



Legal Dimension Of The Existence Of Distribution Companies In The Electricity Market And Distribution Contracts

Bahar Bölümcü Yılmaz ^a, Sadullah Özel ^b

^aBatman University, Faculty of Technology, Department of Electrical and Electronics Engineering, 72060, BATMAN/TURKEY

^bMaster's Student Batman University, Faculty of Engineering and Architecture, Department of Energy Management
baharbolumcu@gmail.com

ARTICLE INFO

Article history:
Received 21 November 23
Revised 11 March 2024
Accepted 13 December 2024
Available online 18 December 2024
Presented in International Energy Summit 2024

* Corresponding author.
E-mail address:
sadullah.ozel@batman.edu.tr

ABSTRACT

Electricity Market; It is a market consisting of the production, distribution, presentation, market operation, wholesale, retail sales, import and export activities of electrical energy and the business and transactions related to these activities. Distribution activity, which is one of the activity areas of the market, refers to the uninterrupted, continuous and high-quality delivery of electrical energy to the end consumer through lines of 36 KW and below. According to the decision dated 12/09/2012 and numbered 4019 taken by the Energy Market Regulatory Board, distribution and retail sales activities must be carried out under separate legal entities by legal entities holding distribution licenses as of 01/01/2013. With this decision taken by EMRA, it is aimed to ensure that the activities of electricity distribution companies are more transparent and open to competition in order to liberalize our electricity market. Efforts to ensure competition in the electrical energy market also bring about the unique characteristics of the market, the increasing need for electrical energy, legal problems and the need for legal regulation. In this study, the existence of the electricity market and distribution companies, their legal aspects, the main contracts in energy management and the processes related to the implementation of the contracts will be explained.

2024 Batman University. All rights reserved

1. Introduction

Generation, transportation (transmission and distribution), trade and trade of electrical energy, which is a basic requirement and indispensable part of our lives, and the services associated with all these processes and their specific characteristics constitute the electricity sector. The electricity market, which has gone through different stages in the historical process and transformed into today's practices, refers to the generation, transmission, distribution, market operation, wholesale, retail, import and export activities of electrical energy and the business and transactions related to these activities. Distribution, one of the most important activities of the market, refers to the uninterrupted, continuous and high quality delivery of electrical energy to the final consumer through lines of 36 KW and below [1].

After 1980, the restructuring of the electricity sector, which was on the agenda in many countries around the world, came to the agenda in Turkey around the same time. With the liberalization of the electricity market, the vertically integrated structure, which was owned by the public sector in the past, is now being transformed into a competitive market structure in

which the private sector also plays a role. For this reason, the private sector was requested to take part in the generation, supply and distribution phases of electricity market activities [2]. The main purpose of vertical unbundling is to ensure that all participants have non-discriminatory access to the transmission and distribution networks, which will maintain their natural monopoly characteristics in the electricity system, and that competition is transparent. In this context, the historical adventure of distribution activities carried out by the public sector in Turkey is summarized as follows:

- In 1982, some electricity generation, transmission and distribution facilities owned or used by municipalities were transferred to the Turkish Electricity Authority (TEK),
- In 1993, TEK was restructured into two separate state-owned enterprises, the Turkish Electricity Generation and Transmission Corporation (TEİAŞ) and the Turkish Electricity Distribution Corporation (TEDAŞ).

In 1980 and 1990, various legislative amendments were enacted to encourage private sector participation in the sector in line with the practices in other countries. However, these initiatives have so far failed to yield the desired results as the necessary legal and legislative arrangements have not been developed as a whole.

2.Privatization

Privatization, in a narrow sense, refers to the transfer of ownership and management of public economic enterprises to the private sector. In a broader sense, it involves the transfer of public assets or publicly measurable resources to private ownership, as well as the implementation of regulations that reduce or eliminate the state's role in economic activities. The concept of privatization is based on the work of Adam Smith, often considered the founder of modern economics, whose 1776 book *The Wealth of Nations* laid the groundwork for this concept. Generally, privatization can be defined as the transfer or sale of state-owned investments and resources to the private sector in accordance with free-market principles, provided that the oversight and control remain with the state [3].

The privatization process can be realized through various methods, which differ in terms of technique, results, and political and economic impacts. In the context of the Turkish electricity market, the privatization of distribution activities was carried out based on Article 15 of the Law on Privatization Applications No. 4046. This law facilitated the transfer of operating rights (operating rights transfer, IHD) and the sale of shares (share transfer model, IHS Model) in TEDAŞ, which was responsible for electricity distribution in Turkey.

By the 1980s, rapid technological development and globalization led to socio-economic transformations worldwide. These changes, driven by crises and problems within public administrations, prompted many countries to undertake reformist actions [4]. With the rise of free-market economic principles, state-driven models were increasingly questioned, leading to the deregulation of trade and finance. Consequently, privatization emerged as a policy to reduce the state's role in the economy and transfer economic areas to the private sector. In line with these developments, privatization policies were implemented to improve efficiency and address issues within the electricity sector. The goal was to liberalize the sector by increasing competition, and in 2004, the Electricity Market Reform and Strategy Document was published [5].

For many years, electricity distribution in Turkey was handled by TEDAŞ, but following the 2004/3 decision by the High Planning Council, the Electricity Energy Sector Reform and Privatization Strategy Document came into effect, stipulating the privatization of distribution

activities. The plan proposed creating a maximum of 21 distribution regions across Turkey. As the first stage of privatization, electricity distribution companies (EDAŞ), each with separate legal identities but fully owned by TEDAŞ, were established in 20 regions as of March 1, 2005. In 2006, to ensure the transfer of operating rights, a Operating Rights Transfer Agreement was signed between TEDAŞ and EDAŞ. This agreement led to the second stage of privatization, where shares of EDAŞ were transferred to the private sector while TEDAŞ retained ownership of the facilities. The share transfers were completed by 2013. Today, TEDAŞ no longer holds a distribution license, and distribution activities are carried out by privatized EDAŞ in the regions specified in their licenses [6].

3.Regulation

Regulation, in a general sense, is a concept that concerns various fields such as law and economics. From a legal perspective, it can sometimes refer to regulation, sometimes to supervision, or in some cases, to both regulation and supervision. From an economic standpoint, regulation involves a broader range of activities than typical regulation and supervision. Therefore, the concepts of regulation and supervision alone do not fully define regulation. The term "regulation" encompasses not only the establishment of rules for a particular activity and ensuring compliance with those rules but also guiding the implementation of laws, assessing complaints about violations, imposing temporary measures to prevent serious and irreparable harm, evaluating notifications about decisions, conducting investigations upon complaints or at the discretion of the regulatory body, providing documentation and information, imposing fines, and showing how the law is being applied in the relevant sector [7].

Since the 1980s, energy production and distribution of primary energies such as natural gas, coal, hydraulic energy, and oil, as well as secondary energy sources like electricity, have gradually shifted from state monopolies to the private sector and/or publicly traded companies with state participation. In Turkey, discussions on this shift began in 1985 and were put into practice during the 1990s. After the publication of the European Union's Directive 96/97, restructuring efforts in the electricity sector were initiated in 1997, and as a result, the Electricity Energy Law No. 4828 was adopted in 2001. With the Electricity Market Law, Turkey aimed to create a competitive electricity market based on private law principles, where the state would assume a purely regulatory role, ensuring a transparent and efficient market [8].

In the electricity sector, there are two stages where competition is not feasible: the high-voltage transmission and low-voltage distribution stages. Furthermore, there are no technological or economic barriers to competition in the production and supply (retail sales) stages. In countries where privatization has been successful, regulation is not deemed necessary in stages where competition is possible. However, in Turkey, where the state has withdrawn from the sector through privatization, the continuity of oversight and control under the regulatory framework remains essential. Therefore, it is crucial for the Energy Market Regulatory Authority (EPDK) to perform monitoring and control impartially and free from external pressures to ensure the success of privatization. If effective regulation and supervision are maintained within the framework of privatization, a transparent and efficient electricity market will be established [8].

4.Legal Aspects of Post-Privatization Distribution Companies

Thomas Edison's famous quote, "I'll make electricity so cheap that only the rich will be able to afford to light their homes with candles," which emerged at the end of the 19th century, aligns with the goal in the Electricity Market Law of 2001: "to make electricity available to consumers at low cost." In this context, under the Electricity Market Law, distribution companies, under licenses granted by the Energy Market Regulatory Authority (EPDK), are required to provide electricity distribution and connection services to all system users in a non-discriminatory manner and with high quality.

The electricity service, considered a public service, does not have the characteristics of a public good from an economic standpoint. Electricity consumption is both excludable (consumers can be charged for the electricity they use) and competitive (the marginal cost of one person consuming one more unit of electricity is greater than zero). The categorization of electricity services as a public service is based on the universal service logic. The Electricity Market Law includes provisions that aim to ensure the provision of a reliable, quality, continuous, and low-cost electricity service to consumers [9].

Electricity distribution, although not prohibited for the private sector, is still considered a public service due to its monopoly nature. Despite privatization, distribution remains under the public sector's control in Turkey, with private companies holding monopoly power. Distribution services can only be carried out by private legal entities in specific regions, as outlined in the Electricity Market Law. According to the Court of Cassation, electricity distribution is inherently a public service monopolized by the state. This was reflected in a 2004 decision regarding TEDAŞ, which held the monopoly in energy distribution [10].

5. Conclusion

The discovery of electricity is one of the milestones in human history, as it facilitates numerous everyday activities, from transportation to agriculture. Therefore, electricity, along with water and air, has become an essential commodity. Its production, transmission, trade, market operations, and regulations all aim to ensure electricity is supplied at reasonable prices, with a focus on security of supply, environmental sustainability, and a robust market. Electricity is not only of extraordinary value due to its importance but also has unique characteristics not found in any other commodity [14].

For this reason, electricity markets have a unique structure, operational processes, legal framework, and public interest, subject to economic regulation. As a result, the state long managed the electricity sector, but since the 1980s, many countries have initiated restructuring processes, leading to privatization. In Turkey, privatization initiatives in the electricity sector have gone hand-in-hand with liberalization reforms. The first legislative measures were taken in 1984 with the Law No. 2983, and the electricity sector underwent significant changes with the Law No. 3096 that year, marking the end of the Turkish Electricity Authority's (TEK) monopoly and allowing the private sector to engage in electricity production, transmission, and sales.

The Electricity Market Law No. 4628, which came into effect in 2001, laid the legal framework for the restructuring of the electricity industry, aiming to open up the market to competition while maintaining regulation of natural monopolies such as transmission and distribution. The Law's primary goal is to ensure a competitive, transparent, and efficient electricity market while also establishing an independent regulatory body for oversight [15].

The developments in the electricity sector, from TEK to TEDAŞ, and eventually to regional distribution companies, are of great importance to consumers, as distribution and retail sales are the most commonly encountered areas of the market. The privatization and restructuring of the distribution and retail sales sectors have aligned with neo-liberal economic policies. In today's Turkey, with the increasing demand for electricity due to rapid urbanization and industrialization, the private sector's participation is essential for providing the necessary investment and financing, as state resources alone cannot meet these growing needs [16].

Acknowledgement

The summary part of the declaration was previously prepared and presented to many participants in the Batman Energy Summit'23 program. After the abstract was accepted, the study was completed by turning it into a paper. At the stage when the first summarized version of the study was presented in the Batman Energy Summit'23 program, Batman University Energy Management Department Head Assoc. Dr. I would like to thank Mr. Mehmet Rıda TÜR. Following the presentation of the abstract in the Batman Energy Summit '23 program, the work on the abstract was completed and the declaration phase was started. During the process, the necessary information, guidance and final checks of the declaration were carried out in order to prepare a publication in academic language. Faculty Member of Batman University Faculty of Economics and Administrative Sciences, Department of International Relations, who did not spare his support in the revision process. Dr. I would like to thank Mr. Sadullah ÖZEL.

References

- [1] Güngör, İ. Uluslararası Alanya İşletme Fakültesi Dergisi.
- [2] Üstündağ, B. (2021). Elektrik Dağıtım Faaliyeti İle Diğer Elektrik Piyasası Faaliyetleri Arasında Yönetim Ayrıştırmasının Uygulanabilirliği. Yıldırım Beyazıt Hukuk Dergisi, (2), 611-646.
- [3] Ertılav, M., & Aktel, M. (2017). Tedaş (Türkiye Elektrik Dağıtım Anonim Şirketi) Özelleştirilmesi. Uluslararası Alanya İşletme Fakültesi Dergisi, 7.
- [4] Zenginobuz, Ü. (2000). Elektrik Sektöründe Özelleştirme, Rekabet Ve Regülasyon, Rekabet Kurumu Perşembe Konferansları, Ankara.
- [5] Alma, H. (2015). Özelleştirilen Elektrik Dağıtım Ve Perakende Satış Şirketlerinin Şirket Değerleme Yaklaşımıyla İncelenmesi.
- [6] Kurum, M. E. (2010). Elektrik Sektöründe Özelleştirme, Regülasyon Ve Türkiye Uygulaması (Doctoral Dissertation, Marmara Üniversitesi (Turkey)).
- [7] Zenginobuz, Ü. (2000). Elektrik Sektöründe Özelleştirme, Rekabet Ve Regülasyon. Perşembe Konferansları, 5.
- [8] Güvenek, B. (2009). Devletin Regülasyonlar Yoluyla Piyasalara Müdahalesi Ve Türkiye Enerji Piyasaları. Sosyal Ekonomik Araştırmalar Dergisi, 9(18), 45-62.
- [9] Avcı, M. (2014). İdarenin Kamu Hizmeti Faaliyetlerinde Daralma Ve Dönüşüm: Özelleştirme Ve Regülasyon. Türkiye Adalet Akademisi Dergisi, 5(16).
- [10] Oğurlu, Y. (2001). İdari Yaptırımlar Karşısında Yargısal Korunma.
- [11] Yargıtay 19. Hukuk Dairesi, E. 2004/12212, K. 2005/7157, T. 24.6.2005 (Kazancı)
- [12] 87/693-138 Sayı Ve 16.10.1998 Tarihli Rekabet Kurulu Kararı, S. 4-6, [Http://www.Rekabet.Gov.Tr/Pdf/87-693-138.Pdf](http://www.Rekabet.Gov.Tr/Pdf/87-693-138.Pdf)
- [13] Anayasa Mahkemesi, E: 1994/43, K: 1994/42-2, T: 9.12.1994, Rg: 24.1.1995/22181 Ve Anayasa Mahkemesi, E: 1994/49, K: 1994/45-2, T: 7.7.1994, Rg: 10.9.1994/22047
- [14] Alma, H. (2015). Özelleştirilen Elektrik Dağıtım Ve Perakende Satış Şirketlerinin Şirket Değerleme Yaklaşımıyla İncelenmesi.
- [15] Yağmur, K. A. Y. A. (2020). Türkiye'de Özelleştirmelerin İstihdam Etkileri: Elektrik Dağıtım Şirketleri Üzerine Bir İnceleme. Kayseri Üniversitesi Sosyal Bilimler Dergisi, 2(2), 1-23.
- [16] Ertılav, M. (2014). Türkiye'de Özelleştirme: Tedaş (Türkiye Elektrik Dağıtım Anonim Şirketi) Örneği. Süleyman Demirel Üniversitesi, Sosyal Bilimler Enstitüsü, Yayınlanmamış Yüksek Lisans Tezi.