Asian Economic and Financial Review, 2016, 6(5): 261-276

Asian Economic and Financial Review
ISSN(e): 2222-6737/ISSN(p): 2305-2147

URL: www.aessweb.com

PRIVATISING SOCIALLY OWNED ENTERPRISES, THE CASE OF KOSOVO

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ABSTRACT

This paper aims at analyzing activities, and some of the causes of economic expansion of Kosovo's economy, mainly focused in stage of initial establishment of the private sector in Kosovo. The purpose of the paper is to present the current situation of privatization and results of this process, namely to review some of the obstacles, with a view of eliminating such obstacles and fostering development. The paper shall provide a comparison between the process and current point of privatization, with a special focus on obstacles to Kosovo's economy. This paper shall prove an overview on the situation of privatization processes sectors, and it is an effort to mirror the main obstacles preventing from corruption and other factors. The main goal of the paper is to provide a basis for informing various actors involved in privatization process and economic development policy making in Kosovo. On the other hand, it is also an effort to contribute in consolidating information and statistical records, with a view of providing an accurate overview on Kosovo's industry.

Keywords: Privatization, Industry, Obstacles to business, Employment, Exports, Imports, Economic expansion, SME growth.

Contribution/ Originality

Through this paper we analyzed the process of privatization in relation with all the indicators that will provide answers regarding the advantages and disadvantages of privatization in Kosovo's enterprises that consider this process as not completed, in order to reach conclusions which would help the continuation of the rest of this process by eliminating and argument the defects that may have the same. This becomes more important because the transition and privatization are not successful stories of Kosovo.

1. INTRODUCTION

Kosovo is comparatively small country located in the South-East Europe. It has a population of approximately 1.8 million, with 49.53 percent male and 50.47 percent female, and percentage of people living in rural areas 61% (Kosovo Agency of Statistics (2015)). There are 166. Residents per square kilometer and approximately 297,090 households with 5.85 people each, on average. Kosovo's economic profile does not look very healthy. Kosovo is continuing to struggle with high rates of unemployment, approximately 35.3%. The Kosovo 2012 Labor Force Survey results (2013) show that around 1.2 million, or two-thirds of the total population, form the working age group (people aged 15-64). Of the total working age group, only 36.9 percent are active in the labor force (438,544 people).

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DOI: 10.18488/journal.aefr/2016.6.5/102.5.261.276
ISSN(e): 2222-6737/ISSN(p): 2305-2147

From the total number of active people in the labor force, 69.1 percent (302,844 people) are employed and 30.9 percent are unemployed (135,700 people) (KAS (2015)). The same source states that unemployment is much higher for women than it is for men, at 33.1 percent compared to 41.6 percent, respectively. The most discouraging figure is the youth unemployment rate (aged 15-24), which is the highest among all age groups at 55.3 percent (KAS (2015)). Around 63.8 percent of young females and 52.0 percent of young males in the labor force are unemployed (KAS (2015)). The high rate of unemployment among the youth population might have affected to some extent their self-confidence, as they have not been provided an opportunity to demonstrate their skills and talents. As a result, many of them are discouraged and seek to work outside Kosovo. The general high rate of unemployment, moreover, has led to a high poverty rate. In Kosovo, around 34.5 percent of the population lives in poverty, and around 12.1 percent lives in extreme poverty with less than €1 per day (KAS (2015)). The main reason behind these discouraging figures is linked to weak private sector development and low capital investments. The majority of Kosovo businesses provide jobs that require only low-level skills – this also has some effect on the motivation of workers to pursue proper education (Riinvest Institute (2014)). Additionally, the few businesses that need advanced skills report that the universities and colleges in Kosovo do not link their curriculum effectively with the skills needed by the market; therefore, students equipped with diplomas from these institutions do not meet their demands.

Also Kosovo is a poor country with many problems and difficulties. Immediately after the War and the entry of KFOR forces, Kosovo entered the direct transition phase. Therefore, Kosovo as a new country is facing a very wrecked and inherited economy and is going through a very difficult post transition phase, with attempts to transition from the type command economy to free market economy. The liberalization of capital is a conductive opportunity to the transformation of the property as a fundamental step towards a functional economy and incentives for direct foreign investments for which the need is extremely current, considering the fact and the situation in which was the country after the war, and next we will present advantages, which are favorable to invest in Kosovo.

The main features of economic development are: (i) continuously negative trends of macro-economic indicators (especially the GDP, which is approx. €5.5 Billion, or around 3084 Euros per capita, according to the Kosovo Agency Statistics, 2014). Kosovo represents one of the late comers in the transition process, whose transition process started in year 2000. The evolution of the Kosovo economy was somewhat turbulent at the beginning of 2000s, followed by relatively steady growth afterwards. On the other hand, the imports are deemed to be covered by exports at a rate of 10 %), (ii) high unemployment, which appears to be over 40%, (iii) lacking foreign direct investments, and (iv) a reforming system of secondary and higher education (Central Bank of Kosovo (2015)). According to the same source, around 10% of Kosovo's population lives in extreme poverty, while around 35% of the population lives close to the poverty line. The shift in regime in 1999 in Kosovo caused considerable output loss in the economy and the new government inherited a largely obsolete capital stock. In the next two years, while the economy was struggling to recuperate managed to approximately double its GDP, however the base remained relatively low.

Table-1. Real growth rate

Years	2008	2009	2010	2011	2012	2013	2014
GDP per capita (%)	4,5%	3,6%	3,3%	4,4%	2,8%	3,4%	1,2%

Source: Kosovo Agency of statistics: Gross Domestic Product (Q2- 2015)

Private enterprises in Kosovo started springing by 1989. Nevertheless, the intensity of registering SMEs had an inclination after 1990, and continued until 1995. At this time, enterprises were mainly organized in the form of family enterprises, handicrafts, small retail, restaurants and agricultural enterprises. The establishment of such enterprises was not an outcome of an attractive business environment, but sprang out of the need to create jobs for people expelled from work in socially owned enterprises. These businesses were created with own resources and Diaspora remittances. The trends of private business development are presented in the following chart (KAS, 2013).-

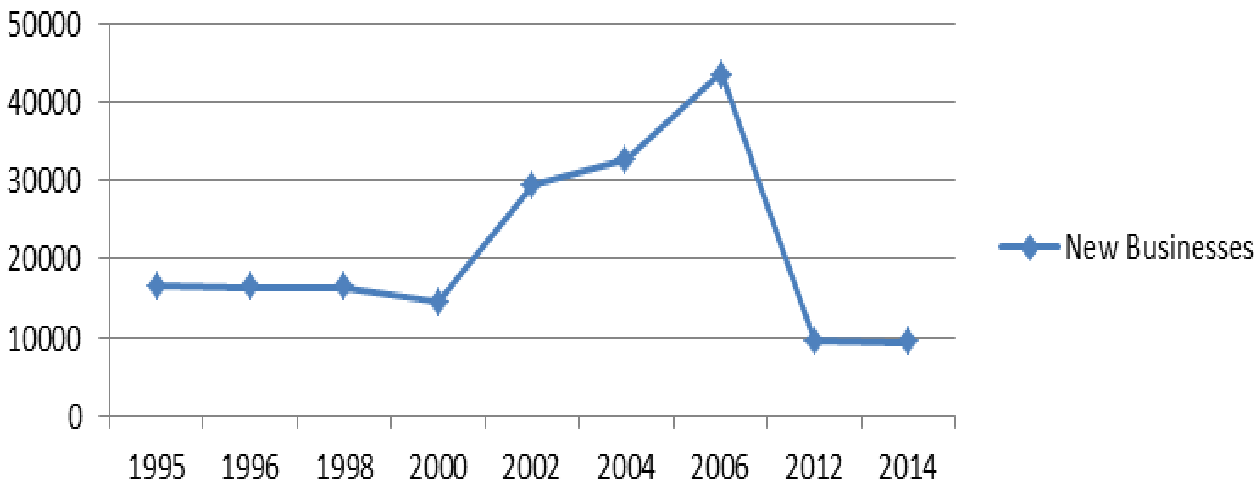

Figure-1. Trends of private business registration in Kosovo (SMEs in the period 1996-2014)
Source: Kosovo Agency of Statistics: Statistical Repertoire on economic enterprises in Kosovo, 2015

The reason for falling trends in SME registration between 1994 and 1996 was the large pressure exerted from the then-government against the Kosovo businesses, and the deterioration of the general situation throughout Kosovo in 1998, and until the armed conflict. Open violence and expanding physical insecurity, insecurity of property and limitations of freedom of movement of citizens and businesses in Kosovo pushed the SME registration down.

From 2002 until 2007, the economy experienced a more steady growth (3.8 percent on average), mainly driven by remittances, donors and private consumption. During this time the external balance continued to deteriorate, given a very low export base, and a heavily dependence on imports. Meanwhile, the fiscal authorities were conducting a rather conservative policy approach, by continuously concluding the fiscal balance with surplus. The reason for conducting a conservative fiscal policy were partially political (unresolved political status), as well as, due to the restricted the monetary tools to enforce macroeconomic stability and particularly to finance budget deficits. The unemployment rate is considered to be the highest in the region (45% in 2009; 35.3% in 2014, (KAS (2013)) whereas the inflation rate was fairly low (even deflation in 2004 and 2005). Adding here the budget surpluses and the low base of exports, a presence of a large output gap in the economy may be inferred. Another important year in terms of economic activity was 2009, when the impact of the global financial crisis that commenced in 2007, started to show. Even though Kosovo was one of the few countries in Europe not to experience a recession at that time, the signs of economic slowdown were expressed in the form of the export decline due to a fall in external demand, slowdown in imports due to a decline in domestic demand and a slowdown in lending activity because of the perceived uncertainty from the banking system. The influence of the financial crisis and the more recent budget crisis in some of the European countries may still be present, thus it should be of interest to investigate whether this effect is permanent (attributed to the trend) or transitory (attributed to the cycle).

After the war, pursuant to the Law on Privatization in Kosovo, Law no. 03/L-067, three processes of property transformation took place for the non-private properties: Commercialization process, through which 23 socially owned enterprises were commercialized, Privatization process, involving around 500 SOEs, Publicly owned enterprise restructuring process, such as in the Kosovo Energy Corporation, Post Telecommunications of Kosovo, Railways, Heating District and other publicly owned enterprises. The restructuring of these enterprises is now being implemented through corporatization.

2. ANALYSIS OF THE LEGAL FRAMEWORK FOR PRIVATIZING PUBLICLY OWNED ENTERPRISES

2.1. Legal Framework for Privatizing Publicly Owned Enterprises

The Republic of Kosovo has had some experience with privatization, specifically with regard to the privatizing of Socially Owned Enterprises (SOE). The privatization of SOE has achieved considerable progress but also in several aspects it has been a dubious process, at best. Indeed it occurred at a time of uncertainty with regard to ownership over SOE. Without delving into too much detail, the privatization of SOE was ordered by UNMIK (which prepared the necessary legal framework) and was exercised by the Kosovo Trust Agency (KTA), under the understanding that the SOE were property of Kosovo and to some degree of SOE's respective employees. Majority of SOE have been already privatized under such legal framework and by the same entity. After the declaration of independence by the Republic of Kosovo, steps have been undertaken and the Law on Privatization Agency of Kosovo was adopted, thereby creating the successor to the Kosovo Trust Agency, the Privatization Agency of Kosovo (PAK). Under this new law, PAK was given the authority to administer, and thereby privatize, SOE that exist in Kosovo. As a result, PAK continues privatizing the SOE that still need privatizing and have not been privatized by the KTA, therefore, it continues operating as a continuation of the work and processes that were once performed by the KTA. As it will be seen, the KTA does not have any authority with regard to POE. The authors consider that during the process of privatization of the SOEs important experience has been accumulated and human capacities has been built that could be better used during the process of privatization of POEs.

The legal basis for fully or partially privatizing a POE in the Republic of Kosovo can be found in the Law on Publicly Owned Enterprises ("Law on POE") (Law No. 03/L-087). To wit, the Law on POE speaks of "sale of shares," that can be interpreted that this law permits the partial or full privatization of the POE in question, depending on the decision of the Government. The sale of shares is possible because the Law on POE, specifically Article 4, requires that at this point in time all POE should be organized as Joint Stock Companies ("JSC"). Under the Law on Business Organizations,(Law No. 02/L-123) namely Article 126, a JSC "is a legal person that is owned by its shareholders but is legally separate and distinct from its shareholders." The JSC under the Law on Business Organizations is similar to the corporations one may find in EU member states or the United States, with minor changes and less sophistication. In the case of a POE, the only shareholder in Central POE is the Republic of Kosovo, whose shareholder rights are exercised by the Government of the Republic of Kosovo (Article 5 of the Law on POE). The Law on Business Organizations does not restrict the transfer of shares by the Government of the Republic of Kosovo to any other entity. Specifically, Article 9 of said law governs the privatization of Central POE (Pursuant to Article 3.1 of the Law on POE, Central POE are enterprises identified in Schedule 1 that is attached to the Law on POE). Thus, a covenant must be stated that the law does not speak as to the privatization of the Local POE, however, this problem does not concern this writing because its purpose is the analysis of the legal framework for privatizing Central POE.

2.2. Impact of Private Sector in Kosovo

As stated in the beginning of this report, private sector development is of critical importance as it creates enterprises leading to more jobs and empowerment, brings new technology and innovation, and increases the income of the country as a result. Indeed, in many developing countries, the private sector is considered the primary engine of economic growth. Despite its important role, the figures about this sector in Kosovo are not very encouraging, especially when compared with neighboring countries. Kosovo has a very low number of newly created businesses, and many of those fail shortly after their establishment. To be more specific, Kosovo's new business density in 2012 (new registrations per 1,000 people ages 15-64) was 1.2 – that is three times lower than neighboring Macedonia (3.6), for instance (World Bank, 2013). It is noteworthy to mention that 92 percent of Kosovo businesses are micro-enterprises (1-9 employees), mostly family-owned businesses, thus having limited potential for innovation and to reach beneficial economies of scale. The geographic distribution of Kosovo businesses, moreover, is highly unequal. The overwhelming majority (one third of them) are concentrated around Pristine, leaving other parts of Kosovo less developed. Similarly, the performance of Kosovo businesses does not appear to be satisfactory. A Riinvest Institute (2013) reveals that, compared to the previous year, an average of 54 percent of the existing Kosovo businesses stated that their sales have decreased (a decrease of 34 percent), 21 percent stated that the sales increased (an increase of 22 percent), and 25 percent of them claimed that their sales recorded no changes. Furthermore, the survey reveals that businesses in Kosovo make the bulk of their sales within the country. On average, 89 percent of the total sales are made in Kosovo, whereas the remaining 11 percent are made outside Kosovo. A range of different obstacles contribute to the unfavorable picture of the private sector. Barriers associated mostly with the unsatisfactory level of law enforcement constitute the major barriers hindering the creation and development of new firms in the private sector. More specifically, Riinvest Institute (2013) reveals that barriers such as unfair competition (driven by tax evasion and informality in general), corruption, organized crime, and a non-functioning court system are perceived as the most serious obstacles by businesses. It is worth noting here that, due to the sluggish performance of the judiciary system, 62 percent of Kosovo businesses, according to the Riinvest survey, claimed that they do not trust courts at all. Other barriers commonly faced by businesses include limited access to finance, high cost of finance (Kosovo Chamber of Commerce, 2013) and fiscal barriers. Shortly, based on this picture, it appears that Kosovo is struggling to create a favorable businesses climate that would create the preconditions for a healthy and sustainable private sector, which in turn would lead to new competitive businesses, new jobs, and an improvement in the overall socio-economic wellbeing of the people.

2.3. Privatization as a Concept

In economic terms, privatization represents a situation where enterprises transfer the ownership from public property in private property. Privatization is a unclear concept that recalls sharp political reactions. It covers the variety of ideas and policies, diverge from the eminently reasonable to the wildly impractical. However in varied and at times unclear in its meaning, privatization has unambiguous political origins and objectives. It emerges from the countermovement against the growth of government in the West and represents the most serious conservative effort of our time to formulate a positive alternative ("The Meaning of Privatization," Princeton University Press, 1989). Privatization proposals do not intended merely to return services to their original location in the private sphere. Some proposals require to create new kinds of trading relations and promise results comparable or superior to conventional public programs. Thereupon it is a mistake to define and reject the movement as simply a replay of traditional opposition to state intervention and expenditure. The current wave of privatization initiatives move a new page in the conflict over the public-private balance.

In the ideological world we inhabit, contesting interests and parties use "public" and "private" not only to describe but also to celebrate and condemn. Any serious inquiry in terms of meaning of privatization must begin, thus, by unloading the complex freight that the public-private distinction carries.

The terms public and private are essential for the language of our law, politics, and social life, but they are the source of continual frustration. In this case many things seem to be public and private at the same time in varying degrees or in different ways. As a result, we quarrel endlessly about whether some act or institution is actually one or the other. We qualify the categories: This group is quasi-public, that one is semi-private.

Most enterprises start as private enterprises funded by a small group of investors. As they grow in size, they will often having access in the equity market for financing or property transfer through the sale of shares. In some aspects, this process is subsequently reversed when a group of investors or a private enterprise purchases all of the shares in a public enterprise, making the company private and, therefore, removing it from the stock market.

Privatization is a wide-ranging term covering several distinct types of transactions. In general, this means the shift of some or all of the responsibility for a function from government to the private sector. This term has most commonly been applied to the divestiture, by sale or long-term lease, of a state-owned enterprise to private investors. But another critically model of the process of privatization is the granting of a long-term franchise or concession under which the private sector finances, builds, and operates a major infrastructure project. A third model of privatization involves government selecting a private entity to deliver a public service which earlier produced in-house by public employees. This model of privatization is increasingly called external or outsourcing.

Despite of the mode of privatization, the common motivation for engaging in all three types is to substitute more efficient business operations for what are seen as less efficient, bureaucratic, and often politicized operations in the public sector. Some have described the key difference as the substitution of competition for monopoly, though some forms of privatization may involve only one provider in a given geographic area for a specific period of time. However, because government almost always operates as a monopoly provider, the implementation to privatize usually means de-monopolization, even if not always robust, free-market competition.

The implementation to privatize usually involves “money”. Governments sell state-owned enterprises to provide proceeds either for short-term budget balancing or to pay down debt. Government transfer to the private sector to finance and develop a major bridge or seaport when their own resources are stretched too thin. And they external services in the hope of saving money in their operating budgets, either to balance those budgets or to spend more on other services.

3. CURRENT STAGE OF THE PRIVATIZATION OF SOES IN KOSOVA

The privatization process in Kosovo had very difficult start followed by hesitation and delays, and experienced it’s forwards and backwards during its development. Since its start in June 2002, it experienced two breaks, firstly during the fourth quarter of 2003 and 2004; then it had a good flow during 2005, 2006 and 2007 before again having a major slow down during the 2008. With the KPA on board, the process should continue with remaining SOEs of which the most important are entities of Trepca, Ski Resort in Brezovica, unresolved issues of SOEs in Gjakova. Majority of the remaining SOEs are expected to go under liquidation process. The privatization process in Kosovo inherited around 500 Socially Owned Enterprises of which only 30% with around 60 000 employees were functioning after the War. Important technological and human assets were concentrated in these enterprises during the 1980s but because of the imposition of ‘special measures’ by the Serbian government and the violent governance and poor management during the 1990s; the depreciation of assets and technologies, and changes in regional and international business environment most of these enterprises were operating ineffectively and below their capacities and many ceased operations altogether. In order to institutionalize a privatization process in Kosovo, the international administration (UNMIK) presents a special legal structure which consisted of:

- Regulations governing the operation of Privatization Agency of Kosovo
- Regulation for the Special Chamber of the Supreme Court
- Privatization Agency of Kosovo Operational policies

Tendering and procurement rules for Government Generally, this legislation enabled and facilitated the direct sale of enterprises through regular and special spin-off. The latter was accompanied with some undertakings on investment and employment given by the buyer. An overview of the privatization process in Kosovo shows:

- It was estimated that some 403 SOEs should be privatized or liquidated. By June 2014, 428 SOEs were put up for tender, in the form of 551 New Companies. And relatively 114 companies are in liquidation process.

- After a decade of privatization, 460 of these Spin off New Companies have reached the stage of contract completion, with an additional 24 Special Spin-offs reaching contract completion (the new company and its assets handed over to the winning bidders). A further 78 contracts for the sale of new companies are pending and will be passed on to the PAK. (51 New Companies tenders have not reached the completion stage).
- Total privatization proceeds to date have reached Euro 662 million.
- The additional investment commitment for Special Spin-offs (23 Companies only) is in total Euro 196 million, while the average investment for a regular spin-off is 420 thousand Euros in the first 2 years.
- Employment commitments for special spin-offs are 12,442 jobs and employment in regular spin offs has also grown. In summary, the total New Companies privatized since the initiation of the privatization program is now 769 (10% await contract completion). These New Companies have been created from the assets of 534 SOEs.

4. PRIVATIZATION AND CONCESSION OF STRATEGIC COMPANIES IN TRANSITION ECONOMIES

In the last two decades, many countries around the world (developed, developing and transition economies) initiated the reform of utility industries aiming at improving the efficiency of these companies through competition and private ownership (Lieberman, 2008). The reform of utilities refers to, and involves, a variety of measures ranging from vertical separation of different activities of integrated companies, introduction of competition at various levels of operation, and the privatisation of different parts of a utility, often to different owners. Traditionally, the 'natural monopoly' characteristic22 and the 'public service' feature of utilities meant that they were treated differently from other SOEs. In most transition economies the privatization of these industries, which were classified among 'strategic industries', took place later and proceeded more slowly than that of the other sectors of the economy. Furthermore, the privatization of utilities also created the need for an effective regulatory framework that will protect consumers from the exercise of monopoly power by private producers and the producers from future expropriation by the government (Megginson, 2005). In this section we will first present some features of the privatization through concessions.

4.1. Privatizing Telecommunication Services

Telecommunications companies have been highly profitable in most countries and, therefore, were at the top of the list of utilities to be privatized (Newbery, 1999). But despite their profitability, revenue generation and contribution to employment, they provided poor quality services and their performance was substandard. The restructuring and reform of the telecommunication sector was an important prerequisite for the development of the sector and the economy as a whole (Berlage, 1995). Modern telecommunication being one of the key service sectors that contributes to productivity enhancement and growth in other sectors became an essential requirement for the transition from a centrally planned to a market economy. Following this, it was exposed to the need to be adopted with rapid speed, changing the opportunities, open to other firms beyond recognition and rapidly turning previous technologies obsolete in many countries (Sallai *et al.*, 1996; Megginson, 2005). In order to implement, adopt and benefit from these developments, huge investments in new technology are required to develop the necessary infrastructure and facilities, something which can be provided only by the private sector (often from abroad). Foreign investors will not only supply the technology and expertise but also management skills and access to foreign capital. Privatization was, of course, only the initial step of a long process and its success was linked to the establishment of an independent and strong regulator who will encourage private sector involvement in the sector, facilitate the creation of a competitive environment, and protect consumers from the possibility of misuse of market power derived from their strong market position (Levy and Spiller, 1993; Choi, 1995). By now, many countries have successfully completed the privatization of their telecom companies. Governments have used two basic methods for selling telecom assets: direct sale of all or part of the company to a single buyer through negotiation, or selling a proportion of shares of the company through initial public offerings (IPOs) 35. A majority of Transition Economies employed direct sale as a divesting method for privatizing their telecoms while Share Issue Privatization (SIP) was used only in few cases (like in Czech Republic, Estonia, Hungary and Poland). The former method is more prone to political pressure and corruption while SIP is more transparent and fewer are accompanied by scandals (Megginson, 2005). The latter method, however, requires a minimum level of development in financial markets and a stock exchange. Most governments have retained a proportion of their telecom shares for their own benefit or for later privatization – when prices would have 35 This is sometimes referred to as share issue privatization or SIP 27 Dilemmas and Backwards in a Fast Track - Privatization of POEs in Kosovo forum 2015 risen and the sale would generate larger revenue for the state. Others have been reluctant to allow their share to drop below a certain level, usually 20 to 25 percent required for being a "blocking minority" shareholder. Some of these are even constitutionally prohibited from allowing their share to drop below this level (Megginson, 2005; European Commission - World Bank, 2007). Following table summarizes the privatization of telecom companies in selected Transition Economies (for more detailed summary, refer to Appendix 3).

Table-4.1. Privatization of telecomm companies in selected countries

Countries	Methods of sales	Fraction sold (%)
Albania	Asset sale	85%
Bulgaria	Asset sale	51%
Croatia	Asset sale	35%
Hungary	SIP	30%
Macedonia	Asset sale	51%
Serbia	Asset sale	49%

Source: Parts form Table 8.4 (Megginson, 2005)

While most countries sold controlling stakes of their telecoms, others retained the majority of shares or a Golden Share. Almost always, the buyers were foreign telecom companies, i.e., companies with experience of the field and also funds to in invest abroad. Albania, for example, sold 85% of shares to Cosmote/Telenor Company, a consortium of OTE (Greece) and Telenor (Norway) and the payment was made in two trenches. Hungary sold 17% of telecom shares to Deutsche Telecom (DT) as early as 1993 while in 2000 the ownership share of Deutsche Telekom's in Matáv increased to 59.52%, the remaining 40.48% are held by the public, while the Golden Share is held by the Hungarian state. Macedonia and Montenegro sold controlling stakes to Magyar Telecom which is itself majority owned by Deutsche Telecom (DT) who also bought a controlling stake in Croatia's main telephone company after initially buying 35% in October 1999. Serbia on the other hand sold only 49% of its telecom to OTE of Greece and Italy's Stet in 1997. Bulgaria retained its Golden Share despite selling over 50% of shares of its telecom to OTE from Greece and KPN from Netherlands (Megginson, 2005; ECWB, 2007). By retaining the golden share in the company, the government retains the right to veto any strategic decisions.

4.2. Stagnation of Privatizing Post and Telecommunication of Kosovo (PTK)

The Post and Telecommunication of Kosovo were established in 1959 under a Decision no. 1115497/1-1959 of the Steering Council of Yugoslavian PTT Communion. Then, in 1990 all the Albanian employees and other minorities who disagreed with the politics of Milosevic were driven out of their workplaces by force. During the war in 98-99 all the office items and assets of the PTK were stolen, demolished, and some of them completely damaged.

After the war, start to negotiating teams of the PTK, KFOR and UNMIK enabled the legal return of employees to their workplaces. After 6 years of attempts, PTK has established following three business units: Telecom of Kosovo, Post of Kosovo, and Vala mobile network operator. These three business units of the PTK are licensed by the Kosovo Telecommunications Regulatory Authority. The government of the Republic of Kosovo decided to sell PTK in 2008; yet, in 2010 it decided to privatize only 75 per cent of its assets (BIRN, 2013). In April 2013, the government revealed that “a German company, AXOS-capital, in consortium with Najafi Companies LLC, had been selected as the winner to take over 75 per cent of PTK in return for the sum of 270 million euro” (BIRN, 2013). However, the members of the parliament did not vote on selling PTK since they claimed that the company was undervalued and they did not find enough reliable information about AXOS (Bytyci, 2013). For this reason, the process of privatization in this company has not been finalized yet. Nevertheless, a public debate was raised when doubtful information regarding AXOS were presented by different media networks.

The truth is obviously seems: the privatization of PTK and many other enterprises should happen if Kosovo wants to move forward with economic development. In this article i will show three main arguments that opponents of privatization is recently making criticism to the Kosovo Government.

1. PTK provide revenues for the Kosovo Budget
2. The PTK value is so low
3. Privatization triggers unemployment

4.3. The Privatization of Kosovo Energy Distribution and Supply Corporate (KEDS)

The process of including the private sector in the energy sector of Kosovo, particularly the privatization process of distribution and supply, carried out by Kosovo government in 2013, saw the public polarize on it pro and against. Because this sector has a fundamental importance to the quality of life of Kosovo citizens, the way the privatization was done and the outcomes of this vital process have justifiably attracted the greatest attention. Given this reality, this report aims at analyzing the progress and outcomes of privatization of distribution and supply sector, so that it can serve as a guideline to similar projects that Kosovo government is supposed to set up and carry out in the coming period, as well as to closing the gaps that can likely be improved in the current project. This report and the platforms via which the report is to be presented intend to ignite a lively debate between the relevant stakeholders, such as the Kosovo parliament, Kosovo government, political parties, civil society, academic circles and the general public.

Kosovo government has, in a speedy way, completed the privatization process of energy distribution and supply company amid lack of crucial consensus between the relevant stakeholders in the society in general The process as a whole has been characterized by lack of transparency and inclusive debates, amid an impression created that the government was trying to hold this debate merely within its relatively close circles. The process has also been accompanied by a limited access to official documents Kosovo Parliament has been avoided holding any privatization process-related debate in terms of discussing modalities, as well as analyzing the costs and benefits. The role of the parliament was merely limited to passing the decision taken by the government, the Government Privatization Committee (GPC) respectively. Taking into account the fact that Kosovo parliament members are the only representatives elected by the vote of Kosovo citizens, ruling them out from this process practically shuts the door on the voice of the only body that is directly responsible before those who are supposed to benefit from the privatization of this enterprise; the citizens of Kosovo. What is more, Kosovo parliament passed only in principle the motion on KEDS privatization, but by imposing a condition on this privatization depending on the outcomes of feasibility studies which have never been presented Despite relying on a basic legal framework, the vulnerability of this legal framework has, however, created an excessive discretion for the government by consequently limiting the observational role of parliament. According to this legal framework, the competences were delegated to the GPC, which is an all-in-one political entity utterly composed of members of government, ministers respectively. That might have well damaged PRIVATISATION IN THE ENERGY SECTOR 9 the process of privatization of Kosovo Electricity Distribution and Supply Company (KEDS) as well made it vulnerable to the political impact of parties in power and other irregularities in absence of an oversight and report on the parliament KEDS has been granted the right to collect a significant amount of financial receivables in the form of initial receivables; an amount which was, reportedly, granted with the aim to ensure proper functioning following the ownership transformation. The transfer of the right to the private investor to collect as initial receivables the amount of over €20M after the privatization process went in an absolute silence by all the parties involved in the process. Such lack of transparency puts into a new perspective the privatization of KEDS. In such circumstances, the details of the transfer of the ownership has not presented properly to the citizens. KEDS, as a public operator, which provides public services and operates in a regulated market, is obliged to follow the procedures of the public procurement law thoroughly when purchasing goods and services. Nevertheless, it results the KEDS does not follow the law on public procurement. Consequently, there is discrimination on the grounds of treatment against economic operators. Moreover, no proper transparency and competitiveness is ensured in line with the law on public procurement the privatization process has made the investors to significantly reduce trust in investing in Kosovo, given that the process was followed by allegations of corruption and conflict of interest. The lack of law implementation against corruption and the lack of taking measures to clamping down on these phenomena have influenced the process of KEDS privatization, hence if the situation is to continue with the same pace, it will then have a negative impact on the coming strategic projects in the country.

The process of unbundling and privatizing several parts of the Kosovo Energy Corporation (KEK) begin during early post-war years; at the period when Kosovo was administrated by the UNMIK administration. In 2002 and 2003, the UNMIK in the name of Kosovo signed The Athens Memorandum – 2002 and The Athens Memorandum - 2003. Both of these memorandums of understanding aimed to see the application of European Union (EU) norms across Western Balkans countries. The unbundling of vertical enterprises and establishment of independent enterprises for the generation, transmission, distribution and supply of electricity were amongst those norms. Afterwards in 2005, the Athens Treaty, was signed by which the Energy Community has been established. Kosovo as member of this community undertook mandatory obligations, which amongst other things oblige Kosovo to unbundle its own vertical enterprises in the energy sector. Also, the idea of unbundling and privatizing of several KEK parts co-ordinated with UNMIK initiative to commercialize and privatize social enterprises in Kosovo in order to reactivate these enterprises based on free market principles. KEK organisational structure was inherited from the socialist Yugoslav system, where enterprises used to be organized in a vertical system. An enterprise would be responsible for lignite mines, the generation, transmission, distribution and supply of electricity. In addition to these activities, the KEK also had under its umbrella other non-essential activities, such as gasification of lignite, health services for its own employees, restaurants and public transport. Aside from its very structure, KEK also inherited very old and destroyed assets from the period of 1990-1999, in which investments lacked, and the enterprise was mismanaged. This fact was one of the key factors as to why KEK had poor financial performance between 1999 and 2008. From 1999 until 2002, KEK was managed by the UNMIK administration, while from 2002 until late 2007 by foreign companies in collaboration with local staff. Nevertheless, all the efforts into a financial recovery failed and thus the KEK could not become financially sustainable. One of the key triggers of financial problems at the KEK was the immense losses in the distribution network. The average loss in the distribution network between 2000 and 2009 was estimated to be about 45% of the entire energy injected into the distribution network. This figure goes on to reach the maximal point of losses over the course of 2005 and 2007, with a 49.2% loss. Out of these losses, about 18% were technical losses, whereas the other part commercial ones. Although there is a trend of declines in losses, the technical and commercial losses continue to be one of the main problems in the energy system in Kosovo to this day, with an estimated 35.54% of losses marked in 2013. The other essential problem was the electricity bill collection. During 2000, only 37.7% of the billed electricity was collected. However, as the efficiency of KEK management grew and with the formation of state institutions, the percentage rose to 58.8% in 2001 and gradually to 79.7% in 2009 before reaching its highest point in 2011, when the level of collection was estimated at 90%.

Large electricity losses not only caused financial problems to KEK, but to the consolidated Kosovo budget as well, which was obliged to subsidies the electricity system in order not to put it at the risk of a total failure. Over the period between 2000 and 2007 alone, some €273M were allocated on subsidy by Kosovo's consolidated budget to KEK, and which constituted some 85% of the overall amount of subsidies allocated to the public enterprises during that period. In addition to many subsidies, the Kosovo energy sector was also a target of lots of foreign donations. During 1999 and 2007 alone, some €400M were granted by the EU to different energy projects, whereas the overall amount the KEK received between 1999 and 2008 is estimated to be around €1,052M. Despite the continual increase of collections and cuts in technical and commercial losses, the poor financial performance of KEK was a heavy burden on the Consolidated Budget of Kosovo.

5. PERFORMANCE OF PRIVATIZED COMPANIES IN KOSOVO

5.1. Summary Statistics on Privatized Enterprises

The survey was conducted in January 2015; there were 121 privatized enterprises in the sample (24 special spin-offs), of which only 66 were active at the time of the survey (including all special spin-offs). Table 2 presents the descriptive statistics for the active privatized firms in the sample. Out of the total number of active privatized companies that were surveyed, nearly 60% are engaged in production activities; 21% are in the service sector and the remaining 19% in the trade sector. This diversification of our sample allows us to capture intra-sectoral differences. In terms of size6, 11% of companies are micro-enterprises, 50% are small, 35% are medium and around 4.5% are large. Special spin-offs were apriority expected to be large companies, however, we found that there are enterprises privatized via this method which fell into both small and medium size categories. All large enterprises were privatized through Special Spin-off. Additionally we observed the ownership type of the active privatized companies. Results show that half of these companies are sole proprietorships out of which 10 are companies privatized through Special Spin-Offs. 27% of companies are corporations of which 8 are companies privatized through Special Spin-Off. The remaining 23 percent are partnerships out of which 5 are companies privatized through Special Spin-Off. As for the legal status of active privatized enterprises, around 70% are registered as limited liability companies among which 20 are companies privatized through Special Spin-Off. Remaining 30% are registered as unlimited liability company of which only 3 are companies privatized through Special Spin-Off. One can conclude that privatization has stimulated more partnerships and organization of enterprises as corporations compared to the private SMEs sector.

Table-5.1. Summary Statistics of Active Privatized Companies

Sector	%	Size	%	Ownership type	%	Legal status	%
Production Sector	60	Micro-Enterprises	10.6	Individual Businesses	49	Unlimited liability company	27
Trade Sector	19.6	Small-Enterprises	50.00	Corporations	28	Limited liability company	73
Service Sector	21.4	Medium-Enterprises	34.1	Partnerships	23		
		Large- Enterprises	5.3				

Source: Riinvest Institute (2008)

The reasons why nearly one third of privatizations cases are not operating varies from case to case. In some cases, the owners have no possibilities for additional investment and working capital necessary to put their companies into operations. Another reason might be that the buyers see more benefit in treating these companies as a real estate investment waiting for better valuation on the market. We could not investigate further this group of New Companies due to the fact that it was very difficult to find the new owners.

6. BUSINESS ENVIRONEMENT

6.1. Barriers in Private Businesses

Table 3 below presents the perceptions of respondents from privatized businesses about various barriers to doing business. The intensity of barriers is measured by a score ranging from zero to 100 identified by the respondents. It would be useful from a policy perspective to explore differences between barriers experienced by privatized businesses and by the rest of the firms, especially if the selective policies are to be applied. The perceptions of entrepreneurs owning privatized businesses differ to a certain degree from those of entrepreneurs owning the rest of the firms. Nevertheless these differences are not so significant. The rang of scores is similar but the intensity of barriers such as poor power supply, the extent of the informal economy , communication difficulties, corruption and other public services is higher in other private firms than in privatized companies. The barriers with higher ranking in post- privatized companies are high taxes and access to credit.

Table-6.1.a. Intensity of barriers facing privatized and other private firms

	Privatized companies	Other privatized companies
Unfair competitiveness (tax evasion and informality	84	88.2
Corruption	78	83.4
Law system functioning	68	72
Poor roads and telecommunications	75	72
High taxes	59	55
Access to finance	66.9	45.4
Public services	63.5	70.1

Note: The ‘intensity of barriers’ range from 0 to 100.

Interestingly, high taxes and access to finance are more harmful for privatized businesses. A possible explanation is that privatized businesses are younger than other firms hence facing the liability of newness. In addition the entrepreneurs owning privatized businesses have invested a significant amount of financial capital during the process of privatization, hence any further financial burden experienced presents significant additional burden which is hard to overcome. Also, banks may hesitate to finance newly established businesses especially privatized businesses that might face cash flow problem due to large investment in the start up phase.

6.2. Competition

As far as competition is concerned, the results indicate that the intensity of competition from domestic competitors and imports, is more severe in ‘other private firms’ sector, where over 38 % of companies consider domestic competition as a very big obstacle, whereas only about 24 % of post-privatized companies consider this a big obstacle. Also it is worth pointing out that over 20 % of private sector companies, compared to 12% of post-privatized firms, consider the import competition as a very big obstacle for the development of their companies. Most of both types of companies do not see domestic and import competition as an obstacle at all. Another important difference is in terms of competition that the two groups of firms face. It is clear that privatized businesses face less competition compared to the rest of the firms. Several business indicators explain this. The privatized businesses are larger than the rest of the firms in terms of number of employees, turnover and assets. This provides them with the competitive advantage resulting from economies of scale. In addition 60 % of privatized businesses are export oriented (compared to 20% of the rest of the firms) underlining their competitive ability of penetrating in foreign markets and being less dependent on the local demand. Further, privatized businesses invest drastically larger amount of capital than other firms (Euro 4,338,274 vs. Euro 331,610), emphasizing their power and advantage in business activities. Given these indicators, it is clear that privatized businesses are more competitive in the market place and thus face less competition than the rest of the firms.

6.3. Corruption

Given that the privatization process in Kosovo has been transparent and open to everyone, the method used (especially the regular Spin-Off method) has left less space for corruption as it provided less discretion for the institutions involved in the process. This method has reduced subjective elements of other privatization methods. However, based on the results of our survey presented in Table 4, half of the respondents from privatized companies perceive the level of corruption as being very widespread, while another 31.8% perceive that corruption is spread. Only 3% of respondents perceive that the level of corruption is not spread at all. These results in turn, put into question the transparency of the process regardless the privatization method knowing the fact that the perception of pervasive corruption is considered to be enforced by the lack of transparency. The perceptions of owners of privatized companies on corruption are similar to those of de-novo private companies reflecting a more reliable illustration of the extent of corruption in Kosovo.

Table-6.3.1. The perception of respondents on the level of corruption in Kosovo (%)

Prevalence of corruption in Kosovo	Privatized companies	Other privatized companies
Widely spread	50.0%	59.6%
Spread	31.8%	24.4%
Moderately spread	9.1%	9.8%
Rarely spread	1.5%	1.8%
Not spread	3.0%	0.6%
No answer	4.5%	3.9%
Total	100.0%	100.0%

Source: Riinvest Institute (2008)

7. CONCLUSION

Main conclusions from this research include:

- Government of Republic of Kosovo has clearly share its commitment for energetic and fast privatization of three POEs. Although this government designation should be accepted it seems that it is disproportionate with current level of preparations, forming of solid legal frame, creation of necessary political and public support and basic consensus in the Assembly and with other key stakeholders at the society. This has been proven as an environment that doesn't support government intentions and this is proven by the lack of substantial progress during last 18 months since government purposes were made public.
- Current legal frame provides only basic solutions for embarking on privatization POEs. The procedures in this framework, and polices are not clear. It seems that Government Privatization Committee (GPC) Public Private Partnerships – Inter-ministerial Steering Committee (PPP-ISC) have been granted with too much powers, without clear line or oversight and reporting to the Kosovo Assembly.

- The Government of Kosovo has not clear policies in place regarding the reorganization the ownership structure of POEs after first wave of privatization respectively if is going to sell all shares to a private investor or will keep portion of that in public ownership for later eventual privatization or will embark on so-called ‘golden share’ approach.
- Along the privatization government has not a policy in place regarding the use of revenues from privatization of POEs. Certain main aspects of this should be part of transparency debate in the society, media, academy etc. As these corporations are to serve public interest in large , current and future generations we consider viable policies and solution should be determined;
- Ownership change after privatization (or secondary privatization) has been relatively small; only 15%, or about one in six privatized companies has been resold; most post-privatized companies (New Companies) have been organized as partnerships and corporations (50%) compared to 13% of private SMEs with similar legal status. Again contrary to the SMEs out of which 80% are unlimited liability companies, most of New Companies are limited liability companies (70%).
- Privatization effects are negatively impacted by long delays in contracting process and the winner of the bid could sign the contract, on average, only after 7 months while it took some other 3-5 months , on average, to take over the company
- The key reasons of investors participating in the privatization process have been: availability of skilled employees at low wages, geographical location and natural resources.
- Privatization process performance of post-privatized companies is better that had been expected. However, the dynamics of growth of sales, exports, employment and investment are better than the remaining pat of the private sector’. In this case PTK had to be privatized in 2010 because of higher prices of shares and market value, the acceleration of privatization process consist with improvements in exports and GDP growth rates. The turnover of surveyed companies has doubled compare to 2006, exports have increased six times and investment has increased by 30% during the same period. The average export share of sales is 35% and they cover about 46% of imports (the rest of the economy 11%). About 80% of managers/respondents consider their business to be in better conditions during 2007 compared to 2006 and they expect that the current year would be even better.
- The majority of New Companies have continued the previous business activity, but nearly 40% of them have induced changes in manufacturing program and also undertaken technological changes.
- The number of employees was reduced immediately after privatization, but it has generally increased afterwards. Currently, about 60% of the work force were employees of the company prior to privatization. Surveyed companies expect to increase the number of employees in 2008 for about 9% than in 2007; more than 60% of companies have recruited new employees.
- There is strong orientation towards exports: 44% of companies are export oriented.
- More than 80% of these companies have made investment, financed by their own resources and about 1/3 from credit sources with loan terms considered unfavorable for more than 80% of respondents;
- Companies which are privatized with liquidation process are performing better than expected; they are showing better labor productivity than companies privatized through Special Spin-Off.

8. RECOMMENDATIONS

We recommend that Kosovo government and Assembly in a near future complete legal frame for effective, transparent and accountable privatization of POEs through amending existing Law on POEs and Low on PPP and concessions or by passing a laws on privatization of each of three main POEs : KEK, PTK and PIA;

- The Kosovo Assembly should be more actively engaged and build its position in this process that could ensure transparency and accountability of Government and other bodies for the successful completion of this process. Authorizations of GPC and PPP-ISC should be carefully weighted and analyzed in this context. This should be clearly ensured through completion of legal frame;
- Following experiences in other transition economies we suggest that part 7 Dilemmas and Backwards in a Fast Track - Privatization of POEs in Kosovo forum 2015 of shares to the extent that doesn't discourage strategic investors remain public at first round of privatization of POEs in order to eventually be privatized with much higher price later.
- Government and Assembly through inclusive debate with other stakeholders should build policies that ensure that great portion of proceeds other than transaction costs are used for public investment in infrastructure, education and health and not for current budget consumption for salaries, goods and services.
- We recommend that the length concession arrangements is determined carefully and that 40 years arrangements are an exception for specific projects (e.g. infrastructure networks, forestry etc) and that these arrangements in case of large transactions should have the approval of Kosovo Assembly in case that they exceed period of 20-25 years;

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