

# Privatization of the Turkish National Lottery: Milli Piyango

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A draft law concerning privatization of the Turkish national lottery, founded in 1939, was submitted to the Prime Ministry in June 2003. According to the then available information, the privatization model would be a combination of Greek and English systems.

A state company would be established to which all commercial activities of the national lottery general directorate should be transferred.

An international public offering initially planned with the issuing of a "golden share." Fifty percent of the sale proceeds would be distributed as premium.

Several times tender specifications were announced, and the last word from the government, coming in May 2004, was that the Milli Piyango tender was on the role. However, a tender has yet to be arranged.

Sources close to the privatization, which is a part of Turkey's \$19 billion loan deal with the International Monetary Fund, told IGamingNews.com that the bureaucrats are delaying the tender, which is not considering that the Turkish state received TR589 trillion (roughly US\$400 million) in revenue from the Turkish national lottery in 2003.

Turkey, with one foot already in the European Union, hasn't had a very lucky hand in "selling" its privatization jewels. Just a couple of days ago, a Turkish court blocked a \$1.3 billion privatization sale of Turkish oil refinery company Tüpraş. Earlier, there were huge legal problems in privatizing state banks (obtained by HSBC), the Turkish state tobacco and alcohol monopolies, etc.

One needs very good lawyers in Turkey, especially considering that there are no specialized laws directly targeting the Internet, which for most lotteries is the distribution backbone.

So it is still not clear if the winner of the Milli Piyango tender will be able to use interactive media (Internet, mobile phones, etc.) for its distributions and promotions.

With so many unanswered questions concerning the privatization of Milli Piyango (and its surroundings), IGN visited the leading gambling law office AKT in Istanbul, where three legal officers in the firm's "Lottery Privatization Group" are engaged daily in all the aspects of the privatization project.

**IGN:** Milli Piyango is, at this moment, still an operator and licensing body for third parties running lotteries. For the privatization of the national lottery, there should come a split. Who is writing this new law?

**AKT:** The law has actually been passed. It is the Law Nr. 4971 regarding the *Amendment of Certain Laws and the Decree with the Force of Law Concerning the Establishment and Duties of the General Directorate of National Lottery*, dated Jan. 8, 2003 (hereinafter referred to as the "Law"). Please note, however, that the Law basically introduces amendments to the already existing decree regarding Milli Piyango, with a view to enable the licensing of the games operated by Milli Piyango. In other words, a split between the functions of Milli Piyango is not intended. Thus a new law in principle need not to be passed.

Yet, there seems to be some disagreement between the general directorate of Milli Piyango and the privatization administration about whether additional changes need to be made in the law and whether a regulation giving the ultimate green light to go on with the privatization is necessary. The regulation would, if needed, presumably be put into effect along with the announcement of the tender specifications. Milli Piyango is not in favor of this idea, claiming that the tender specifications will sufficiently cover all issues. At the moment the tender

specifications are still not known and licensing fee payment structure, contract details and collection of revenues are unclear points in the bidding procedures.

Milli Piyango will in any case remain the exclusive authority regarding games of chance and will act as the licensing body. Similarly, Milli Piyango's powers of supervision will remain unchanged and will not be transferred to a private company or any other entity, as a result of which the operations of the licensees will still be under the auspices of the "Milli Piyango Idaresi" (General Directorate of Milli Piyango).

According to the Law, licenses will be granted for games of chance for a maximum duration of 10 years. Acquirers of the licenses will be allowed to operate and organize those games of chance for which they bought the license. Under the Law, the General Directorate, at its discretion, may give licenses one by one or in a package.

**IGN:** It was stated that this May there would be a tender. But we are now already in June. What can we expect?

**AKT:** The proceedings for the tender have commenced, the tender commission (the composition of which is stated below) has been formed and currently the commission is working on the project. On the other hand, it is not possible to say when exactly the tender will take place. As per the oral information we obtained from the General Directorate, the tender may be announced in June, however, there is no certainty at the moment. The disagreement between the General Directorate and the Privatization Administration as noted above, might cause further delay.

**IGN:** Other privatizations have taken place. Could you mention some? Was there one that worked out without problems?

**AKT:** Turkey's privatization program has not been without its drawbacks, but according to the Privatization Administration (PA), some 170 state-owned companies have been sold. From the companies that have been tendered in the first quarter of 2004 among other Tekel alcoholic beverages, Bursagaz and Esgaz, Gemlik Gübre, Samsun Gübre and Igsa (last three being companies producing fertilizers), the privatization has been finalized.

A couple of high-profile privatizations have been problematic though, among which Petkim and Tekel Tobacco are worth mentioning.

**IGN:** Several Turkish international companies are looking for a foreign party. Would a stand-alone foreign party have a chance to win the privatization?

**AKT:** According to the Law, licenses will be given to companies incorporated in Turkey in the form of a joint stock company (the so-called "anonim sirket") in Turkish. On the other hand, there is no limitation with regard to shareholding of such a Turkish company; i.e. 100 percent foreign ownership is allowed. Therefore, a stand-alone foreign party may bid in the tender by incorporating a subsidiary in Turkey and may obtain a license provided they win the tender. Incorporating a Turkish subsidiary is not a grave hindrance, as incorporating a firm in Turkey is not a problematic matter and may be completed quite swiftly. It is our personal opinion that a stand-alone foreign partner has a practical chance of obtaining the license.

As is clear from your first question, the General Directorate will still hold considerable control over the activities of Milli Piyango. Whether the practical execution of the lottery's activities rests in the hands of a Turkish company or of a foreign company operating as a Turkish company under Turkish law should make no difference since the monitoring task of the general Directorate stays intact.

**IGN:** Do you know the tender preconditions?

**AKT:** The exact tender conditions are not known at the moment; they will be known only when the tender specifications are announced. The term of the license and method of tendering, however, are known. That is, the term of license will be 10 years, and the method

of tendering will be the so-called "negotiation" method ("pazarlik usulu") as defined in law 4046.

The definition of negotiation method under the Law 4046:

*"In this method, tenders may be initiated by obtaining bids from more than one bidder in a sealed envelope. It is possible to carry out more than one round of bargaining negotiation with the bidders.*

*Bargaining negotiations are carried out separately with each bidder. However, the tender commission may decide to carry out the bargaining negotiations collectively with bidders with whom negotiations are still continuing at any stage of the tender.*

*The tender commission may also set forth new principles applicable to the tender in case new situations arise in the course of bargaining negotiations, provided that such new principles (i) do not contradict with the principles stated in the tender announcement and/or tender specifications, (ii) do not constitute competition obstacles, and (iii) apply to all bidders with whom bargaining negotiations are still continuing.*

*In the event the tender commission deems appropriate, the tender may be concluded by an auction to which the bidders with whom bargaining negotiations are still continuing shall participate. This is a matter that has to be stated in the tender announcement and/or the tender specifications.*

*The tender commission keeps minutes of the negotiations and the minutes are signed by the bidders and the members of the tender commission."*

It is clear that this is a quite open way of negotiation. The Tender Commission, which consists of one representative of the privatization administration, one representative of the Ministry of Finance, one representative of the Undersecretariat of Treasury and two members of the Milli Piyango General Directorate, has considerable freedom in regard to negotiating with the bidders and concluding the tender.

**IGN:** Will it be a "beauty contest" or will the highest bid will win?

**AKT:** We cannot say anything definite yet on this matter, as we do not know the tender specifications yet. As is clear though from the information above, the Tender Commission has flexibility with regard to the negotiations and concluding the tender. Our personal opinion is that in the tender conditions some quality guarantees are likely to appear. It is inevitable in my opinion that the negotiations will have the character of a beauty contest, next to the actual bidding. The bidding process will presumably have elements of both.

**IGN:** Which body is responsible for the tendering?

**AKT:** As said in response to the above question, the body responsible for the tender is the Tender Commission. After the tender has been concluded, the winner of the tender, the general directorate and the Privatization Administration enter into a three-way license agreement in order to transfer the license from the General Directorate to the winner of the bidding.

**IGN:** Will the winning party also get the right for Internet and mobile phone gaming? Will new products be allowed?

**AKT:** The Tender Conditions can only answer these questions conclusively, but as things are looking now it is our opinion that it is unlikely that the winning party is receiving the rights to Internet and mobile phone gaming or to introduce new products. Internet and mobile phone gaming are as yet illegal in Turkey and, besides the licenses the winning party will obtain, are

likely only to concern the games that exist now. It is unlikely that these licenses will grant these rights to the winning party.

The same is also valid for the introduction of new products. The license(s) obtained by the winning party will probably only be valid for existing games. The introduction of new products will remain a right of the General Directorate of Milli Piyango for which products the General Directorate can then of course transfer a license.

**IGN:** Is there Internet legislation. If not, will there be Internet legislation before the Milli Piyango is privatized?

**AKT:** Other than small-scale things like the electronic signature, there is not much of a specific Internet-aimed legislation. A few attempts at control of the Internet met with public resistance and have been called off. Telecommunication laws in part also cover Internet activities.

**IGN:** What will be the power of the Gaming Board? May they give new licenses to new operators?

**AKT:** The General Directorate of Milli Piyango remains the sole exclusive authority to give licenses for games of chance and also the monitoring and supervising function of the General Directorate remains in tact. The law only mentions in regard to the licenses given by the General Directorate, "the operating and organizing of games."

The General Directorate still has the right to give new licenses to new operators, except for those games for which a license is already given. The license obtained gives an exclusive right. The General Directorate of Milli Piyango itself is also not allowed to operate the same game as for which they have given a license another company.

**IGN:** Do you have any other important information in this field?

**AKT:** You may also be interested to know that in regard to the license there is a profit sharing mechanism. Of the gross revenues of the licensee, a certain part of the revenues have to be set aside and will go to certain institutions. According to the Law, at least 5 percent of the revenues go to the General Directorate of Milli Piyango and at least 10 percent goes to a fund for the support of the defense industry. These are the minimum percentages and the tender commission is authorized to determine and announce higher percentages in the tender specifications. Recently though the share assigned to the fund for the support of the defense industry is under discussion. There is the possibility that this provision will be taken out.

A further point of notice is that the license is not assignable to any third party.

## **Background**

The Turkish companies Alarko Holding (a group of companies in the fields of contracting, land development, industry and trade, tourism, energy and seafood) and Dogus Holding (financial services, automotive, construction, tourism, media and retail) have announced that they jointly will seek a foreign partner with experience to operate a lottery.

Additionally, Turkey's two largest business conglomerates, the Koc Group and the Sabanci Group have already stated that they are cooperating in trying to obtain Milli Piyango (and another to be privatized company: Turk Telekom).

Koc Group is comprised of 98 companies in industries including automotive; food; retail; tourism; durable goods and construction; energy, information technologies; and financial services. In 2002, the group's consolidated revenues increased by 8 percent to US\$6.7 billion, despite the 34 percent decrease in banking and financial services revenues.

Sabancı Group is comprised of 68 companies in the fields of banking and insurance; tire and reinforcement materials; chemicals; retail; food; cement; automotive; textiles; and international trade. In 2003, the consolidated revenue for Sabancı Holding was US\$7.3 billion, with a net income of US\$583 million.

Additional Turkish multinational companies showing interest in acquiring the Turkish national lottery:

- Dogan Media Group (DYH) has two divisions: "content producers" and "service providers." Content producers are newspapers, magazines, book publishers, TV channels, radio stations and a music company. Service providers include distribution, retail, production, cable TV, Internet, printing and advertising sales companies as well as a factoring company.
- OYAK has a total of 36 subsidiaries--25 of them direct and 11 indirect--in finance, cement, automotive, foods, chemicals and services.
- Cukurova Holding holds groups in the fields of banking and finance; insurance; investment; industry and construction; trade; media; communications and IT; tourism; and services.

Gaming companies that have openly stated they would bid for Milli Piyango:

- Camelot Plc., operator of the UK National Lottery.
- GTECH Corp., a U.S. global player in the IT/lottery industry with over \$1 billion in revenues.
- Greek Organization of Football Prognostics (OPAP), a sports betting company in Greece and Cyprus.
- Intralot A.S., an international operator and gaming industry supplier.
- Lottomatica SpA, a lottery organization owned by the Italian publishing company De Agostini SpA.

Milli Piyango's Products:

- A plain lottery with draws on the 9th, 19th and 29th of each month. Extra lotteries, organized on other days and dates (e.g., the New Year Lottery on Dec. 31).
- Scratch cards.
- Sayisal Loto (Number Lotto), a turning sphere draw with balls numbered 1-49.
- Sans Topu (Chance Ball), a five-plus-one game with two set spheres. (Five balls are drawn from a sphere containing the numbers 1-34; one ball is drawn from a sphere containing the numbers 1-14.)