Telecommunications	NA	2.61	PO
2001-02-01	2001	Trafficom Kft	Hungary	New Europe	Telecommunications	99	9.12	PS
2001-06-20	2001	Telia Finland Oy	Sweden	Old Europe	Telecommunications	100	41.15	PS
2001-09-01	2001	Telekomunikacja Polska SA (TPSA)	Poland	New Europe	Telecommunications	12.5	902	PS
2001-10-08	2001	SFP (Societe Francaise de Production)	France	Old Europe	Telecommunications	100	4.2	PS
2001-10-16	2001	Ceske Radiokomunikace AS	Czech Republic	New Europe	Telecommunications	51.19	178.76	PS
	2002	Antenna Hungaria Rt.	Hungary	New Europe	Telecommunications	10	0	PS
2002-06-13	2002	Hellenic Telecommunications Organization SA (OTE)	Greece	Old Europe	Telecommunications	8	627.8	PO
2002-12-09	2002	Telecom Italia SpA	Italy	Old Europe	Telecommunications	3.5	1380.5	PO
2003-09-19	2003	Koninklijke KPN NV	Netherlands	Old Europe	Telecommunications	12	2315.5	PO
2003-11-10	2003	Telekomunikacja Polska SA (TPSA)	Poland	New Europe	Telecommunications	8.66	436.4	PO
2004-02-03	2004	Cesky Mobil AS	Czech Republic	New Europe	Telecommunications	3.62	23.61	PS
2004-04-02	2004	Telekomunikacja Polska SA (TPSA)	Poland	New Europe	Telecommunications	1.94	108.3	PO
2004-07-08	2004	Pages Jaunes (France Telecom)	France	Old Europe	Telecommunications	36.3	1790	PO
2004-09-02	2004	France Telecom SA	France	Old Europe	Telecommunications	10.85	6214.5	PO
2004-10-11	2004	Deutsche Telekom AG	Germany	Old Europe	Telecommunications	4.67	4442.48	PO
2004-10-29	2004	Belgacom SA	Belgium	Old Europe	Telecommunications	5.3	684.6	PO
2004-11-08	2004	TDF (France Telecom)	France	Old Europe	Telecommunications	36	502	PS
2004-12-02	2004	Telekom Austria AG	Austria	Old Europe	Telecommunications	17	1430	PO
2004-12-08	2004	TeliaSonera	Finland	Old Europe	Telecommunications	5.3	1459.9	PO
2005-01-19	2005	Koninklijke KPN NV	Netherlands	Old Europe	Telecommunications	6	1309.3	PO
2005-04-12	2005	SPT Telecom AS (Cesky Telecom AS)	Czech Republic	New Europe	Telecommunications	51.1	3507.3	PS
2005-06-06	2005	France Telecom	France	Old Europe	Telecommunications	6.2	4176.64	PO

Source: Privatization Barometer, 2005

CONCLUSION

Within a few days, Turkey is to start accession negotiations with the EU. There have been much done up to now but it is sure it will never be enough. Liberalizing the markets is one of those topics where some has been done but still there too much process to be achieved.

By the directives of liberalization in the energy and telecommunications sectors, EU markets are about to be a single market where borders are really have been opened. Sure the process is not enough in some of the countries just like us. But the Commission sends warnings to those which move slowly and these put the process in a way.

Turkey, until now, tried to liberalize the energy and telecommunications markets but it could only be at a limited degree. Also privatization dealings are going well through. 51 per cent share in Türk Telekom that belongs to the State has been sold in the summer of 2005 at a good price of six and a half billion USD. Also Tüpraş will be sold within a few weeks where a good price is being expected. So the fresh money the country really needs can be earned by these transactions. Besides, the state quit its hand from the economic relations directly that has been a big problem for the country as a whole for years.

With that Turkey has done untişl now, we can easily assume that it can adapt regulations put in the EU. Until now, liberalization process could not be achieved as said above. The customers can not choose their suppliers at the moment but the achievements up to now give the idea that Turkey can do much more when the appropriate situation occurs.

In this study, the privatization and liberalization processes in Turkey and the EU have been examined and tried to draw a route map for Turkey in order to meet the requirements of full membership. It is not difficult to say that Turkey is not far from some of the Member States regarding privatizing and liberalizing the energy and telecommunications sectors. Just to be decisive and to seriously analyse the privatization and liberalization conditions are the only concepts we need.

What we see in the directives and general philosophy of the EU is that the compulsory way to the Member States is to liberalize their markets and give the opportunity to the customers to choose their suppliers. By the way privatization is not a must for the EU but it is a modern view of economical understandings so most of the EU Member States privatize SOE.

When we think of Turkey, for the perspective of EU candidacy, both privatization and liberalization processes are very important. It is true that the EU does not impose to privatize the SOE's but these enterprises effect the economical performance of the governments negatively. So it indirectly effects the accession negotiations. Liberalization, on the other hand, is compulsory according to the directives of the EU. So Turkey has to achieve the liberalization process both for the membership perspective and also for its citizens as customers who buy these services.

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