Case study 1

Water distribution and sanitation in Casablanca (Morocco)

Contract type: Water distribution and sanitation for Grand Casablanca

Contract award Date: 1997

Private partner: Lyonnaise des Eaux (now Suez), France, which created a local company "Lydec"

Key parameters: 30 years contract with periodical reviews; investment and performance commitments

In a context of an international trend of greater reliance on the private sector for the economic policy, Morocco decided during the 1990s to privatize water distribution and sanitation for major cities. Casablanca was the first case in 1997, followed by Rabat in 1998 and Tangier in 2002. The reasons for the privatization (or concession) were greater efficiency expected from the private sector, higher investment capacity as well as improvement in the quality of service.

In the Casablanca case, the contract was a multi service contract (electricity and water distribution, sanitation) awarded for 30 years by the Grand Casablanca municipality. It was at that time the most important concession on the African continent, covering a population of 4 million inhabitants. The private partner was the French company Lyonnaise des Eaux (today Suez), which has had vast experience in the sector in France and internationally.

The original commitments included total investments over 30 years (1997-2027) of 3 000 million DH (value 1996, about 300 million euros) including 500 million DH in water distribution and 1 600 million DH in water sanitation. These commitments were slightly modified in 2008 in the course of contractual revision.

Lyonnaise des Eaux proceeded to the creation of a Moroccan company and injected 800 million DH (ca. 80 million euros) in equity. The investment proved profitable as, according to a Moroccan Cour des Comptes (Court of Auditors) report from 2014, cumulated total dividends on the 15 years period amounted to 1 592 million DH.

On the whole, the Cour des Comptes considers that the contract has allowed a trajectory of modernisation and service improvement. However the Court has noticed a number of problems that have hindered a fully satisfactory assessment.

Many of the difficulties can be traced back to a weak legal framework. At the time of award, no specific legal regime existed. Only in 2006 a law on concession largely inspired from French legal regime was enacted. This means that the 1997 contract was prepared and implemented under the general law of contracts.

To start with, the contract was granted without specific competition (no tender was organized). The press later insisted that the contract had been directly discussed and arranged by the then Interior Minister. The lack of publicity of the negotiation process extended to the content of the contract itself, which led to ulterior political problems (interestingly the above mentioned Interior Minister died in exile in France in 2007 after having lost his functions during the Arab spring, while the Head of the Casablanca municipality was later jailed for corruption in unrelated businesses).

Further legal weaknesses mentioned by the Court of Auditors include:

- the various municipalities part of the Grand Casablanca group have signed the contract as a single legal entity and therefore have little control on the execution of the contract.
- Too many clauses related to penalties and termination had a vague wording which did not allow for effective implementation (especially in connection with key issues such as investment commitments, tariff revision, fault, remuneration)
- Contractual investment program did not mention urban planning assumptions, and how to proceed when these assumptions do not realize
- Handover processes and backlog claims were poorly handled.

As a result, the investment commitment was not fully implemented. According to the Cour des Comptes, after deduction of logistic and management investment, the rate of completion of infrastructure investment forecast was only 26%. These insufficient investments were reported to insufficient equity and excessive dividends. Taking into account remuneration of technical assistance which was often used as a way to repatriate profit, the rate of return of the investment on the 1997-2012 period was 25% as opposed to a budgetary forecast of 15%. While Lydec does not agree to the assessment of the Court[1], it states that tariffs raised that were to be accepted by the contracting authority did not take place, which limited the generation of a cash-flow available for investment.

In addition, the court considered that Lydec financial statements were insufficiently transparent, leading to an excess of reimbursements as the contractual authority had little possibility to check the claims, which were sometimes notified without material basis.

The steering committee did not work very well due to consensus rules and the absence of contradictory data to the ones produces by the concessionary. In connection with the lack of

[1] https://client.lydec.ma/c/document_library/get_file?uuid=8e04ecc8-1468.

meaningful control, the revision of the contract, which should have taken place after 5 years suffered extensive delays and was agreed only in 2009.

In addition to the financial irregularities described by the Cour des Comptes, the concession contract suffers from a lack of popularity because the population considers the tariffs as excessive (despite social tranche priced under cost recovery), which constrains the municipality to periodically threaten Lydec with legal action and strengthened control. Lydec argues that the tariffs are regulated and that it buys water to a public body (ONEE) without control on the buying price. It is to be noted that this situation is not limited to Casablanca concession as in Tangiers, under a different contractor (Veolia), the political situation around the concession contract went as far as riots in 2011 and demonstrations in 2015.

Lessons learnt

Insufficient preparation of the contract has led to the difficulties in interpretations and weaker position of the contracting authority in contract management
Legal framework needs to be improved
Penalties mechanisms need to be realistic and implemented
Greater transparency is necessary for the long-term success of the project as well as avoidance of involvement of concession contracts into political disputes

Case study 2

Tramway in Rabat- Salé (Morocco)

Contract type: tramway operation and maintenance

Contract award Date: 2009

Firm: Transdev, France

Key parameters: 5 years contract; technical risk but not commercial traffic transferred to the private party

The Rabat Salé tramway project was launched in 2009 with the creation of the STRS (Société du tramway de Rabat-Salé) as a public company in charge in implementing the project with shareholders the Agence pour l'Aménagement de la Vallée du Bouregreg (a public body) as well as the State and the municipalities of Rabat and Salé.

Rationale for the project was the degradation of traffic situation in the Rabat Salé agglomeration. The population in the conurbation grew from 1.3 million in 2004 to over 2 million in 2010. While Salé is home to a predominantly impoverished population, most employment opportunities are situated in Rabat, where all Ministries and most administrative jobs are located. Both cities are separated by the Bouregreg river and everyday over 650 000 persons cross the valley. Inefficiency of buses transport and of collective taxis as well as growth of individual transportation have led to traffic jams and pollution. The tramway link allows for better connection between the cities improving social cohesion, and is also appreciated by women as a relatively safer transport mode.

Total investment was about 300 million euros including equipment, infrastructure and rolling stock. The financing is ensured through 50% equity and the remaining part as loans from Agence

Francaise de Développement (AFD) for 43 million euros, European Investment Bank for ca 100 million euros and a 9 million euros subsidy provided by EU (Facilité d'Investissement pour le Voisinage).

Due to uncertainties about traffic forecast, PPP approach was not used for the capital investment. The chosen scheme was to award management, operation and maintenance of tramway for 6 years (renewable once) to Transdev, a subsidiary of French Caisse des Dépôts et Consignations, for an amount of 800 million DH (about 80 million euros). Contract entered into force in June 2010.

The project was inaugurated in 2011. It comprises two lines for a total of 20 km and 31 stations. It also includes 3 car parks as it was expected that a significant proportion of car users would switch to tram. In addition, a large viaduct was built over the river 14 m above the water. It also allows for cars and pedestrians traffic. Technically the project has proved a huge success, the use of modern and effective rolling stock (Alsthom provided) considerably improving the image of public transportation in the area.

On the commercial side on the other hand, with traffic forecast amounting to 180 000 users per day, the results did not fully come up to expectations, growing from 80 000 users/day in 2012 to 120 000 users/day in 2015, which all the same accounts for 50% of transportation between Sale and Rabat especially during peak hours.

Affordability issues may explain this situation. While the poorer part of the potential users would require ticket price similar to a bus ticket, users of small taxis and professional women wish a higher price to make a distinction between tram and usual public transportation that suffer of a poor image in connection with safety and hygiene problems. According to the feasibility study completed for the Casablanca tramway, which is certainly valid for Rabat as well[2], majority of users would be ready to pay 5.5 DH while the financial balance price is 7 DH. At inauguration the price was set to 7 DH. One year later, in a move to try to increase traffic, the price was decreased to 6 DH. To date tram is not profitable and has to be heavily subsidized (which is so far considered politically acceptable).

In addition, the creation of the tramway lines created problems for the bus operators. Rabat Salé buses had been operated by Stareo, a local company controlled for over 50% by Veolia, a French company under a PPP contract granted in 2009. Veolia decided to leave the company in 2011 and its share was taken over the municipality. With no financial means to invest in new vehicles, the company has registered heavy financial losses in the recent years in conjunction with poor management and excessive staff costs. In 2017, it is announced that the municipality is considering launching a PPP scheme and finding a private operator, which should agree on assuming all commercial risks.

The tramway financial difficulties have not prevented the launching of an extension. The works have started in 2017, under a financial scheme similar to the initial project. The new lines adding another 7 km should operate from 2019.

[2] http://telquel.ma/2012/06/25/Tramway-a-combien-ca-roule_528_3295

Lessons learnt

Realistic approach is necessary to structure successful project (commercial risk was not transferred to the private sector)

Even well justified project on socioeconomic grounds may not be commercially successful

Transport masterplan should carefully consider all aspects of urban transportation