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**Privatization in the Federal Republic of Germany:
recent developments**

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Privatization in the Federal Republic of Germany
Recent Developments

I. Phasing out the Privatization in East Germany: The Winding-Up of the Treuhandanstalt

Since 1990 the Treuhandanstalt has been carrying out its task to restructure East German enterprises through the creation of viable enterprises by means of suitable divestment measures, the immediate privatization of those enterprises and the liquidation of enterprises without the prospect of attaining competitiveness. Its main task will be fulfilled by the end of 1994. For the remaining fields of work an organizational structure which takes account of the changed structure of the task has to be developed.

At the beginning of 1994 243 enterprises out of originally 13000 units held by the Treuhandanstalt remained for sale. Less than 100 000 people work in those enterprises, which is less than 2 % of the total workforce in East Germany (6.1 million employees). More than 1.5 million job guarantees and investment pledges of more than 184 billion DM could be obtained from private investors.

Viable entrepreneurial solutions could be found for 73 % of all enterprises. The essential assets of a further 7 % could be sold before their shares were liquidated. The remaining 20 % of the enterprises had to be wound up because according to expert opinions and in the view of the Treuhandanstalt they could not be made viable. However, in the course of the winding up of these enterprises 30 % of the jobs could be saved through partial privatization. The realization of the contractual rights and obligations of the Treuhandanstalt in

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the context of the sale of enterprises has become one of its central activities. A check of the guarantees given by private investors for 1991 and 1992 has revealed that in general guarantees are kept. In many cases the actual figures are even higher than those which had been agreed upon.

The end of the restructuring activities of the Treuhandanstalt requires an organizational concept for remaining tasks and the preparation of a law aiming at its implementation.

A timely and efficient fulfilment of the remaining tasks can best be achieved if they are decentralized and transferred to private entities. The Federal Government is considering the following possibilities:

- Viable enterprises which will not yet have been privatized by the end of 1994 - in all likelihood these will be far less than 100 enterprises in so-called Management KGs and probably large-scale enterprises - are to be transferred from the Treuhandanstalt to the Federation in view of the traditional competence of the Federal Ministry of Finance for industrial participations.
- The comprehensive tasks of contract management concerning some 50 000 privatization contracts and the remaining reprivatization tasks are to be fulfilled by private enterprises on the basis of service contracts. It is being examined to which extent these tasks can be carried out in decentralized structures, involving auditing companies and taking account of regional economic conditions.
- The administration and sale of real estate and assets in agriculture and forestry will be carried out by the already existing Bodenverwertungs- und -verwaltungs GmbH (BVVG), a limited liability company. The greater part of the agricultural areas will be farmed out on a long-term basis. Privatization will only be possible afterwards.

- The sale and development of other real property (commercial buildings and residential construction) is an important task for Germany as a business place. It will be assumed by the Treuhand Liegenschaftsgesellschaft (TLG).

- The administrative tasks bestowed on the Treuhandanstalt such as decisions on the priority of investments over restitution claims, granting permissions for real estate transactions, decisions on the assignment of assets to local or regional authorities in particular to the states (Länder) and local authorities can only be transferred to other institutions once it is guaranteed that this will not lead to a the fulfilment of the remaining tasks. The delay in Treuhandanstalt will continue to assume these tasks for a transition period after 1994.

Even after the completion of its core tasks the Treuhandanstalt must continue to exist as a legal entity, even if named otherwise (Federal Authority for Special Assets resulting from the Unification), as a partner in many contractual and legal relations which in individual cases can last much longer than until the end of 1994.

II. Reform of the Post und Telecommunication Sector:

In the telecommunication sector Germany will abolish the monopoly of the German Telekom for telephone services (speech communication) at the beginning of 1998 in accordance with the corresponding EC-directive. In the course of the ongoing political negotiations about the "Post Reform II", which essentially consists in the conversion of the three post enterprises Telecom, mail service and postbanking to stock corporations and ensuing privatization, the abolition of Telekom network monopoly had been envisaged. The draft of a telecommunication statute, besides defining compulsory performances,

provides for open access for suppliers of telecommunication services to the network and for a special control of abusive practices for suppliers with dominant positions in the relevant market. Such suppliers should have their tariffs authorized in order to avoid abuse of market power and price discrimination.

At present the political discussion on the implementation of the draft in the near future is open. In any event the conversion and privatization of Telekom might give an incentive to venture upon more competition in the long term.

III. Railway Reform:

The reform of the German railway system, which has come into effect at the beginning of 1994, has brought about the creation of three separate enterprises for the railroad network, passenger traffic and the transport of goods. It provides for free access to the railroad network. A new institution, the Federal Railway Authority, decides on the granting of access in a non-discriminatory way in case of conflicting interests. The principles on which its decisions will be based will be set out in a government regulation. Besides competition law remains fully applicable.

IV. Private Construction of Highways:

In No. 23 of its Program of Action for more growth and employment the Federal Government has declared its intention to create the prerequisites for the financing, building and operation of newly constructed parts of Federal highways by private investors on the basis of tolls to be levied for the financing and to start concrete projects until autumn 1994.

Accordingly a bill has been drafted which provides for the possibility of transferring the building, maintenance, operation and financing of Federal Highways to private investors.

The private investors shall be granted licences to carry out the projects. They shall be allowed to levy tolls and use the revenue derived therefrom to refinance the projects. For reasons of compatibility with EU rules on the taxation of haulage vehicles and the levying of tolls on public roads by member states tolls can only be levied for the use of newly constructed bridges, tunnels and mountain passes on highways and Federal roads and newly constructed Federal roads with several tracks for each direction. However, the Federal Government will explore the feasibility of extending private investment in highways beyond the scope of the present bill and intends to draft a new bill with increased possibilities for private engagement in the next parliamentary term.