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THE ROLE OF MANAGERS IN THE PRIVATIZATION OF STATE-OWNED ENTERPRISES IN POLAND

The author discusses the influence exerted by Polish state-owned enterprise managers on the pace and manner of the privatization of their enterprises. Considering conditions of separation of ownership and management and weak supervision exercised on behalf of the owners, she formulates the thesis that managers can decide about the privatization of their enterprises independently if they aim to maximize the long-term benefits from work and ownership. The thesis is substantiated by studies of preparations for privatization in five enterprises where such conditions existed and where the managers showed a keen interest in deriving personal benefits from privatization.

1. INTRODUCTION

One notable feature of Polish privatization, commenced in 1990 (Dziennik Ustaw 1990, no. 51, pos. 298), is that it can be viewed as a process from two perspectives: a microeconomic and a macroeconomic one. Microeconomically, privatization is a process spanning a period of many years over which state enterprises are gradually transformed into private undertakings. The speed of ownership transformations varies: in the early nineties many small and medium-sized state enterprises were transferred to private owners through fast-track sale. The number of such state enterprises is diminishing noticeably, large enterprises prepare for privatization more slowly. Full privatization may be preceded by partial ownership transformations, such as the transfer of enterprises to the rule of corporate law with the State Treasury retaining 100 per cent control, or the privatization of some assets of an enterprise.

Macroeconomically, privatization is a process of gradual transfer of state enterprises' assets to private owners. The rate of the macroeconomic process depends to a large extent on the speed of ownership changes in individual enterprises. The data provided in Fig. 1 indicate that the existence of state enterprises undergoing slow ownership changes is a structural characteristic of Polish privatization. Such enterprises include:

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1. Single-member companies of the State Treasury, operating independently or within the National Investment Fund programme (the rate of their privatization does not exceed 10 per cent of their total number per year).

2. Private undertakings, so-called employee companies, using state-owned assets under lease agreements.

3. Enterprises liquidated owing to their bad financial situation.

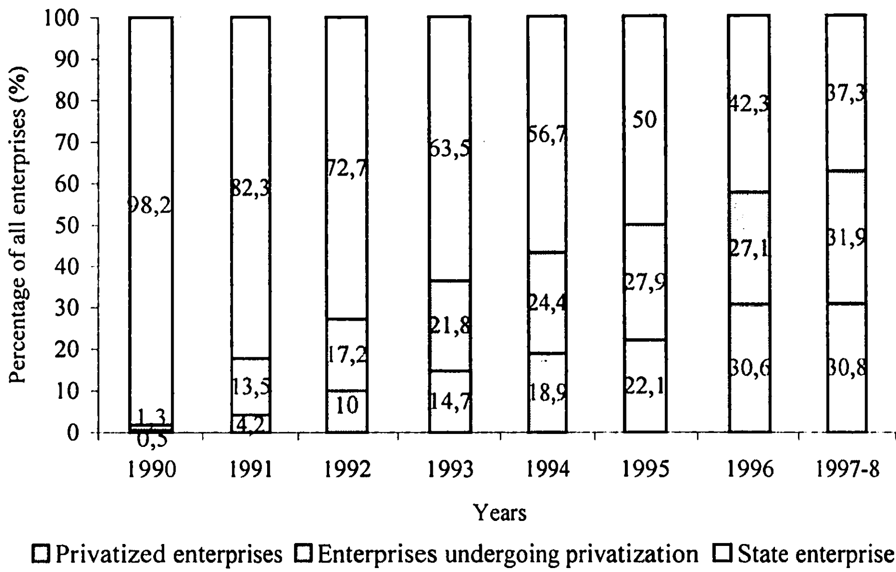

Figure 1. Structure of privatization in Poland, 1990-1998

Source: Ministry of Privatization and Ministry of State Treasury data published in *Rzeczpospolita* newspaper.

In such enterprises there is a period, from the commencement of preparations for privatization to the completion of the performance of the provisions of the privatization contract, when business operations are carried on in parallel to ownership transformation. The question that arises in this connection is what causes the privatization process to take so long in some Polish enterprises. Hypothetically, the following causes can be mentioned:

1. Procedures under the 1990 privatization law are complex, including in particular the requirement that the terms of the privatization contract should be agreed with the employees and the Anti-monopoly Office.

2. The legal and organizational structure of the Polish economy was shaped by the central planning system and is ill-adapted to market economics. Large

enterprises require restructuring, which in some cases must be industry-wide and may merit state-level consideration. This applies to coal mining and the fuel and energy sector.

3. The will to privatize and the goals of privatization are dependent on the sphere of politics. Since 1993, privatization has slowed down because political objectives, such as the support of voters employed in industries whose privatization requires deep restructuring, have dominated over the economic goals of privatization.

4. The rate of privatization is influenced by managers.

This paper will present the results of research on enterprises whose privatization did not require complicated restructuring but which nevertheless prepared for privatization for several years (Klimczak and Borkowska ed. 1997). The research indicates that a key role in the privatization of enterprises is played by their managers.

The aim of this paper is to substantiate the claim that managers exert strong influence on the speed and progress of privatization in the enterprises they manage.

The thesis is based on the fundamental observation of a separation of ownership and management in state enterprises preparing for privatization. This separation becomes complete if an enterprise embarks on the process of indirect or direct privatization, as it is then transformed into a company run by the management. Since company law does not provide for supervision by the employees, the management may pursue its own policies independent of the owners' interests. In single-member companies of the State Treasury owner supervision is nominally exercised by an official, while in enterprises privatized through employee leasing the shareholders may adopt articles of association that vest broad or even unlimited powers in the management. Thus, it may be concluded that in these two cases the manager may pursue a privatization policy suiting his own interests. A third case occurs in public utility enterprises run by a contract manager who is bound by the contract to privatize the enterprise.

The separation of ownership and management is a common phenomenon in a contemporary market economy. Ever since Berle and Means (1932) established that only half of the 200 largest American corporations were controlled by their owners, the separation of ownership and management has been a challenge to the neo-classical theory of the enterprise, which assumes the identity of owner and manager, leading to the next assumption: that the objective of the owner managing his enterprise is to maximize profit. If however it is assumed that an enterprise is managed by a manager who may evade supervision by owners (Marris 1964), it becomes legitimate to inquire what objective or objectives are pursued by managers. The extensive literature on this subject indicates that the separation of ownership and management is considered from either of two perspectives: based on the assumption of the manager's utility function maximization or based on the assumption that managers will try to achieve benefits satisfactory to them.

In the first cluster of approaches, referred to as managerial, the following objectives maximized by the manager are considered:

1. sales revenues, providing that profits earned are satisfactory to owners (Baumol 1959);
2. sales revenue and enterprise value growth balanced over time (Marris 1964);
3. benefits favoured by the manager, such as knowledge, prestige and security (Papandreou 1952);
4. lifetime income (Monsen and Downs 1965);
5. freedom to decide about the enterprise (Williamson 1963).

In the second group of conceptions, known as behavioural, instead of maximization, the focus is on achieving certain benefits satisfactory to the manager over a certain time frame (Simon 1955, 1957). The benefits may be defined in the same way as in the managerial approaches: as the manager's income, power, and sales revenue, but the behavioural theories move away from the model of a goal-oriented and rational manager and investigate the behaviour of the manager in his environment. A typical example of such an approach is the theory of the firm proposed by Cyert and March (1963), which regards the enterprise as a coalition of managers, owners, customers and employees, none of whom are particularly interested in the enterprise so long as they obtain benefits that satisfy them. Schumann (1992) points out that managerial theories also place emphasis on ensuring that owners obtain satisfactory profits. Curven (1976), Fama and Jensen (1983) and Blattner (1977) further point out that the market environment may affect the manager's ability to act independently. The alternative objectives mentioned above are effectively restrained if the enterprise operates on competitive markets, but where an enterprise is not listed on a stock exchange, the markets for its products are not very competitive, and it uses public resources, the managers have huge possibilities to pursue their own interests without supervision by the owners.

The verification of the claim that managers exert a strong influence on privatization processes in Pòland, in the light of the above-presented concepts of separation of ownership and management, consisted of the following stages:

1. Selection of enterprises that:

a) had been undergoing privatization for several years and belonged to one of three categories: single-member companies of the State Treasury, companies privatized through leasing and public utility enterprises;

b) operated in markets with weak competition or held a monopoly or dominant position.

2. Examination of the privatization activities of the managers of those enterprises from the point of view of their motivation based on the assumption that the manager's utility function is as follows:

$$U = u(C_{t1}, ..., C_{tn})$$

where C_{ti} denotes the quantity of benefits consumed by the manager during period *i*.

The period that is of interest to the manager extends from the commencement of privatization to the end of his working life. Benefits consumed by the manager will be taken to include:

a) benefits derived from consumer goods acquired in the market;

b) non-pecuniary benefits derived from his position with the particular enterprise, such as authority, prestige, freedom to make decisions regarding capital.

C_{ti} is a vector of those benefits, which depend on: the length of service with the enterprise, income from employment and income from property. A job with a state enterprise ensures stability, secure income and freedom to act, whereas privatization puts those benefits at risk. Therefore, the acceleration or deceleration of the privatization process by the manager should be investigated from the perspective of the strength of his motivation relating to the utility function described above. This is discussed in section 2.

In order to carry out privatization in a manner most advantageous to himself, the manager must take into account the employees' aspirations, because in the first stage of privatization the manager's privatization benefits stem from his employee rights, and the formal supervision on behalf of the owner. Relations among the parties to the privatization contract are discussed in section 3.

The last part of the paper discusses the impact of the market environment on the manager's freedom of choice and ability to act with respect to the privatization of his enterprise.

2. DESCRIPTION OF THE PRIVATIZATION OF THE INVESTIGATED ENTERPRISES

The research was conducted in six enterprises that began to prepare for privatization immediately after the 1990 State Enterprise Privatization Act had come into force. The enterprises were selected for the legal forms adopted during the preparatory period. The decision to take an enterprise outside the rule of the State Enterprise Act and transform it into a commercial-law company was related to the choice of the privatization method. Thus, enterprises choosing the so-called capital method (direct sale or sale on the stock exchange) were transformed into single-member stock companies (S.A.) of the State Treasury, whereas those choosing the asset leasing method could choose between the stock company (S.A.) or the limited liability company (Sp. z o.o.). Depending on the chosen legal form and on property rights, different forms of corporate governance evolved, within which managers managed enterprises and prepared them for privatization. Among the selected enterprises, five were managed by managers strongly interested in privatization (cases 1, 2, 3, 4 and 5) and one had a manager who did not endeavour to attain his own aims through privatization (case 6). The cases investigated were as follows:

1. A wholly-owned stock company of the State Treasury, represented by a ministry official, preparing for capital privatization. The company, formed in 1992, with operations in the metallurgical industry, did not require restructuring or capital injection. It held a monopoly position with respect to 10–15 per cent of its products and a dominant position with regard to the remaining part. In 1996 the company was included in the list of Poland's top 500 enterprises in terms of sales volume. The size of the enterprise precluded employee privatization, so capital privatization was the only avenue to pursue. No department for privatization was created within the company. The president of the company was in charge of the process. There were three capital privatization options: sale of a substantial stake to a strategic investor (favoured by the ministry), inclusion of the enterprise in the National Investment Fund programme (government-supported option), sale of shares through the stock exchange to dispersed investors (supported by the management). Three different consulting firms prepared justifications for each of the options. Eventually, the option preferred by the management was adopted. The management had mustered the support of the trade unions, who threatened industrial action if another option was chosen. The rights and benefits of the employees did not depend on the selected privatization method; it was the president of the company, whose position and operating latitude depend on the type of corporate governance, that was the interested party. His power would be greatest if shares

were sold to dispersed buyers. In contrast, sale to a strategic investor or inclusion in the National Investment Fund programme would significantly limit his authority.

2. A wholly-owned stock company of the State Treasury, represented by a ministry official, preparing for capital privatization. The company was formed in 1991. It operates in the energy industry in a bilateral monopoly situation. As its products are of public utility nature, the prices are regulated by the government. The enterprise was profitable, but that was of no significance in view of the public utility nature of the operation. The prospect of deregulation in the energy sector and the technical condition of the company's assets pointed to a need for capital injection and restructuring; therefore, the choice of privatization method had to take into consideration external sources of financing. That and the size of the company, which in 1995 was in the list of the top 500 enterprises in terms of sales, were the reasons for considering the sale of a substantial stake in the company to a strategic investor who would finance the required investments. Preparations for privatization proceeded with the active involvement of the management board and a privatization officer specially appointed and duly authorized by the management board. The ministry did not take a stance as it, has had no strategy for the privatization of the whole industry. The management has conducted talks with potential strategic investors, in which it set down conditions that included – in addition to financing necessary investments – employment guarantees for the staff and the management. Seeking to secure such guarantees, the management board prepared its own ownership transformation plan that involved the preservation of the existing status of the company and its management and the formation of a joint venture with the strategic investor and the company as partners. The acquisition by the investor of equity in the enterprise would take place gradually as the investment programme proceeded. To date, the plan has not been implemented.

3. An employee stock company, formed in 1991 to lease the assets of a state enterprise that had undergone liquidation. Shares in the company were taken by the management of the liquidated state enterprise, who took up positions on the company's management board, (35.6 per cent of all shares); the employees (41 per cent); and persons not employed in the company (23.4 per cent). The liquidation of the state enterprise was merely a legal fact as from the economic point of view the enterprise, considered as an organization, functioned in an unchanged manner. However, after the establishment of the stock company, its operations were based on private capital and leased state-owned assets. Under the lease contract, the company obtained the use of those assets for five years with an option to acquire ownership upon the payment of

their value in instalments. The privatization was prepared by the former general manager of the state enterprise and a team of consultants whose leader took up the position of chairman of the company's supervisory board. The team valued the enterprise's assets using two methods: book value and discounted cash flow. An average of the two valuations was the basis for the determination of capital instalments and lease rentals. The terms of the lease were so favourable that the employee company met its obligations to the State Treasury before the expiry of the original term and became the owner of the assets in 1993. The company's business is wholesale trade in a local market – the company tenders for contracts to make supplies to budgetary units. In most transactions there is no strong competition. The familiarity of the company president (former general manager of the state enterprise) with budgetary units' purchasing systems has played a key role in the development of the company, based on the strong motivation of the entire management board, whose stake in the share capital grew from 35.6 to 40 percent during the term of the lease contract as a result of redemption and cancellation of employee shares. The employees' shares are dispersed and do not pose a threat to the position of the management board and the supervisory board at the general meeting, especially as the shares are not publicly traded.

4. An employee limited liability company, formed in 1991 to lease assets. The deed of association was constructed in such a way as to equip the person carrying out the privatization (the former communist party secretary) with the rights of the owner. This was achieved thanks to the following provisions: transfer of shares outside the circle of existing shareholders was restricted, single-person management board was appointed for an indefinite term, the role of the supervisory board was reduced to a minimum, individual shareholders' right to exercise supervision was excluded. As a result, the president could limit his stake in the company to 10 per cent of the share capital. The remaining shares were dispersed among more than 400 employees. The lease contract included an option to acquire ownership of the assets after eight years. However, after just two years the company filed a request for exemption from further lease payments on the grounds that it was making investment outlays. The company was granted such an exemption after four years of making capital and rental payments, which amounted to 30 per cent of the total sum under the contract. This was in conformity with Polish law, even though in the company under consideration the investments had been made at the expense of a foreign partner with whom a trade agreement had been concluded whereby the products of the Polish company were sold under the foreign company's trademark. A part of the investments had been financed by the National Environmental Protection Fund. The company operates in the metallurgical industry. It holds a dominant

position in the domestic market. However, there is competition from imported products, which the company has matched, thanks to its cooperation with the foreign partner. Privatization, cooperation with the foreign partner, exemption from part of the lease obligations and extinguishment of the claims of heirs to former owners who had been deprived of their rights as a result of nationalization, were all the feat of one person, the president of the single-member management board.

5. A state enterprise that has the status of a public utility enterprise because it provides public transport services. It was formed in 1990 as a result of a division of a national enterprise into regional enterprises. At the same time the new enterprises divided the market among themselves, so for most of their services they are in a monopoly or a dominant position. The share of revenues accounted for by subsidized public utility services rose from 75.1 per cent in 1993 to 87.9 per cent in 1995. In connection with the establishment of the regional enterprise, the former head of the regional branch of the national enterprise was given an administration contract that also included the preparation of the company for privatization. The authority of the administrator is much wider than that of the general manager of a state enterprise because in an enterprise under administration the employee council ceases to exist. A supervisory board was appointed, one third of whose members are elected by the employees according to the same rules as in the case of an employee council. The activities of the administrator are subject to annual assessment based on the fulfilment of tasks under the contract and the enterprise's budget, the achieved profit, profitability and the current ratio. The preparation of the enterprise for privatization by the administrator consisted of two stages. In the early nineties, the use of the enterprise's assets was restructured – technically separate parts of the assets were leased to groups of employees who formed civil-law partnerships or acted as contract agents. All lease agreements secured the provision of services for the enterprise by the new firms, which could also sell such services in the open market. Upon the completion of the asset-use restructuring, the administrator prepared his own original privatization plan that called for the establishment of employee limited liability companies which would take over the remaining assets and derive benefits from leasing them. The plan has not been implemented in that enterprise or any other in the industry, which continues to function thanks to its public utility status.

6. A wholly-owned stock company of the State Treasury, formed in 1994 on the basis of a bank arrangement pursuant to the Enterprise and Bank Financial Restructuring Act 1993. Until 1990 the enterprise, which operates in the mechanical industry, did not have any competition. Difficulties in selling its output, aggravated by the withdrawal of a government subsidy for investments

and the passive attitude of the management, caused a systematic growth of the enterprise's liabilities to the bank, to trade creditors and to the State Treasury. The enterprise was rescued by entering into a scheme of arrangement with the bank, whereby 55 per cent of the liabilities were forgiven and the remainder was to be repaid in 12 low-interest quarterly instalments; the bank also provided a loan supporting the implementation of the recovery programme. After one year of the implementation of the bank arrangement scheme, the company was included in the National Investment Fund programme. The management board was placed under the supervision of one of the Funds, who prepared a comprehensive restructuring plan. As part of the plan, one of the divisions of the enterprise was sold to a foreign investor, and the proceeds from the sale used to repay liabilities to the bank, the national budget and the local authority's budget, and also to modernize the remaining part of the company. The management board of the company, composed of former executives of the state enterprise, was not subject to actual owners' supervision until inclusion in the National Investment Fund programme. Under that programme, relations between the owners and the management of the company are based on the fund management contract entered into by representatives of the State Treasury.

3. THE PRIVATIZATION CONTRACT

The microeconomic process of privatization can be characterized as a process of preparing a privatization contract, negotiating its terms, concluding it, and subsequently performing it or renegotiating its terms. The pre- and post-contract stages differ from one privatization transaction to another because of their uniqueness, but a common feature of the process is the non-standard and incomplete nature of the privatization contract due to the fact that:

1. The object of the transaction, i.e. a particular enterprise, is highly specific.
2. Every transaction has occasional frequency.
3. The parties to the transaction consist of many persons, each of whom has his/her own personal interest connected with the privatization. The network of such interests makes the privatization process a complex game whose participants are characterized by bounded rationality and propensity for opportunistic behaviour.
4. The privatization transaction is closed in a situation of uncertainty, both fortuitous and behavioural, stemming from the opportunism of the participants.

These are typical features of a non-standard contract as discussed by Williamson (1985). Uncertainty, specificity of the object and the occasional frequency of such transactions do not require substantiation. The interests of the transaction participants and the features of their personality are of key importance for the characterization of the privatization contract as an alternative to transaction cost theory for the description of the privatization process is agency theory (Arrow 1985).

From the point of view of agency theory, privatization should be viewed as delegation to an agent to conclude and perform a contract on behalf of the state as the owner of an enterprise. The agent, acting as a trustee of the interests of the State Treasury, takes all actions on the basis of complete information and enters into a contract in conformity with the law and principles of good conduct. Such a solution, which makes it possible to avoid the opportunistic behaviour of transaction participants, was applied to the privatization of state property in the eastern *Länder* of Germany. Practice cannot be perfect, as there is always uncertainty, and therefore agency contracts are imperfect. In Poland no solution resembling the proposals of agency theory has been adopted for the privatization of state enterprises. The owner, i.e. the State Treasury, is represented both by state officials and by the enterprise manager.

The demand side of a privatization transaction is composed of potential purchasers of an enterprise or its various assets. Such potential purchasers include outside investors, employees and the management. If the direct (leasing) method of privatization is chosen, the role of outside investors is limited and insignificant: they are passive investors. However, in enterprises that have chosen capital privatization, there may be active investors on the demand side.

On the basis of the preliminary identification of the participants in privatization, one can already draw the conclusion that the decision as to the choice of the privatization method exerts an influence on the formation of the sides of the transaction. The choice of the direct (leasing) method of privatization is conducive to the natural adversarial character of the sides of the transaction. On the supply side are the owner's agents (in the shape of state or regional officials), and on the demand side are the employees and the management of the company, which formally represent the interests of the company's owners, i.e. primarily the employees and itself.

In contrast, if the capital method is chosen, the adversarial character of the interests of the sides of the privatization transaction becomes blurred, bringing about a conflict of interests for members of the management board, who – in accordance with the law but in contradiction to the nature of the transaction – figure both on the supply side (as the owner's agents) and on the demand side (as potential buyers, also interested in employment in the privatized undertaking). As agents for the owner, managers should use their efforts to ensure that the company gets an active owner, but such an outcome of privatization poses various threats to their own interests. An active owner may replace the management board or, even if he does not do that, he may limit their authority in the enterprise. This conflict of interests should be recognized as a significant feature of the privatization transaction because managers are insiders, i.e. persons with access to important and confidential information about the enterprise. As formal agents for the owner, they should use such information exclusively in the interests of the owner; however, many years of observation of privatization processes lead to the conclusion that if a conflict of interests arises, managers favour their own interests over those of the owner. Nevertheless, if privatization is to proceed in accordance with their will, the managers must take into account the interests of other participants in the transaction. According to the assumptions of institutional economics, their identification requires the rejection of the notion of public interest in relation to representatives of government and regional officials. In Poland this is also justified in view of the legal framework of privatization, which does not specify the public priorities of privatization. Only the "basic directions of privatization and ... the allocation of proceeds therefrom" are subject to public decisions, and the Ministry of Privatization, operating on the basis of the 1990 Act (Dziennik Ustaw 1990, no. 51, pos. 298), did not have the features of a government agency. Thus, the public goals of privatization are not operationalized in individual cases and consequently are not internalized in agency contracts. Therefore, it can be assumed that government or regional officials who, while being agents for the enterprise owner do not have clearly identified privatization goals, can carry on clandestine activities aimed at furthering their private interests. This opens the way for opportunistic behaviour.

The employees of an enterprise are an important participant in the privatization transaction. Formally they are part of the demand side of the transaction, but the initiation and carrying out of privatization, i.e. the preparation of the offer and the formation of the supply side, depend on employees' approval. The interests within their utility function are relatively clear. They include primarily security of employment and related pecuniary and non-pecuniary benefits. In all privatized enterprises these interests are protected in the form of employment guarantees.

The next item in the employees' utility function, aside from employment security, is pecuniary profit from privatization. Privatization law gives the employees of privatized enterprises privileges whose realization depends, *inter alia*, on the employees' purchasing power.

The purchasing power comprises not only of financial means but also the rules for taking shares, specifying the number of shares for each employee as well as the due dates and forms of payment and the rules for the transfer of the shares. In this respect, there are many ways for management to win employees over to privatization. All those ways have one thing in common: to pursue them, a company must generate free funds at a level satisfactory to the workforce. They include many different forms of financial support for employees taking shares. This is also a feature of employment protection measures.

Thus, a manager who is preparing for privatization faces the problem of conducting the day-to-day business of the enterprise in such a way as to ensure funds required to satisfy his allies, especially the employees. However, this is also beneficial for managers, because the profitability of an enterprise may be taken advantage of to prolong the privatization process and search for a form of privatization that would best serve their interests. In view of the uncertainty accompanying a privatization transaction, it may be assumed that a manager will generally be committed to ensuring that the enterprise generates profits or free funds at a level satisfactory to his allies in privatization.

4. IMPACT OF THE ENVIRONMENT OF AN ENTERPRISE ON THE PRIVATIZATION PROCESS

It follows from the characteristics of the privatization contract that the furthering of a manager's private interests necessitates the incurring of transaction costs. These include *ex ante* the costs of legal procedures, the cost of studies, searching for investors and efforts to win support for the chosen privatization method, e.g. the cost of financing the taking of stakes in equity by employees, and *ex post* the costs of renegotiating the terms of privatization. In addition to the above costs, which can be measured, transaction costs include the costs of lost opportunities that the manager passes up because he is busy negotiating and winning over his allies. The longer the privatization process and the bigger the enterprise in terms of the number of employees, the greater the opportunity cost.

Privatization transaction costs are borne by the enterprise. Therefore, one question that is worth looking into is whether the manager's interests in the privatization will not cause him to seek to minimize those costs. The characterization of the privatization contract presented in the preceding section indicates that managers are not committed to cost optimization measures, owing to uncertainty as to whether as a result of privatization they will achieve their goals, such as continuity of employment, high income and authority in the enterprise. The manager associates a high degree of probability that those goals will be achieved with the acquisition of the status of an active owner. If the manager can direct the privatization process in such a way as to become a **residual claimant** in the future, then we can venture that he will be interested in cutting down transaction costs, and especially opportunity cost, as he will not prolong the privatization process. If, however, the manager has little control over the realization of his goals through privatization, for instance because a strategic investor must be found, then it is likely that the privatization process will be prolonged and all procedures will be overpaid. Such behaviour was observed in the course of the research cited above, but it should be noted that it is only possible if the environment of the enterprise allows it. The economic and financial situation of the investigated enterprises was good and improving. The businesses consolidated their market positions or even gained larger market shares, prepared to face up to foreign competition, and made modernization investments. This might be taken as evidence of pro-efficiency efforts on the part of the managers, but the research showed that the enterprises were able to improve their profitability because:

1. They had a monopoly or a dominant market position.
2. They benefited from the regulation of their markets by the government by means of prices, duties, export quotas, etc.
3. They were awarded public contracts and granted subsidies.
4. They resorted to lobbying.

The investigated enterprises preparing for privatization represent the energy, metallurgy and transport industries, which because of their links to coal mining, the machine industry and the petroleum processing industry form a sector of state enterprises that during the privatization period created demand for government regulation, which made it possible to realize profit satisfying the participants in privatization. Such profit seeking is supported by lobbying, clientelism, public opinion manipulation and commissioned studies, accompanied by opportunistic behaviour. In such circumstances, the managers for many years have been able to choose methods of privatization that fulfilled their utility function, without trying to minimize the costs of privatization transactions. This situation may be compared with the protection of managers against hostile takeovers by way of the so-called golden handshake.

Government regulation and other forms of profit seeking by managers are an informal golden umbrella that may effectively protect an undertaking against a "hostile takeover", if managers perceive privatization as something hostile, threatening their existing authority and associated benefits. The golden umbrella, thanks to financial assistance, also facilitates the achievement of benefits from privatization. This means that the government protected managers' *status quo* in a manner that is evidence of weak interest in privatization and its economic effects.

The results of this research cannot be generalized, as the privatization process also applies to enterprises operating in competitive markets. However, it is no coincidence that the privatization process in Poland slowed down in the period from 1994 to 1997, when the implementation of the provisions of the

Europe Agreement establishing an association between Poland and the European Union had not yet started. Likewise, it is no coincidence that until the beginning of 1997 there was no legislation enabling the conclusion of management contracts with a share purchase option. Now such possibilities exist, but they are not attractive to managers because under the privatization law they can, as employees of their enterprises, acquire shares free of charge. That may be an incentive to speed up privatization processes but not as strong as management contracts.

5. FINAL REMARKS

The Polish privatization law enacted in 1990 did not take into account the special position of the manager, as an insider, and his interests. As a result, privatization transactions lack a clearly defined adversarial relationship between the sides. The manager of an enterprise figures on the supply side of the transaction as an agent for the owner and on the demand side as an employee. In this situation, the manager is a judge of his own case, and privatization transactions are not sufficiently protected. As non-standard transactions they can be taken advantage of by one of the parties to derive additional benefits not envisioned in the contract. The more the market in which an enterprise operates is regulated by the government, the greater the degree of moral hazard for its manager. Market deregulation would mean the deprivation of managers of the protection that enables them to prolong privatization processes.

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