Impact of a New Legislation on the Water Market and Competition in France

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ABSTRACT

In France, water services are under municipal responsibility. They can be managed, either by municipalities themselves, or by private companies through delegation contracts. Whatever the situation is, water management remained under state control.

The law of January 29, 1993 known as "Sapin Act " limits the duration of the contracts of delegation and imposes a procedure of publicity and consultation preliminary to their conclusion or their renewal.

A study has been lead from 1998 by our laboratory on the impact of this competition between private companies on the delegation contracts and the price.

The main conclusions are the following:
- Including water and wastewater contracts, the procedure of competition lead to an average fall of 10% of the price paid to the contractor. The most significant falls concern services of more than 20 000 inhabitants.
- If the global distribution of the contracts between the 3 major companies of this sector is not basically modified, one notes an increasingly marked presence of independent private operators.
- The duration of the contracts is in reduction. It passed on average from 17 to 11 years.

Then, it appears that the procedure instituted by the law of January 29, 1993 allowed a better exercise of competition between the private companies. The municipalities, mainly the smallest, encounter difficulties in the course of the procedure, that's the reason why they expressed strong expectations in regard to the services of consulting. The progressive development of associations of municipalities makes it possible for the municipalities to obtain more favourable contractual conditions. The study makes it possible to follow the evolution of the number of procedures initiated pursuant to the law of January 29, 1993: nearly 300 in 1997, 582 in 1998 and 684 in 1999. In 2005, most of the 12 000 French contracts would have been renegotiated, figure that shows the economical impact on water services.

KEY WORDS

competition; France; legislation; sewerage services; water market; water services.

INTRODUCTION

In France, the local authorities (municipalities or groups of municipalities) are responsible for organizing the water and sewerage services. As a result, they have a key role to play.
They own the infrastructure and are free to select the management method of their choice. Concretely, they have two options:
- either they can operate the service directly, that is with their own personnel and other resources,
- or they can opt for indirect management, where another party – generally from the private sector – is appointed to perform the service. This may be done in several ways by a local authority:
  * by entering a service provision agreement with a company that is paid directly by the authority
  * or by delegating the public service so that a substantial portion of the remuneration of the private contractor is derived from the water bills paid by the users of the service. In other words, the contract is balanced by the operating results.

**The Water Market in France.**
France has some 30,000 water and sewerage services, each of which serves from a few hundred to several million users. 48% of these water services (i.e. 21% of the population) and 62% of the sewerage services (i.e. 47% of the population) are managed directly by the local authority. Most of these are small municipalities, but they include a few large cities as well (Strasbourg, Amiens, Nantes, Tours etc.). While such directly provided services are numerous, they account for only 20% of the volume of the water sold, which is relatively small.

**Table 1 Number of water and sewerage services in France (source: 1998 water survey, Ifen, Scees, Water Agencies).**

<table>
<thead>
<tr>
<th></th>
<th>Drinking water</th>
<th>Sewerage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal departments managing both services</td>
<td>10,835</td>
<td>12,236</td>
</tr>
<tr>
<td>Inter-municipal services</td>
<td>4,093</td>
<td>2,175</td>
</tr>
<tr>
<td>Partial municipal services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Including system management</td>
<td>1,409</td>
<td>3,561</td>
</tr>
<tr>
<td>Including production management</td>
<td>1,284</td>
<td>3,561</td>
</tr>
<tr>
<td></td>
<td>125</td>
<td></td>
</tr>
<tr>
<td><strong>Total number of services</strong></td>
<td><strong>16,337</strong></td>
<td><strong>17,972</strong></td>
</tr>
<tr>
<td>Municipalities with no service</td>
<td>114</td>
<td>15,107</td>
</tr>
</tbody>
</table>

A few figures can give an idea of the French water market (Martinand, 2001):
- the total turnover is Euros 10.7 thousand million inclusive of taxes and fees, i.e. € 7.8 thousand million in revenue collected directly by the operators (public bodies and private companies). The three major private operators (Vivendi (formerly Générale des Eaux), Ondéo (formerly Lyonnaise des Eaux) and SAUR) collect Euros 3.5 thousand million. The volume of water distributed to all users is about 5 thousand million cubic metres per year, approximately half of which is subject to sewerage treatment fees.

**The Problem of the Natural Monopoly and Lack of Competition.**
The private market of water in France is dominated by three private French operators, who are also present in international markets and who are recognised for their expertise (Vivendi, Ondéo, SAUR). The particularly strong concentration that is prevalent in the market can raise some doubts about whether it is truly competitive.

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1 Source: Ministry of the Environment, quoted in the Tavernier report (Tavernier, 2001).
Further, until the early 1990s, service delegation agreements were not subject to any compulsory competitive measures, which often led to insufficiently transparent practices. The rapid rise in the price of water during that decade and the consequences of the lack of transparency made the general public suspicious about the management of water services in France.

The position of the authorities who wish to delegate their water services is uncomfortable – firstly, they do not have the technical expertise to stand up to the specialists from major groups and secondly, in the absence of true competition, they can never be sure that the offer they are accepting is indeed the best in terms of quality and cost.

Given the situation, the lawmakers have set up a legal system designed to regulate public service delegation. Several acts were passed from 1993 to 1995. The act of January 29th 1993, the so-called Sapin Act, is one of the first in that regulatory framework.

**Principle of the New Procedure Introduced by the Sapin Act.**
The chief aim of the Sapin Act is to ensure transparency when the delegation agreements are made. To that end, it has set up a tool – no agreements may be executed without preliminary notice and a competitive procedure.

**Figure 1 Stages of the Delegation Procedure defined by the Sapin Act**

The act defines a specific procedure that is to be followed for the execution of delegation agreements.
As illustrated in figure 1, the procedure has been formalized fully, even though some points relating to its implementation require clarification.

The negotiation phase happens to be a key stage in the procedure, giving the local officials the opportunity to negotiate with one or more contractors in order to obtain specifications and detailed information about the content of their bids.

All new delegation agreements are required to follow this notice and preliminary consultation procedure before they are made.

The time frame for completing such a procedure is eight to twelve months. That is why it is indispensable for the local bodies to start working on the issue well in advance. Competent consulting partners can help the local authorities to complete all the steps in time.

Eight years after the law regulating the French water market came into force, the time has come to assess its actual effectiveness. The central government has attempted to review the impact of the provisions of the Act on delegation agreements. In partnership with the Ministry of the Environment and the Water Agencies, our laboratory (ENGREF – Water and Sewerage Management Laboratory) has been conducting a survey for the past three years in order to monitor and quantify the actual impact of the regulations on the water and sewerage services.

Survey.
- Methodology
The work is based on a study of the variation of the average price (i.e. the annual revenue divided by the volume sold) and the operating of competition. It additionally makes it possible to track the development of the number of agreements executed in accordance with the regulations.

That is because the obligation to publish notice in a legal notice newspaper makes it possible to track the names of those authorities that have initiated a procedure in the course of any given year.

The data are collected by means of a questionnaire sent to the relevant authority and/or the consulting organisation. They are entered into a database before further processing.

Two preliminary remarks have to be made:
1. The calculated data and prices are not representative of all French water services, but only cover those services where the agreement was renewed during the given year (studied period 1998 to 2000). However, they do bring out the broad trends, most of which are confirmed over the years.
2. All the average prices are calculated after weighting the data with the volume of water sold.

- Main results
The study was very rich in conclusions. Several key results emerge.

1) An increasing number of agreements
The number of agreements entered into in accordance with the Act rose steadily from some 300 in 1997 to 582 in 1998 and 684 in 1999. The rise seems to have slowed down in 2000 and 2001, but it may be estimated that more than 2000 agreements will be renegotiated in 2005. That expected rise from 2005 can be explained in part by the fact
that many private operators anticipated the passing of the Act and renegotiated their agreements with local bodies just before it was passed. Many such agreements have a term of twelve years or so, and will therefore expire from 2005. The shortening of the term of agreements has meant that there are a larger number of procedures than before.

2) A drop in the term of the agreements
The average term of the agreements fell from seventeen to eleven years. Over 60% of the agreements are entered into for twelve-year terms. That is firstly because of the obligations introduced by the lawmakers in the 1990s (obligation to set a term to agreements, with a twenty-year limit for such terms) and secondly due to the fact that the parties do not wish to commit themselves for excessively long periods.

3) Changes in operators
Procedures leading to a change in operators are rising. However, in eighty or ninety percent of the cases, the existing operator was appointed for another term. The three major groups (Lyonnaisse des Eaux, Vivendi and SAUR France) therefore continue to play an important part in the market. Nevertheless, an increasingly marked presence of much smaller independent operators can be observed. In 1999, these acquired 37 new agreements out of the 305 studied in the survey.

4) A decrease in the prices of operators
In respect of water and sewerage, delegation procedures led to an average fall of 10% of the prices of operators in 1999. The largest decrease relates to services for populations of more than 20,000 (see figure 2).

![Graph showing the average prices of operators before and after the introduction of competition, by size of service (water and sewerage together) (1999)](image)

Figure 2 Comparison of the average prices of operators before and after the introduction of competition, by size of service (water and sewerage together) (1999)

5) Importance of consulting organisations
Very few local bodies initiate the procedure by themselves – approximately nine out of ten of them obtain consulting services (eight out of ten turn to the State and one out of ten use the services of a private firm). The Ministry of Agriculture is certainly the largest consultant in terms of the number of services. However, it mainly works for local bodies in charge of small populations (which are the most numerous).

- Unresolved questions…
The results of the study have brought out price variations, most of them downward. That raises the question of the factors that have led to that development – is it merely due to the
Introduction of competition or does it reflect noticeable changes in the services to be provided by the operator?

Overall, the new procedure appears to encourage competition. The average number of applications per procedure in 1999 was estimated to be 3.6 and the number of offers effectively received was 2.4. These figures might still appear insufficient, and it may be that the coming of new operators – either new French private companies or foreign companies – could have a positive effect on the development of competition.

Negotiation appears to be a key phase, as it offers the local bodies the opportunity to adjust the terms and conditions of the agreements on the basis of their own requirements and the offers of operators.

The entire procedure is conducted by a special commission. However, the final decision is made by the mayor alone, who negotiates the agreement personally in accordance with principle of a private agreement. That is where the procedure reaches its limit, as till now, the mayor is free to take a decision that goes against the recommendation of the commission.

Finally, one reservation about the effectiveness of the Sapin Act relates to the frequent execution of amendments and additional clauses that modify the conditions of the initial agreement without bringing in the competition. It is quite possible that the drop in prices found during the study is compensated in part by amendments made in subsequent years, particularly to put in place new treatment services.

CONCLUSION

Outlook.
- Emergence of foreign operators in France
In the period studied (1998 to 2000), the presence of applications from foreign companies is the exception. To date, no foreign company has been appointed as the water service provider in France, in spite of attempts (particularly from British companies). That situation cannot last for ever. Granted, foreign companies are as yet not very well acquainted with the French competition procedure and the principle of the private agreement is keeping them back to some extent. However, several non-French companies seem to be very seriously interested in the French market and the three major French groups are anticipating the coming of a new form of competition. The future will tell if the contribution of foreign operators in France increases in scope and whether or not it will bring any downward pressure on the prices.

- Continuation of the study
The main trends observed in 1998 were confirmed in 1999 and 2000. In the coming years, most of the delegation agreements under way will expire. Several new procedures will therefore be initiated and it is important to monitor the impact of the negotiations on the prices and quality of French water and sewerage services.

The resulting economic issues are not negligible – opening of the market to new independent and/or foreign operators and lower prices for the consumers.

That is why it is important to repeat the study in the course of the years to come in order to deepen the analysis of the consequences of the implementation of the new regulations relating to the management of water and sewerage services in France.
- Towards the setting up of a regulatory authority

The competitive obligation set up by the Sapin Act has not yet completely corrected the natural unbalance between the different players (local bodies, consumers and operators).

On the private side, the coming of independent operators is certainly increasingly marked, but has still to lead to any significant change in the scope of competition, which is as yet limited. Local bodies continue to ask for advice and accurate quantifiable criteria to assess the quality of the service provided.

The use of performance indicators could be a solution (Guérin-Schneider, 2001). In that way, local bodies could track the annual development of the service. Any drift could be identified and improvements made. The authority could then initiate objective dialogue with the operator.

The indicators could also determine part of the revenue of the operator, giving rise to bonuses or penalties, which would act as incentives.

Such performance indicators based on the quality of the service could act as the basis for regulating water services.

The new water bill that is being examined by the French parliament envisages the setting up of a Higher Council for Water and Sewerage Public Services (Haut Conseil du Secteur Public, 1999). Its tasks would include centralizing and making up references and distributing qualitative and quantitative data relating to such indicators. That would make it possible to compare sufficiently close services. Such pseudo-competition could lead to emulation between the operators away from agreement renegotiation periods. The oligopoly would therefore be broken in part. The system would thus act as a useful supplement for the Sapin Act.

ACKNOWLEDGEMENTS

The authors would like to thank Dr. Antoine Grand d'Esnon, Florence Bonnet and Laurent Djezzard for their contribution to our work on the impact of the regulation on the water market and competition in France.

We have also to address our acknowledgements to the French Ministry of Agriculture, to the French Ministry of the Environment and to the Water Agencies for their support to this work.

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