

OPINION

Privatisations in Cyprus: The Beginning of a New Era

Elina Kollatou*

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As one of the conditions of international support following the financial crisis of spring 2013, Cyprus was required to put in place a framework for the privatisation of state-owned entities and utilities. The memorandum of understanding concluded with the providers of finance anticipating the raising of €1.4 billion by 2018 by privatising the electricity authority, the state telecommunications utility and the Cyprus ports authority, which manages the ports of Larnaca and Limassol.

After an initial Bill failed to secure the necessary support, an amended Bill was passed by the Cyprus Parliament early in March 2014. It establishes a legal framework governing the procedure for restructuring the utilities as joint stock companies and for appointing competent bodies to carry out the procedure, with a view to obtaining strategic investment from overseas. The legislation, which the Government describes as a “road-map” for privatisation, provides for unions to be represented on a consultative committee overseeing disposals, and for utility workers’ pensions and benefits to be protected, but does not include any detailed provisions in this regard.

Privatisations in general

While the concept of privatisation of state assets and activities dates back many centuries, privatisation as it is understood today developed in the UK in the 1980s and rapidly spread to mainland Europe and beyond. The majority of European countries have privatised sectors where state monopoly was the norm, such as utilities, telecommunications and transport. Privatisation was often

justified on the basis of the requirements set by the EU in relation to competition and the opening of certain markets that were traditionally closed to private organisations, but in addition a more compelling reason was to provide revenue to governments struggling to balance the public finances. One British politician famously likened the process to “selling the family silver”.

Proponents of privatisation argue that decision-making in state-owned corporations is usually impaired by political considerations, as governments tend to make opportunistic decisions which will enhance their electoral position rather than creating the necessary infrastructure that will enable the business to flourish. They also argue that the fact that private-sector businesses are driven by profit forces them to operate efficiently and eliminate unnecessary cost. This efficiency, if combined with conditions of healthy competition, will benefit consumers by encouraging innovation and competitive pricing.

On the other hand, in certain sectors privatisations create private monopolies, which require strict and detailed regulation in order to prevent abusive practices. Private monopolies are likely to arise in fields where, owing to the nature of the service provided (such as transport, and water, gas and electricity supply) the most efficient number of service providers is one. As a result the quality of the regulatory authority and regulations put in place by the state will be a critical factor in determining the success of privatisations in general, and those giving rise to private monopolies in particular.

Successful privatisations have proven to be beneficial for public revenue and have created companies with the capacity to compete globally. Proponents of privatisation also argue that the process has contributed to an overall reduction in the price of the product offered to final consumers, though there is no benchmark to confirm this. On the other hand, privatisations have not always been successful. For example, dissatisfaction with the outcome of the privatisation of the water supply in France has led to the state re-municipalising the industry, which has generally proven to be a major success. Failing privatisations in Germany and Finland have also been taken back into public ownership.

The 2014 Cyprus Privatisation Law

The Law prescribes the procedures and methods for effecting privatisation. It provides for the creation of a Privatisation Unit headed by a commissioner and staffed by experts, as well as public employees, to develop detailed proposals. The proposals will be submitted to a commission of two ministers, who will transmit their final plan to the Council of Ministers for approval.

The Government has already proceeded with the necessary actions in order to appoint a privatisation commissioner. The commissioner will be appointed by

* Associate in the Corporate and Commercial Department, Andreas Neocleous & Co LLC.

the Council of Ministers and will be submitting reports to the council through the bi-ministerial committee of privatisations.

The privatisation procedure pursuant to the Law

The main stages of the “roadmap” for effecting the privatisation of state bodies are as follows:

- A joint consultative committee (“JCC”) consisting of two ministers and representatives of the employees of the organisation to be privatised will consult and exchange information on the matter. The JCC will ensure that the employment regime and employee rights (including employment, pension and redundancy rights) remain in conformity with the Constitution of the Republic, existing legislation, relevant regulations and general principles of EU law.
- The detailed privatisation procedure in each case will require the approval of the Council of Ministers.
- National security should not be prejudiced by any privatisation.
- Provision must be made for the effective regulation of the obligations of the bodies subject to privatisation, including any obligations arising out of the requirements and rights of employees.
- Provision will be made for the amendment or repeal of legislation regulating the relevant bodies, particularly as regards their establishment, function, national or international obligations and employee rights.
- An appropriate regulatory framework, including the necessary legislation, must be established to control any monopoly that might be created owing to the nature of the body subject to privatisation.
- The detailed arrangements for privatisation of each organisation will be subject to parliamentary approval. These will include the timing of the privatisation, any proposed assignment of any public assets and rights to a legal or natural person, the amount of the consideration and the procedure for collecting the proceeds of the privatisation.

The main responsibilities of the Council of Ministers in respect of privatisation are the appointment of the bi-ministerial committee, monitoring and considering the decisions and actions of the committee, the establishment of a Privatisation Unit and the appointment of a Registrar for the privatisations. The powers and responsibilities of all of these are set out in the Law. In order to ensure

transparency, the Registrar is required to prepare and submit three-monthly progress reports to the Council of Ministers via the bi-ministerial committee.

Main stages for implementing the privatisation of Cyprus Telecommunications Authority, Electricity Authority of Cyprus and Cyprus Ports Authority

The Government has set out a timetable for the privatisation of the three organisations, which may be summarised as follows:

- Cyprus Telecommunications Authority (“CYTA”):
 - Converting CYTA from a public company to a private company limited by shares, with the state being its sole shareholder—target date December 31, 2014.
 - Determining the terms of a scheme to offer the employees of CYTA a percentage of its share capital at an individual or collective level in conformity with market rules—target date March 31, 2015.
 - Securing a strategic investor to provide the necessary technical knowledge and contribute to the upgrade and growth of the body’s operation—target date December 31, 2015.
- Electricity Authority of Cyprus (“EAC”):
 - Disaggregation of the EAC’s activities into separate legal entities—target date June 30, 2015.
 - Converting EAC from a public company to a private company limited by shares, with the state being its sole shareholder—target date December 31, 2015.
 - Determining the terms of a scheme to offer the employees of EAC a percentage of its share capital at an individual or collective level in conformity with market rules—target date March 31, 2016.
- Cyprus Ports Authority (“CPA”):
 - The CPA will remain a public body and its main purpose will be changed to the exercise of an administrative role—target date December 31, 2014.
 - Outsourcing the management of the commercial activities of the Limassol and Larnaca ports to the private sector—target date December 31, 2015. For the

Larnaca port, the procedure is already under way on the basis of a public-private partnership. For the Limassol port the most likely option is that the state will grant a long-term licence to a suitable port operator.

Conclusion

The Law is the first step on a lengthy journey, and there is still considerable debate at the political level regarding the final destination. A great deal remains to be determined, including the extent of privatisation and the form that it will take, but it can now be said that the process has definitely begun.