

PROSPECTIVE AMENDMENTS ON NATURAL GAS MARKET LAW IN TURKEY

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The Natural Gas Market Law numbered 4646 (NGML) was enacted in 2001 in order to reform the legal structure of the natural gas market in Turkey with the aim to liberalize the market and encourage privatization and competition.

Since the introduction of the NGML, the Turkish natural gas sector has been regulated by the Energy Market Regulatory Authority (EMRA). Companies must obtain licenses from EMRA for gas transmission, export, import, wholesale, distribution and storage. The state-owned Petroleum Pipeline Corporation (BOTAŞ) continues to dominate the market, despite the NGML officially abolishing its monopoly on gas import, distribution, sales and pricing. As required by the NGML, BOTAŞ has begun to transfer its long-term gas supply agreements to the private sector, and it is required to transfer at least 10% of its import contracts every year until it holds only 20% of the market share. In 2007, Shell became the first company to take over some distribution of imported natural gas in Turkey from BOTAŞ.

Despite the efforts for liberalization and privatization in the Turkish natural gas market, at present, BOTAS is still dominant in the market. With the privatization of natural gas distribution companies and gas fired power stations, and the strong dominant structure of BOTAS over the market, Turkish authorities are evaluating the amendments on the current NGML. A significant part of the drafts have been prepared by the market players, authorities, organizations and academics. We have evaluated the draft of Enerji Isleri Genel Mudurlugu (EIGM) which was drafted in June 2009. Key points of this draft NGML are summarized below;

- High pressure pipeline is clearly redefined as a system that transmits natural gas with pressure 75 bar or more. According to draft law, high pressure pipeline together with RMS-A stations which feed distribution networks, are part of transmission network even if they are located in pre-determined distribution area of the distribution company. Additionally pipeline which transmits natural gas from RMS-A stations to privately owned power plants is also considered as a part of transmission network.
- The definition of “eligible consumers” has changed as “consumers, user associations, free zone entities and industrial zones which consume natural gas more than the amount determined by EMRA”. By this change, it might be considered that the limitation of the eligible consumers has removed, but it should be noted that, EMRA will be the determining authority.
- BOTAS will be divided into two as Dogalgaz Tasima Anonim Sirketi (“DOTAS”) and Dogalgaz Ticaret ve Taahhüt Anonim Sirketi (“GAZTAS”).
- Boru Hatları ile Petrol Taşıma Anonim Şirketi (“BOTAS”) shall assign all of the gas purchase agreements to GAZTAS. GAZTAS is allowed to enter into new gas purchase agreements with different countries other than the current gas purchase agreements. GAZTAS is authorized to

assign partially or completely the rights or obligations arising from the transferred or new gas purchase agreements to the third legal parties. It is also allowed to transfer some part of the gas amounts stated in the said agreements.

- The produced natural gas will not be transmitted through the transmission companies, rather they will be transmitted in accordance with the terms of the shipping and delivery agreements that are executed with DOTAS.
- According to one of the amendments in the law, a distribution company will not be able to hold distribution licenses of more than two different cities. This situation may cause problems in the market because currently there are distribution companies holding distribution licenses of more than two cities. This amendment should be evaluated in accordance with the current situations.
- DOTAS shall execute transmission agreements with import, wholesale, production and export companies and it shall determine the relevant tariffs in such agreements. The total gas amount provided by the wholesale companies (excluding DOTAS) shall not exceed 20% of the predicted national natural gas consumption.
- If the national transmission system is available upon the request of the consumers, pursuant to the conditions determined by the EMRA, DOTAS is under the duty to connect the consumers to the system within twelve (12) months. With the current NGML, distribution companies are entitled to distribute gas over their entire license zone which is the border of the municipalities. If these consumers who wish to connect to transmission system, are in the licensed zone of the distribution companies, there will be a dispute between the distribution companies and DOTAS regarding the natural gas sale.
- The transmission of natural gas to the power plants built and operated by private sector which are subject to the Build-Operate Law and Build-Operate-Transfer Law that form a connected system to the national transmission network and executed treasury guaranteed agreements, and the power plants which belong to the public sector is made by DOTAS and the sale of natural gas to such is performed by GAZTAS. This amendment will affect the sales of distribution companies since these power plants are purchasing significant amount of natural gas. On the other hand, this will affect the privatization of the state owned distribution companies.
- The system (including the RMS-A stations), which provides natural gas to the power plants established and operated by the private sector entities (which are qualified as eligibles), is considered as part of the transmission network and is operated by BOTAS, even if such system is located within the pre-determined distribution area of the distribution company. Furthermore, the system including the RMS-A stations which provides natural gas to Ambarli, Bursa and Hamitabat power plants (operated by Elektrik Uretim A.S. and with the total installed capacity of 4.003 MW) is considered as part of the transmission network and

operated by BOTAS, even if such system is located within the pre-determined distribution area of the distribution company.

As it is known, the transfer of the BOTAS RMS-A stations together with high pressure pipeline and customers to the distribution companies is a big legal dispute between the distribution companies and BOTAS. There are many law suits against BOTAS in this regard and they are still ongoing. Only AGDAS (Adapazarı Distribution Company) has so far succeeded against BOTAS. By the enactment of these amendments, the transfer of these lines and consumers shall not be subject to any legal dispute and they will directly belong to BOTAS.

Furthermore, any new publicly owned power plant together with private power plants under BO, and BOT terms will be able to purchase gas directly from GAZTAS and will pay transmission fee directly to DOTAS. On the other hand DOTAS will be able to build individual RMS-A stations together with high pressure pipeline for any privately owned power plant or consumer. In this content, local distribution companies will not be able to claim any transfer fee over those lines. Since the aim of NGML liberalization of the market and encourage privatization and competition, the affects of these amendments should be evaluated carefully and the market players should be involved in the negotiations of the draft law.

Even though these amendments are not finalized and are still subject to negotiations before the Parliament, this can still show us the approach of the governmental bodies to the current NDML. Also these amendments will have a huge impact on the privatization of the distribution companies like Istanbul distribution company IGDAS and Ankara distribution company Baskentgaz. On the other hand, these amendments show us that BOTAS may be privatized as two separate companies in the near future.