

Report on the transparency of the privatisation process of the Electrical Company of Macedonia

Introduction

The idea of privatizing the Macedonian electric energy company (ESM), dates back to 2001. The effort was canceled in 2002, renewed in 2004, and resulted in the formation of four new companies in 2005 (transmission, production, distribution companies, as well as one separate thermo electrical power plant).

The restructuring was in line with the obligations from the "Athens Memorandum-2002" (i.e. Memorandum of Understanding on the Regional Electricity Market in South East Europe and its Integration into the European Union Internal Electricity Market). According to this memorandum, new legal entities (i.e. independent regulatory authorities, as well as separated system operators) must be formed to ensure open and competitive electricity market in the region. As a follow-up to this memo and the Athens memo from 2003, in May 2005 a treaty was signed to establish an energy community in South East Europe. The treaty was signed between the European Union on one hand and Republic of Albania, Republic of Bulgaria, Bosnia and Herzegovina, Republic of Croatia, Republic of Macedonia, Republic of Montenegro, Romania, Republic of Serbia, and Republic of Turkey on the other hand.

The task of the Energy Community is to ensure stable and constant electricity and energy supply in the region, to attract new investments in the energy sector, to create a single regulatory space for trade in the Network Energy, to improve environmental standards in the energy sector (i.e. in relation to Network Energy), including energy efficiency and the use of renewable energy sources, to set out the conditions for energy trade in the single regulatory space, and to develop Network Energy market competition on a broader geographical scale. "The European Commission (EC) and the Balkan Stability Pact are the main propellers and sponsors of the so-called Athens process on the establishment of the Energy Community.

Among the international financial institutions and bilateral donors supporting the process are: the World Bank, the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the German Development Bank (KfW), the United States Agency for International Development (USAID), the Canadian Agency for International Development (CIDA), and the governments of France, Greece, Italy, and Switzerland"¹. The plan for creating a single market for electricity and gas supply in the Balkans was completed with the signing of the agreement on the 25th of October 2005 in Athens, for establishing an open market for electricity and gas supply in the region. The purpose for establishing of the open market is to ensure the competition and security in the energy supply in the region. There is a possibility this Southeastern Energy market will be merged with the EU energy market.

ESM bidding process

One of the recent results from the privatization process is a new owner of the Macedonian distribution company. On the 16th of March 2006, Austrian EVN AG was proclaimed as the winner on the bidding process to buy the national electricity distribution company, ESM-Distribution. EVN AG won the tender in a competition with the Italian ENEL and Czech CEZ. German RWE, in spite of the fact it had fulfilled the bidding prerequisites, did not participate in the process. ESM-Distribution was sold to EVN AG for EUR 225 million.

At this moment EVN AG owns 70,1% of the distribution company's shares. The remaining 19,9% of the shares belong to the European Bank of Reconstruction and Development

¹ Stability Pact Watch: Arrested development, May 2005

(EBRD). The EBRD had two months, after the agreement for selling the ESM was signed (17 March 2006), to declare whether it is going to continue as a shareholder in the Macedonian distribution company, or sell its shares.

The bidding process for one of the thermo electrical power plants, "Negotino," is happening at this moment. The bidding process was closed by the government on 14th of June 2006, when EVN AG was proclaimed as first on the ranking list, but the agreement was not signed because of the parliamentary elections that happened on the 5th of July 2006. The Canadian-Bulgarian Consortium "Hatch Acres Inc.-Finance Engineering" has submitted a complaint on this decision. But because of the fact that the opposition won in the recent parliamentary elections, the destiny of the "Negotino" privatisation is not certain.

Anyway, the experts have proclaimed that if EVN AG won on the tender, it would be very dangerous monopoly. The interest from the media and the other stakeholders in this process is not as intensive as it was for the privatisation of the distribution company. This is fully understandable, taking into account the small scale of this capacity vs. the crucial importance of the distribution system for the whole public in Macedonia.

Privatisation of the production facilities is left for the future.

Background: The first model of privatisation

The Government's adviser for the privatisation in the energy sector in Macedonia, Austrian Meinel Bank, in 2004 suggested three models for privatization. The Government did not present to the Macedonian public the need for privatisation or explain the benefits and risks from the privatisation process. The three suggested models for privatisation were also not presented, either to the broader public or to experts from different fields, before the model was chosen by the Government. No public discussions and debates took place in the first period of the privatisation process.

The first model of privatisation was chosen solely by the Government on the 26th of January 2005, and the decision was proclaimed in the public without any previous discussions and consultations with the citizens or other stakeholders. The choice resulted in dissatisfaction and strong opposition to the process of privatisation among the broader public, as well as among the experts.

In the period March/May 2005 the strongest opposition was against the chosen model of privatisation, according to which 51% of the production and the distribution system (in that period of time these two systems were still not separated from one each other) had to be privatized. This plan included giving concessions of natural resources (i.e. coal and waters) to the new owner, in circumstances when the law on concessions does not precisely arrange the conditions under which the concessions would be made.

At that time a lot of the other very important legislation for this process had not been put in place (e.g. a new law on energy, including the law on electricity market; the new tariff system was not yet set up, and the Macedonian energy strategy was and is still not prepared). A lot of questions were raised among the experts about the proposed model of privatisation, as well as the privatisation by itself. The Government decided to revise its decision under the great pressure of the experts, opposition parties, and non-governmental organizations as well as the broader public.

But, the most influential party for changing the first governmental decision was the World Bank. The World Bank was a great opponent of the idea of selling the production facilities, especially hydropower plants, in a situation where the laws did not regulate in a precise manner the means of using the natural resources, especially waters, (i.e. when the law on concessions and law on water use did not determine these issues in a precise manner).

Due to the pressure from the World Bank, the Macedonian Government decided to split up the production facilities from the electricity distribution sector on the 16th of May 2005, and with this decision they cancelled their reliance on the first model, according to which 51% of the production and distribution sector of ESM had to be sold. . In this way, the privatisation, which in the first place had to be finished in May 2005, was postponed and the whole process was delayed for ten months.

Attempt for transparency

Because of the great public reaction on its previous manner of leading the process, the Government decided to make it more transparent. The Government asked the non-governmental group "Transparency-Macedonia" for cooperation in designing a more transparent process for ESM privatisation. Both sides signed the Memorandum of Collaboration, and Transparency-Macedonia was included in the process as a neutral party, financially independent from the Government with the role of advising the Government and implementing actions which would lead to the transparent process of privatisation.

Journalists were the main target group of the Transparency-Macedonia work. Accredited journalists from the most influential media were trained to follow the process and inform the public about it. Debates among different stakeholders started which led to the changes in direction. The Government decided to choose the second model proposed by Meinel Bank. The distribution system was separated from the production capacities, and 90% of the shares from the distribution company were subject of privatisation.

However, not every suggested measure for transparency of the process was fulfilled by the Government. In the Transparency Macedonia "Report on transparency in the process of ESM' s privatisation" it is stated: "It is an unambiguous conclusion that the Government and the Ministry of Economy did not fully abide by their obligations, which were clearly implied in the project, and which were of exceptional importance for realization of the requests for transparency of the privatization process of a company, such as ESM-Distribution, one that is of exceptional significance for the Macedonian economy."²

It was also decided by the Government to hire a public relations agency to promote the process of privatisation of the distribution system in Macedonia. The agency was hired too late, just two weeks before the pre-bid procedure started, and the effects of this governmental act of transparency were not enormous.

Secret agreement

The bid (tender) procedures seem to be conducted in a manner consistent with the international standards. However, the request from all of the four pre-qualified tender participants to delay the documentation-submitting deadline for two weeks was criticized by some experts as "time which the companies need to make a deal between each other about the prices which would be offered for the distribution company". The request was approved by the Government.

The agreement for selling the ESM-Distribution to the Austrian EVN AG, signed on the 17th of March 2006 between the Macedonian Government and the new owner of the distribution system, is a document known only to signatories, i.e. its content is known neither in the Macedonian public, nor to the relevant state institutions. The Macedonian Government

² Transparency Macedonia: Monitoring of Transparency in the privatisation process of the Electric Power Company of Macedonia, Final publication, 2006

proclaims that it would like to present the content of the agreement to the public, but the new owner does not want to publicize it, in order to protect “commercial secrets”. According to the new owner, this kind of agreement is fully confidential.

The anticorruption committee was offered an opportunity to see the document, but only if it would sign a declaration “ not to publicize by any means the data in the agreement”. The committee refused to sign such a declaration because it is against the law on work of the committee. The same conditions for inspection the agreement were offered to the non-governmental Transparency-Macedonia, but the offer was refused, because it was against the mission of this organization. In the preface of their final publication it is also stated: "The peak of non-transparency was the signing of the Agreement with the best bidder and the manner in which it was offered for “insight”, without a possibility for any comments or other type of intervention. On the other hand, however, the procedure of opening the bids was transparent to the maximum, as a kind of attempt to improve the impression on the non-transparency."³

Eco-sense is still waiting for the reply from EBRD, where the bank’s standpoint about this secrecy should be presented.

At this moment the Macedonian public is not informed about the issues and conditions in this agreement which concerns the entire public in Macedonia. Under the justification of protecting its commercial plans, EVN AG keeps the Macedonian public in total information darkness concerning the future relations with the new owner, and the duties and rights of the new owner.

Recent and possible future developments of the process

At this moment the three companies (for production, transmission and distribution of electricity) operate in very bad financial circumstances According to some experts this situation could endanger the production and security of supply with electricity in Macedonia. The new elected political majority has started to proclaim its intentions for saving the electro energetic sector in Macedonia with merging the production and transmission facilities. The idea is supported by many experts, but they are all of the opinion that this should be done on the bases of good strategy.

Does this mean that the processes of transformation and privatisation of the electricity sector in Macedonia were done in a very fast way, or maybe in a not very right way? Maybe it is too early to judge, and the future will certainly bring the right answers, but the beginning of the new era in the electro energetic sector in Macedonia was not very bright.

EBRD role in the promotion of the privatisation process

The EBRD was included in the processes of transformation and privatisation of the Macedonian electro-energetic sector through the project “ESM Pre-privatisation Share Purchase”. EUR 45 million in the form of equity were allocated to the Macedonian Government. This sum was intended for selling the whole ESM (as it was planned by the government in 2001). Because in this moment only the distribution company is sold, the amount allocated by EBRD to the Macedonian Government is only EUR 20 million (data obtained from conversation with Kenji Nakazawa, head of the EBRD office in Skopje). The Macedonian Ministry of Finance was officially asked about the conditions under which the

³ Transparency Macedonia: Monitoring of Transparency in the privatisation process of the Electric Power Company of Macedonia, Final publication, 2006

agreement was assigned and the purposes for which this money is intended, but the answer never came.

It was very interesting that nobody paid and still does not pay attention to the EBRD's role in the process, besides the fact that EBRD is possible owner of the 19,9% of the distribution system in Macedonia. The signed agreement between Macedonian government and EBRD has never been disclosed, with the explanation that the project is in the private sector category. This position seems strange considering that it involved a state-owned company.

The deadline for announcement of the EBRD's intentions with the shares they own in the electricity distribution company was on the 16th of May. Eco-sense is still waiting for this answer. Official answer has still not come, but on the 7th of June EBRD was still in the negotiations with the new owner of the distribution company, Austrian EVN AG.

Conclusions and recommendations

- The process of informing the public was not started on time. The decision for privatizing the company was made without the consultations with the public, either with the experts or with the general public. As a result, the public was excluded from this process in the early stages.
- The Government has never precisely informed the public about the reasons why ESM had to be sold, and consequently it has never persuaded the public that its decision for such an action is justifiable and right.
- The Government has never precisely informed the public about the benefits from the privatisation, and it has never informed the public about the risks which the privatisation will bring.
- Searching for information (from the non-governmental organization point of view) was not always an easy work. Getting information from unofficial sources, i.e. the sources which are not in charge for giving the information, was easier way. (The EBRD openly stated at the beginning of the research that it's not going to disclose any additional data, including the agreement signed with the Macedonian government and the Board document for the project concerning equity they gave for the ESM transformation and privatization, then the data available on their website. EBRD has also never replied on the letter asking for information about their present ownership in the ESM-Distribution, i.e. the plans with their shares in the company. The Macedonian government has also never replied on the request for disclosing the agreement signed between them and EBRD. The Ministry of Finance has never replied on the request for information about the conditions under which the equity from EBRD are obtained and the manners in which these finances are spent).
- Establishing official bodies for information dissemination for the process was not done on time.
- The process of privatisation was politically abused, i.e. used for political fights between the Government and the opposition.
- The content from the signed agreement between the Government and EVN AG is still secret, which results with the unknown conditions in which the distribution market functions in Macedonia.
- Nevertheless, this privatisation was evaluated by many as the most transparent privatisation in Macedonia up to date. The government will have to learn to inform and consult the public about its intentions with significant influence to the whole society before the decisions are put in place.
- Disclosing of documents, or parts of them, which contain information valuable to the public, must be ensured by the government and the international financial institutions.
- Specifically, the EBRD should release its agreement with the government,
- Also, EVN AG should release the parts of the agreement which are really not under commercial secrecy.

- The strategic documents regarding the future development of the energy sector in Macedonia have to be created and adopted as soon as possible. This will define the future trends in this sector, and will prevent negative decisions and steps in the future, including the negative steps in the future privatisations of the electricity facilities. Broader scope of stakeholders must be involved in creating of such documents, which will insure good quality documents leading to sustainable energy sector in Macedonia.

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