

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: The Tender Procedure for Acquiring Blocks of Shares in Joint Stock Companies

Back in September of 2000, the announcements regarding the sale of blocks of shares in large Ukrainian enterprises kept rolling off the State Property Fund's ("SPF") bulletins: Zaporizhia Aluminum Plant, Pivnichny Ore Enrichment Plant, Kramatorks Steel Plant, Nikopol Ferroalloy Plant, KhersonNaftoPererobka Oil Refinery, Khartron and TurboAtom Plants, to name a few.

Even one of Ukraine's crown jewels, Ukrtelecom, was up for sale in 2000, in accordance with Law "On Particularities of Ukrtelecom," No. 1869, dated July 13, 2000, which offered investors up to 43% stock. This privatization never materialized, however, and the law was terminated on July 5, 2005. Just three weeks later, on July 25, 2005, Ukrtelecom once again appeared on the priority list of enterprises slated for privatization. It is still nowhere close to being privatized.

In August 2005, then acting Prime Minister Yulia Tymoshenko prepared an amazingly comprehensive list of enterprises that were subject to privatization (and re-privatization). Eventually, some were re-privatized (like Krivorizhstal), while others went into hiding on a list of "objects not subject to privatization" (Nikopol Ferroalloy Plant). Eventually, however, NFP was taken away from the billionaire Victor Pinchuk.

In early 2006, the SPF decided to overhaul the process of selling stock in its joint stock companies. Along with the new Civil and Economic Codes, there is a new procedure for conducting tenders, with a focus on transparency. Despite any attempts to bring transparency into the privatization game, however, shady inside deals persist. For instance, in 2007, Luhanskteplovoz (locomotive plant) was sold in a last-minute auction that included only one bidder from Russia for a pitiful \$60 million. Earlier, the State Property Fund estimated its worth to be as much as \$2 billion, while Renaissance Capital assessed the value at a more realistic \$121 million.

The head of the parliament's Special Monitoring Commission on Issues of Privatization, Andrei Kozhemyakin, complained that there was no competition, no transparency, and that the 76% stake should have been sold for more. He had a good point: out of nine companies that had concluded preliminary agreements with SPF to purchase the plant, only four bidders were short-listed. Eventually, two of them (both controlled by Privat Group) were excluded from the final bidding process.

The SPF spokesperson, Nina Yavorska, countered that there was nothing strange about the fact that the only two bidders in the tender were controlled by the same Russian company, and the head of SPF, Valentyna Semenyuk (a member of Yanukovich's pro-Russian parliamentary coalition) defended the absurdly low price. Fortunately, the auction's results were nullified. Still, this political melodrama exemplifies the full extent to which local politicians play a role in privatization of Ukrainian assets.

Notwithstanding the foregoing, below we describe the tender procedure for acquiring state-owned blocks of shares in Ukrainian joint stock companies.

I. Introduction

The tender procedure for the sale of blocks of shares of stock in joint stock companies is regulated by Order No. 1800 "On Approval of the Regulation of the Procedure of Conducting Tenders Involving the Sale of Blocks of Shares of Stock of Joint Stock Companies," dated August 31, 2004, jointly approved by the State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine and the State Commission for Securities and the Stock Market and registered with the Ministry of Justice on December 23, 2004 under No. 1634/10233 (hereinafter the "Order").

The Order sets forth the procedure for the preparation, organization and conducting of tenders involving the sale of state-owned blocks of shares in open joint stock companies. Such tenders are conducted by the state privatization bodies, sometimes with the participation of state-authorized advisers. Importantly, the Order does not apply to energy companies or to companies listed as "not subject to privatization", including the notorious Nikopol Ferroalloy Plant (re-privatization victim).

The Order defines "tender" as the method of selling shares in open joint stock companies to a tender winner, who is defined as the candidate who offers the highest price for such shares and undertakes to fulfill all of the terms and conditions of the tender. The Order further provides that advisers may be brought in to facilitate the effective sale of stock during these tenders. Such advisers are selected according to the procedure approved by the State Property Fund's Order No. 1745, dated August 21, 2000.

In somewhat relation to this provision of the Order, the Cabinet of Ministers also passed Resolution No. 1320 "On the Procedure for the Sale of State-owned Packets of Shares of Open Joint Stock Companies, Created in the Process of Privatization, in the Form of Depository Receipts on International Stock Exchanges," dated July 21, 1999. Resolution No. 1320 makes it possible for investors to buy packets of shares from designated OJSCs on international markets in the form of depository receipts.

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