

A critical Analysis of the strategic sector Privatization in Macedonia

Assoc. Prof. Dr. (PhD Uni Graz) Endri Papajorgji

Dean of the Faculty of Law at Tirana Business University College, Tirana, Albania

Abstract

The Macedonian government did not draft a specific strategy for the privatization of the strategic sectors. The Privatization law did not apply to companies that managed waters, forests, gambling, banks, financial and insurance organizations and monopoly companies (Art. 3 of the Privatization law). The privatization process of the strategic sectors was first implemented by special laws and amendments to the privatization law in 2000, which introduced the tender sale procedure as the standart one. The Privatization Agency was not responsible for the privatization of strategic companies. Instead, they were proposed by the relevant ministries for privatization, while a Commission under the Ministry of Economic Affairs was responsible for implementing the procedure. As in Albania, this process has been supported by the IMF and WB as well as by international consulting firms with good technical and financial knowledge in the privatization and restructuring process in the search for strategic investor (Rattner, Forman, 2000, 24). In this sense main objective of this manuscript is the analysis of the strategic sector Privatization in Macedonia.

Keywords: Macedonia, Analysis, commercial law, strategic sector privatization.

Introduction

The privatization process began with the privatization of Fa OKTA, the only oil company in Macedonia. As a result of the Greek embargo, the financial situation of this public oil company in 1999 was very difficult (Barlet, 2008, 69). The Macedonian government entered into negotiations with the Greek companies *Hellenic Petroleum and Meton Etep* (the Greek state owns the majority of shares) in 1998 and took further steps to privatize the company the following year. In 1999, the first amendment of the privatization law entered in force. It foresaw direct sales to strategic investors. As a result, in May 1999, the privatization contract for the sale of Fa OKTA to the group *EL. P. ET. Balkaniki* for a price of 32 million US \$ (payable in three installments) was completed.¹

In 1993, before being privatized, OKTA signed a 10 year contract with the Greek oil company *Mamidakis Jetoil AG* for the distribution of the oil imports of OKTA and processing at the facilities of *Jetoil* in Thessaloniki, Greece. Until 1999, this contract was respected; after the privatization in favor of *Hellenic Petroleum* not anymore, because the oil was processed in the facilities of *Hellenic Petroleum* in Thessaloniki, the direct competitor of *Maimadiks Jetoil AG* (Velkova, 2007, 2). Because of alleged breach of contract *Mamidakis Jetoil AG* sued the Macedonian Fa OKTA AG 2004 before the arbitration court in London. The London Court of Arbitration recognized a payment

¹ ICG, Balkans Report – Macedonia's public secret – How corruption drags the country down No 133, 2002, 15 (16), <http://www.crisisgroup.org/~media/Files/europe/Macedonia%2015.pdf>.

of \$ 17 million in damages for the four-year breach of contract.²

The privatization process continued with the privatization in the telecommunications sector, with the privatization of Macedonia's state-owned telephone company, *Mak Tel AG*. The Macedonian government contracted as a consultancy firm *CIBC Woody Gundy Oppenheimer*, an internationally recognized investment bank, and the international law firms *Squire Sanders L.L.P & Dempsey and Coopers & Lybrand*, one of the world's leading telecommunications accountancy firms and consulting firms for the development of the privatization strategy.³ 51 percent of the shares of *Mak Tel AG* were sold after further amendments to the privatization law on 15.1.2000 to a consortium of the Hungarian telecommunications company *MATAV*, a company of the *Deutsche Telekom Group*, for 320 million US \$.⁴ The international tender sale procedure was implemented. On 1.6.2001 *T-Mobile Macedonia AG* was established as a subsidiary of *Mak Tel AG* as the first mobile communications company (GSM). In April 2006, the commission of the Ministry of Economy decided to privatize the remaining shares of *Mak Tel AG* (45.1%) through public auctioning on the Macedonian Stock Exchange. The shares were sold in three days.⁵ The Macedonian state retained only a 2% share in *Mak Tel AG*.

The second license of the GSM provider was sold in November 2001 for 28.5 million euros with the tender sale procedure to the Greek *OTE AG*,⁶ the third license in 2007 was privatized in a tender sale procedure to *Mobilkom Austria AG*.⁷

In the energy sector, in November 2002, the Macedonian government mandated the Ministry of Economy and the *Fa Electropanstvo na Makedonija*, the state electricity supplier of Macedonia, to implement the reform of the *ESM* restructuring in cooperation with the government consultants.⁸ On March 19, 2004, the "Law on the Reform of *ESM* Macedonia AG for Production, Transmission and Distribution of Electric Power in State Property" entered in force.⁹ Articles 1 and 2 of this law defined the legal objectives that should be followed by the restructuring and privatization of the *ESM*. According to Articles 4, 5 and 6, the *ESM* should be divided into three public limited companies, namely:

- Public limited company for the distribution and supply of electricity (AD za proizvodstvo, distribucija i snabduvanje so električna energija = *ESM*),
- Public limited company for production (Energijata na Makedonija AD = *EMEL*) and
- Public limited company for the Network Management (Makedonski Elektroprenosen Sistem Operator = *MEPSO*)

² http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2007/08/23/feature-03.

³ Abazi, Strategic Sector privatization in Macedonia 2009, 53, http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf.

⁴ EBRD, Transition Report Macedonia 2001, 146 (147).

⁵ EBRD, Transition Report Macedonia 2006, 118 (118).

⁶ EBRD, Transition Report Macedonia 2002, 150 (151).

⁷ EBRD, Transition Report Macedonia 2007, 130 (130).

⁸ Abazi, Strategic Sector privatization in Macedonia 2009, 51, http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf.

⁹ Zakon za preobrazba na Elektrostopanstvo na Makedonija Akcionersko Drushtvo za proizvodstvo, prenos i distribucija na električna energija vo drzhavna sopstvenost, Sl V RM 2004/34.

The privatization took place through the public tender sale procedure (Art. 7 of the Law of 19.3.2004). The Austrian *Meinl Bank* was an international adviser to the government in this privatization. It advised the government to follow the same procedure as in Albania, ie the sale of no less than 51 percent of the shares to a foreign strategic investor.¹⁰ The EBRD committed itself to acquire 19 percent of the shares of *ESM AG* in the privatization process. The privatization took place on March 17, 2006 through the sale of 70 percent of the shares to the Austrian *EVN AG* as part of the international tender sale procedure. Following the completion of the privatization process, the EBRD refused to purchase 19 percent of the shares. At the end of 2006, the remaining shares were also sold to *EVN AG*.¹¹ The value of the privatization amounted to 225 million euros and the value of the investments to 96 million euros.¹² As a result of the ambiguity in the privatization agreements regarding the old debts of *ESM AG* towards the Macedonian state-owned company *EMEL AG*, the sum of EUR 90 million plus interest, totaling EUR 160 million, was awarded in the first-instance proceedings before a Macedonian court. Therefore, the Austrian company *EVN AG* filed a lawsuit against *EMEL AG* on 12.5.2009 at the International Center for Settlement of Investment Disputes in Washington.¹³ Articles 12 and 13 of the purchase agreement between *EVN AG* and the Macedonian state did not provide for any liability of *EVN AG* towards *ELEM AG* for old debts prior to privatization. In 2011, *EVN AG* and the Macedonian government agreed to terminate all proceedings on the basis of a court opinion,¹⁴ following the entry into force in February 2011 of the new Energy Law¹⁵ and an agreement between *EVN* and the Macedonian Government on the implementation of the Energy Law.¹⁶ In the aviation sector, in 2008 a tender sale procedure was implemented for the concession of the airports "Alexander the Great" - Skopje, "St. Paul the Apostle" Ohrid and the construction of a new cargo airport in Shtip.¹⁷ The tender procedure for the construction and commissioning of airports was carried out in accordance with Articles 33, 43 and 44 of the "Law on Concession and PPP" of 15.1.2008. On August 29, 2008, the international tender procedure was carried out in accordance with the "Law on the Concession and PPP". On 2 September 2008, the Turkish company *TAV Macedonia DOOEL* was the only bidder for the concessions of both airports in Skopje

¹⁰ Abazi, Strategic Sector privatization in Macedonia 2009, 52, http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf.

¹¹ Abazi, Strategic Sector privatization in Macedonia 2009, 52 (53), http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf.

¹² EBRD, Transition Report Macedonia 2006, 118.

¹³ Tieman, The electricity Sector in FYROM, IMF Working Paper 2011, 10, <http://www.imf.org/external/pubs/ft/wp/2011/wp1130.pdf>.

¹⁴ The parties agreed to share half of the future proceeds from the contribution of customer claims resulting from the period before the takeover by *EVN*, <http://evn.corporate-reports.net/reports/evn/annual/2011/gb/german/301040/rechtliches-umfeld-in-suedosteuroopa.html?printDoc=1> (Stand 20.9.2013).

¹⁵ Zakon za energetika, SL V RM 2011/16.

¹⁶ <http://macedoniaonline.eu/content/view/18283/45/> (Stand 20.9.2003).

¹⁷ Abazi, Strategic Sector privatization in Macedonia 2009, 55, http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf (Stand 3.10.2013).

and Ohrid and the construction of the cargo airport in Shtip.¹⁸ The duration of the concessions is 20 years. The Turkish company was committed to invest a sum in the amount of 200 million euros.¹⁹

In the past five years (since 2014), the privatization of the remaining state-owned companies has stalled. Since 2008, the Macedonian government has been trying to sell 49 percent of the shares of state-owned postal company *Makedonska Posta*. However, the tender procedure failed already at the beginning due to lack of interest from investors. The government will therefore continue to try to privatize the company through the tender sale process.²⁰

In addition, in recent years, the Government of Macedonia has attempted to privatize four loss-making companies. These were repeatedly offered for privatization.²¹ These companies include 76.6 percent of the shares of the state-owned chemical company *Ohis*, the electrotechnical company *EMO Ohrid*, the tobacco company *Tutunski Kombinat AD Prilep* and the state-owned manufacturer of military equipment *11 Oktomvri Eurocomposite*.²² These four companies remain at the forefront of the government's privatization agenda.

In the spring of 2013, the government also announced the privatization of 49 percent of the shares in the state-owned electricity company *EMEL*. Its enterprise value amounts to approximately 750 million euros.²³ The Macedonian Ministry of Finance has announced a tender sale procedure for the repair and extension of the rail network, which will include the construction of a 62.5 km long rail track, part of Corridor 8 of the 1500 km long connection from the Albanian port of Durrës to the Bulgarian port of Varna.²⁴

Like Albania, Macedonia also uses the possibility of concession to attract foreign investors; especially in the energy sector. The new legal framework also facilitates the creation of PPPs.²⁵

Conclusions

This manuscript shows that Macedonia had only one objective with the strategic sectors, the same as with the non strategic sectors, namely the quick privatization.

¹⁸ Abazi, Strategic Sector privatization in Macedonia 2009, 56, [://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf](http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf).

¹⁹ EBRD, Transition Report Macedonia 2008, 124 (124).

²⁰ <http://www.balkans.com/print-news.php?uniquenumber=97196>.

²¹ EBRD, Transition Report Macedonia 2011, 126 (127).

²² EBRD, Transition Report Macedonia 2012, 112 (113).

²³ <http://www.mondaq.com/x/238910/Corporate+Commercial+Law/Corporate+Energy+And+>.

²⁴ <http://www.seetoint.org/projects/seeto-comprehensive-network-projects/eligible-for-funding/construction-of-new-railway-section-kicevo-border-with-albania/>

²⁵ In Macedonia, concession contracts will build 400 small hydropower plants valued at 700 million euros, twelve other smaller hydropower plants in the Vardar river valley worth 1180 million euros, a hydropower plant in Cebren worth 338.37 million euros, another in Galiste with a value of 200.24 million euros and another in Boskov Most with a value of 70 million euros; The Wolf Theiss Guide, PPPs, Concessions & Public procurement 2011, 140, http://www.wolftheiss.com/tl_files/wolftheiss/Dokumente/projects_brochures/The_Wolf_Theiss_Guide_to_PPPs_Concessions_and_Public_Procurement.pdf.

Many speculations have arisen about the privatization of strategic sector companies, because most contracts were not made public. Foreign investors were able to participate in the privatization process. Corruption accompanied this process. However, this was much less dramatic than in Albania. In particular, policymakers early opted for cash privatization and not the use of privatization vouchers. There were not undesirable developments like the so-called pyramid schemes in Albania; as well as no civil war-like riots occurred, as was the case in Albania in 1997, but still a big problem in Macedonia remains the situation with the minority (majority - Albanians) of the population and nationalization idea. The problem with the name of the republic and Greek embargo was solved lately with the Prespa Agreement, but the economic situation, high unemployment, the failure to attract foreign investors remain the big challenges of Macedonia toward free market economy and EU membership.

References

- Abazi, H. (2007). Strategic Sector privatization in Macedonia 2009, 53, http://kfos.org/wp-content/uploads/2011/10/Privatization_ENG.pdf.
- ICG, Balkans Report (2002). Macedonia's public secret – How corruption drags the country down No 133, 2002, 15 (16),
- EBRD, Transition Report Macedonia 2001, 146 (147).
- EBRD, Transition Report Macedonia 2002, 150 (151).
- EBRD, Transition Report Macedonia 2006, 118 (118).
- EBRD, Transition Report Macedonia 2007, 130 (130).
- EBRD, Transition Report Macedonia 2011, 126 (127).
- EBRD, Transition Report Macedonia 2012, 112 (113).
- EBRD, Transition Report Macedonia 2008, 124 (124).
- Velkova, S. (2007). Corruption in Privatization in the Public Utility Sector and Growth in South-East Europe-Contracts and Regulations in Telecommunication, Government Department of the Harvard University.
- Zakon za preobrazba na Elektrostopanstvo na Makedonija Akcionersko Drushtvo za proizvodstvo, prenos i distribucija na elektricna energija vo drzhavna sopstvenost, Sl V RM 2004/34.
- Zakon za energetika, Sl V RM 2011/16.
- <http://www.crisisgroup.org/~media/Files/europe/Macedonia%2015.pdf>
- http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2007/08/23/featu-re-03
- <http://www.balkans.com/print-news.php?uniquenumber=97196>