

7th Annual Meeting of the Infrastructure Consortium for Africa

(Paris, 17 and 18 May 2011)

Session 5 (Wednesday, 18 May, 14:45-16:45)

***The role of the public partner :
Ability to negotiate, award contracts,
Monitor the implementation of contracts,
participate in maintenance***

Theme

After two sessions on improving the business environment and conditions for private sector financial investment respectively, this session aims to highlight the role and importance of States, governments and public operators in improving and strengthening public-private partnerships (PPPs). Discussion should focus on the means to use to support public authorities in conducting and completing their missions whether that be in the definition of public policy, regulation, planning, contracting or operating. Round table participants were chosen on the basis of their experience in this area. The moderator may ask them to talk about such experience and could take ideas from the note hereinafter.

In sub-Saharan Africa all institutional models co-exist. A number of countries have broadly engaged in reforms. As a result, private investment has emerged (as is the case in the energy sector in Kenya). Other countries have opted to keep government monopolies. In parallel, with donors' support, establishing PPPs has been the mainstay of numerous innovations to reach less profitable segments (for example output-based aid to supply rural areas with electricity). In any case, if a partnership is to be effective, it is important to establish a clear and relatively simple division of roles and sharing of responsibilities among partners to promote complementary action and balanced risk sharing. Public partners therefore have a key role in the smooth operation of infrastructure services regardless of the institutional model. Their presence at every stage in the project from regulation to the management of services and project supervision implies that a relationship of confidence is established with private investors.

Diagnostic points and questions to discuss in the session

1. Coordination of public policies, essential to the visibility of investors

Drawing on a diagnostic of existing infrastructures and effective practices in place, public policies should provide information on:

- The level of service and pricing structure;
- The priority of investments;
- The partners' sharing of responsibilities and risks, which determines the level of private sector involvement;
- The method of regulation.

Coherent choices, defining the direction of public policies and determining investment planning, must aim to ensure the performance of infrastructures, i.e. the effective and efficient provision of services that are adapted to the peoples' needs.

2. Reliable and legitimate regulation mechanisms to reassure private investors

Regulation mechanisms should aim to:

- Establish a clear pricing structure that the government and public and private operators have negotiated and that serve one public policy;
- Establish technical, contractual, economic and financial norms and standards;
- Introduce competition when it is non-existent or weak, or at least establish the contestability of established situations;
- Define the obligations of public service and protection of local interests in a clear and transparent way, including in areas where service profits remain weak;
- Facilitate conflict management.

It therefore seems that it is a priority to promote the emergence of viable regulation mechanisms that are considered legitimate and able to bolster the rationality for certain behaviours and to improve economic predictability in order to facilitate participation of the private sector.

3. Efficient public entities used to set up mature and bankable projects

The upstream phase of preparing projects, conducted by public partners, determines how mature a project is and consequently private investors' interest. One of the major reasons for the lack of investments in infrastructures in Africa is precisely the shortage of mature and bankable projects, in other words, the lack of details based on in-depth technical, legal and financial studies on which investors may decide to act. The shortcomings of contracting are therefore also found at the level of overseeing project feasibility studies, ensuring appropriate technical design, reliable demand estimations and means of implementation studied as well as the structuring of projects at the institutional, financial and technical level.

Negotiation and procurement procedures likewise fall short, mainly because of corruption, money laundering and opaque relations between the State and government agencies, which are still very present in Africa.

4. Risk allocation and establishing contracts between the public and private sectors

Although involvement of the private sector can be beneficial to the provision of efficient services, a number of PPP contract experiences have nevertheless resulted in failure. An average of 15 and 25% of PPPs (management contracts, administration, concessions) are abandoned in the water and electricity sectors respectively in Africa¹. This is mainly due to different motivations of private and public stakeholders (distribution of dividends versus public interest rationales), a large amount of information and competence asymmetry between partners (multinational versus local authority), but especially governance and economic confidence problems.

¹ Source: The report, *Africa's Infrastructure: A Time for Transformation*, The World Bank

When drawing up contracts, the sharing of responsibilities and risks borne by each of the parties must be clearly established, but also guaranteed. But first, a number of problems need to be openly addressed:

- Pricing policies that do not match investment needs. In many countries, tariffs that operators charge users are regulated by the State, and they cannot raise them often enough for investments to be profitable. In Cameroon for example the national power company was not allowed to increase tariffs in 2010 despite the fact that they had been frozen since 2007. In 2008, the underpricing of electricity generated a loss of approximately 0.9% of the GDP for the whole of sub-Saharan Africa²;
- A level of service and costs that do not necessarily correspond to expectations;
- The lack of guarantees (services, financial resources) from public partners vis-à-vis their contractual commitments;
- As a result, there is inadequate understanding of risk and unequal sharing between the parties.

The public partners in the broad sense (operator, regulator, government) must also be engaged with private partners regarding all these issues. Private partners must likewise commit when it comes to investments, targets and the quality of service provided, employee training, and the rate of return expected that should remain compatible with service targets.

Conclusion

Although the shortcomings of the public sector are often recognized, PPPs have not always produced the results that were expected. Governments and donors are now more cautious when conducting sectoral reforms aimed at privatizing all or a portion of a service. Yet, the delays in the development of Africa's infrastructure make private sector participation crucial at every level (operation, maintenance, investment).

Several strategies can be considered depending on the sector and the national contexts: the implementation of performance targets (investment, construction, operation, maintenance and commercial management) for public operators to concessions (when the private sector has an interest in them), to outsourcing a portion of responsibilities to international or local private companies, through management or maintenance contracts.

The challenge also involves capacity building and improving human resource management in government administration (pay scales, career managements, intergenerational transfer of knowledge) so as to attract and retain competent and motivated professionals.

² Source: The report, *Africa's Infrastructure: A Time for Transformation*, *op. cit.* Unless otherwise stated, data in section 1.2. have been taken from this report.

Questions

What recommendations can be drawn from past experience? What should countries' priorities be? What aspects are donors expected to support? Should private investment only focus on the most profitable segments? How and why can the private sector's interest be drawn to the less profitable sectors, especially in rural areas? Should the focus be on maintaining private operations since they can have social objectives? How can the participation of the local private sector be promoted and structured (from water carriers to small local operators)?

What method of regulation should be promoted by a regulation agency or through contracts? Is a regulator's independence to be encouraged at all costs?

Is it important to target overall tariff equilibrium (investment + operation) or should less ambitious objectives be considered for certain sub-sectors? How can a structural operating deficit be offset financially to allow for private sector participation?

Is it necessary to introduce consultation and information mechanisms (norms and sanctions) between public and private partners to generate more confidence?

How can the relationship between the public and private sectors be balanced? Could the idea of guaranteeing a minimum level of service to the private sector through a contract be applied? (Service level agreements signed by a State and a private company stipulating the targets that the company and its public partners need to meet. The private company pays an insurance premium but in return, if public partners do not meet their targets, the State pays the company compensation).

Possible guidelines for the ICA Secretariat:

Strengthen the role of sectoral platforms using the model the energy platform has established for power purchase agreements (PPAs). Reinforce the cross-sectional analysis aspects of Africa Infrastructure Country Diagnostic (AICD) studies on the progress of institutional reforms and the participation of the private sector in the financing and operation of services. Incorporate PPPs into the Geographic Information System (GIC) being developed by the ICA.