

French Privatizations: practical tips for prospective bidders

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Following the success of the most recent privatizations of large regional airports (Nice, Lyon and Toulouse¹) and in accordance with the guidelines of the French Government (see [France's Reform Agenda: First Year Overview](#)), a new wave of French privatizations is about to begin.

Even if the list of companies to be privatized is likely to change, among the processes already initiated are those involving [Aéroports de Paris](#) or "ADP" (the operator of Paris Charles de Gaulle and Orly airports, among others), [Française des Jeux](#) or "FDJ" (the second major gaming operator in Europe), [Engie](#) (a global energy and services company) and Engie-controlled [GRTgaz](#) (a leading European player in natural gas transmission), each with its own characteristics². Other processes may be announced subsequently³, which will take into account French budgetary constraints and the State's desire to promote alternative ways of retaining influence on assets considered to be strategic (such as the issuance to the State of "golden shares").

Given the strong interest of investors – especially international investors – in prior privatizations, it may be useful to highlight the major features of French privatization processes and provide insight for prospective bidders.

1. Familiarization with the applicable legal framework

The disposal of assets or shares by the French State is governed by a very specific legal regime, which varies according to the type of transaction being contemplated⁴. For example, depending on whether or not the transaction involves the disposal to the private sector of the majority of the share capital of a company (as well as other criteria), the transaction must first be authorized by an act of Parliament before subsequently being decided by executive decree. The privatizations of ADP and FDJ – both majority controlled by the State – are currently at the legislative authorization stage⁵.

The determination of the terms and conditions of the sale procedure and its implementation are conducted under the supervision of the Minister of Economy, with the actual work being carried

¹ However, the sale of an equity interest in the Toulouse-Blagnac airport to a Chinese consortium caused considerable controversy.

² The timing and conditions of the sales – including what percentage of capital of each company will be sold – remain to be specified but in any event the sales would not be launched before the Pacte bill is enacted, which is not expected to occur before the first half of 2019.

³ It has been reported that the following companies may be concerned: Orange, Air France-KLM, Peugeot and Renault.

⁴ See primarily order n° 2014-948 dated August 20, 2014.

⁵ For Engie (in which the State owns 24.1% of the capital and 34.85% of the voting rights), the proposed legislative amendment is intended to allow the State to reduce its ownership below the current minimum ownership threshold of one-third of Engie's capital or voting rights (the French State would in any case retain a golden share in Engie granting it veto rights on strategic asset sales). For GRTGaz, it is proposed to allow the selling down of Engie's and other State-owned entities' holdings to 50%, thus making it possible to open the capital of GRTGaz to private investors.

out by the *Agence des participations de l'Etat* (State Shareholding Agency). Other administrations or administrative authorities are also likely to be involved, for example, if the asset concerned is a regulated asset⁶.

In practice, the general framework for transactions carried out off-market (*gré à gré*)⁷ follows, in most cases, defined specifications or “*cahier des charges*”⁸, which are published on the website of the *Agence des participations de l'Etat*⁹ in French and English and which vary depending on the transaction. These specifications list in particular the terms of the proposed sale, the conditions to be fulfilled by the candidates and the criteria governing the selection of potential purchasers.

Strictly speaking, in addition to the specifications and the divestiture process, it is also essential for any interested candidate to carefully analyze the regulatory environment of the relevant asset, all the more so that it may be reinforced during the privatization process, notably in order for the French State to maintain some influence after the sale¹⁰.

2. Anticipate the expected formalism

For any foreign investor accustomed to auctions governed by process letters of investment banks, being confronted with a privatization process based on specifications can be destabilizing.

Including their annexes, specifications are fairly large documents (up to fifty pages), that candidates are asked to irrevocably and unreservedly accept and fully respect, failing which their application will be rejected.

The formalism applies, for example, to the characteristics of the candidates' applications and subsequent offers, which will generally have to include various clearly identified items, ranging from statements of oath concerning various subjects (e.g., tax compliance) to broad disclosure requirements.

Therefore, anticipating the process is very important, especially since the period of time between the publication of the specifications and the deadline for submitting application proposals can be short (approximately two weeks, for example, in the privatizations of Lyon and Nice airports) and most of the items to be submitted by the candidates must be in French.

Although this formalism may seem quite restrictive, it is not intended to discourage candidates. On the contrary, it aims to ensure that all potential candidates, both French and foreign nationals, are on an equal footing.

⁶ In addition, and depending on the circumstances, foreign investors may have to seek the prior approval from the French Ministry of Economy under applicable French foreign investment rules. Obviously, the delivery of such authorization should not raise any particular difficulty since the purchasers are selected by the French State.

⁷ Sales of shares on the market may be also conducted, possibly combined with off-market sales.

⁸ Alternatively, transactions carried out off-market may be achieved by means of a cooperation agreement (*accord de coopération*), without calls for tenders.

⁹ www.economie.gouv.fr/agence-participations-etat.

¹⁰ In this regard, the Pacte bill will strengthen the regulatory framework applicable to ADP and FDJ. Prospective bidders should also carefully consider the specific measures that will accompany the reduction in the State's equity interest in ADP and FDJ to limit the exclusive rights granted to these two companies.

3. Articulate your offer

As with any customary sale process, the proposed conditions included in the firm offers submitted by the candidates will be critical in the selection of the winning buyer.

The factors on which the selection will be made will obviously require careful consideration. The price offered, while very important¹¹, is not the only criterion that will be taken into account by the State: the industrial plan of the candidate, the proposals made in response to certain objectives or concerns (e.g., development of the workforce, involvement of local authorities or other local stakeholders, relationship with other shareholders etc.) will also be examined carefully and will be the deciding factor when choosing between candidates who have offered similar prices.

Given the extreme sensitivity of the assets concerned, in particular on a political level, the preparation of offers is very important, especially for investors who do not have real visibility in France. Without it being a prerequisite, involving established French players may be considered favorable in this respect. Similarly, an aggressive tax structure, even if legal, is likely not to be viewed favorably.

In addition to the procedural framework outlined in the specifications, it should also be emphasized that selection objectivity and transparency are otherwise ensured by an independent commission – the *Commission des Participations et des Transferts* (the French Shareholdings and Transfers Commission) – and, ultimately, by a judge in the event of an appeal against the selection decision.

4. Be flexible

One last tip for interested candidates: be patient and flexible. The privatization processes can be relatively long and can be punctuated by unforeseen events (litigation, political interference, etc.).

Therefore, interested candidates should be prepared to remain flexible so as to best respond to any issues that may arise throughout the process, including post-selection. Keeping a close relationship with public representatives throughout the process is essential in this respect, especially if the transaction involves a regulated asset and the French State will retain some ownership in the asset.

¹¹ Under French constitutional rules, the protection of public property prohibits any transfer of a public asset for a price lower than its fair value.

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