



Best Practices in Investment for Development

Private investment in water and electricity

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Main points

- Legal issues arising from private investment in key infrastructure projects
- UNCTAD's response to the call to share best practices
- WIR08: research and policy analysis on FDI in key infrastructure sectors
- UNCTAD case studies of best practices in FDI: electricity, roads.

Infrastructure projects are:

- Sensitive: essential utilities, politically sensitive, broader policies issues, sensitive to “climate change”
- Complex: different involvement and responsibilities for public and private sector, various instruments
- Long term: long lasting commitments, value and return on investment are difficult to assess, evolving economic surrounding, competition is difficult.

Water and electricity are « worse cases »

- Water:
 - Life essential
 - High political sensitivity
 - Sensitive to “climate changes”
 - “Old” public service, not high tech
 - Complex schemes for private involvement: drinking water, sanitization, irrigation, power generation
 - Lower levels of government: municipalities
 - Price of water ? Not competitive sector
 - No liberalization commitments

Water and electricity are « worse cases »

- Electricity:
 - Essential for economic development
 - Not competitive context but pressure from international and bilateral partners for liberalization
 - Complex instruments and involvements: generation, transportation, distribution, retail
 - Balance sensitive to outside factors: draughts, floods, geo political issues
 - Involvement of private sector
 - National policies, national implementation

Infrastructure cases: 40% of pending ISDS cases

- Investor-State dispute settlement cases arising under investment treaties
- 8% of concluded cases
- 40% of pending cases: (13 water, 23 electricity, 14 gas). More if add waste collection
- Dispute arising in the early years of concessions (4-5 years)
- Highly politicized. Three examples:
 - Aguas del Tunari vs. Bolivia: complex concession
 - Azurix vs. Argentina: operation concession
 - Biwater Gauff vs. Tanzania: private operator condition for funding, amicus requests

Complex framework issues

- Transparent and fair tendering conditions: taking into account economic realities
- Long term contracts: unforeseeable changes in circumstances, « climate change »
- Catch-it-all term: PPP. Legal instruments very different.
- FLEXIBILITY: key word. Important for both parties to keep stakes: partnership, communication, adjustments.
- Previsibility/stability vs. Quality and cost effectiveness

Infrastructure projects: combination of ODA/FDI ?

- Specificity of infrastructure projects: regulation and governance, competence and competitiveness
- Combination of ODA and FDI for low-income countries (UNCTAD TD/B/Com.2/80)
- FDI (incl.through PPP): better services (veolia page), quality, price of utility.

UNCTAD, Geneva

The UN specialist on FDI

- Global research: World Investment Report (www.unctad.org/wir)
- Best practices case studies: electricity and roads (2008)
- Country-level advice:
 - Investment Policy Reviews (www.unctad.org/ipr)
 - BITs and national law on FDI (www.unctad.org/ia),
 - Investment promotion and facilitation (www.unctad.org/asit).