

Utterly uncompetitive

- The home lands of eternal water privatisations

By
David Hall and Emanuele Lobina

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d.j.hall@gre.ac.uk and e.lobina@gre.ac.uk

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1. Introduction

Private companies like to present themselves as champions of competition. We are told that repeated, vigorous battles between companies ensure the survival of the fittest; that privatisation and liberalisation are an opportunity to seize the benefits of this creative energy; and that by delegating our public water services to such champions we can ensure years of efficient and profitable service.

But in the water sector, contracts and licenses worth billions of Euros of revenues each year have never been exposed to competition. The great majority of privatised water in Spain, nearly all privatised water in France, and all the privatised water in the UK, have never been subject to competition. The business is extremely concentrated in the hands of a few companies, which are currently under investigation for anti-competitive collusion, which have previously been investigated for abuse of market dominance, and have been involved in a number of cases of proven illegal corruption.

The private business in this sector has been built by gaining uncompetitive, sometimes corrupt, monopolies, and then holding onto them for decades, in some cases over a century. The solution is to end privatisation.

Table 1. Private water contracts – no competition

	Proportion of private water contracts based on competition
France	5%
Spain	33%
UK	0%

Source: see text

This report looks at three of the four countries in Europe where water privatisation covers 50% or more of the population, including two where it has existed for many years – France and Spain – and the UK, where privatisation happened through a single act in 1989 (the fourth is the Czech republic).¹

2. Marseille: a microcosm

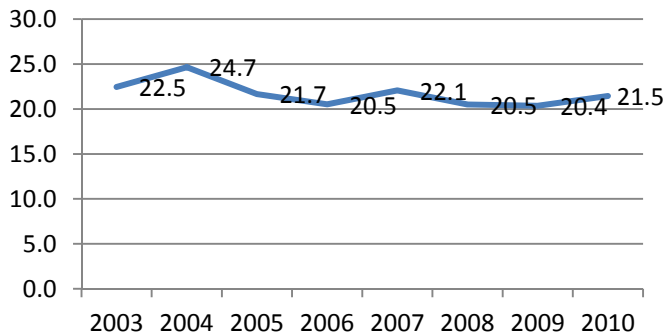
The 2012 World Water Forum is being held in Marseille, which provides an excellent illustration of the non-competitive nature of the sector.

The water service in Marseille was first privatised in 1942, during the 2nd World War. The contract was awarded without any competitive bidding. It was awarded for 50 years. It was renewed in 1960, and again in 1991, in both cases without any competitive tendering. The current contract is due to expire in 2013, by which time the operator will have enjoyed the monopoly for 71 years without ever having to face competition.

The company, Société des Eaux de Marseille, is a subsidiary of Veolia. Until recently, however, it was 50% owned by Veolia and 50% owned by Suez. It was one of the 14 jointly owned companies which the French competition council (“Conseil de la concurrence”) decided were an abuse of market dominance, and ordered the joint ownership to be ended. The companies did this by allocating some wholly to Suez, and some wholly to Veolia. Marseille was given to Veolia.

The company is very profitable. It generates a high return on capital which is consistently over 20%. This is roughly double the average of its peer group, which, according to the Orbis business database, is 10.8%.

Chart A. Profitability of Société des Eaux de Marseille
(Return on capital employed, profits before tax)



Source: Orbis BvD

3. Countries

3.1. The UK: a competition-free zone

Water and sewerage companies in England and Wales were privatised under the 1989 Water Act.ⁱⁱ This Act did not apply to Scotland and Northern Ireland, where water and sewerage remain operated by public sector companies, Scottish Water and Northern Ireland Water.

The privatisation took place by the sale to the public, through an IPO on the stock exchange, of the 10 regional water and sewerage authorities. These authorities had been created by the Water Act of 1974 by consolidation of previous municipal operators: there was no process of competitive tendering involved.

In a number of areas, water supply (but not sewerage) was still operated in 1989 by smaller private statutory water companies which had held the concessions for many years, often since the XIX century. The newly privatised regional companies, and the pre-existing water-only water companies, were assigned licenses by the Department of Environment under the water Act 1989.ⁱⁱⁱ There was no process of competitive tendering for these licenses, which were simply assigned to incumbents.

In 2002 the licenses of all these monopolies were amended to state that no other company could replace the incumbent except “where the Secretary of State has given the Appointee at least 25 years’ notice to terminate the relevant Appointment in relation to the whole of its area and that period of notice has expired”.^{iv}

The net effect is that each and every one of the UK private water companies (a) has been assigned their monopoly concession without any competitive tendering (b) holds a concession that is, for practical purposes, indefinite, and cannot be terminated without 25 years notice: there is thus no prospect of any competition in the foreseeable future unless the laws are changed.

In the UK, there has never been any competition for the private water monopolies in England and Wales. And, thanks to the licences which state that companies are entitled to 25 years notice of termination, there never will be.

3.2. Spain: land of eternal concessions

Three cities in Spain have private water contracts which have run for over 100 years without any competition. Two-thirds of private contracts have never been subject to competition.

We examined 17 Spanish cities with more than 100,000 inhabitants operated by private companies. Of these, 6 cities awarded contracts competitively (Las Palmas de Gran Canaria, Santa Cruz de Tenerife, Oviedo, Santander, Salamanca, Jaén), 4 cities awarded contracts to the only bidder (Valencia, Valladolid, Granada, Lleida), 7 cities awarded and/or renewed contracts without competitive tendering (Barcelona, Murcia, Alicante, Almería, Albacete, Castellón de la Plana, Badajoz). Thus two-thirds of the contracts have not been subjected to competition, and only one-third competitively. These are terrible figures, which only look less awful by comparison with even worse figures for France and the UK.

Three of these cities stand out because the private company enjoys a contract without competition for over 100 years.

The oldest is Aguas de Barcelona (AgBar), established in 1867, which gradually expanded by acquisition and served the entire city of Barcelona by the end of the XIX century. The concession contract is of indeterminate duration, and so the company has never once faced competition. AgBar has now held the contract for 145 years, and would claim it has a contractual right to hold it forever.^v

In 1902, the city of Valencia awarded a water concession to a private company, AVSA. The contract specified that the monopoly would last for 99 years. And so in the late 1990s, for the first time since 1902, the city of Valencia began to draw up tender documents. At this point AVSA, now part of the SAUR-Bouygues multinational group, announced that if it lost the tender it would demand compensation of €54m for investments it had made in the system.^{vi} Not surprisingly, there was not a single competing bid. AVSA, now part of a joint venture with the council itself, will enjoy the concession for a further 50 years, by which time the city of Valencia will have had 150 years of private water monopoly with not a single competitive bid.^{vii} The ownership of the monopoly has however changed hands again: in 2007, SAUR sold its 33% stake in Aguas de Valencia to another French multinational, Suez – who reportedly bought it to prevent it being bought by a third French multinational, Veolia.^{viii}

Alicante is about to join the club of cities with concessions lasting for over a century without competition. In 1893, the municipality awarded a 60-year concession to Aguas de Alicante following an auction. The concessionaire was taken over by Aguas de Barcelona in 1921. In 1953, the municipality bought 50% of the concessionaire, renamed AMAEM, with the other 50% remaining with Aguas de Barcelona. AMAEM was then awarded a concession up to 2016, without any competitive tendering, and in July 2006, the municipality renewed the concession to AMAEM for further 20 years, with expiry due in 2036, by which time the private operation will have continued for more than 100 years without competition.^{ix}

3.3. France: an exclusive and self-perpetuating oligopoly

Only 5% of private water contracts in France have ever been subject to a truly competitive tender. Over 90% of the private water market is in the hands of three companies, Suez, Veolia and SAUR. They are now being investigated for collusion by the European Commission, and have previously been investigated by the French authorities for colluding through joint ventures.

France is the home country of the two major water MNCs, Veolia and Suez. Together with the UK, it is the EU-15 country where the highest share of water operations is managed by the private sector. Three large groups - Veolia, Suez, and SAUR - hold 92% of all these contracts.^x No non-French company has ever won a single one of these contracts (“Aucune entreprise étrangère n'a encore pénétré le marché”).^{xi}

In January 2012 the European Commission (EC) formally launched an investigation into Veolia, Suez and SAUR, and their trade group the Federation Professionnelle des Entreprises de l'Eau (FP2E) “coordinated their behavior” on “elements of the price invoiced to final consumers”. The EC raided the three companies in 2010 over concerns that they colluded in public tenders for water distribution and treatment. In July 2010 the EC opened a prosecution against Suez Environnement for 'breaking seals' fixed during the raids, which could have been done to try and cover up evidence: Suez appealed against the legitimacy of the raid.^{xii} (In 2009 GdF-Suez, the parent company of Suez Environnement, was fined €53 million by the EC for an agreement with other European gas companies not to compete in gas supplies in each other's countries^{xiii}).

It was expected that the worst of these abuses would have been ended by the Sapin Law (“Loi Sapin”) passed in 1993, which required municipalities to invite tenders for future contracts from 1996. Previously, no procedure was specified and private operators were often selected through negotiated procedure. However, contracts signed before such date, even when awarded in the absence of competitive tendering, remain valid until their expiry.

In 1997, the French national audit body Cour des Comptes published a report (Cour des Comptes, 1997) criticising the degree of competition and transparency of private water contracts prior to the entry into force of the Loi Sapin. In particular, the Cour des Comptes pointed to a number of practices prevalent prior to the Loi Sapin: a) the award of contracts in the absence of competitive tendering; b) the award of contracts for an excessive duration, not justified by the risks borne by the private operator; c) the repeated renewal of contracts in the absence of competition spanning across decades and resulting in isolating the local private operator from any competitive pressure for an excessive duration. The Cour des Comptes also observed that: i) a number of contracts had been renewed immediately prior to the entry into force of the Loi Sapin to allow the private operator to enjoy a protracted period without having to face competition; ii) in particular, a number of contracts had been extended in favour of the incumbent operator as a result of investment programmes which could not be depreciated during the life of the original contract; iii) in a number of cases, competitive tendering adopted pursuant to the Loi Sapin has resulted in the appointment of the incumbent operator, benefiting from asymmetry of information in respect to the other bidders.

Since the Loi Sapin came into force in 1996, about 4% of water contracts have been re-tendered each year. This has not resulted in dramatic competition: in 65% of cases, there were only one or two companies bidding for the work.^{xiv} In 90%

of all the competitive tendering procedures for water services under the Loi Sapin, the contract has been retained by the existing contractor. The incumbent – nearly always one of the big three groups - thus has a clearly massive advantage.

We examined the history of 17 French cities with more than 100,000 inhabitants with private water contracts (including Paris, where the contracts expired in 2009). At least 14 contracts were awarded through negotiated procedure and/or renewed without competitive tendering. They included Paris (whose population is 2,125,017); Marseille (796,525); Lyon (444,852); Toulouse (390,174); Nice (343,166); Montpellier (225,748); Bordeaux (215,277); Lille (184,445); Saint-Étienne (180,393); Dijon (150,144); Villeurbanne (124,451); Caen (114,079); and Perpignan (105,027). This list includes the five largest French cities. It is also worth noting that the largest French water supply contract serves around 4 million people in the metropolitan area surrounding the city of Paris, awarded by the SEDIF inter-municipal association: this was first awarded in 1923 then renewed in 1962 and again in 1993, until it was finally tendered competitively in 2011 – a period of 88 years without a single moment of competition, now due to expire in 2011. Only two of the cities over 100,000 had used competition to award the original contract: Rennes (206,221) has awarded a contract under the Loi Sapin, but the successful bidder was the incumbent. Nîmes (133,391) awarded a contract competitively in 1969, but the contract was subsequently renewed, prior to the enactment of the Loi Sapin, for further 20 years and without any competitive procedure.

One way in which the dominance of the big companies was established was by forming joint ventures with each other in a number of towns and regions, with the effect of restricting competition in the French private water market. In July 2002, the French competition council (“Conseil de la concurrence”) ruled that Suez (Lyonnaise des Eaux - SLDE) and Veolia (Générale des Eaux - CGE) had been abusing their market dominance in France. It listed 12 joint ventures in France, including Marseille and Lille, and two of these joint ventures also involved SAUR, the third largest water company. The Competition Council recommended that the Ministry of Economy act to force CGE and SLDE to remedy the situation by dismantling their joint ventures (Conseil de la Concurrence, 2002).^{xv} This was not done until some years later.

In France, even at the end of 2008, over 95% of all private contracts were held by the company which was originally awarded it without competitive tendering procedures.

4. Notes

ⁱ The primary data on which this report is based relates to 2010 and earlier years.

ⁱⁱ Water Act 1989 http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890015_en_1

ⁱⁱⁱ OFWAT 2002 Consolidated water company licences <http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/Content/watercompanylicences>

^{iv} Condition ‘O’ inserted in licenses with effect from October 2002 e.g. page 9 of

[http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/lic_bournwest.pdf/\\$FILE/lic_bournwest.pdf](http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/lic_bournwest.pdf/$FILE/lic_bournwest.pdf)

^v Source: David Saurí, Universidad Autonoma de Barcelona, personal communication, 13 November 2008.

^{vi} “Informe De Pricewaterhousecoopers Valencia Pagara A Avsa 54 Millones Si Rescata La Concesion”, *Expansion*, 17 January 2001.

^{vii} Alfonso, J. (2001) “Aguas de Valencia gana el concurso de suministro local”, *Cinco Dias*, 3 October 2001, p. 6.

^{viii} Utility Week October 26, 2007 WATERSuez increases stake in Spain's water market

^{ix} Source: Email communication with Lluís Basteiro Bertolí, ISF (Ingeniería Sin Fronteras Catalunya), 15 November 2008; AMAEM, “Aguas de Alicante: pasado y futuro” (<http://www.aguasdealicante.es/multimedia/d-historia.htm> - accessed 26 January 2009); AMAEM, “Historia – 110 Años de historia, Pasado, presente y futuro de Aguas de Alicante” (<http://www.aguasalicante110aniversario.com/historia> - accessed 26 January 2009); Geoscopio, “AMAEM, participada por el Grupo Agbar, renueva la concesión de agua y alcantarillado en Alicante hasta el año 2036”, 12 July 2006

(http://www.geoscopio.com/guias/res/noticias/AMAEM_participada_por_el_grupo_agbar_renueva_la_concesion_de_agua_y_alcantarillado_en_alicante_hasta_el_ano_2036_9459.htm - accessed 26 January 2009).

^x Observatoire des DSP: Déroulement des procédures de délégation des services publics d'eau et d'assainissement, procédures 2004.

http://www.agroparistech.fr/labogea/doc_dsp.html

^{xi} Observatoire des DSP: Déroulement des procédures de délégation des services publics d'eau et d'assainissement, procédures 2004.

http://www.agroparistech.fr/labogea/doc_dsp.html : “Aucune entreprise étrangère n'a encore pénétré le marché”

^{xii} Bloomberg *Jan 18, 2012* Suez, Veolia, Saur Probed by EU on Water-Services Collusion <http://www.bloomberg.com/news/2012-01-18/suez-veolia-saur-under-investigation-by-eu-antitrust-regulator.html>; France: Commission Opens Formal Proceedings Against Suez For Alleged Breach Of A Seal. Article by SJ Berwin's EU & Competition Team 17 June 2010 <http://www.mondaq.com/article.asp?articleid=102812>

^{xiii} The Guardian (London) July 9, 2009 Thursday Brussels fines energy companies £1bn for cartel

<http://www.guardian.co.uk/business/2009/jul/08/gas-company-fines-european-commission>

^{xiv} Observatoire des DSP: Synthèses de l'enquête annuelle http://www.agroparistech.fr/labogea/doc_dsp.html

^{xv} See also Conseil de la concurrence, «Marché de l'eau: le Conseil de la concurrence demande au ministre de remettre en cause les filiales communes de la CGE et de la SLDE», Communiqué de Presse N. 22, 17th July 2002 (<http://www.finances.gouv.fr/conseilconcurrence/communiqués/comm22.htm>); «Vivendi et Suez accusés de fausser le jeu de la concurrence», *La Tribune*, 18th July 2002