

Water privatisation and restructuring in Latin America, 2007

by

Emanuele Lobina and David Hall

PSIRU, Business School, University of Greenwich
e.lobina@gre.ac.uk; d.j.hall@gre.ac.uk

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1. Introduction

This report on water in Latin America is presented in three sections.

Firstly, it covers the development in private and public sector institutions. This includes mapping which international companies remain in the region and which have left; the activity of private companies based in South America itself; the presence of private equity and investment funds; the development of new public sector services; and examples of public-public partnerships (PUPs) and water operator partnerships (WOPs)

Secondly, it discusses some of the major issues currently affecting water services in the region, including the issues of BOT contracts; the activities of the development banks; the refinancing of water services using local savings, through both the public and private sectors; continuing disputes over privatisation; and the specific problem of continuing court cases by multinational companies claiming compensation.

Thirdly, it includes a country by country survey of developments with the services which have been at some point subject to private sector involvement.

2. Companies

2.1. The retreat of the multinationals

Multinational water companies have retreated from Latin America in the last 5 years. The two key reasons have been public opposition, and failure to make large enough profits. In January 2003 Suez, the largest operator of private water contracts in Latin America, announced that it would withdraw from operations in developing countries unless the return on capital was at least 13%. In 2007, Suez announced that its withdrawal was complete, and that it no longer has any employees in water in Latin America.

2.1.1. Multinationals which remain in Latin America 2007

Few multinational companies from outside the region now remain in possession of water operating contracts – concessions, leases, or management contracts – in Latin America. Those which do remain have no intention of expansion, and have even attempted to sell some of their remaining holdings.

There are no longer any English or French water companies acting on their own. The remaining short list is dominated by two Spanish-French groups, plus two other Spanish companies. This is similar to the electricity sector, where all three major Spanish electricity companies continue to operate in the region, although most multinationals from the USA and elsewhere, including the French company EDF, have retreated from Latin America.

The two Spanish-French water companies are Aguas de Barcelona (AgBar), whose largest shareholder is the French company Suez; and Proactiva, a 50-50 joint venture between the Spanish construction and waste group FCC and the French water and waste company Veolia. Even these companies have already given up some of their contracts: AgBar, for example, has exited from its contracts in Brazil, Uruguay and Argentina; and Veolia/FCC/Proactiva has lost its Argentinian contracts in Tucuman and Catamarca. Neither of these companies expects to expand, and are likely to contract further. Agbar states that it has no intention of adding to its existing contracts, and has already sold 49.9% of its major Chilean subsidiary, Aguas Andinas, to local investors through the stock exchange. Agbar also agreed the sale of its stake in the Cartagena contract in Colombia in 2005, but the sale was vetoed by the municipality. Veolia/Proactiva has also sold 49% of its Mexican

subsidiary to a local firm, and wants to sell its holding in the Brazilian company Sanepar, despite its legal action to retain its right to a minority shareholding.

There are four more Spanish companies. One is the electricity company Iberdrola, which does not regard water as a core sector, has no other water investments anywhere in the world, and has already tried to sell its Essal company in Chile; two of the Spanish construction groups, ACS and Sacyr Vallehermoso, have isolated contracts; and the municipally owned water company of Madrid, Canal Isabel II has a 60% holding in the shares of the private Colombian operator AAA. There are two Italian companies with remaining interests: Acea, the semi-privatised water and electricity company of Rome, which has already discussed selling its only distribution company, in Honduras, and is experiencing problems with its BOT contract in Peru; and the construction groups Edison and Bechtel, which own the private operator in Guayaquil, which is under increasing public and political pressure. There is also a Japanese group, Marubeni, with a single small company in Chile. Finally, a Canadian investment fund, the Ontario Teachers Pension Plan (OTPP), has become a substantial investor in water in Chile, covering a population almost as large as AgBar.

The multinational presence is thus reduced to a small core of Agbar, Proactiva, a few other Spanish companies, and, in Chile, the investment fund OPTT and Marubeni.

Table 1 Multinationals remaining in water in Latin America

Multinational	Home country	Contracts continuing in 2007		Contracts terminated or sold by 2007	
		Country	City	Country	City
Aguas de Barcelona	Spain/France	Chile	Santiago	Brazil	Campo Grande
		Colombia	Cartagena	Argentina	Aguas Argentinas
		Cuba	Habana	Argentina	Santa Fe
		Cuba	Varadero	Uruguay	Aguas de la Costa
		Mexico	Saltillo		
Proactiva/Veolia/FCC	Spain/France	Colombia	Monteria	Argentina	Tucuman
		Colombia	Tunja	Argentina	Catamarca ¹
		Colombia	San Andres	Venezuela	Aguas de Monagas
		Mexico	Aguascalientes		
		Brazil	Sanepar		
ACS/Urbaser	Spain	Argentina	SAMSA (Misiones)	Argentina	AGBA
Iberdrola	Spain	Chile	Essal	Uruguay	Uragua
Sacyr Vallehermoso/Valoriza/AGS	Spain	Brazil	Sanear, Aguas De Mandaguahy		
Canal Isabel II	Spain	Colombia	AAA		
		Ecuador	Amagua		
Acea	Italy	Honduras	San Pedro Sulas		
Edison/Bechtel	Italy/USA	Ecuador	Guyaquil	Bolivia	Cochabamba
Marubeni	Japan	Chile	Aguas Decima		
Ontario Teachers Pension Plan (OTPP)	Canada	Chile	Essbio, Essel, Esva		

¹ The contract is being retendered as a lease contract, and Proactiva are reported to be bidding (September 2007)

2.1.2. Multinationals which have left Latin America

Other companies have exited all operating contracts in Latin America. Their contracts have been terminated, or their subsidiaries have been sold to local private or public bodies. This list includes the largest private water companies in the world, except for Aguas de Barcelona and Veolia (see above). The largest, Suez, transferred its last remaining subsidiary in the region, in Chile, to Aguas de Barcelona (see above).

Table 2 Water multinationals no longer present in Latin America

Multinational	Home country	Contracts sold or terminated	
		Country	City
Suez	France	Argentina	Buenos Aires
		Argentina	Santa Fe
		Brazil	Limeira
		Bolivia	La Paz/El Alto
		Puerto Rico	
SAUR	France	Venezuela	Hidrolara
		Argentina	Mendoza*
Thames Water	UK	Chile	Essbio, Essel
Anglian Water	UK	Chile	Essval
Aguas de Bilbao	Spain	Argentina	AGBA
		Uruguay	Aguas de la Costa
Azurix	USA	Argentina	OSBA
		Argentina	Mendoza
Aguas do Portugal	Portugal	Brazil	Prolagos

*In process of exit.

2.2. National and local private sector

Privatisation, and the unravelling of the multinationals' presence, has resulted in some water operating contracts being held by South American companies, as indicated in the table below. Only two of these private companies based in the region are active internationally, i.e. outside their home country. One is AAA, from Colombia, which has water operating contracts in Ecuador and the Dominican Republic; the other is Latin Aguas, which has obtained a contract, as part of a joint venture with a Peruvian company, in Tumbes, Peru. The Chilean companies may reduce in number as a result of further bids from multinationals.

These local companies may not be able to raise significant amounts of local capital. The Argentinian companies have benefited from public finance and waiving of investment targets in Cordoba (Roggio), Mendoza (Sielecki) and Rioja (Latinaguas); and 60% of AAA's equity comes from a Spanish public sector operator, Canal Isabel II. The Chilean private companies may reduce their presence, as Japanese groups are reported to be interested in buying Solari's Aguas Nuevas.

Table 3 South American private companies

Company	Home country	Operations in home country	Operations abroad	
			Country	Company/ location
Latinaguas/ Chamas Group	Argentina	Corrientes, Salta and la Rioja	Peru	Tumbes (jv with Concisa)

South Water/ Sielecki group	Argentina	Clorinda, Santiago del Estero, Mendoza		
Grupo Roggio	Argentina	Cordoba		
Odebrecht	Brazil	Limeira		
Bertin/Equipav	Brazil	Campo Grande; Prolagos; Itu		
Solari group	Chile	Aguas Nuevas		
Luksic group	Chile	Aguas de Antofagasta		
Hidrosan/lcafal/Vecta	Chile	Regions III and XI		
AAA	Colombia		Ecuador	Samborondon
Concisa	Peru	Tumbes (jv with Latinaguas)		

2.2.1. Latinaguas

Latinaguas is part of the Chamas Group in Argentina. It provides 1.59 million residents with potable water and 1.11 million with sewerage service in 132 localities through concessions in three provinces: Corrientes, Salta and la Rioja.

2.2.2. South water/Sielecki

Sielecki is a Mendoza based group present in a variety of business in Argentina, from wineries to pharmaceuticals and banking, and most recently to the oil industry. It has a key stake in the Mendoza water company OSM. South Water also holds the Aguas de Formosa concession in Clorinda, the capital of the Formosa province, since December 1995 and the Aguas de Santiago concession in 4 cities in the province of Santiago del Estero since 1997.

2.2.3. Grupo Roggio

Firstly established as a construction company, Grupo Roggio was a major participant in the Argentinean privatisations of the 1990s, specifically in the roads, railways and telecommunications sectors. Via the minority shareholder Servicios del Centro (16.3%), the Roggio Group had already a stake in Aguas Cordobesas as part of the Suez/Agbar-led consortium. However, with the new deal it acquired control of the private concessionaire in December 2006.

2.2.4. AAA (Triple A)

Triple A (AAA) is 60% owned by Canal Isabel II, the municipally owned water company of Madrid, and so should perhaps be regarded as an international municipal company rather than a local private company. It provides water supply and sanitation services to Barranquilla and Soledad. Other Colombian operations include Santa Marta and Puerto Colombia and, since March 2005, Sabanagrande and Santo Tomas¹. Triple A has also expanded in Ecuador and the Dominican Republic

2.2.5. Hidrosan

Hidrosan Ingeniera is a Chilean water and waste management company. In 2001 it paid CLP 2.1 billion (Euros €3.1m) to Thames Water's subsidiary Essbio. The Chilean authorities prosecuted Thames Water over this, and Thames agreed that the payment was improper and agreed to pay USD \$11.1m compensation to Essbio. Hidrosan is also one of three partners owning Chanar, another privatised Chilean water company. Chanar awarded a construction contract to Hidrosan. Hidrosan was employed as a consultant when the Santiago water company, Emos, which was privatised to Suez, awarded a construction contracts of \$315m. To degreemont, a subsidiary of Suez. Hidrosan certified that this award was in order.

2.2.6. Luksic

The Luksic group holds a water concession in Antofagasta through its majority stake in Antofagasta plc, a long-established company listed on the London stock exchange which was originally set up in the 19th century to invest in the railway from Antofagasta. Antofagasta plc is now mainly a copper and

other mining company, with the water company, which partly serves its mines, as a profitable sideline.

2.3. Investment funds

In the north, especially in the UK and the USA, there has been a growing number of private operations bought by private equity firms. In Chile, a Canadian pension fund, the Ontario Teachers Pension Plan (OTPP), has bought up a number of water companies, and is now owns the second largest cluster of water companies in the country, serving over 36% of the population. There are no other signs of investment funds from the north buying water companies in South America.

No private water companies in South America are wholly or partly owned by private investment funds based in Latin America, as at October 2007. There have been a few cases where Latin American investment funds have bought stakes in water companies, or tried to, but as at October 2007 none own any holdings of significance. In 2006 Suez discussed the sale of the Buenos Aires private company to investment funds Fintech (Argentinian) and Latam Assets (Mexican-American), but the sale did not take place because the funds did not receive guarantees of price rises. An Argentinian investment fund, Southern Cross, bought the Chilean operations of Thames Water in 2006, but in 2007 sold these on to OTPP. Chilean investment groups also bought control of Esva from Anglian Water in 2003, but agreed to sell Esva to OTPP in 2007.

2.3.1. Ontario Teachers Pension Plan (OTPP)

The OTPP is the largest pension fund in Canada, covering 271,000 teachers, with US\$101 billion in net assets. US\$15.2 billion of this is invested in private equity, forestry and infrastructure. The Infrastructure Group “focuses on the acquisition and long-term retention of low-risk assets that generate stable returns linked to inflation.”²

Its infrastructure investments include 25% of the shares of Northumbrian Water, a UK water company; 50% of Intergen, an electricity generating company; 25% of Scotia Gas, a UK gas distribution company; and 100% of CGT Terminals, a north American container port terminal company.³ It also invests over US\$900m. in the Maquarie Infrastructure fund.⁴

The OTPP emphasises the long-term nature of its investment in Chile: “We’re a long-term investor and are committed to supporting the development plans of these companies....Infrastructure investments generate reliable, long-term returns that are correlated to inflation, making them a good match for paying inflation-indexed pensions to the plan’s members.”⁵

2.4. Public sector

The public sector has recovered many of the privatised concessions. As shown by the table, this process re-emphasises the range of forms and structures adopted by the public sector, with differing roles for national, regional and local governments, as well as employees and communities.

The public sector continues to operate in all cities other than those which have retained privatised operations.

Table 4 Renationalisation and remunicipalisation of private water contracts

Country	City/region	Public sector entity	Owners			
			National	State/ region/ province	Municipal	Employees/ union
Argentina	Buenos Aires	AySA	90			10
	Buenos Aires	Aguas Bonaerense		90		10

	(province)	SA (ABSA)				
	Buenos Aires (province)	Aguas Bonaerense SA (ABSA)		90		10
	Tucuman	Sapem/OST		90		10
	Santa Fe	Aguas Santafesinas SA		51	39	10
Bolivia	La Paz/El Alto	Epsas	100			
	Cochabamba	Semapa			100	
Uruguay	Maldonado (Aguas de la Costa)	OSE	100			
	Maldonado (Uragua)	OSE	100			
Venezuela	Hidrolara	State of Lara and municipal governments		50	50	
	Aguas de Monagas	State of Monagas and municipal government		49	51	

In Argentina, the renationalisation of water in Buenos Aires re-establishes a strong role for central government in the sector, which was the case before the privatisations of the 1990s were induced. It is noteworthy that workers and unions often have a formal ownership stake in the new public entities. This is the result of the employee shares which were introduced at the time of privatisation, which were originally intended to buy off opposition from workers and unions.

In Brazil, which has a mixture of state and municipal water operators, there is a range of initiatives and developments. The association of municipal operators, Assemae, has been actively encouraging the development of municipally owned operators, including the use of public-public partnerships. In the other direction, two of the major state-owned companies in Brazil have been part-privatised by the sale of shares to investors through the stock exchange. SABESP, owned by Sao Paulo state, is 49.7% owned by investors through the New York and Sao Paulo stock exchanges. Copasa, owned by Minas Gerais state (59.8%) and the municipality of Belo Horizonte (9.7%), is also listed on the Sao Paulo stock exchange, and 30.24% owned by private investors. Both these companies are also engaged in international 'partnerships': SABESP with the utility Sedepal, in Lima, Peru; and Copasa with the Paraguayan state water company Essap.

In Colombia, which has both a multinational and a local private operator, three municipally-owned Colombian water operators are trying to expand into other areas: EAAB (Empresa de Acueducto y Alcantarillado de Bogota), EPM (Empresas Publicas de Medellin) and Aguas de Manizales. Aguas de Manizales agreed to take over the Cartagena concession from AgBar, but this was blocked by Bogota city council. It is developing management contracts in two other regions. EPM, together with an employees pension fund, has taken on a management contract in Bogota, and is bidding for work in Peru.

In Uruguay, a referendum decided to make water privatisation illegal, resulting in the renationalisation, under OSE, of the two privatised concessions.

In Venezuela, the state has funded development of water services through community organisations in Caracas and peri-urban areas.

2.5. PUPs and WOPs

A number of partnerships have been developed. In all cases, they are seen by the receiving operators as alternatives to privatisation, or at least responses to pressures for privatisation. The partnership between Huancayo and ABSA was initiated by the trade unions in each country, and includes an agreement between the unions as well as between the water companies.

Table 5 Partnerships: PUPs and WOPs

Receiving operator		International operator		
Country	Name	Country	Name	Type
Peru	Huancayo	Argentina	ABSA	Municipal/union
Paraguay	Essap	Brazil	Copasa	State-private
Peru	Sedepal	Brazil	SABESP	State-private

2.6. Post-privatisation ownership: country patterns

There are clear differences between countries in the changes to ownership of the privatised utilities. In Bolivia, Uruguay and Venezuela all the privatised operations have returned to the public sector, under national or municipal ownership. In Brazil and Chile, private companies have sold operations to new private owners. Only in Argentina is there a mixed pattern, with some companies returning to national or municipal ownership, and some being sold to new private owners.

The short-term nature of the presence of the private companies is emphasised by the fact that very few privatisations continue under their original ownership. In Colombia, Chile, and Ecuador some of the private concessions continue under their original ownership. However, only in Colombia and Ecuador are the majority of contracts still under their original owners. In Chile, most of the original operators have left, except for AgBar in Santiago, which has sold nearly half its stake to local investors. In Ecuador, the contract in Guayaquil is increasingly controversial. In Brazil, the only original stake remaining with an international company is that of Veolia in Sanepar, and the legal status and future of that holding are hotly contested; the much smaller local private operations also continue.

Table 6 Ownership changes to privatised water companies in South America, 2007

Country	No privatisation	Returned to municipal or state ownership	Sold to local private owners	Sold to international private owners	Continuation under original ownership	New private contracts (since 2005)
Argentina		x	x			
Bolivia		x				
Brazil			x		x	
Chile			x	x	x	
Colombia					x	x
Ecuador					x	
Paraguay	x					
Peru						x
Uruguay		x				
Venezuela		x				

3. Issues

3.1. BOTs and other contracts

The water multinationals continue to hold contracts for building and operating water or wastewater treatment plants, under build-operate-transfer (BOT) contracts. These contracts are attractive to the companies as they provide a guaranteed cashflow for a 30-year period, under a contract with a single customer, the water distribution company.

However, there have been a number of problems with BOTs in Latin America, including the termination of Suez/Degremont's BOT wastewater treatment plant in Salitre, Colombia, where the authorities estimated that the company had been charging ten times too much, and the termination of Biwater's BOT contract in Chile in 2006. This reflects a global pattern with BOT contracts, with observed problems including reported corruption in the creation of the contracts; making water distributors pay more for treated water than they are charging consumers; and creating unsustainable financial obligations on water distribution authorities (Hall and Lobina 2006).

In addition, one of the remaining contracts, AgBar's operation in Cartagena, benefits from an arrangement whereby the operating company itself, Acuacar, which is jointly owned by Agbar and the municipality, subcontracts the management of the operation to Agbar itself for a substantial and fixed fee, thus guaranteeing a return regardless of performance.

3.2. IFIs and public finance supporting privatisation: subsidies and campaigns

Public finance plays an important role in the viability of many private contracts, even where the private operators remain. In particular, it continues to play an important role in investment.

- In AgBar's contract in Cartagena, Colombia, the investments have been overwhelmingly financed by the government and a World Bank loan.
- In Veolia's concession in Monterria, Colombia, the government invested over \$4.5million by 2003
- Grupo Roggio's contract in Cordoba is supported by the wiving of concession fees and an annual subsidy, together worth US\$6.5m. per year.
- The privatised Tumbes concession in Peru has received guarantees from the government, backed by large subsidies from the German government through KfW: a donation of \$15m., and a loan of \$15m. that was conditional on a private operator being introduced.

Public finance, in the shape of the international financial institutions, is also playing a leading role in the continued promotion of privatisation in the water sector. Paraguay has responded to IMF pressures to propose some form of privatisation of its water utility, and introduced a WOP with a part-privatised Brazilian state company. The IADB approved a US\$ 50 million loan to Peru in 2005 to promote public-private partnerships (PPPs) in water supply and sanitation; the German development bank KfW contributes US\$22.3million; the Peruvian government US\$ 18 million.

Privatisation is also being promoted in Peru by the Cato Institute, a USA right-wing think-tank. An unusual example of a pro-privatisation campaign, Peruanos sin Aguas, is operating in Peru, and the Cato Institute has issued a press release supporting it, including highly misleading claims, such as: "Lima's marginalized poor are correct about the potential of the private sector to meet their water needsThe poor know, too, that the price they're used to paying would fall dramatically with privatization."⁶

3.3. Refinancing investments with local funds: negative FDI

The general consequence of the withdrawal of multinational companies is that their investments, which counted as foreign direct investment (FDI), are refinanced by using local savings. This is true whether it is done by sale of shares – as for example the sale of 49.9% of Aguas Andinas in Chile, which allowed Suez and Agabar to withdraw US€458m. - the issuing of local debt to replace international loans, or nationalisation/municipalisation. The pursuit of compensation claims, for example the \$105m awarded to Vivendi in relation to Tucuman, increases this disinvestment.

There has clearly been a major outflow of foreign investment through the private sector. The impact of this can be seen in Argentina, for example, where total French net disinvestment was over €289 m. in 2005, and a similar amount in 2006, as a result of the withdrawal of Suez from the national water market and the sale of privatised electricity companies.⁷

3.4. Current campaigns: Peru, , other contracts

Campaigns against water privatisation continue in a number of cities even where the privatisation has not been terminated or has reverted to another private company, for example Guyaquil (Ecuador) and Cordoba (Argentina).

The country with the strongest anti-privatisation campaign is Peru, which is under pressure from the IADB and the German government to privatise water. The campaign has succeeded in preventing the privatisation of the water utility in Lima, Sedepal, and the privatisation proposed at Huancayo. Instead a WOP/PUP has been developed between Huancayo and the Argentinian ABSA ("5 de setiembre"-operated), alongside an agreement between the peruvian and Argentinian unions.

In Quito, Ecuador a recent campaign was successful in preventing privatisation. There are also campaigns against privatisation proposals in central American countries, including El Salvador, where 16 protestors have been charged with terrorism and one trade unionist was killed in July 2007, shortly after participating in a demonstration over water privatisation) and in Nicaragua.⁸

3.5. Continuing negotiations and court cases for compensation

The exit of the multinationals continues to create significant costs for Latin American countries. The companies filed many cases at the World Bank's arbitration tribunal, ICSID, claiming compensation for the contracts which had been discontinued. These cases are proving extremely costly, both in terms of the awards, and in terms of the resources consumed in challenging them. NGOs have tried, with only partial success, to join the proceedings as *amicus curiae*. In May 2007 Venezuela, Bolivia, Nicaragua, and Cuba decided to leave ICSID⁹.

It should be noted that it is Vivendi Universal, the media company and former owner of Veolia, which is pursuing the cases and benefiting from the proceeds.

Table 7 ICSID Cases as of September 2007 - <http://www.worldbank.org/icsid/cases/pending.htm>

Country	Concession	Claimants	Claim	Award	Status
Argentina	Tucuman	Aguas del Aconquija, Vivendi Universal	US\$ 375m	US \$105m.	Filed: 19.02.97 Award Rendered 20.08.07: US\$ 105 million payment
Argentina	Province of Buenos Aires	Azurix	US\$ 400m	US \$165m., pending appeal	Filed: 23.10.01 Award rendered (subject to appeal): US\$ 165m payment
Argentina	Mendoza	SAUR International	US\$200m- 300m	pending	Filed: 27.01.04 Saur to discontinue proceedings? April 2007
Argentina	Mendoza	Azurix	¿?	pending	Filed: 08.12.03 Pending (Tribunal not yet constituted)
Argentina	Province of Santa Fe	Aguas Provinciales de Santa Fe, Suez, Aguas de Barcelona, Interaguas Servicios	US\$ 300m	pending	Filed: 17.07.03 Pending
Argentina	Cordoba	Aguas Cordobesas, Suez, Aguas de Barcelona	US\$ 108m	Settled	Filed: 17.07.03 "Settlement agreed by the parties and proceeding discontinued at their request", January 2007
Argentina	Buenos Aires	Aguas Argentinas, Suez, Aguas de Barcelona, Vivendi Universal	US\$ 1.7 billion	pending	Filed: 17.07.03 Pending (<i>amicus curiae</i> allowed)
Argentina	Province of	Impregilo	US\$ 100	pending	Filed: 25.07.06

	Buenos Aires		million		Pending (Tribunal not yet constituted)
Bolivia	Cochabamba	Aguas del Tunari	US\$ 50m	2 pesos	Filed: 25.02.02 Abandoned (formally settled), January 2006
Bolivia	La Paz/El Alto	Aguas de Illimani	-	withdrawn	Not filed as mutual agreement reached by the parties March 2006

4. Developments by country

4.1. Argentina

Argentina is one of the Latin American states to have privatised water supply and sanitation operations to a greater extent and since an earlier date. At the end of 1999, 22 private operators were active providing services to 71% of the country's urban population (Ducci, 2007: 64-65). The remaining part of the population was supplied by state-owned companies and cooperatives, with public operations increasing in importance after the termination of a number of concessions following the 2001 Argentine crisis. There has also been a major role of Argentine investors and operators in those concessions that have not been renationalised.

4.1.1. Aguas Argentinas

Performance and renegotiation

The Aguas Argentinas water supply and sanitation concession in Buenos Aires, Argentina, covering 10 million people, started in May 1993. In September 2005 its private shareholders decided to terminate the 30-year contract, due to failure to reach an agreement with the government on the revision of tariffs following the Argentine financial crisis of December 2001. The Aguas Argentinas concession, which has been promoted as a flagship privatisation, was marred with problems including downward revision of the committed investment, failure to deliver on the investment programme and upward renegotiation of tariffs, long before the economic crisis which caused the massive devaluation of the local currency (Hall & Lobina, 2006: 34-37).

It is clear that the Suez concession in Buenos Aires was already experiencing significant difficulties before the devaluation of the peso in 2002. Notably, Aguas Argentinas was already missing even its reduced investment commitments whilst at the same time water rates were increasing at a rate significantly faster than other prices (Hall & Lobina, 2006: 34-37). According to water regulator ETOSS, the total investment realised by Aguas Argentinas from 1993 to 2002 amounted to US\$ 1.34 billion, equivalent to 61% of projected investments (Ducci, 2007: 73).

Argentine crisis and international arbitration

On the December 2001 Argentine economic crisis, the elimination of currency adjustment provisions in water tariffs and the ensuing conflict between the Suez group and the Argentine government, see Hall & Lobina (2002: 9-11). In July 2003, Aguas Argentinas, Aguas the Barcelona and Vivendi Universal (Veolia has no equity stake in Aguas Argentinas following the separation of Vivendi between Vivendi Universal and Veolia Environment) filed an international arbitration suit in front of the World Bank's ICSID (International Centre for Settlement of Investment Disputes)¹⁰.

Aguas Argentinas and its shareholders claimed US\$1.7 billion in losses caused by currency devaluation as a result of the government's policy to freeze tariffs¹¹. The amount claimed by Suez nears the value of the US\$1.8 billion, 5-year investment programme for the period 2007-2011 developed by AYSA, the public water operator that took over operations after the departure of Aguas

Argentinas¹². As of April 2005, the total value of the 62 compensation claims submitted to ICSID by multinationals (MNCs) active in a number of public services including water supply and sanitation amounted to at least US\$ 18 billion although other estimates put the figure at US\$ 80 billion. The latter figure represented “an amount similar to the public-sector foreign debt that Argentina defaulted on during the late 2001 economic collapse, which was recently restructured in a debt swap”. The difference between the two estimates was due to the calculation methods adopted: the more conservative estimate reflected the mere sum of the amounts known to be claimed by the MNCs, while the more pessimistic one was due to the fact that Argentina’s National Treasury prosecutors also assessed those compensation claims for which no money value had been defined¹³.

At the time of writing, the arbitration tribunal had not made a final decision¹⁴. While the arbitration case was still pending, the Argentine government and Buenos Aires water regulator ETOSS had been negotiating with Suez for some time over the amount of the investments Aguas Argentinas would have to make¹⁵. In May 2005, the arbitration tribunal hearing the Aguas Argentinas case made a decision on the petition submitted by 5 NGOs: Asociación Civil por la Igualdad y la Justicia (ACIJ), Centro de Estudios Legales y Sociales (CELS), Center for International Environmental Law (CIEL), Consumidores Libres Cooperativa Ltda. de Provisión de Servicios de Acción Comunitaria and Unión de Usuarios y Consumidores. The petitioners had filed a “Petition for Transparency and Participation as Amicus Curiae” requesting that: a) they were allowed access to the hearings in the case and that the hearings should be open to the public as a matter of transparency; b) they were allowed the opportunity to present legal arguments as *amicus curiae*, on the grounds that the case affected the public interest; and c) they were allowed timely, sufficient, and unrestricted access to all of the documents in the case. The court decided: a) to deny access to the hearings because “The crucial element of consent by both parties to the dispute is absent in this case”; b) to allow third parties to submit briefs to the court, under specific conditions, as *amicus curiae* or “friends to the court”, because the tribunal recognised that the briefs were justified by the public interest which was affected by the case and could serve to broaden the elements of evaluation in the adoption of the final decision; and c) to decide on the request to access the documentation on the case only if and when the tribunal would decide to grant a third party permission to file a brief as “friend to the court”¹⁶. In February 2007, the Tribunal decided to allow the petitioners to submit an *amicus curiae* brief. However, the 5 NGOs were not granted permission to attend the proceedings and were denied access to arbitration documents¹⁷.

In April 2007, the petitioners made an *amicus curiae* submission to the tribunal. “The brief emphasizes that human rights law recognizes the right to water and its close linkages with several other human rights, including the right to life, health, housing, and an adequate standard of living. The brief further notes that human rights law requires that Argentina adopt measures to ensure access to water to the population, including physical and economic access. Under this light, the freezing of the tariff levels amidst an economic crisis allowed the population to have access to water and sanitation, and thus the measures complied with Argentina's requirements under human rights law.

The *amicus curiae* brief notes that human rights law requires Argentina to ensure access to water and sanitation to the population, and that the rationale underlying the freezing of tariff levels amidst an economic and social crisis is relevant for the interpretation and application of the standards of treatment in the relevant BITs”¹⁸ (Bilateral Investment Treaties).

Termination and the aftermath of Aguas Argentinas’ exit

In February 2006, Suez declared it was withdrawing its ICSID claim in order to facilitate the sale of its shares in Aguas Argentinas to any buyer, as the deal had been complicated by the government’s refusal to allow the concessionaire increase water tariffs. In January 2006, Suez was holding talks aimed at selling its shares to a consortium made by investment funds Fintech and Latam Assets, one Argentine, the other Mexican-American, while Aguas de Barcelona would have acted as operator of the service. Even if the potential buyers offered to compensate Suez for renouncing its ICSID claim, the negotiations with the consortium failed as the Argentine government rejected the investment

funds' request for tariff hikes. Negotiations also failed with Argentine businessman Eduardo Eurnekian as he was not prepared to pay the US\$ 350 million requested by the Suez group as compensation for renouncing the ICSID claim "as they consider the suit to be an asset worth that particular sum". So that in late February 2006 Suez intended to put pressure on the government to cancel the Buenos Aires concession and press on with the arbitration proceedings. According to Suez, the Argentinean government could buy Aguas Argentinas in case no private investors decided to do so. Another option apparently contemplated by the government and trade union Fentos/CGT, which owned a 10% equity stake in Aguas Argentinas, was that the concessionaire would be temporarily renationalised and while the government was looking for an operator or was re-offering a concession to bidders, the workers would take charge of operations. Fentos/CGT general secretary José Luis Lingeri declared that, in the absence of interest from the private sector, the state could take charge of the service and the trade union would collaborate by guaranteeing adequate operation and maintenance. Mr. Lingeri confirmed that the union would retain ownership of 10% of Aguas Argentinas' capital but stressed that if the government ruled out any tariff increase then it would have to contribute with public financing and subsidies. In fact, operation and maintenance required a yearly sum of Peso 150 million and the expansion of service coverage required between Peso 200 million and Peso 250 million, while yearly turnover of Aguas Argentinas was around Peso 750 million¹⁹.

In March 2006, the Argentine government revoked Aguas Argentinas' concession on grounds of failure to provide the promised levels of investment and service quality. Minister of Planning Juan De Vido revealed that "43 of the 151 water sources used by Aguas Argentinas had more than the permitted level of nitrates in their water, suggesting that the water has not been filtered properly". Aguas Argentinas justified having cut back on investment because water and sewage charges had been frozen since 2002²⁰. A survey carried out by consulting firm OPSM for Argentine newspaper *Página/12* found that 83.4% of the interviewees supported the decision to terminate the concession. More precisely, 72.3% of the interviewees said they agreed with the decision to rescind the contract and 11.1% very much agreed with the same decision²¹.

Aguas Argentinas' exit was accompanied by lawsuits brought by individual citizens, civil society organisations and local authorities for the poor level of service or failure to provide any service at all, ranging from lack of water pressure to erroneous billing, from deterioration of housing resulting from rising groundwater to bills charged for services that were not provided. Due to water borne diseases spreading even in important urban centres, consumers' organisation ADUCC (Asociación de Defensa de los Derechos de Usuarios y Consumidores) described the situation as an emergency. The lawsuits amounted to an aggregate value of Peso 1.5 billion (US\$ 487 million) and ombudsman Eduardo Mondino called for the courts to freeze Aguas Argentinas' assets to safeguard the interest of citizens affected by Aguas Argentinas poor performance²². In September 2006, water regulator ETOSS fined Aguas Argentinas for Peso 1.5 million (US\$ 485,000) for failures to fulfil the concession contract and for neglecting users' complaints. This brought the total amount of fines imposed on the private operator in 2006 to more than Peso 25 million. Between 2003 and 2005, Aguas Argentinas was fined by ETOSS for a total of Peso 30.4 million²³. In May 2006, commercial bank and Aguas Argentinas minority shareholder Banco de Galicia was taking legal action against Suez as the main shareholder and comptroller of the concessionaire. More precisely, Banco de Galicia was seeking compensation for damages suffered as a result of actions taken or not taken by Aguas Argentinas directors and shareholders Suez, Aguas de Barcelona, Anglian Water and Vivendi Universal, that resulted in the termination of the concession. They were doing so under Argentine law, which provides for business partners' "joint obligation to compensate" their associates if a company is found to have been affected or damaged by the controlling partner²⁴. Minority shareholder trade union Fentos/CGT was also planning to take similar legal action²⁴. In April 2006, Aguas Argentinas was "trying to collect an estimated 60mn-100mn pesos (US\$19.5mn-32.5mn) in owed bills"²⁵. In October 2006, a group of Aguas Argentinas lenders filed a lawsuit in New York against Suez and Aguas de Barcelona claiming payment of US\$ 135 million in compensatory damages for principal, interest and other charges owed, as well as in punitive damages. The group of lenders, named Aguas Lenders Recovery Group LLC, described Aguas Argentinas as a "mere shell" and claimed "that the controlling shareholders lost Aguas' most valuable asset, the water concession, through gross undercapitalization and

mismanagement, while allegedly extracting 'management fees' and other 'self-dealing transactions' from Aguas. 'In the end, Suez/Agbar left not only the citizens of Buenos Aires, but also plaintiff and other creditors, literally and figuratively 'high and dry,' the lawsuit says"²⁶. Finally, the state-owned water operator AYSA that took over from Aguas Argentinas estimated that Peso 2.82 billion (US\$ 910 million) were needed to solve problems with water pressure and replace pipes and requested that the money be collected from the former concessionaire²⁷.

Establishment of public water operator AYSA

Following the Argentine government's decision to rescind the Aguas Argentinas concession in March 2006, state-owned water operator AYSA (Aguas y Saneamientos Argentinos) was appointed to operate water supply and sanitation services. AYSA was 90% owned by the Argentine government and 10% owned by the trade union CGT which held the same equity stake in Aguas Argentinas.

The appointment of Carlos Ben as AYSA President was criticised as he had previously been an Aguas Argentinas executive as a representative of the Suez Group and was alleged to have been associated with the asset stripping of Aguas Argentinas²⁸. CGT adjunct secretary José Luis Lingeri, who had already sat in Aguas Argentinas' Board of Directors, was confirmed as member of AYSA's Board of Directors. A governmental spokesman justified the decision in light of the considerable knowledge of the system held by workers, without whose efforts the functioning of the system in the last four months of Aguas Argentinas operations would have been "impossible". However, reports also noted that Mr. Lingeri, a former supporter of the Menem administration, had also established strong political links to the Kirchner administration²⁹. In June 2007, Mr. Lingeri was among others prosecuted for mismanagement of a US\$ 285 million World Bank loan³⁰.

Despite the above controversies, according to a survey carried out by consulting firm OPSM for Argentine newspaper *Página/12*, 71.6% of the interviewees agreed with the decision to appoint AYSA a public water operator. More precisely, 67.3% said they very much agreed with the decision to effectively renationalise water operations and 4.3% expressed their mere agreement. 4.3% said they were against the appointment of the state-owned operator³¹.

AYSA identified the removal of nitrates and general improvement in service levels as the immediate priorities³². The problems with nitrates were reportedly solved within one year from the beginning of operations, although numerous complaints were received, something that AYSA blamed on the state of the system left by the private concessionaire³³. When the Aguas Argentinas concession was terminated in March 2006, the private concessionaire had failed to realise a total Peso 2.819 billion (US\$ 900 million) in projected investments. From April to December 2006, AySA invested a total of Peso 28.3 million, mainly on reducing excessive nitrates levels³⁴.

In October 2006, a long term investment plan was approved providing for the investment of some Peso 17.6 billion (US\$ 5.69 billion) between 2006 and 2020. The investment plan was aimed at achieving full service coverage for water supply (from the current level of 84%) and 90% coverage for sanitation (from the current level of 64%) by 2011. Financing would be obtained from AySA's own resources, that is to say mainly tariffs, while the remaining 48% would come from public sources such as the central government (38%), the municipal government of Buenos Aires (5%) and the Buenos Aires province and remaining municipal governments within the concession area (5%)³⁵. Brazilian state-owned development bank BNDES and the Argentine government were considering scope for BNDES to finance part of the Argentinean government's contribution to AySA's investment programme. More precisely, the Brazilian government announced it had US\$ 3 billion available to invest in infrastructure in Argentina upon the condition that Brazilian firms be involved in the works contracted out. BNDES would contribute US\$ 600 million to expand Argentine gas pipelines to increase the transportation of gas up to nearly 22 million cubic meters each day in the next three years. The expansion of the Argentine production of bio-diesel was also discussed by the two delegations. Argentine Minister for Planning Julio De Vido emphasised that the proposed BNDES finance was not about collaboration between the two governments but a mere business deal in the

spirit of Mercosur, as Argentina would in exchange provide Brazil with some 1.2 million daily cubic metres of gas³⁶.

AySA operated a social tariff policy in favour of low-income residential users unable to afford paying the bill, which by end December 2006 counted over 114,000 beneficiaries and implied a cost of Peso 4 million per year³⁷. Another policy of its private predecessor retained by AySA was the so-called Participative Management Model, whereby “all the parties involved work together: the municipalities, the company, the regulatory agency, the neighbors and their representatives. The municipalities are responsible for the direction of the work; the company is in charge of developing the projects, training the executors, providing the materials and conducting task follow-up; the neighbors actually carry out the works; and the regulatory agency provides the necessary legal coverage”. In the year 2006, Km 25.1 of networks had thus been constructed and 2,254 connections installed benefiting a total of 9,077 people. As of December 2006 22 works were still in progress which were projected to benefit a total of 42,489 people³⁸. The Water + Work Plan (“Agua mas trabajo”) consisted of an initiative introduced by the central government to both enhance the expansion of water supply and sanitation service coverage and promote employment. The plan was funded by the central government and saw the involvement of municipalities where the works were to be implemented, together with labour cooperative associations and neighbours, and consisted in the training of unemployed people aimed at realising works. This initiative had also begun under the operations of Aguas Argentinas. In 2006, AySA had thus facilitated and overseen the implementation of works for the construction of Km 88.13 of networks and the installation of 8,532 connections, benefiting a total of 56,820 people. As of December 2006, 55 works were still in progress under the Water + Work Plan, which were expected to benefit 106,245 people³⁹.

As of December 2006, AySA employed 4,058 workers although employment levels were to be affected by the decision to terminate outsourcing as used in a number of areas by the former private concessionaire Aguas Argentinas⁴⁰. AySA requested suppliers to comply with labour and social regulations in areas such as pay, social security, insurance, safety, hygiene and the environment. AySA also privileged national contractors pursuant to national regulations on “Buying National” issued in 2002⁴¹. In August 2006, a “new and ground-breaking” Collective Labour Agreement came into force which emphasised training and workers education, with a total of 21,874 training hours taking place from March to December 2006. AySA’s School of Apprentices was also enlarged and an agreement was entered into with the Tres de Febrero University “to develop and teach Post-graduate studies in Sanitary Engineering”. Initiatives in the area of safety included training and awareness raising on the prevention of accidents, vaccination against flu and hepatitis, a regular medical check-up for the entire workforce, specific technical training and medical check-ups for workers operating equipment and driving vehicles, and a campaign against smoke within company premises⁴².

4.1.2. Province of Santa Fe: problems, Suez withdraws and public company takes over

In September 1995, a Suez-Lyonnaise des Eaux-led consortium was awarded a 30-year concession for the provision of water supply and sanitation in the province of Santa Fe, Argentina (2.2 million inhabitants, of which Suez serves 1.8 million with water supply and 1.2 million with sewerage)⁴³. The concession agreement fixed the limit value of harmful substances to be found in the supplied drinking water much above what established by Argentine law. Also, local consumers’ association Union de Usuarios y Consumidores described how the concession had followed a very similar pattern to that of other Argentine privatised water concessions, characterised by immediate and persistent renegotiation, price increases and downward revision of projected investments and operational targets. The first renegotiation of the concession agreement started in May 1997, only 18 months after the beginning of operations, and provided for the postponement of projected investments by 6 to 7 years, in some cases from 1998 to 2004, in others from 2001 to 2007 and 2008. In December 2000, concessionaire Aguas Provinciales de Santa Fe (APSF) and the provincial government reached a preliminary agreement on the content of a second renegotiation. The proposed renegotiated agreement provided for the introduction of additional tariff increases and a substantial reduction in the amount of projected investments (see Table 3 below) which, for the period 1996-2008, would total US\$ 405m

instead of the US\$ 707m established by the original concession agreement (Muñoz, 2002). In 2002, APSF claimed it had invested US\$ 250m in the first 6 years of the concession. As the original concession agreement required the concessionaire to invest US\$ 356m, APSF failed to realise US\$ 106m or 29.8% of the originally agreed investments (Lobina & Hall, 2003: 11)⁴⁴. On other problems with the Santa Fe concession in terms of quality standards and the charging practices of APSF, see Lobina & Hall (2003: 26).

Table 3 APSF (Santa Fe, Argentina), amount of investments provided for in original concession agreement and in second renegotiation (proposed renegotiation, not implemented)
(in millions of pesos/dollars)

Five-year period	Investments provided for in original contract	Investments provided for in second renegotiation
1996 –2000	290.00	245.00
2001 –2004	211.00	80.00
2005 –2008	206.00	80.00
Total	707.00	405.00

Source: Muñoz (2002).

According to an Inter-American Development Bank report, investments realised by APSF from the beginning of operations to end 2003 amounted to US\$ 228 million, corresponding to 53% of what had been originally established in the contract (Ducci, 2007: 78).

Following the Argentine crisis, the devaluation of the local currency and the governmental policy to freeze water tariffs, in July 2003 APSF, Suez, Aguas de Barcelona and Interagua Servicios filed a US\$ 170 million arbitration suit against the Argentinean government before an ICSID tribunal. The compensation claimed subsequently increased to US\$ 310 million (Ducci, 2007: 83). The court was composed of the same members that were hearing the Aguas Argentinas and Aguas Cordobesas cases. At the time of writing the case was still pending⁴⁵. In March 2006, the ICSID Tribunal rejected the request filed by a group of NGOs for an amicus curiae brief on procedural grounds. More precisely, although similar in nature to the submission accepted in the Aguas Argentinas case, the petition failed to demonstrate that the experience, expertise, and perspectives provided by the petitioners would “assist the Tribunal in arriving at its decision”. However, this would not prevent the NGOs to resubmit a petition for participation as amicus curiae. Furthermore, local authorities requested the University of Rosario to estimate the value of works that the concessionaire was contractually obliged but failed to realise, aiming to assess the damage this had caused to consumers and taxpayers.

In June 2005, Suez was in negotiations with Argentine private water operator Latinaguas to sell its shares in APSF. When talks failed, Suez tried to sell its shares to the Argentine ceramic and tiles group Ceramica Alberdi, while operations should have been guaranteed by the private technical operator Passavant, an engineering company with no direct experience in the operation of a water supply and sanitation system. This option failed too and in January 2006 Suez decided to withdraw from Santa Fe. The provincial government set up the operator Aguas Santafesinas SA (ASSA), majority owned by the provincial government (51%) and minority owned by the 15 municipal governments within the concession area (39%) and the trade unions (10%), which took over operations in early February 2006.

At the time of writing, it remained to be seen what implications the election of Hermes Binner (the candidate of the centre-left coalition Frente Progressista) to governor of the Santa Fe province would have on the restructuring and operations of ASSA.

4.1.3. Aguas Cordobesas: problems, renegotiation and popular opposition

In April 1997, Suez-Lyonnaise des Eaux was awarded a 30-year water supply only concession in Cordoba, Argentina (1 million inhabitants) (Ducci, 2007: 83-84)⁴⁶. Total investment required to increase water supply coverage from 83% to 97% in 30 years had been estimated at around US\$ 500m. Although the contract required the operator, Aguas Cordobesas, to invest US\$ 150m in the first two years, the concessionaire invested only US\$ 84m from 1997 to 1999 (Nickson, 2001b: 1, 14-15). Accordingly, Aguas Cordobesas failed to realise US\$ 66m or 44% of the originally agreed investments for the first two years (Lobina and Hall, 2003: 11).

An example of PPP neglecting the need to include shanty towns within the service area is represented by Cordoba, Argentina, where the 1997 concession agreement required Suez subsidiary Aguas Cordobesas to extend water supply coverage from 83% to 97% over the 30-year duration of operations. However, it remained unclear whether the projected 97% coverage ratio included low-income areas, for which the operator seemed to have no legal requirement to connect residents to the network. Also, the 1997 contract only provided for the operator's responsibility to build and extend the primary network and not residential connections, which remained the responsibility of the municipality or individual households. This was contested by many residents in low-income neighbourhoods (Nickson, 2001b: 21-22; Lobina and Hall, 2003: 31-32). Ducci (2007: 88) also notes that the difference between the Cordoba concession and the Aguas Argentinas and Santa Fe concessions is that investment targets were less strictly defined and "more flexible".

Following the Argentine crisis, the devaluation of the local currency and the governmental policy to freeze water tariffs, in July 2003 Aguas Cordobesas, Suez and Aguas de Barcelona filed a US\$ 108 million arbitration suit against the Argentinean government before an ICSID tribunal. The court was composed of the same members that were hearing the Aguas Argentinas and Aguas Provinciales de Santa Fe cases. At the time of writing the case appeared to be still pending⁴⁷.

In late December 2005 the Cordoba congress approved the renegotiation of the concession agreement and tariff hikes that would grant the concessionaire a 60% increase in revenues. More precisely, Aguas Cordobesas would reportedly "raise charges by 25-50% for medium-income neighborhoods and by up to 100% for the wealthiest sectors, but prices will remain substantially smaller for low-income households". Cordoba's mayor tried to oppose the agreement but failed to stop it: "in light of public opposition to the proposed increase in water charges, Córdoba mayor Luis Juez took legal action against the agreement, but judge Carlos Lescano ruled that the challenge was inadmissible". As a result of the contractual renegotiation, Suez and Aguas de Barcelona decided they would continue to own and operate Aguas Cordobesas and that they would "call off" the arbitration claim before ICSID⁴⁸.

However, in late February 2006 Cordoba's provincial government decided to suspend the price hikes for three months following public anger and opposition to the deal. Consumers and trade unions organised a march against the approved tariff increases, calling for the re-nationalisation of water operations and public participation of consumers and trade unions. Anger was motivated by the fact that the charges could increase to up to 500% as, apart from increasing tariffs, Aguas Cordobesas would "start charging customers for the volume of water they consume rather than the area their residence covers". "We are going to continue protesting until the increase is overturned", vowed Oscar Mengarelli of Argentinean workers union CTA (Ducci, 2007: 90)⁴⁹.

Faced with popular opposition, in March 2006 the provincial government approved a price increase of 15%, which led Suez and Agbar to withdraw from the concession. Contrary to the cases of renationalisation in Buenos Aires and Santa Fe, Cordoba's provincial government decided to award a concession to a new private operator. In July 2006, the Argentinean private conglomerate Grupo Roggio acquired the shares held by Suez and Agbar in Aguas Cordobesas and agreed with the provincial government to revise the contractual agreement. Firstly established as a construction

company, Grupo Roggio was a major participant in the Argentinean privatisations of the 1990s, specifically in the roads, railways and telecommunications sectors. Via the minority shareholder Servicios del Centro (16.3%), the Roggio Group had already a stake in Aguas Cordobesas as part of the Suez/Agbar-led consortium. However, with the new deal it acquired control of the private concessionaire in December 2006 (Ducci, 2007: 89).

The renegotiated agreement with the Roggio group provided for a number of measures aimed at guaranteeing the profitability of operations. These included a 12% tariff increase since January 2008, the annulment of payment of a US\$ 3.3 million yearly concession fee to the provincial government, the retention of a subsidy paid each year by the provincial government in favour of the concessionaire, which amounted to Peso 9.6 million (US\$ 3.2 million) in 2006 and was to increase to Peso 12.6 million in 2007. Aguas Cordobesas also obtained a US\$ 1.7 million loan from local bank Banco de Cordoba (Ducci, 2007: 90)⁵⁰. Importantly, the implementation of the projected investment programme was postponed⁵¹. Suez and Agbar agreed to provide technical assistance to Aguas Cordobesas until December 2007 and retained a 10% equity stake in the concessionaire for three years, in order to guarantee the repayment of US\$ 28 million to the EIB (European Investment Bank) for a loan issued in 1998 (Ducci, 2007: 90)⁵². Cordoba mayor Luiz Juez denounced in his personal capacity the renegotiation of the Aguas Cordobesas concession as illegitimate and flawed due to the alleged violation of laws, decrees and administrative regulations⁵³.

In April 2006, Cordoba province governor José Manuel De la Sota guaranteed continuity of employment to the workers of Aguas Cordobesas. According to trade union CGT, these totalled 500 staff including the 150 employees of the company CCLIP, which benefited from services outsourced by Aguas Cordobesas. According to Aguas Cordobesas, workers were 420⁵⁴.

4.1.4. Workers-operated public company takes over OSBA in Greater Buenos Aires after Azurix termination

Awarded in June 1999, Azurix' OSBA (Obras Sanitarias Provincia de Buenos Aires) concession covering two of the Buenos Aires Province's three regions, and its 2 million inhabitants (Ducci, 2007: 100), ran into trouble following allegations of poor service quality, and failure to honour contractual commitments as well as financial problems⁵⁵.

In October 2001, Azurix (which was then liquidated) announced it would withdraw from the contract as of January 2002 accusing the regional government of "serious breaches"⁵⁶, and would claim compensation for a sum of up to US\$ 400m⁵⁷. The concession was terminated in March 2002 (Hall & Lobina, 2002: 13-14). For more details on the problems with the concession to Azurix, including poor performance and low financial sustainability, see Amorebieta (2005: 149-153).

In October 2001, Azurix filed a compensation claim before ICSID against the Argentinean and the provincial government. In July 2006, the ICSID Tribunal issued an award condemning the Argentine government to pay compensation of over US\$ 165 million plus interest. This represented 29% of the amount claimed by Azurix, which had eventually increased to US\$ 565 million⁵⁸. The accuracy of Azurix' demands for compensation had already been questioned. "Investigations are being done about the works that Azurix claim to have done. Fraud is suspected in what they had declared as done but does not exist in reality, or was only a simple fitting out of some aqueducts that were supposed to be renewed but were not" (Amorebieta, 2005: 156). At the time of writing, the case was still pending as the Argentine authorities had appealed against the decision and filed annulment proceedings in December 2006⁵⁹.

After the termination of the privatised concession, operations were taken over by a publicly-owned company operated by a workers cooperative. "In February 2002, the provincial government either did not have the technical staff or the managers needed to take charge of the service. This (under the deadline pressure) led the Water and Sanitation Trade Union of the Province of Buenos Aires (Sindicato de Obras Sanitarias de la Provincia de Buenos Aires) into urgent negotiations to guarantee

the quality, quantity and continuity of the supply to the almost three million people covered by the concession". The provincial government set up Aguas Bonaerense SA (ABSA) as a public sector water company, co-owned and operated by workers cooperative "5 de setiembre S.A.", and with strong public participation at many levels. "Users were involved through the representative organisations both in the regulator body (ex ORAB) and in the management of the company Aguas Bonaerenses S.A. (ABSA), and an agreement was reached to transform the salaries for operating the service into new shares for workers once the company had got balanced accounts and got over the water and sanitation emergency created by the mismanagement of Azurix Buenos Aires – ENRON". Workers enjoy a superior technical and operational knowledge but this has not prevented them from developing "a broad policy of consultations with the authorities, users and consumer unions" (Amorebieta, 2005: 153-155).

The immediate results obtained by the workers-operated public company have been positive. "For drinking water, more than 100,000 metres of the oldest functioning water networks, some of them with over 70 years of use, are being replaced, using modern techniques of piping and contracting small and medium domestic companies. Another priority was the building of new water networks in the main cities to expand the service to highly populated areas with sanitation problems, and to strengthen water pressure and water levels in critical areas on the periphery of some cities. The work interrupted by the paralysis of Azurix Buenos Aires has started again, particularly the reactivation of the Sewage Treatment Plants and equipping purifying systems that were out of service due to lack of investment. This guarantees a reduction in pollution levels.

In 1999 – when privatisation took place - the province of Buenos Aires had a rate of water supply of 74% and 47% of the urban population had access to sanitation. In 2002, after Azurix withdrew and ABSA was established, the supply of water had decreased to 68%, due to demographic growth and lack of investments. Sanitation did not reach 43% of the population. Today 71% have potable water and 45% have household sewerage. Importantly, up to now all investments were with money from the company and of the provincial government budget. Very recently, the governor arranged a loan with the World Bank which will be important for the expansion of the services. We have had to urgently renovate the water networks as Azurix did nothing at all and leakages amounted to 40% of the drinking water produced. Millions of litres have been lost due to the age of the tubes (over 60 years). More than 110,000 metres of tubes have been changed and we have recovered the contractual water pressure in 30% of the area covered. Similarly, Azurix had practically abandoned half of the black waters treatment plants, which resulted in a substantial increase in the pollution of rivers. Now 30% more of the paralysed plants have an optimal functioning" (Amorebieta, 2005: 155-156).

Amorebieta (2005: 156-157) identified the main challenges for ABSA as "getting total autonomy by incorporating users as shareholders represented by their respective organisations and the inclusion of other productive sectors of the region where ABSA provides services. This is needed to guarantee the highest possible level of democracy in decision making, the rational use of the economic and financial resources, the start of a priority system in the expansion of the service with a social approach and the commitment of the state to financing the biggest works that such an important region needs to match the demographic growth and the productive development".

According to Ducci (2007: 105), ABSA had communicated that it was not running an operating deficit and that it had complied with its investment programme for the years 2003 and 2004.

4.1.5. Workers-operated public company takes over AGBA in Gran Buenos Aires

The 30-year concession to operate the sixth sub-region of Buenos Aires province, with some 1.7 million people, was awarded in November 1999 to AGBA (Aguas del Gran Buenos Aires). The successful consortium initially included Aguas de Bilbao, Impregilo and the Argentinean company Sideco. The Aguas de Bilbao/Impregilo/Sideco consortium submitted the only bid, for the reportedly low amount of US\$1.26 million, and won the concession. Urbaser (Dragados group) and Dycasa failed to submit tenders despite being pre-qualified, as did Saur, Aguas de Valencia and Suez. But

after the concession was awarded in November 1999, Sideco left the consortium "for strategic reasons" and Dycasa and Urbaser joined it (Hall & Lobina, 2002: 14)⁶⁰.

"In July 2001, AGBA - 20% owned by Aguas de Bilbao; 27.4% owned by Urbaser; and 42.6% owned by Impregilo - lagged behind the projected investment plan after 18 months of operations in the Gran Buenos Aires region. As a result, AGBA was holding talks with the local government aiming to renegotiate the concession agreement and take into account the "unforeseen events". In May 2002, Dragados Urbaser acquired an additional 10% stake in AGBA from Aguas de Bilbao. In April 2002, Dragados had declared that it was "not too concerned" about the economic and financial situation in Argentina following the December 2001 crisis, given that its exposure there "is not too significant"⁶¹. After various attempts at renegotiating the concession agreement and problems with the affordability of the service rendered and disconnections, in January 2006 Aguas de Bilbao was negotiating the sale of its minority stake to no better identified pension funds⁶².

In July 2006, Buenos Aires province governor Felipe Sola announced he had rescinded the contract with AGBA claiming that, although the concessionaire had promised to invest Peso 250 million, it had failed to invest "a single Peso" in some parts of the concession area⁶³. More precisely, the annulment of the concession was first announced by the local government following service problems and a dispute on the charges frozen after the Argentine crisis⁶⁴. When formally announcing the rescission of the contract, local authorities "alleged failings in terms of investments and expansion of services"⁶⁵. A study carried out by Argentine university Universidad Nacional de La Plata in September 2005 found that of the 1.8 million inhabitants covered by the AGBA concession, 65% were not connected to the water supply network and 80% were not connected to sewerage⁶⁶. Following the termination of the AGBA concession, the water supply and sanitation service would be operated by the state-owned company ABSA, which already operated in the part of the Buenos Aires province previously covered by the Azurix concession and whose technical operator was the workers cooperative "5 de septiembre". ABSA was to employ all the previous AGBA workers and retain their working conditions⁶⁷. In August 2006, provincial authorities announced works for the value of Peso 31 million (US\$ 10.1 million) to increase water pressure and enhance potabilisation, ensure the subsequent expansion of the water supply network and expand the sewerage network, and to improve a number of wastewater treatment plants⁶⁸.

In July 2007, Impregilo file an arbitration case in front of ICSID claiming over US\$ 100 million in compensation plus interest and costs. Impregilo claimed that the Argentine government had violated the BIT (Bilateral Investment Treaty) between Italy and Argentina by expropriating and renationalising its assets. At the time of writing, the case was still pending and a tribunal to adjudicate the case had not been established yet⁶⁹.

4.1.6. Tucuman water from private to public

In 1995, a 30-year concession to provide water supply and sanitation services to 87% of the province of Tucuman, covering 695,000 consumers, was awarded to Aguas del Aconquija, a consortium led by Générale des Eaux (then to be part of the Vivendi group and currently owned by Veolia Environnement). Générale des Eaux held 36% of the shares, Dragados 27%, Benito Roggio and Sons (27%), with the remaining 10% owned by workers. Aguas del Aconquija was the only bidder despite pre-qualified bidders included Saur, Thames Water, Biwater and Madrid's municipal operator Canal Isabel II. Corruption and irregular conduct has been suspected, in association with allegations of irresponsible conduct on both the part of the local authorities and the private concessionaire (Ducci, 2007: 90-91, 94).

The concession was awarded on the basis of the offered tariff levels and the private operator pledged to invest US\$ 367 million. As a result, average tariffs including taxes increased by 93.4%. Part of the increase was due to VAT (21%), a 6% levy to finance the functioning of regulator ERSACT, and a number of municipal and provincial taxes, none of which were charged before the privatisation. Prior

studies had estimated the need for a mere 33% tariff increase excluding taxes, to allow for the implementation of a US\$ 300 million investment programme (Ducci, 2007: 91).

Although water tariffs nearly doubled following the award, the company failed to accomplish the planned investment programme allowing the water supplied to turn brown⁷⁰. Consumers stopped paying bills and the concession was terminated in October 1998⁷¹. Before then, in June 2006, the Argentine companies holding shares in the concessionaire sold out in order to avoid prejudicing their other businesses with the government as a result of the local dispute. Aguas del Aconquija was thus 85% owned by Générale des Eaux, 5% by Dragados-Construcciones Argentinas and the remaining 10% by workers (Ducci, 2007: 94).

In February 1997, Aguas del Aconquija and Vivendi filed a US\$ 300 million compensation suit with ICSID, which initially decided to dismiss the claims. The French MNC appealed against the decision⁷² and after resubmission of the case the Tribunal rendered an award in August 2007⁷³. This condemned the Argentine government to pay US\$ 105 million in compensation plus interest and costs⁷⁴, although the claimant demand had in the meantime increased to US\$ 375 million (Ducci, 2007: 94). Payment would be made to Vivendi Universal, not Veolia Environment, as after Vivendi was split between Vivendi Universal and Veolia, the former retained ownership of the shares in the Tucuman and Aguas Argentinas concessions⁷⁵.

In December 2001, Argentine waterworks promotion and financing agency ENHOSA (Ente Nacional de Obras Hidricas de Saneamiento) which had provisionally carried out operations after the termination of the private concession announced it would set up Sapem - 90% owned by the province of Tucuman and 10% owned by the workers union of OST (Obras Sanitarias de Tucuman) – to manage and operate water services for 30 years. Tucuman authorities would have to assume the US\$ 6.5 million debt of the public water operator OST. ENHOSA then continued to carry out service provision throughout 2002 and 2003 due to the difficulties encountered by Sapem in appointing a sub-concessionaire. At the end of 2003, the Argentine government pledged to provide Peso 28 million (US\$ 9.4 million) to finance priority works, mainly to be implemented in 2004⁷⁶.

According to Ducci (2007: 94-95) performance indicators on service coverage had remained at the same levels as of 1998. Also, stagnating performance could be explained with the limited financial resources available, as tariffs had not been increased since 1996 despite accumulated inflation nearing 80%. In February 2003, public operator OST started disconnecting users who had failed to pay their bills. OST was to cut the service to 17,000 of the 56,000 consumers in San Miguel de Tucuman that had not paid their bills since 1998. OST communicated that “only 62,000 users out of a total of 213,000 pay their bills on time, which explains the utility’s 60mn peso (some US\$18.9mn) debt”⁷⁷.

4.1.7. Mendoza: Azurix quits and Saur considers exit

In May 1998, the provincial government of Mendoza sold 70% of the shares of water operator Obras Sanitarias de Mendoza (OSM) to a consortium including Enron Argentina (then Azurix Mendoza), Saur International and Italgas. OSM was providing water supply and sanitation services to 900,000 people, that is to say 80% of the provincial population, and would operate under a 95-year concession. Saur was the technical operator and owned 32.08% of OSM, as did Azurix. Other private shareholders included Italgas and local company Vila and Groissman. The winning consortium had offered US\$ 132.7 million for the shares, against much lower competing offers of US\$ 65.5 million and US\$ 53.9 million. The local government were to benefit for the high price paid for the shares, but also as shareholders and for the payment of a yearly royalty for the use of infrastructure. This was set at 3.85% of net operating revenues collected in the first five years of the concession and was to subsequently increase to 9.98% (Ducci, 2007: 96-97)⁷⁸.

The concession had encountered problems even before the December 2001 Argentine crisis as the operator had failed to realise US\$ 40 million of the projected investment programme. By end 2002, problems included US\$ 4.4 million in arrears on payment of the yearly royalty and a total US\$ 3.5

million in penalties imposed by the regulator due to poor service levels. In April 2002, OSM requested a 34% tariff increase and a revised investment programme to ensure the economic viability of the operations, which local authorities failed to accept. As a result, Azurix filed a compensation claim to ICSID in September 2003 and Saur submitted a separate ICSID compensation suit for US\$ 200 million to US\$ 300 million in November 2003 (Ducci, 2007: 98)⁷⁹. At the time of writing, the Azurix case was still pending and a tribunal had not been established yet, while in April 2007 the Saur case was suspended upon request by the parties⁸⁰.

Following the liquidation of Azurix, the shares held in OSM by the US-based MNC were sold in January 2004 to South Water, owned by Argentine private conglomerate Sielecki, for US\$ 1.5 million. This was a much lower amount than the US\$ 65 million originally paid by Azurix. OSM was thus owned by South Water (32%), Saur International (32%), the provincial government (20%), workers (10%), Italgas (4.5%) and Inversora de Mendoza (1.5%). Mendoza-based Sielecki group held equity stakes in the wholly Argentine owned concessions of Formosa and Santiago del Estero and had diversified its portfolio in sectors as diverse as wineries, pharmaceuticals, banking and the oil industry (Ducci, 2007: 96, 99)⁸¹.

After the exit of Azurix, Saur International continued acting as OSM's technical operator and the commercial viability of operations depended on keeping withholding payment of the yearly royalty and implementing a minimum level of investments (Ducci, 2007: 99). In early April 2007, Saur announced it was leaving OSM and was exiting from all its Latin American operations. The Sielecki group was interested in acquiring control of OSM. The provincial government's requests to the new concessionaire included carrying out the expansion of service and the adjustment of employee salaries in exchange for a 19.7% tariff increase⁸². Less than two weeks after the announcement of Saur's departure, Saur announced it had suspended its ICSID claim for 6 months, while the provincial government declared that it was ready to renegotiate the contract and that it was not certain whether Saur would leave OSM or not⁸³.

4.1.8. Aguas de Misiones: Dragados get EIB finance and EU political risk cover

In August 1999, Servicios de Aguas de Misiones SA (SAMSA) was awarded a 30-year water supply and sanitation concession in the cities of Posadas and Garupá, in the Misiones province. SAMSA was 27% owned by Urbaser, 18% owned by Dragados, 45% owned by Urbaser Argentina and 10% owned by workers (Guidek et al., 2005). Effectively, the Dragados group owned 90% of SAMSA as Urbaser was a Dragados subsidiary⁸⁴.

The first five year investment programme amounted to US\$ 63 million and in January 2001 the EIB lent US\$ 18 million for 15 years, which were guaranteed under the EU budget guarantee programme against political risks including currency transfer, expropriation and war and civil disturbance (Hall and Lobina, 2002: 15)⁸⁵.

In July 2006, SAMSA announced that it had invested Peso 30 million (US\$ 9.74 million) and had carried out works in conjunction with the provincial government for further Peso 60 million (US\$ 19.5 million). This suggests that there was a considerable delay in the implementation of the first five year investment programme. The Peso 60 million works were 25% financed by SAMSA and 75% financed through a World Bank loan provided to Argentine governmental agency ENHOSA⁸⁶.

SAMSA stated that water supply coverage had increased by 27% and sewerage by 72% since 1999. "Samsa has also implemented a series of social measures designed to make payment for services easier for the lower earners in the area, with payment facilities, financing and charges tailored to customers. The firm has also forged around 60 different neighborhood agreements with the backing of provincial water and sewerage regulator Eprac, each adapted to the requirements of the particular areas served"⁸⁷.

In May 2006, SAMSА rejected claims in the local press that it had requested a hike in water rates to ensure the economic viability of operations. Local newspaper Linea Capital had also claimed that SAMSА had threatened not to implement part of the projected investments unless tariffs were increased, and that it was considering withdrawing from the concession⁸⁸. At the time of writing there was no sign that a renegotiation or indeed a cancellation of the concession was imminent.

4.1.9. Proactiva's Catamarca water concession cancelled and to be re-tendered

In April 2000, FCC and Vivendi joint subsidiary Proactiva Medio Ambiente won the Catamarca water concession in Argentina prevailing over Urbaser. Proactiva won the 30-year concession after offering to pay 12.5% of annual billing to the provincial government, while Urbaser had offered 12.35% (Hall and Lobina, 2002: 15)⁸⁹. Proactiva Medio Ambiente is 50% owned by FCC (Fomento de Construcciones y Contratas) and 50% by Veolia⁹⁰. In July 2004, Veolia decided to sell all the shares it held in FCC⁹¹.

Proactiva's Catamarca concessionaire was Aguas del Valle, which replaced the state-owned company Obras Sanitarias Catamarca in provincial capital San Fernando del Valle de Catamarca and the departments Valle Viejo and Fray Mamerto Esquiú, where 80% of the province's population lives. After September 2000, Obras Sanitarias Catamarca continued providing water services in the rest of the Catamarca province⁹².

Reportedly, "services did not improve as expected and to make matters worse the devaluation brought about a freeze in charges and the concessionaire failed to make the promised investments, much as in the other failed water concessions in the country". As a result, in December 2004 the provincial government and the concessionaire agreed to terminate the contract. Aguas del Valle would have continued operations until operations were handed over to a new concessionaire. In June 2007, local authorities were still working on defining the tender rules for the award of the new concession. Aguas del Valle, and Argentine firms Sielecki group, LatinAguas and the Cordoban investors in Aguas Cordobesas were said to be interested in bidding for the concession⁹³.

The new concession, with a duration limited to 10 years with a 5 year extension option, would effectively be a lease contract as the private operator would be required to finance operating costs and maintenance. Conversely, the provincial government would be responsible for financing infrastructure investment, including the construction of an aqueduct and wastewater treatment plant, the installation of meters and the expansion of services outside the concession area⁹⁴. Under typical concessions, the private operator is required to finance all operating and capital costs, including maintenance and infrastructure investment.

The above provisions were clearly aimed at reducing the performance risk faced by the private operator and facilitating the economic viability of the contract. It remains to be seen whether Aguas del Valle would have a competitive advantage over the other bidders due to its knowledge of the system. The submitted bids would be judged on the basis of the lowest price for cubic metre of water, as water would be metered. Also, local authorities were not expecting water charges to increase immediately⁹⁵.

4.1.10. Argentine-owned concessions: Latinaguas and South Water

A number of private concessions have been awarded to operators exclusively owned by Argentine firms, such as Latinaguas of the Chamás group and South Water (also known as Sagua SA) of the Sielecki group.

Latinaguas provides 1.59 million residents with potable water and 1.11 million with sewerage service in 132 localities through concessions in three provinces: Corrientes, Salta and la Rioja (Hall and Lobina, 2002: 15). The Aguas de Corrientes concession started in 1991 and covers the province capital and 10 of the province's largest cities (Ducci, 2007: 64). The original 30-year duration was

extended following renegotiation in December 2004, so that the due date of expiry was postponed from 2021 to 2026. This followed the provincial government's refusal to grant a 12% tariff increase and demands to postpone implementation of the investment programme. In February 2005, local authorities were reportedly considering terminating the concession "due to alleged contractual non-compliance"⁹⁶. However, at the time of writing the concession was still operating.

The Aguas de Salta concession started in July 1998 (Ducci, 2007: 64) and planned to invest some US\$ 90 million⁹⁷. However, in October 2005 a neighbourhood association in the town of Metan accused the concessionaire of not having "invested enough to modernize its obsolete infrastructure" and called for the provincial government to renationalise operations. "Around 70% of households in the town consume bottled water because they are not convinced by the company's water treatment processes. On top of that, last summer most homes in the town were left without water for nearly a month"⁹⁸. In January 2002, the provincial regulator fined Aguas de Salta "some US\$22,000 for not responding to client complaints"⁹⁹. In November 2003, a 10% equity stake in the concessionaire was to be transferred to 674 former employees¹⁰⁰.

The Aguas de la Rioja 30-year concession started in April 2002 (Ducci, 2007: 64) after the Latinaguas group had been awarded a management contract in the same concession area in 1999. The concession, which could be extended for a further 10 years at its expiry, covered the provincial capital of la Rioja and the cities of Chilecito and Chamental¹⁰¹. Awarded after the breakout of the Argentine crisis, the concession benefited from public financing from national agency ENHOSA and parts of the works were financed by the monthly fee paid by the concessionaire to local authorities¹⁰².

Latinaguas is trying to expand its water activities both in Argentina and internationally. In 2005, Latinaguas attempted to buy Suez' shares in Santa Fe concessionaire APSF together with the Argentine Taselli group, but the attempt failed due to Suez refusal to abandon the ICSID case as a condition to the deal. Latinaguas and Buenos Aires province workers cooperative "5 de setiembre" were to jointly operate the concession¹⁰³. In June 2007, Latinaguas was reportedly interested in bidding for the new Catamarca concession¹⁰⁴. Internationally, Latinaguas holds a concession in Tumbes, Peru and in early 2007 it was bidding for a concession in Piura-Paita, Peru and a technical services contract in Brazil's Goiás state. In October 2006, Latinaguas pre-qualified for the Quito concession in Ecuador but plans to privatise Emaap were cancelled in march 2007 following a public campaign¹⁰⁵.

South Water holds the Aguas de Formosa concession in Clorinda, the capital of the Formosa province, since December 1995 and the Aguas de Santiago concession in 4 cities in the province of Santiago del Estero since 1997 (Ducci, 2007: 64). The Sielecki group has also an important equity stake in Mendoza concessionaire OSM Mendoza and in June 2007 it was said to be interested in bidding for the new Catamarca concession¹⁰⁶.

4.2. Bolivia

4.2.1. Privatisation and renationalisation in La Paz, El Alto

The private concession in La Paz was awarded to the Suez-led consortium Aguas de Illimani (AISA) in 1997. Like the Aguas Argentinas contract, the AISA concession has been portrayed as a success story, and particularly as a "pro-poor" PPP, for some time until events led to its termination.

The contract included explicit targets for extending connections to poor households, including the El Alto area, but the contract was re-interpreted to allow a range of different services according to ability to pay (Komives, 1999: 30-34).¹⁰⁷ The techniques used here by Suez to make the extensions profitable included involvement of community groups, the use of micro-credit schemes and voluntary labour by the inhabitants to make connections, and the use of the shallow 'condominial' sewerage system. All these elements were problematic, with community leaders organising protests at the working of the concession, and the economic viability of the condominial system is dependent on free

labour (Laurie & Crespo, 2002).¹⁰⁸ One further problem with making the service profitable was due to the very low daily consumption levels in El Alto (Hall and Lobina, 2007). Crespo (2004) explains consumption patterns in terms of generalised poverty and the fact that El Alto is a dormitory city of La Paz, which implies high variations in terms of population between daytime and night, rather than in terms of cultural habits.¹⁰⁹

Despite the positive image internationally enjoyed by AISA until recently, mostly resulting from the PR efforts of the private operator and the international and bilateral agencies backing it, the concession proved controversial since its inception. Crespo (2004) shows how social resistance to the concession was constant across time, although varying in strategy adopted. The El Alto neighbourhood association FEJUVE played a pivotal role in organising social resistance, but its strength can be explained as people of different walks of life joined together in protesting against poor service and high connection charges¹¹⁰. FEJUVE persistently exerted pressure on the Bolivian government to obtain the termination of the concession, which was eventually decided in January 2005 by the Carlos Mesa administration. This took place two days after FEJUVE declared an indefinite road blockade until the rescission of the AISA concession, in an escalation of confrontational initiatives from the initial rallies and protest marches¹¹¹. The contract was officially ended in January 2007 under President Evo Morales after amicable negotiations providing for the Bolivian government to assume responsibility for AISA's loans, amounting to US\$ 9.6 million, and pay US\$ 5.5 million as compensation to AISA's shareholders. Bolivian officials had been induced to enter amicable negotiations rather than resorting to unilateral termination in order to avoid alienating international financial institutions, which they hoped could finance the operations of newly established public water provider Epsas¹¹². Amicable negotiations also allowed for avoiding entering an international arbitration dispute in front of ICSID¹¹³. In April 2007, Bolivian Minister for Water Abel Mamani requested and obtained that regulator SISAB removed the indexation of tariffs to the US Dollar. Epsas tariffs and connection charges would thus increase by 6% per year¹¹⁴. The Bolivian government has written off the US\$ 9.5 million debt assumed by Epsas towards a number of financial institutions and had received US\$ 5.5 million from the Venezuelan government to devote to Epsas investment programme. The introduction of public participation in Epsas decision making through the involvement of social movements and the municipal governments of La Paz and El Alto is being proposed. The introduction of public participation within regulatory activities via the constitution of a multi-stakeholder regulatory body is also being discussed (Ducci, 2007: 115-116).

Scrutiny of the AISA concession

In September 2005, water regulator SISAB (Superintendencia de Saneamiento Basico) contracted Bolivian firm Pozo & Asociados to carry out an independent audit on AISA's activities from August 1997 to December 2005. The audit, which also provided the grounds for the termination of the contract, pointed to the private operator's failure to comply with contractual targets in terms of connecting households to the pipeline network. From 1997 to 2001, AISA made a total of 46,438 connections to the water supply network in El Alto, failing to realise 25,314 connections or 35.28% of the contractual target. As regards the sewerage network in La Paz, AISA failed to realise 12,479 connections corresponding to 32.84% of the contractual target. The auditors also found signs of "arbitrary" tariff increases in sample bills corresponding to 12 billing periods (SISAB, 2006).

A study carried out by SAMAPA Residual, the public company entrusted with the supervision of the assets given in concession to AISA, found out that tariffs charged by AISA were overvalued by about 20%. More precisely, the tariffs had been calculated to allow for the reimbursement of the investments carried out by public operator SAMAPA and so AISA was charging users US\$ 8.9 million. However, the fee paid by AISA for the use of infrastructure built by SAMAPA amounted to only US\$ 3.5 million per year, a sum which was projected to gradually decrease in the course of the concession. Furthermore, tariffs were fixed in US\$ to protect the operator from currency risk and guaranteed a rate of return on investment of 12% (Crespo, 2004). The Pozo & Asociados audit found out that in the 8 years of operations analysed AISA's actual rate of return exceeded 15%. Despite AISA's claims of having invested US\$ 51.7 million, the audit estimated that investments actually

realised by the private operator amounted to some US\$ 23.6 million for a net value of US\$ 19.9 million after depreciation, compared to the US\$ 42.2 million claimed by AISA (Pozo & Asociados, 2006).

The Pozo & Asociados audit revealed that AISA had entered a contract with shareholder Suez in which it undertook to remunerate the parent company for the transferred technology, know how and technical assistance, as well as for its assistance to management. The contract provided for the payment of a yearly management fee equal to 8% of the operator's EBIDTA (Earnings Before Interest, Taxes, Depreciation and Amortization). In addition, AISA committed in advance to paying a fix sum for technical assistance of US\$ 155,000 for the first year of the contract, US\$ 230,000 for the second and an amount to be agreed for the third year (SISAB, 2006). The management and technical assistance contract thus allowed Suez to extract more profits from the concession than those resulting from dividends paid by AISA. The Pozo & Asociados audit calculated that from 1997 to December 2005 the total amount perceived by the Suez group under the management and technical assistance agreement with AISA corresponded to more than US\$ 11 million. Although AISA had computed such as operating costs, the auditors described it as a form of dividend nearing the amount of capital contributed by the concessionaire (Pozo & Asociados, 2006).

Based on the findings of the audit and taking into consideration AISA's response, in December 2006 SISAB sanctioned AISA with a US\$ 50,000 fine for a number of irregularities, including less than transparent accounting and reporting practices and failure to realise works according to the agreed technical standards (SISAB, 2006). SISAB's head Álvaro Camacho admitted that for the duration of AISA's concession, SISAB's control over the private operator had been "weak"¹¹⁵.

4.2.2. Privatisation and renationalisation in Cochabamba

In September 1999, the International Water-led consortium Aguas del Tunari was awarded a 40-year concession for the water and sanitation system of Cochabamba, the third largest city in the country with some 500,000 inhabitants (Hall and Lobina, 2002: 15-16). The award to the private operator was characterised by lack of transparency (Lobina, 2000; Jouravlev, 2004: 39). Water tariffs increased by up to 150% (Jouravlev, 2004: 39) in order to cover the costs of the Misicuni project, a massive engineering scheme causing water to cost "roughly six times that of alternative sources" and provide for a guaranteed 15% real return (Hall and Lobina, 2002: 15-16). Tariffs were also indexed to the US\$ (Jouravlev, 2004: 39). The massive tariff hikes hit the people of Cochabamba where the minimum wage was less than US\$100 per month. The average water bill was estimated to equal 22% of the monthly pay of a self-employed man and 27% of that of a woman. The concession was terminated in April 2000, following social unrest and military repression which left one person dead, two blinded and several injured (Lobina, 2000; Hall and Lobina, 2002: 15-16).

Social opposition to the concession was led by the Coordinadora de Defensa del Agua y de la Vida (The Co-ordinator for the Defence of Water and Life), an alliance including the trade union representing minimum-wage factory workers, peasant farmers, environmentalists and youth (Lobina, 2000). In parallel with the pattern of events in El Alto, the Coordinadora "began to stage rallies and protest marches, escalating later to roadblocks that brought the city to a standstill. Support for the movement spread through local assemblies meeting, attracting a cross-section of the population rarely see taking action together"¹¹⁶. Jouravlev (2004: 39) and Sjölander Holland (2005: 23-35) identify lack of public participation in the decision making preceding the introduction of reforms and dissatisfaction with the provisions of a law affecting the allocation of water rights to indigenous people and farmers as further factors provoking social unrest.

Full cost pricing contributed to exasperating Cochabamba's consumers. In June 1999, the World Bank's review of public expenditure in Bolivia recommended that "no subsidies should be given to ameliorate the increase in water tariffs in Cochabamba, which should reflect the full cost of provision of the Misicuni multipurpose project". Later, the review document expanded on the point: "so far the Government has made the clear decision that there will be no public subsidy ... and that the users will

pay in full for the [water] services [in Cochabamba]. It is critical that the Government maintains this position." This would have the obvious effect of placing all the burden of the over US\$ 200m Misticuni project and the guaranteed 15% real return on consumers¹¹⁷ (Lobina, 2000; Hall and Lobina, 2002: 15-16).

Table: Estimated savings for Cochabamba consumers in 2001, as a result of termination of the Aguas del Tunari concession

USER CATEGORY	TOTAL SAVINGS FOR 2001	YEARLY SAVINGS PER HOUSEHOLD OR BUSINESS	% OF THE MONTHLY MINIMUM WAGE
Empty land	\$27,550	\$9.41	14%
The very poor	\$439,423	\$19.73	29%
The poor	\$748,323	\$40.16	60%
Middle class +	\$1,042,765	\$110.12	164%
Commercial users	\$1,211,888	\$208.98	312%
TOTAL/AVERAGE	\$3,469,952	\$58.71	87%

Sources: SEMAPA computer records; <http://www.democracycctr.org/bechtel/waterbills/waterbills-global.htm>.

In November 2001, International Water's subsidiary Aguas del Tunari filed a US\$ 25m compensation claim with the World Bank's ICSID (International Centre for the Settlement of Investment Disputes) (Hall and Lobina, 2002: 15-16). In January 2006, Aguas del Tunari decided to settle the dispute against the token payment of Bolivianos 2 (US\$ 0.30). The Democracy Center, a US-based NGO involved in organising protests at the compensation demand against the cash strapped Bolivian government, commented "Sources directly involved in the settlement negotiations cited continued international citizen pressure as the reason the companies decided to drop the case"¹¹⁸.

After the termination of the Aguas del Tunari concession, operations were handed over to the municipal undertaking SEMAPA. SEMAPA's Board of Directors has been restructured to allow for broader stakeholder participation. In its new composition, the Board includes Cochabamba's mayor acting as the Board chairman, another representative of the municipal administration, 3 representatives of Cochabamba's consumers, one trade union representative and a representative of the association of professions (appointed by the mayor). Nonetheless, SEMAPA's performance has been mixed. On the one hand, service coverage has increased to 70%, much more than coverage levels when the Aguas del Tunari concession was awarded, and the number of connections from 2000 to 2004 has exceeded the operating targets initially set for Aguas del Tunari. On the other, the expansion in service coverage has mainly benefited the urban centre and its relatively more affluent dwellers while the expansion of service to southern peri-urban areas has been postponed. This means that low income consumers are not connected to the pipeline network and buy water delivered by tank or other means at much higher prices than those charged by SEMAPA. Furthermore, service continuity is only 60% and Unaccounted-for-Water is above 50%. There has been a marked increase in the number of workers with the ratio number of employees/000s connection growing from 5.77 in 2002 to 11.52 in 2003, as workers raised from 270 to 700. Some observers have explained this with the influence within SEMAPA's Board of Directors of the trade unions and the mayor, who have purportedly established a firm political alliance. Consumer representation within SEMAPA would have conversely been weakened by lack of interest in the population and low turn out at elections of users' representatives. Finally, SEMAPA is affected by heavy debts of US\$ 24 million as of 2004. Debt would have been made worse by the freezing of tariffs for 5 years, resulting in a decrease by 21% in real terms. In November 2005 tariffs were increased by 7.5% and in May 2006 by a further

5% so that tariffs went back at 1999 levels in real terms. This was requested by the Inter-American Development Bank (IDB) as a condition to issue a loan. Further conditions imposed by the IDB include the reduction of number of employees/’000s connections to 4 and to reorganise the managerial structure of the municipal operator (Ducci, 2007: 122-124)¹¹⁹.

4.3. Brazil

As of September 2005, there were a total of 63 concessions for water supply and sanitation services covering 7 million consumers¹²⁰. The majority of these were of relatively small dimensions. In fact, without considering Veolia’s participation in and operational control of Parana state’s Sanepar which served on its own more than 7.5 million inhabitants¹²¹, only 4 concessions awarded to MNCs accounted for 35% of the total covering an aggregate population of 2,450,000 inhabitants. At the time of writing, of the above 5 operations (including Sanepar), three had been abandoned by the multinational operators and two had been affected by persistent problems. In all cases where the MNCs had completed their exit, there was no instance of re-nationalisation as local companies bought the respective shares.

A number of major state-owned water companies has been semi-privatised by listing on the stock exchange. This was the case of Sao Paulo’s Sabesp with its 25 million consumers which make it the largest water operator in Brazil, and Minas Gerais’ Copasa which is the third largest Brazilian water supply and sanitation operator with its 11.1 million people served¹²². Public operations are not only carried out by state-owned PLCs (Public Limited Companies or joint stock companies), but also by municipally-owned operators, a number of which have proved to be efficient and effective service providers.

4.3.1. Suez leaves Aguas de Limeira concession

In 1995 Aguas de Limeira, a consortium 50% owned by Brazilian firm Odebrecht and 50% by Suez, was awarded a 30-year concession for the provision of water supply and sanitation services to the city of Limeira (250,000 inhabitants) in the state of Sao Paulo. The concession has been marred by allegations of corruption and legal disputes over its cancellation (Ducci, 2007: 160).

Estimates indicate that under the concession water supply coverage increased from 87% in 1995 to 100% in 2002, sewerage coverage from 80% to 100% in the same period. Also, Unaccounted-For-Water would be at 16% and customer satisfaction at 98% (Ducci, 2007: 160-161). However, Vargas (2003: 41) points to a more mixed picture including doubts on the reliability of the company’s claims. “There was also a small improvement in services expansion, whose rates were already high, and a broad investment in sewage treatment ... On the other hand, there are strong suspicions ... of manipulation on data about the investments made and the contract goals”.

In June 2006, Aguas de Limeira was brought to court for breach of contract in relation to untreated wastewater discharge (Ducci, 2007: 161). By February 2007, Suez had left and Aguas de Limeira was wholly owned by Odebrecht¹²³.

4.3.2. Manaus concession: Aguas do Amazonas

In June 2000, Suez-Lyonnaise des Eaux was awarded a 30-year water and wastewater concession in Manaus (1.2m inhabitants), Amazonia state, Brazil (Hall & Lobina, 2002: 18). The concession has been marred by conflicts between the private operator and local authorities on the state of the infrastructure prior to the award and contractual compliance. The concessionaire has been fined a total of US\$ 2 million for poor service quality. The prospects of the concession have been described as “extremely precarious” and a possible termination has been announced (Ducci, 2007: 162). At the time of writing there was no sign of Suez exiting the concession, although Suez had been reported having made the decision to withdraw from Brazil altogether¹²⁴.

4.3.3. Agbar leaves Aguas de Guariroba concession in Campo Grande, Mato Grosso

In July 2000, the Suez-Agbar venture Interagua won a US\$ 217m, 30-year water supply and sewerage concession in Campo Grande, the capital of Brazil's state of Mato Grosso do Sul (750,000 inhabitants)¹²⁵. The joint venture was initially reported as being Interagua, but in December 2000 AgBar said the joint venture was called Aguas de Guariroba, 50% owned by Agbar, 41% by Cobel, and 9% by Mato Grosso state water company Sanesul. Agbar, which owns 53% of Interagua, was the operator of the Campo Grande concession (Hall and Lobina, 2002: 18).

As a result of a generalised delay in the achievement of investment targets, in December 2003 the municipal government put Aguas de Guariroba under administration for 90 days. Investigations found undue costs of around US\$ 2 million. Also, investment targets were redefined in order to make up for the due investments and meet targets for 2004.

In November 2005, as part of its strategy to reduce its presence in Latin America and leave Brazil, Agbar sold its shares in Aguas de Guariroba to local investors Bertin group and Equipav for US\$ 26 million (Ducci, 2007: 162-163). By February 2006, the Bertin/Equipav consortium had bought Cobel's stake in Aguas de Guariroba and was planning to buy the remaining 9% held by Sanesul¹²⁶.

4.3.4. Aguas de Portugal leaves Prolagos concession, Rio de Janeiro lake district

In late 2000, Aguas de Portugal took over Brazilian water company Prolagos, which held a water supply and sanitation concession and serving around 250,000 people in the Rio de Janeiro lakes district. Portuguese state-owned Aguas de Portugal held a 93.5% stake in Prolagos (Hall and Lobina, 2002: 18).

In July 2007, Aguas de Portugal was completing the sale of Prolagos after reportedly facing "serious difficulties" in making returns on investments¹²⁷.

4.3.5. Sanepar

In 1998 Parana state part-privatised its state water company Sanepar and became the first Brazilian state water supply and sanitation company to open its capital up to private partners. Sanepar served a over 7.5 million consumers¹²⁸. At the time of writing, Sanepar was 52.5% owned by the Parana state and 34.7% by the consortium Domino Holding, including French water MNC Veolia and the Brazilian Andrade Gutierrez Group. However, Parana state had 60% of voting power, with 39.7% in the hands of the private operator Domino Holding¹²⁹. The World Bank's IFC was an indirect investor in Sanepar¹³⁰ as in November 2001 it decided to invest US\$30m in acquiring a 16% stake in AGC. The concession has been controversial, with alleged poor service quality, less than transparent practices and problems in delivery to the poor. It has also seen protracted conflicts between the state of Parana and private shareholder Domino over the validity of the concession agreement and the effective control of management (Hall and Lobina, 2002: 16-17).

In February 2003, the shareholder agreement was declared void on grounds of lack of investment and tariff increases. In June 2004, the state government proposed a capital increase that would have produced the effect to reduce Domino's shareholding to 20%. The consortium resorted to the courts and in September 2007 the Supreme Federal Court ruled in favour of Domino, so that the validity of the shareholder agreement was re-established. Parana's state government declared its intention to appeal against the ruling. In September 2005, Veolia had announced it would withdraw from the contract and try to sell its shares to the state government for US\$ 200 million (Ducci, 2007: 161)¹³¹. However, at the time of writing there was no sign of Veolia having exited Domino Holding and Sanepar.

Interestingly, in September 2006 rating agency Moody's explained Sanepar's improved credit rating and financial performance in light of tariff increases and support from Parana's state government "in the form of advances and reduced dividends"¹³².

4.3.6. Sao Paulo's Sabesp semi-privatisation

As a wholly state-owned water company for the state of Sao Paulo, SABESP managed to considerably improve its efficiency and effectiveness following in-house restructuring from 1995 to 1998 (Lobina and Hall, 2000: 49-50). It is deemed to be the world's largest water company, with 25 million customers.

In 2002, state authorities decided to list Sabesp on the New York stock exchange in order to raise budget capital through the sale of shares¹³³. At the time of writing, Sabesp was 50.3% owned by Sao Paulo state and 49.7% listed on the stock exchange, of which 27.6% of shares floated on the Sao Paulo stock exchange (BOVESPA) and 22.1% floated on the New York stock exchange (NYSE)¹³⁴. According to Ducci (2007: 159), the municipality of Sao Paulo has threatened not to renew the concession to Sabesp.

In July 2007, Sabesp declared that it was seeking alternative financial sources to traditional public funds in order to raise capital for urgent works. For example, alternative financial mechanisms could have included the issuance of bonds. Problems with traditional public funds were that "The credit lines offered by the federal government as part of PAC are weighed down by excessive bureaucracy". Furthermore, "investment funds such as the federal workers' protection fund FAT provide funds at low interest rates, but require that lengthy project analysis be concluded before the funds can be authorized"¹³⁵.

In November 2006, Sabesp and Lima, Peru's state owned utility SEDAPAL were planning to set up a joint venture to provide water supply to seven districts located in Lima's southern area. The Peruvian government presented the deal as a public-public partnership despite Sabesp being a semi-privatised company. This means that the proposed joint venture and its future operations are more likely to represent a PPP (public-private partnership) or a WOP (Water Operator Partnership) in case collaboration was on a not-for-profit basis¹³⁶.

4.3.7. Minas Gerais Copasa semi-privatised

In February 2006, Minas Gerais state-owned water supply and sanitation company Copasa was listed on the Sao Paulo stock exchange¹³⁷. At the time of writing, COPASA was 59.77% owned by the Minas Gerais state, 9.67% owned by the Belo Horizonte municipal administration and 30.24% floated on the stock exchange¹³⁸. In September 2007, Minas Gerais state and the Belo Horizonte municipal government were planning to sell part of their shares in COPASA, in order to raise Reais 300 million (US\$ 161 million) and fund state government works. More precisely, the shares to be sold were bonds issued in July 2007 that were convertible to shares¹³⁹.

In September 2007, COPASA and the Paraguayan state water utility Essap signed an agreement for the provision of technical assistance on a not-for-profit basis under the UN Water Operator Partnership initiative. COPASA would provide technical assistance aimed at helping Essap reduce water leakage by 15.5% in one year. "Copasa will assist in drawing up a diagnosis for the potable water provision system serving Asunción and the metropolitan area; defining, coordinating, supervising and implementing an action plan to reduce losses; training Essap staff to implement the plan and reduce losses; and transferring control and water network loss reduction technologies. Essap will replace some 50km of pipelines, install some 60,000 new water meters and launch a meter testing system, among others"¹⁴⁰.

4.3.8. Goias state Saneago

In February 2007, Goias state water utility Saneago was to award a contract for the management of its commercial operations. Saneago expected the successful bidder to invest around Reais 5.5 million in the management of commercial services. It received 6 bids including from Minas Gerais' COPASA and a consortium participated by Argentine private water operator Latinaguas. The contract was going

to be financed by an IDB loan which was issued in 2005 upon the condition that the private sector was involved in Saneago's operations. The loan was part of a Reais 200 million (US\$ 95.2 million) IDB-funded waterworks project for state capital Goiânia¹⁴¹.

4.3.9. Successful municipal water operations throughout Brazil

Brazilian association of municipal water operators ASSEMAE has published the booklet "Successful Experiences in Municipal Public Water and Sanitation Services from Brazil" (Exitó). The document presents twenty examples of successful municipal water supply and sanitation operators in large and small, wealthy and poor municipalities across Brazil. These include renowned cases such as Porto Alegre's DMAE, on which also see Hall *et al.* (2002), and Campinas' municipally-owned PLC SANASA. Experiences range from financially sound operations to democratic participatory decision making¹⁴².

4.4. Chile

The water privatisations in Chile started in 1999, by the sale of shares in existing public sector water companies and the concurrent award of long term concessions, and virtually cover all the country. In most cases, service coverage had already been expanded considerably by public water operators prior to the privatisations, which focused on enhancing wastewater treatment. In some cases, as in Santiago de Chile, public operators had been regarded as efficient even by the World Bank (Hall and Lobina, 2002: 18-19).

Weaknesses in the Chilean regulatory framework have exacerbated the asymmetry of information in favour of private operators. Furthermore, weaknesses in the conflict resolution mechanism have meant that private operators have more often rather than not prevailed in the recurrent disputes with the regulator and managed to control the system (Jouravlev, 2004: 30, 44-45). Finally, the social impact of tariff increases is mitigated by a system of targeted subsidies to low income consumers (Jouravlev, 2004: 52).

The ownership structure of water operators has undergone considerable changes in the last few years, as a result of the exit of a number of MNCs. This has been partly compensated by the entry of local investors and eventually of Canadian investment fund Ontario Teachers Pension Plan (OTPP), one of Canada's largest public investment funds with over Cdn\$ 106 billion (US\$ 106 billion) in assets. While Suez has only formally withdrawn from the Chilean market, by selling its shares to Agbar, this is a partially-owned Suez subsidiary so that the group retains its presence in Chile, unlike other Latin American countries.

By contrast, Thames Water and Anglian Water have sold of their shares in ESSBIO and ESVAL, the second and third largest Chilean water utilities, respectively to an Argentine private investment fund and a consortium of Chilean firms, only for OTPP to take over both companies. OTPP is attracted by the reliability of the investment, providing low-risk, inflation-adjusted, long term returns. As a result of its acquisition of Thames Water and Anglian Water's Chilean operations, OTPP controlled 36.4% of the Chilean water market and became the second largest player in the market after Agbar, holding a 38.4% share. This has produced a high level of concentration, with the two companies controlling together controlling almost 75% of the Chilean water and wastewater market¹⁴³.

4.4.1. Agbar stays in Santiago de Chile's Aguas Andinas

In June 1999, a Suez-Lyonnaise des Eaux/Aguas de Barcelona consortium bought 42% of the shares of Santiago de Chile's water company EMOS (then renamed Aguas Andinas) for US\$ 957 million. The private consortium was also awarded an unlimited duration concession to manage and develop the city's water and sewerage system (Lobina and Hall, 2003). Other shareholders include the Chilean government's economic development agency CORFO, holding a 35% stake, and pension funds, company employees and other investors (World Bank and PPIAF, 2006: 242). Aguas Andinas claims

to have expanded wastewater treatment from 7% in 1999 to 70% in 2006¹⁴⁴ and the contract is regarded as a success in terms of increased service quality, investment and profitability (Lee and Floris, 2003: 286; Jouravlev, 2004: 35).

However, in June 1999 Suez took over an efficient and effective company with limited need, if any at all, for organisational restructuring, which would operate under a familiar regulatory framework. It also acquired a captive wastewater treatment market to exploit. The duration of the concession meant that, as the private operator of Aguas Andinas, Suez had been shielded from competition in perpetuity. In addition, it reportedly enjoyed a “constant level of profitability, of roughly one-third of total sales, ... guaranteed by the state”¹⁴⁵ (Lobina and Hall, 2003).

According to Gómez-Lobo and Vargas (2002, 2001) and Gómez-Lobo (2003), as cited in Jouravlev (2004: 24, 35), the first rate-review process after the privatisation of EMOS generated concerns over the effectiveness of the regulatory framework under private operations. In 2000, tariffs increased by an average of 20% in real terms for water supply and sewerage, irrespective of virtually universal coverage having been achieved in both sub-sectors. Subsequently, wastewater treatment would have accounted for 25% of total tariffs.

In April 2004, Suez sold 31% of its shares in Aguas Andinas to its partly-owned subsidiary Agbar in order to raise capital for other ventures. This allowed Agbar to assume control of Aguas Andinas, which was 51% owned by the Suez/Agbar consortium and served over 38% of Chile’s consumers. Aguas Andinas represented the most important single international operation held by Agbar. In May 2006, Agbar declared that its strategy for Latin America was to retain its position in Chile, ACUACAR (Cartagena, Colombia), Aguas del Saltillo (Mexico) and in Aguas de la Habana and Aguas de Varadero (Cuba). Also, Chile would have been used as a base from which to sell technical and consulting services to other Latin American countries, but without foreseeing any further direct investment. In November 2005, holding company Inversiones Aguas Metropolitanas, through which Agbar and Suez controlled Aguas Andinas, was floated on the stock exchange. The sale of 49.9% of Inversiones Aguas Metropolitanas shares generated revenues of US\$ 458 million for Agbar and Suez (Ducci, 2007: 129, 142).

4.4.2. Ontario Teachers Pension Fund takes over ESSEL, ESSBIO and Aguas Nuevo Sur del Maule

In November 1999, a joint venture between UK water MNC Thames Water and Portugal’s state-owned company Electricidade de Portugal (EDP) bought a 45% equity stake in ESSEL, the company providing water supply and sanitation services in Chile’s region VI (Los Libertadores region). With ESSEL, Thames Water and EDP also acquired a water concession of indefinite duration. The remaining 55% of the capital was owned by Chilean government’s economic development agency CORFO. In December 2001, Thames Water bought EDP’s 50% in the consortium and so held 45% of ESSEL’s shares in its own right (Ducci, 2007: 130).

In September 2000, Thames Water bought 42% of the shares in ESSBIO, the company holding an unlimited water supply and sanitation concession in Chile’s region VIII (Bio-Bio). Thames Water subsequently bought a 9% stake which was floated and came to hold 51% of ESSEL, while CORFO owned the remaining 49%. In October 2002, ESSEL and ESSBIO merged (Ducci, 2007: 130-131).

In November 2001, Thames Water was the sole bidder and acquired 100% of Aguas Nuevo Sur del Maule which held a 30-year concession in Chile’s region VII (Maule). Thames Water thus served 20% of the country (Ducci, 2007: 129-131).

ESSBIO failed to meet all the projected operational targets, and in 2004 it only achieved 86% of the goals set for region VI and a 37% for region VIII. Poor performance has been attributed to technical problems causing delays in the subcontracting of works but also to the decision of Thames Water’s mother company RWE to slow down investment before selling the UK-based water MNC. Poor

performance resulted in a total US\$ 5.1 million fines imposed by Chilean regulator SISS from 2001 to 2004 (Ducci, 2007: 132-133).

ESSBIO has also been investigated for alleged irregularities due to payments made by Chilean engineering company Hidrosán, one of ESSBIO's major providers of contracted out works, in exchange of Thames Water issuing invoices for US\$ 3.6 million. At the time of writing judicial proceedings on the irregularities were still ongoing. However, upon CORFO's initiative, in September 2005 an arbitration court condemned Thames Water to pay US\$ 11.1 million in compensation to ESSBIO for the damage caused by the alleged irregularities. Payment of compensation was set by CORFO as a precondition to the sale of Thames Water's shares in ESSBIO and Aguas Nuevo Sur del Maule¹⁴⁶.

RWE had made a strategic decision to divest all its activities in the water sector and to sell Thames Water. In February 2006, the Argentine investment fund Southern Cross bought Thames Water's Chilean operations for US\$ 300 million. Thames Water thus wrote off some US\$ 200 million on the original values of its acquisitions (Ducci, 2007: 133-135).

In August 2007, Southern Cross sold its 51% stake in ESSBIO and 100% of Aguas Nuevo Sur del Maule to the OTPP This was the first infrastructure investment carried out by OTPP in South America. OTPP explained that the Chilean regulatory framework guaranteed long term returns indexed to inflation, thus suitable to covering the cost of inflation-protected pensions for the 271,000 teachers who were members of the plan. OTPP announced that the local management of ESSBIO and Aguas Nuevo Sur del Maule would remain in place despite the change in ownership. OTPP also declared its interest in investing in Latin American infrastructure and particularly in Chile, where it had spent 3-4 years studying the country's regulatory system: "we are interested in the infrastructure area in general and to us that includes electric, gas and water distribution, and it could also include tollroads, airports, ports and power plants"¹⁴⁷. OTPP reportedly paid over US\$ 500 million for buying the two companies, of which US\$ 326 million for ESSBIO. When Southern Cross bought ESSBIO from Thames Water it paid US\$ 222 million, plus an undisclosed amount for Aguas Nuevo Sur del Maule¹⁴⁸.

4.4.3. Anglian Water leaves ESVAL, OTPP to take over

In December 1998, the Aguas Puerto consortium bought 40.41% of ESVAL, which held a water supply and sanitation concession in of indefinite duration in Chile's region V (Valparaiso). Aguas Puerto was composed by Chilean private electricity company Enersis (72%) and the UK water MNC Anglian Water (28%). ESVAL was also 38.89% owned by CORFO and 7.70% owned by pension funds. In August 2000, Anglian Water bought the shares held by Enersis in Aguas Puerto, which became a wholly owned subsidiary of Anglian Water. As a result of a capital increase in ESVAL's capital and the acquisition of the adjacent Aguas Quintas' contracts, Anglian Water had paid a total US\$ 170 million and held a 49.82% equity stake in ESVAL (Ducci, 2007: 136-137).

ESVAL's Unaccounted-for-Water remained effectively stable from 1998 to 2005, while efficiency was mainly achieved by reducing the number of workers. The number of employees to '000 connections ratio decreased from 2.3 in 2008 to 0.7 in 2005 (Ducci, 2007: 138).

Confronted with the deteriorating profitability of its international operations, in November 2002 Anglian Water decided to sell its international activities and refocus on core activities in the UK. In October 2003, a consortium made of Chilean group Fernandez Leon/Hurtado Vicuña and local investment vehicle Sociedad de Inversiones Moneda Asset bought Aguas Puerto for US\$ 92 million. As a result, Fernandez Leon/Hurtado Vicuña owned 44.8% of ESVAL and Sociedad de Inversiones Moneda Asset owned 5%. Anglian Water wrote off some US\$ 120 million (Ducci, 2007: 139-141).

The Fernandez Leon and Hurtado Vicuña group, owner of Sociedad Almendral (formerly known as Chilquinta), had held the Aguas Quinta operations in region V from 1993 to 2000, before these were

acquired by ESVAL, and a concession in the city of Valdivia since 1995. In 2003, the Fernandez Leon and Hurtado Vicuña group also won an operating contract in the IV region and thus established operating company Aguas del Valle as a subsidiary of ESVAL. In addition, Fernandez Leon and Hurtado Vicuña's Sociedad Almendral was part of a consortium with Suez holding 98% of region X water supply and sanitation concessionaire Aguas Decima, until this was taken over by Marubeni in September 2006 (Ducci, 2007: 129, 141). Fernandez Leon and Hurtado Vicuña owned Chile's private telecoms operator Entel and had investments in the utilities, real estate, financial and mining sectors¹⁴⁹.

In August 2007, OTPP announced that it was to buy 48.92% of ESVAL shares for US\$ 365 million which would also allow OTPP to acquire ESVAL's subsidiary Aguas del Valle. OTPP declared that "the investment is well suited to the pension plan's objective of providing stable, long-term returns to help pay teachers' pensions up to 70 years from now". Both ESSBIO and ESVAL were expected to "provide stable low-risk returns, and they have a very long economic shelf life consistent with our long-term investment goals". As in the case of ESSBIO's acquisition, ESVAL's management would keep in place irrespective of the change in ownership¹⁵⁰.

OTPP was expected to launch an offer for the acquisition of 100% of ESVAL's shares after the approval of the purchase of the 49% stake. However, state-owned agency CORFO ruled out selling its 29.43% shares as the utility was "considered a strategic asset to the country"¹⁵¹. Completion of OTPP's purchase of ESVAL was expected to take place by end November 2007¹⁵².

4.4.4. Iberdrola considers leaving ESSAL

In July 1999, Spanish electricity group Iberdrola bought 51% of ESSAL, which held the water supply and sanitation concession for Chile's region X with the exception of the city of Valdivia. Iberdrola made the strategic decision to divest its water activities and since 2001 put ESSAL for sale. Although it has received a number of offers, it has decided that none was worth accepting (Ducci, 2007: 141-142). In September 2007, the Japanese conglomerates Marubeni and Matsui were both reportedly interested in acquiring Iberdrola's stake in ESSAL¹⁵³.

4.4.5. Chilean-owned operations

A number of other operations were in the hands of Chilean firms, altogether representing over 14.3% of Chilean consumers served (Ducci, 2007: 129).

In 2006, the Solari group owned 99% of region IX concessionaire Aguas del Araucania, region I concessionaire Aguas del Altiplano and region XII concessionaire Aguas Magallanes (Ducci, 2007: 129). In September 2007, Japanese conglomerates Marubeni and Mitsui were reportedly interested in acquiring the Solari family's vehicle Aguas Nuevas, through which it owned Aguas del Araucania, Aguas del Altiplano and Aguas Magallanes¹⁵⁴.

In December 2003, Chilean conglomerate Luksic group acquired a 30-year water concession in region II operated by Aguas de Antofagasta after submitting a bid of US\$ 27 million. However, state-owned utility ESSAN remained responsible for the treatment of wastewater generated in the cities of Antofagasta and Calama, which it contracted to the UK-based MNC Biwater. Biwater held a concession to collect and treat 100% of Antofagasta wastewater until 2024. Also, in March 2001 it won a 20-year BOT contract for the construction of a US\$ 6.32 million wastewater treatment plant in Calama but this was cancelled in January 2006 (Ducci, 2007: 129)¹⁵⁵.

In August 2007, a consortium of Chilean firms, made up of engineering company Hidrosan, Icafal Inversiones, and Vecta Inversiones, owned operations in regions III and XI. These included Aguas Chañar, that had won a 30-year operating contract from state-owned utility Emssat in December 2003, and Aguas Patagonia de Aysen that won a 30-year concession to operate state water utility Emssa in January 2003¹⁵⁶.

The only case of water supply and sanitation operations that had not been privatised and that continued to be operated by a municipal enterprise was represented by SMAPA (Empresa de Servicios Municipales de Maipu). SMAPA served the city of Maipu, in the Santiago metropolitan region, which accounted for 4.4% of Chile's total water clients, which boasted the lowest tariffs in the country (Ducci, 2007: 129)¹⁵⁷.

4.5. Colombia

Following a number of sectoral reforms, as of 2005, private operators accounted for 13% of all Colombian water operations, 5.4% was represented by mixed enterprises and 81.6% by municipal operations (Ducci, 2007: 163). At the time of writing and excluding BOT and management contracts in Bogota, water MNCs held concessions in Cartagena de las Indias, Barranquilla and other neighbouring municipalities, Monteria and Tunja. Municipally-owned PLCs (Public Limited Companies or joint stock companies), such as those owned by the municipalities of Medellin, Bogota and Manizales, were running their operations commercially and aggressively seeking to expand their activities in Colombia and other Latin American countries, specifically Peru.

4.5.1. Agbar's ACUACAR in Cartagena

In 1994, a public-private joint venture was set up to provide water supply and sanitation to Cartagena de Indias (900,000 inhabitants). Aguas de Barcelona – part of the Suez group - was the only bidder for a 45.91% stake (Hall and Lobina, 2007; Hall and Lobina, 2002: 19-20). The 26-year French-style affermage-lease contract has been indicated by international and bilateral development agencies as a success story, particularly as regards the expansion of services to the poor (Sotomayor, 2003; ARD, 2005: 61-67; World Bank, 2006). The World Bank (2006) estimates that by 2005 public-private operator Aguas de Cartagena (ACUACAR) had extended access to water supply to 99% of the population, while access to sewerage reached 95%, respectively from 68% and 56% in 1994 (ARD, 2005: 63). Also, service quality had improved for existing customers with 24-hour service becoming “the norm”, the reduction of Unaccounted-For-Water (UFW) from 60% to 41% and the introduction of nearly universal metering. However, the analysis of events suggests that contribution of considerable amounts of public finance, the removal of risks for the private partner and the assumption of liabilities by local authorities enabled the pursuit of commercial considerations without undermining the achievement of performance and social objectives.

The part-privatisation of water services, the first to be adopted in Colombia following legal reform in the early 1990s, was decided in reaction to the inefficiency and underinvestment of public operator Empresas Públicas Municipales de Cartagena (EPMC) (ARD, 2005: 61-62). Haglund and Gomez (2006: 16-17) identify the main causes of EPMC's problems as the “appointment of non-qualified people in posts that required technical expertise”, the fact that “the water service was used to finance other public services, and functioned as a “petty cash drawer” for the municipality” and the artificially low tariffs charged which negatively affected EPMC's ability to invest. The bidding process was hastily organised with very limited time for companies to put forward bids (Haglund and Gomez, 2006: 18) and the mayor signed the contract with Aguas de Barcelona on his last day in office in December 1994. The contract initially provided for the municipal government to hold a 10% equity share in the mixed capital operator (ARD, 2005: 62). In 1995 the newly elected mayor of Cartagena was fiercely opposed to the lack of transparency and potential corrupt inducements in the privatisation, and wanted to annul the contract and remunicipalise the water services, but the World Bank made clear that it would make funding conditional to privatisation. As a result, the mayor simply renegotiated the terms of the arrangements with Aguas de Barcelona.¹⁵⁸ The city council thus came to own 50% while a number of private investors, of whom company employees were a majority, owned the remaining 4.09% (Hall and Lobina, 2007).

Contractual design resulted in significant removal of the risks faced by Aguas de Barcelona. Firstly, the affermage-lease contract requires ACUACAR, whereby Aguas de Barcelona holds a 45.91%

equity stake, to provide a reduced share of investment finance. Secondly, the costs for the operator are reduced by ensuring that it has access to the existing and newly built infrastructure free of cost for the entire duration of the contract. Furthermore, substantial liabilities have been assumed by the municipality as regards payment of pensions to the many former EPMC employees who lost their jobs with the award of the contract. Finally, Aguas de Barcelona is generously remunerated in relation to the risks assumed and for its performance.

Immediately after being awarded the contract, ACUACAR dismissed all the former 1800 employees and rehired 270 of them in order to boost operating efficiency (ARD, 2005: 62). The municipality retained responsibility for payment of pensions to former EPMC staff that had remained unemployed. The consequent financial obligation of 16,000m pesos per year (\$8m) reduces municipal funds available for social investment in health and education...and thus creates a negative impact on the urban poor (Lobina and Hall, 2003). This adversely affected the municipality's finances as its "personnel costs nearly doubled" and the local administration had to assume "high levels of debt during that period to cover operational deficits" (ARD, 2005: 66-67).

ACUACAR had a responsibility for operating water supply and sanitation, but limited responsibility for financing investments. The main investments were financed through a \$117.2m project, of which \$85m was funded by the World Bank, \$20m from the central government, \$7.6m from Cartagena's municipal government and just \$4.6m from Acucar itself, though Acucar is also responsible for repaying 10% of the World Bank loan; and a subsequent project of \$40.5m, with \$24.3m coming from the Inter-American Development Bank (Hall and Lobina, 2007). Hall and Lobina (2007) argue that ACUACAR's claimed achievements in terms of extending water supply and sanitation coverage increased from 1995 to 1999, at a growth rate of 5 to 8%, are not remarkable given the scale of external investment (\$157.7m). Furthermore, as at 1999, the company maintained it had no contractual responsibility for people living in unofficial settlements, and as a result many of the poor remained 'invisible' to the contractor: the company claimed that over 90 per cent of the population were connected by 1999, whereas a World Bank report the same year stated that "Nearly one-third of the population, mostly in poor neighbourhoods, is without running water and basic sanitation services".¹⁵⁹ (Hall and Lobina, 2007)

Also, ACUACAR signed a fee-based management with Aguas de Barcelona, so that Aguas de Barcelona was remunerated both through dividends and the management fees. This arrangement has allowed Aguas de Barcelona to extract increasing revenues from its Cartagena operations, as management fees were calculated as a growing percentage of Acucar's gross income: in the first four years of operation, this management fee was fixed at 2.94%, 3.37%, 3.82% and 4.25% respectively of gross income: in 1999, when ACUACAR declared profits of \$1.96m, AGBAR received \$900,000 from its dividend share and \$1,200,000 from its management fee (Lobina and Hall, 2003). The World Bank (2006) argues that the fact that the management fee perceived by Aguas de Barcelona is linked to revenues "created an incentive to improve billing and collections, as well as to reduce leaks and to extend services". However, it should be noted that the same incentives are expected to derive from the payment of dividends to shareholders. Moreover, the increase in number of connections to the system is prescribed as an obligation for the operator under the World Bank loan agreement and there are contractual provisions for penalties in case of failure to achieve performance targets (World Bank and PPIAF, 2006: 205-206).

The extension of services can also be explained in light of highly increased tariff levels, covering all operational, financial and investment costs, allowing for cross-subsidies and explicit subsidies in favour of low-income consumers (Haglund and Gomez, 2006: 30; World Bank and PPIAF, 2006: 205, 207; Gómez-Lobo and Contreras, 2003). As regards governance, ARD (2005: 64-65) identify public participation via involvement of and supervision by community committees and a citizen watchdog as an element contributing to the achievement of the contract's objectives. Community organisations have also been involved in assisting low-income consumers to pay bills regularly (World Bank and

PPIAF, 2006: 44). Other important factors are said to include the appointment of independent experts to annually audit ACUACAR's activities and the national regulatory framework (ARD, 2005: 64-65).

Other observers have pointed to weaknesses in local democratic control, with the municipality lacking technical capacity for negotiation. As put by Nickson (2001), "To all intents and purpose it is a sleeping partner"¹⁶⁰ (Hall and Lobina, 2007). According to Haglund and Gomez (2006: 19), "After the creation of ACUACAR, there was more social awareness about the importance of water and sewage services for the city, but accountability has not improved. Despite the fact that ACUACAR provides information about outcomes such as coverage, formal mechanisms of control are still weak and have been neglected by the company. For the president of the District Council, the institutional design has a problem: ACUACAR does the design, the building, and the controlling of quality".

ARD (2005: 66) express the concern that, as responsibility for extending the network and improving the existing system are allocated respectively to the municipality and ACUACAR, the risk of sub-optimal capital investment will "increase when lending from the international community eventually ceases". Interestingly, in September 2005 Aguas de Barcelona started negotiations with the Colombian utility Aguas de Manizales aiming to sell its stake in ACUACAR, explaining that it did not see sufficient growth potential in Latin America. The two companies reached an agreement over the sale, but the municipality of Cartagena blocked the deal refusing the approval in its quality of major ACUACAR shareholder. The mayor explained that the refusal was due to the fact that Aguas de Manizales did not have the necessary experience to serve a city of around one million inhabitants. In March 2006, Aguas de Barcelona announced that it would continue operating and being a shareholder of ACUACAR¹⁶¹.

Finally, an important aspect related to the sustainability of private operations is that of the high cost restricting consumers' access to the service. Ducci (2007: 164) notes that the reduction in water consumption has been considerable, down from over 34 cubic metres per month per person in 1997 to some 20 cubic metres per month per person in 2005. Furthermore, in June 2006 40,000 buildings in the La Boquilla neighbourhood were not connected yet to the sewerage network. A number of families referred to the high connection costs as the impediment to accessing the service and others preferred to "keep using septic tanks or they simply don't care about the [sewerage] service"¹⁶².

4.5.2. Canal de Isabel II's Triple A in Barranquilla

"Public-private water operator Triple A (AAA) has reportedly provided water supply and sanitation services to up to 6 million consumers through its combined Colombian and international operations. Colombian activities include core operations in Barranquilla and contracts in Soledad, Santa Marta, Puerto Colombia and, since March 2005, Sabanagrande and Santo Tomas (Hall and Lobina, 2002: 20)¹⁶³. Triple A has also expanded in Ecuador, the Dominican Republic and Venezuela, although it is not clear whether the Venezuelan contract is still running (see below section 4.10 Venezuela: cancelled concessions accompanied by participatory public operations). In March 2007, it was reportedly interested in upgrading Lima's water distribution system and getting other contracts in Peru (Hall and Lobina, 2002: 21; Ducci, 2007: 164-165)¹⁶⁴".

In 2002, Madrid's municipally-owned water company Canal de Isabel II bought a majority stake in INASSA, the company controlling Triple A. This was done through the vehicle Canal Extensia, of which Canal de Isabel II owned 75% while the remaining 25% was held by Valencia-based privately-owned Tecvasa. Madrid municipal government allowed Canal de Isabel II to take out a Euro 58 million loan to finance the acquisition (Ortega de Miguel and Sanz Mulas, 2007: 145).

In 2004, Triple A's management declared that the company was performing well but that the Colombian water supply and sanitation sector was not attractive for investors. In 2005, Tecvasa sold its equity stake to Canal de Isabel II, which thus controlled 60.4% of Triple A. In 2006, Canal de

Isabel II was forced to invest additional equity into INASSA, in order to repay Euro 22 million in bonds that had been issued by Triple A (Ortega de Miguel and Sanz Mulas, 2007: 145-146)¹⁶⁵.

4.5.3. Veolia and FCC's Proactiva in Monteria and Tunja

At the time of writing, Proactiva, a joint subsidiary of Veolia and FCC, served 3.1 million people in Colombia through 3 contracts: a BOT wastewater contract in capital city Bogota, a water supply and sanitation contract in Monteria and a water supply and sanitation contract in Tunja.

In November 1999, Proactiva won a 20-year water supply and sanitation concession in Monteria¹⁶⁶. According to Veolia, the number of people served with water supply in Monteria was 329,000 while those connected to the sewerage system were 124,000. An IDB report considers the Monteria contract as a positive example of private sector participation (Roda, 2003: 34-35). However, in May 2003 Proactiva was under investigation for alleged misuse of national and regional funds in Monteria. The private operator was also criticised for low investment levels and failing to reach contractual targets in the first three years of operations. Although the Monteria contract was a concession, whereby the private operator was expected to be responsible for financing all operating expenditure and infrastructure investment, the government had invested Peso 13 billion (US\$ 4.55 million)¹⁶⁷.

Proactiva also held a 30-year water supply and sanitation concession in Tunja, running from 1996 to 2026. According to Veolia, the number of people served with water supply in Tunja was 151,000 while those connected to the sewerage system were 148,000.

4.5.4. Bogotá BOT contracts

In March 1998, a private operator 33.34% owned by Proactiva was awarded a 20-year drinking water supply BOT (Build-Operate-Transfer) contract. The Tibitoc plant, located in the Bogota suburbs, sold 206.5 million cubic metres per year and served 2 million people, almost 30% of Bogota's population. The private operator invested US\$ 22 million in three years in rehabilitating the water treatment plant and water mains.

In 1994, Suez Degremont's subsidiary Bogotana de Aguas y Saneamiento won the 30-year Salitre wastewater BOT contract (3-year for construction and 27-year for the operation of the plant) serving 2 million people in Bogota. In December 2004, the contract was terminated after the city council calculated that the project was charging ten times too much, and that it was worth paying US\$ 80 million to buy out the contract (Hall and Lobina, 2006: 45)¹⁶⁸.

4.5.5. EAAB and EPM in Bogotá

According to a World Bank study (Sotomayor, 2003: 1), municipally-owned EAAB (Empresa de Acueducto y Alcantarillado de Bogota) is among the most efficient public utilities in Colombia, together with Medellin's EPM (Empresas Publicas de Medellin) and Manizales' Aguas de Manizales.

Since 2000, EAAB has undergone a programme of "modernisation" aiming at minimising costs and maximising efficiency through the subdivision of Bogota in 5 operational areas. Each operational area was responsible for the operation and maintenance of the secondary water supply and sanitation network and commercial management, including dealing with consumers' complaints. In December 2002, EPM's subsidiary EPM Bogotá Aguas won the 5-year management and services contract to connect users to the water supply and sanitation network, manage water distribution, metering, billing, commercial management and dealing with users' complaints in two of the five operating areas in central and south-eastern Bogota (areas 3 and 4)¹⁶⁹.

More precisely, EPM Bogotá Aguas was composed of Medellin's EPM, EPM's El Retiro-based subsidiary Aguas del Oriente Antioqueño, EPM Bogotá, Emtelco and EPM employees' FEPEP¹⁷⁰. In March 2007, EPM was reportedly interested in upgrading Lima's water distribution system¹⁷¹.

Management and services contracts had also been awarded to Acea's Agua Azul, in consortium with local consulting firm Grucon, for Bogota's areas 2 and 5 and to Aguas Capital, a consortium made of local engineering firms and Brazil's Gas Capital, for area 1¹⁷². Rome-based MNC Acea owned 51% consortium of Aguazul Bogota and served 2.5 million people in the respective areas. It expected the contract to generate an annual turnover of US\$ 10 million¹⁷³.

4.5.6. Aguas de Manizales' contract in Cesar department

Aguas de Manizales is the municipally-owned water company of Caldas department's capital city Manizales. Following the blocked deal to take control of ACUACAR¹⁷⁴, in August 2006 Aguas de Manizales was to start a 3-year, US\$ 5.2 million operating contract to provide water supply and sanitation services to 24 communes in the department of Cesar, with the exception of the capital city of Valledupar. Furthermore, Aguas de Manizales was planning to expand operations in the department of Magdalena¹⁷⁵.

4.5.7. Emcali

Emcali, wholly owned by the municipality of Cali (Colombia's second largest city), provides water, sewerage, electricity and telecommunications to 3 million people. Since the 1990s, Emcali has been under severe financial stress entirely caused by the terms of a power purchase agreement (PPA) with private generating company TermoEmcali, which required Emcali to buy electricity even if it did not need it or could not afford it. Privatisation was proposed as the solution, and this has been strongly – and successfully – opposed by the trade union, SITRAEMCALI, through strikes, occupations, and an international campaign including PSI and affiliates (Hall and Lobina, 2002: 9)¹⁷⁶.

At the time of writing, Emcali remained in public hands, although it had been put under administration in 2000, in order to restore its financial situation. This meant that public services regulator Superservicios effectively managed the enterprise, under a plan to restore its financial viability. The rescue plan provided for restructuring Emcali's debt, reviewing collective work contracts, renegotiating the unsustainable PPA agreement and setting up a social capitalisation fund aiming at realising savings of US\$ 1.07 billion over 20 years and guarantee repayment of debts. The plan was agreed in May 2004 and managed to avoid Emcali's liquidation, as this had debts for over US\$ 500 million.

The agreement was signed by the central and the municipal governments, local creditors, Termoemcali, service users and workers. The central government would contribute US\$ 373 million (Peso 1 trillion) to the social capitalisation fund and would repay debts contracted with the Inter-American Development Bank (IDB) and the Japan Bank for International Cooperation (JBIC) so that Emcali would use its own resources for investment purposes. Cali municipality would start paying for the services received from Emcali and contribute Peso 245 billion in assets and cash for the utility. The 3,200 Emcali employees would contribute Peso 56 billion in the form of cuts in vacations, pension and health payments, but would have payment of their pensions guaranteed for the following 20 years. Local creditors agreed to forego 35% of their outstanding debts, equal to some Peso 360 billion, as did Termoemcali. The PPA was renegotiated to reduce monthly payments to US\$ 1.5 million from US\$ 4.5 million. Finally, consumers would contribute around Peso 400 million over the following 20 years through additional charges. The agreement would ensure the funding of a 5-year, Peso 2.8 trillion investment programme focused on upgrading telecommunication technology and investments in water infrastructure.

A trade union representative declared that they were not happy with the agreement but had signed because the only alternative to that would have been the liquidation of Emcali. However, the union remained worried about Emcali's future. The agreement also provided for an administrative board of creditor representatives to supervise Emcali's activities and Emcali's board, still to be appointed by the mayor of Cali. It was explained that since the creditors had "invested the money so they can drive the company". While Emcali would be turned into a holding company for the different activities, "the

physical structure of the company will remain intact with no intention to spin off any divisions that include electricity, water, sewerage and telecommunications”.

In 2004, Emcali posted net profits of Peso 104 million (US\$ 44.8 million) as opposed to Peso 470 billion net losses the previous year. In December 2006, Superservicios announced that Emcali would remain under administration for further three years, despite calls from the local government to resume municipal control. The regulator explained that, according to projections, it would only be in 2010 the company's management indicators would have improved sufficiently to return it under municipal control. In January 2007, the Colombian government declared that Emcali would have to select a private operator to be competitive in the telecommunication market¹⁷⁷. At the time of writing it was not clear whether that would imply the privatisation of part-privatisation of the other activities of Emcali, including water and electricity.

4.6. Ecuador

4.6.1. Quito: Emaap privatisation cancelled after public campaign

Quito water system and been the object of an attempt to privatise which has met popular resistance in the form of a public campaign, which led to the cancellation of privatisation plans. The municipality of Quito had been planning to privatise water supply and sanitation company Emaap since 2003. The municipality resorted to consultancy Price Waterhouse to conduct a study on how to privatise part of the system, in the Parroquias Orientales District, arguing lack of public funds to make the necessary new investments¹⁷⁸.

More precisely, the plan provided for the selection of a private operator and the transformation of Emaap into a public-private company. Four consortia pre-qualified for the final phase of the bidding process. These were the Chilean engineering company Hidrosan (owner of Aguas Chañar and Aguas Patagonia), the Argentine private operator Latinaguas, a Colombian consortium including Aguas Capital (which held a management and services contract in Bogota) and the UK-based MNC Biwater¹⁷⁹.

The Coalition for the Defence of Public Water, a national organisation of trade unions and community groups supporting the human right to water, including lawyers and ecological groups, community groups, women's groups and indigenous peoples networks, carried out information and education campaign with the support of PSI (Public Services International). The campaign focused on analysing the implications of the proposed privatisation deal. The Coalition was able to prove that the financial calculations made by Price Waterhouse actually required the Municipality to provide almost USD 20 million in the first 5 years. On the other hand, the private companies, which would take over the concession, would only be required to invest USD 7 million. The Coalition also showed that after the 6th year of the concession, the private company could expect to make a profit over the next 30 years of up to USD 226 million. Further, the company would have exclusive rights to the water sources in the Quito region¹⁸⁰.

As a result of the Coalition's campaign, the bidding process was first suspended in September 2006 and in March 2007 the mayor of Quito announced publicly that the water privatisation process would be definitively cancelled¹⁸¹.

4.6.2. IWL's Interagua to stay in Guayaquil

In December 2000, Interagua won a 30-year water supply and sanitation concession in Guayaquil starting from April 2002. Interagua is a joint venture between International Water Holdings (IWH) - which is owned 50-50 by Bechtel, the USA construction company, and Edison s.p.a., the Italian electricity company – and an Ecuadorian company, Equidor, S.A.¹⁸² As of 31st March 2007, Edison

and Bechtel owned 50% each of IWH, and 45% each of International Water Services (Guayaquil) Interagua C. Ltda, up from 26.55% in December 2006.¹⁸³

According to the accounts of Edison s.p.a., in 2006 Interagua had sales revenues of Euros €34million, an increase of 9.7% over 2005; an operating profit of Euros €10m., over 29% of the income; but invested only Euros €8m.¹⁸⁴ The IADB financed the costs of creating the private concessions in the first place, lending the Ecuadorian government \$40m. from 1997 to “to prepare the transfer of the concession to the private sector” and convert the state water company into a regulatory body; from 2003, IADB loaned Interagua US\$50m., and in 2006-07 a further US\$28 million¹⁸⁵ Interagua also raised US\$10 million from local investors by issuing interest-bearing notes at the end of 2003.¹⁸⁶

Since the inception, the concession had attracted controversy due to conditionality imposed by the IDB, IWL’s anti-labour practices. The World Bank’s MIGA (Multilateral Investment Guarantee Agency) had issued a US\$18 million guarantee to International Water Services (Guayaquil) BV of the Netherlands against political risks such as expropriation, civil disturbance and the wrongful call of a performance bond (Hall and Lobina, 2002: 20-21).

MIGA has presented Interagua’s concession as a successful case of private sector participation¹⁸⁷. As a matter of fact, by mid 2007 the concession was “under fire” and facing “mounting complaints from consumers”. Ecuador’s consumer rights watchdog Defensoría del Pueblo filed a legal injunction against what it claimed were “excessive charges”. In July 2007, Ecapag (Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil), which acted as a regulator, fined Interagua for failing to comply with contractual targets for the first five-year period of operations. More precisely, Interagua had failed to realise 8,243 of the 55,238 connections provided for by the contractual agreement. Local authorities declared that despite the problems experienced the concession would continue for the remaining 25 years, but under tighter scrutiny. To that effect, in August 2007 Guayaquil municipality was to assume the control of Ecapag from the central government and carry out regulatory functions¹⁸⁸.

It was not clear whether local authorities had decided to carry on with the concession due to the prospect of having to pay compensation in case of termination, as a result of MIGA’s coverage.

4.6.3. Triple A’s Amagua in Samborondon

In September 2000, Triple A in joint venture with Canal de Isabel II took over privatised water company Amagua in Samborondón. Amagua had been created as a public-private joint venture between the municipality and a Triple A subsidiary (Hall and Lobina, 2002: 21). As at June 2006, Amagua was still part of the Triple A group and continued to operate in Samborondón¹⁸⁹.

4.7. Paraguay’s Essap under renewed pressures to privatise before entering WOP with Brazilian COPASA

Paraguay’s state-owned water company Essap, previously known as Corposana, has recently been under renewed pressure to privatise by opening up its capital to private investors and outsourcing services. In June 2002, the Paraguay parliament voted to indefinitely suspend the privatisation plans for Corposana, which had been driven by fiscal considerations and IMF (International Monetary Fund) conditionality. The proposals were for the subdivision of Corposana into up to seven concession areas and the award of operating licenses in the different zones. The high level of redundancy compensation payments to public employees had represented a major obstacle to the implementation of the proposals (Hall and Lobina, 2002: 21).

In January 2006, the Paraguayan government presented to the IMF plans to include private capital in Essap as “a step forward to consolidate a better country image in the eyes of multinational entities”. Some of Essap’s services would be contracted out to third parties. In December 2006, the central

government established a regulatory council with responsibility over a number of public enterprises including Essap. The regulator would be in charge of promoting efficiency “by redefining management schemes” and “incorporating reforms and regulations”. The government did not rule out privatising or awarding concessions for the operations of any of the public undertakings. “One of the priorities of the council will be to define the exact losses of the country's national sanitation service utility Essap ... Once numbers are clear, authorities will work towards reducing financial losses and improving service quality while maintaining competitive prices. Regulating the public entities will also serve to determine, in the near future, which would most benefit from either improving public management or developing it through privatization or public-private partnership schemes”. The central government had previously a study carried out by a consultancy firm which “recommended reforms to improve services, quality and profitability, and to establish fair prices”¹⁹⁰.

In September 2007, the Paraguayan state water utility Essap signed an agreement with Brazilian operator COPASA for the provision of technical assistance on a not-for-profit basis under the UN Water Operator Partnership initiative (see above section on *Minas Gerais Copasa semi-privatised*). COPASA would provide technical assistance aimed at helping Essap reduce water leakage in Paraguayan capital Asunción and its metropolitan area to increase Essap's water provision capacity¹⁹¹. Interestingly, in January 2006 Essap's five trade unions had requested congressional intervention in the company to resolve water shortages in capital Asunción. The trade unions declared “We requested the national congress to intervene in the company to investigate irregularities in the shortage of water and in certain cases the distribution of water, as well as to look into the managerial deficiencies and lack of foresight”¹⁹².

4.8. Peru

In December 2005, the IDB approved a US\$ 50 million loan to Peru in order to promote public-private partnerships (PPPs) in water supply and sanitation. The project's total costs amounted to US\$ 90.3 million, of which the Peruvian government would contribute US\$ 18 million and German development bank KfW US\$22.3million. Reception of the funds by the municipalities were effectively conditional upon the involvement of private sector operators. The first planned privatisations were those of Tumbes and Piura-Paita, while feasibility studies were also being carried out for possible projects in Huancayo, Pucallpa and Trujillo, and other municipalities had expressed interest in the program¹⁹³.

4.8.1. Lima's Sedapal not to be privatised, yet

Sedapal is the state-owned water supply and sanitation operator serving Peru's capital city Lima and Callao. Unaccounted-for Water in the northern part of Lima reaches 58%, as pipes are from 50 to 70 years old. There have been requests for Sedapal to be privatised or handed over to a private concessionaire, specifically and unusually by vocal neighbourhood association “Peruanos sin Agua” (Peruvians without Water). Pressure group “Peruanos sin Agua” have organised a campaign and in April 2005 staged a 3,000-strong rally calling for Sedapal's privatisation, claiming that the utility had neglected low income peri-urban residents as it is too slow at extending service coverage. The same day, another rally counting 1,000 shanty town dwellers protested against the proposed privatisation of Sedapal claiming that the company had become efficient with profits of some US\$ 30 million in 2004. The CATO Institute have echoed the demands of “Peruanos sin Agua”¹⁹⁴.

In March 2007, Peruvian Minister for Housing, Construction and Sanitation Hernán Garrido-Lecca declared that the government refused to “offer capital Lima's water utility Sedapal under concession because a private company would have to quadruple water rates in order to turn a profit”. In August 2007, Sedapal turned out the public enterprise that had invested more in the first six months of the year. Sedapal had invested over Sol 138 million to extend water supply and sewerage networks in Lima and Callao¹⁹⁵.

In November 2006, Brazilian Sabesp and SEDAPAL were planning to set up a joint venture to provide water supply to seven districts located in Lima's southern area (see above section on *Sao Paulo's Sabesp semi-privatisation*)¹⁹⁶. Also, in August 2007 Colombian companies Triple A and Medellin's EPM were "interested in investing in the upgrading of Sedapal's water distribution systems", as stated by Minister Garrido-Lecca¹⁹⁷.

4.8.2. Rio Chillon bulk water concession

In January 2000, a consortium of Rome's ACEA, Italian construction company Impregilo and Peru's largest construction company Cosapi won a 27-year concession to provide bulk water supply to the northern region of Lima, Peru, with a population of 750,000. Bulk water is supplied on a take-or-pay basis to Sedapal. Concessionaire Agua Azul financed their 2-year US\$ 35 million investment programme by raising US\$ 10 million equity, and selling a US\$ 25 million bond issue, to local investors including pension funds. This was highly rated because the state water company Sedepal has signed a take-or-pay agreement, which is further guaranteed by the government, and the price is indexed to the US dollar (Hall and Lobina, 2002: 21).

Despite the indexation to the US dollar, the Rio Chillon operations have appeared to be exposed to fluctuations due to currency volatility, but also high financial costs. In 2004, Agua Azul posted net profits of Sol 12.2 million (US\$ 3.74 million), which represented a 50% increase in respect of 2003. "Exchange rate gains from a stronger sol helped boost the bottom line, while sales revenue fell 3.96% to 36.3mn soles and operating profit dipped 6.1% to 19.1mn soles". By contrast, in 2005 recorded net profits were at Sol 2.85 million (US\$ 855,000), or 76.7% less than the previous year. "In 2005, net sales dipped 0.42% to 36.1mn soles and operating profit fell 3.35% to 18.5mn soles. Exchange rate losses and continued high financial costs impacted the bottom line"¹⁹⁸

4.8.3. Problems with Latinaguas' Tumbes concession despite German and Peruvian public subsidies

Despite an injunction filed by workers to stop the privatisation, in July 2005 a 30-year concession to operate water supply and sanitation utility Empafa serving 180,000 urban customers in the department of Tumbes, was awarded to Aguas de Tumbes, an Argentinean-Peruvian consortium Latinaguas-Concisa. The Latinaguas consortium offered US\$ 31 million in investments. Other pre-qualified groups included: Consorcio Concesionario de Aguas de Tumbes, a consortium of Colombian firm Conalvias, Cuban company Tecnicas Hidraulicas and Medellin's EPM); Chilean engineering company Hidrosan Ingenieria; Veolia and FCC's joint subsidiary Proactiva; and, Colombia's Conhydra-Hidropacifico-Gecolsa¹⁹⁹.

This was the first water concession to be awarded in Peru's history, and received international and national subsidies. Investments were projected at US\$ 62 million, of which German development bank KFW would provide Euro 17.5 million (US\$ 21.9 million) and the Peruvian government would contribute Euro 4million for initial works. More precisely, "The government is to secure over the first five years the income to the concessionaire, to be paid Euro\$1,350mil over the first stage of the concession contract. To support the privatization KFW is to donate US\$15mil and lend other US\$15mil upon the condition the resources would be managed by a third private operator"²⁰⁰.

Despite such a generous support, Peruvian regulator Sunass reportedly found that in the first year of operations Aguas de Tumbes had failed to extend water supply and sanitation networks and only achieved 5% of the contractually established operational targets²⁰¹.

4.8.4. Piura-Paita concession

In October 2006, Peruvian authorities postponed a 30-year water concession in Piura-Paita to 2007. Pre-qualified bidders were the following consortia: the Argentine-Peruvian consortium Latinaguas-Concysa; a consortium of Colombia's Conalvias and Cuban firm Técnica Hidráulica); the Veolia and FCC's joint subsidiary Proactiva; and, the Colombian consortium Conhydra-Odinsa²⁰².

Projected investments, which were to benefit at least 450,000 people, amounted to US\$ 130 million, of which the Peruvian government would contribute US\$ 20 million to US\$ 25 million and US\$ 70 million would be financed by a loan from the Japan Bank for International Cooperation²⁰³.

4.8.5. Huancayo concession cancelled and Water Operator Partnership approved instead

In November 2005, Peruvian authorities were preparing to award a concession in Huancayo along the same lines as the Tumbes and Piura-Paita concessions²⁰⁴. However, trade unions in Huancayo and in the Buenos Aires province have promoted a Water Operator Partnership between the respective enterprises, Sedam Huancayo and ABSA (“5 de setiembre”-operated Aguas Bonaerenses). The partnership is for the mutual technical collaboration and assistance between the two public companies. An initial study was carried out to assess the extent of needs and to determine compatibilities, following which contracts have been negotiated and signed. At the time of writing, the partnership was operational. The Water Operator Partnership was accompanied by a parallel agreement entered into by trade unions FENTAP and SOSBA under the auspices of PSI. The agreement also provided for the involvement of NGOs Transnational Institute (TNI) and Corporate Europe Observatory (CEO) to support the process by contributing their expertise “experience in the field of organising and international solidarity”. The planned concession has thus been cancelled²⁰⁵.

4.8.6. Improved service coverage under public water company Sedacaj

Sedacaj is a municipally-owned, corporatised water company established as a PLC (Public Limited Company or joint stock company). It operates in the area of Cajamarca and its shares are entirely owned by the municipal governments of Cajamarca, Contumazá and San Miguel. Observers have indicated Sedacaj as a positive example of public water operations as, by 2003, it had achieved to expand water services from 71% to 93%²⁰⁶.

4.9. Uruguay: referendum and constitutional reform followed by termination of private concessions

On Sunday 31st October 2004, in Uruguay, a referendum proposing a constitutional amendment on water was approved by 62.75% of voters. The amendment includes a number of elements, including the statement that access to piped water and sanitation are fundamental human rights, and that social considerations take priority over economic considerations in water policies. It also includes the statement that:

“The public service of sewerage and the public service of water supplying for the human consumption, will be served exclusively and directly by state legal persons”

(“El servicio público de saneamiento y el servicio público de abastecimiento de agua para el consumo humano serán prestados exclusiva y directamente por personas jurídicas estatales.”
See Annexe for Spanish and English text of constitutional amendment.)

4.9.1. History

The referendum was promoted by the National Commission for the Defence of Water and Life, which included FFOSE - the trade union representing workers in the publicly owned water and sewerage company Obras Sanitarias del Estado (OSE) - and several civil society organisations, including REDES-Amigos de la Tierra (Friends of the Earth). Water supply has been privatised through concession contracts in two places in Uruguay, and the campaign was based on dissatisfaction with the performance and behaviour of these concessions, the pressure for new privatisations from IMF loan conditionalities, and further threats arising from trade liberalisation negotiations in the WTO, the FTAA, the EU-Mercosur and other free trade and investment agreements. The campaign was also based on concern for the environment, including the exploitation of water resources, and on concern for the untransparent management of the public utility (whose directors were themselves in favour of privatisation).²⁰⁷

4.9.2. Implementation and effect

The next step under Uruguayan law is that the parliament is now obliged to draft legislation outlining the mechanisms for implementing the constitutional reform. Presidential and parliamentary elections were also held on the same day in Uruguay, with a victory in the presidential election for Tabaré Vázquez, the candidate of the left-wing EP-FA (Broad Front - a popular front, in political terms) coalition, which was one of the supporters of the constitutional reform: the Broad Front also won an absolute majority in both houses. There is some disagreement on the effect on existing concessions, but the amendment states that the compensation which may be payable will only cover past investments which have not been fully recovered, not compensation for lost future earnings (Hall et al., 2004: 2-3).²⁰⁸

4.9.3. Terminated concessions: Agbar's Aguas de la Costa and Aguas de Bilbao's Uruguay

According to Ducci (2007: 145), the constitutional reform led the Uruguayan government to negotiate, not without difficulty, the exit of the multinational operators from the country. This happened in October 2005 in the case of Aguas de Bilbao, which held the Uruguay concession, and in September 2006 in the case of Agbar's Aguas de la Costa.

However, it should be noted that both concessions had attracted a considerable amount of controversy prior to the referendum to outlaw water privatisation. For more details, see Hall and Lobina (2002: 21-22).

In May 2007, the Andean Development Corporation (Corporacion Andina de Fomento) acknowledged that "Uruguay's state-owned water utility (OSE) has proven to be financially sustainable"²⁰⁹.

4.10. Venezuela: cancelled concessions accompanied by participatory public operations

In April 1999, a 4-year management contract for the management of national holding company Hidroven's subsidiary Hidrolara, in the state of Lara, was awarded to Spanish company Aguas de Valencia. Improvements to the service were below expectations and the contract was terminated by amiable agreement in December 2002, three months before its expiry (Ducci, 2007: 152-154).

Another 4-year management contract in the state of Monagas was awarded in March 1997 to FCC's Aguas de Monagas. The contract, which covered 620,000 inhabitants, was not renewed at its expiry in March 2001 due to the governmental authorities' dissatisfaction with the results and the change in the country's political climate. State water company Hidroven's president declared that public operations were problematic and that rehabilitation was being planned (Ducci, 2007: 154-157).

A 30-month contract for the management of Hidrologo in the state of Zulia, covering 3.5 million inhabitants, was awarded in August 2001 to Triple A (Hall and Lobina: 22). It is not clear whether operations have continued after May 2003²¹⁰.

According to Veolia, Proactiva has a contract for the network maintenance and management and commercial administration in central Caracas, from 2002 to 2008. The operations employ 96 workers.

Public participation under the public operation of Hidrocapital, involving CBOs in metropolitan Caracas and peri-urban areas, has been described by a DFID-funded study as an example of building responsible citizenship. The reforms have, according to the authors, "helped improve coverage of WSS services and strengthened community solidarity ties, while providing examples of participatory democracy where not only rights, but also duties of community members are stressed. They have arguably helped reduce the impact of patronage politics which has been historically facilitated by the high revenues of the oil-rich Venezuelan state to which local and national politicians have had access as means of providing infrastructure in exchange for votes" (Allen et al., 2006: 35, 56-57, 59, 77-78, 88).

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²⁰² Source: “ProInversión pushes back Piura-Paita EPS concession process to 2007”, Business News Americas, 10 October 2006; “Grupo colombiano Odinsa busca concesión de servicio de agua potable en Perú; Odinsa, tras concesión en Perú”, Portafolio (Colombia), 26 April 2006.

²⁰³ Source: “ProInversión pushes back Piura-Paita EPS concession process to 2007”, Business News Americas, 10 October 2006; “Grupo colombiano Odinsa busca concesión de servicio de agua potable en Perú; Odinsa, tras concesión en Perú”, Portafolio (Colombia), 26 April 2006.

²⁰⁴ Source: “ProInversion; Concesiones de sanitarias atraeran US\$180mn en 5 anos”, Business News Americas, 14 November 2005.

²⁰⁵ Source: <http://www.world-psi.org/Template.cfm?Section=Home&CONTENTID=18502&TEMPLATE=/ContentManagement/ContentDisplay.cfm>; Email communication with Philipp Terhorst, 31 October 2006.

²⁰⁶ Source: GUISELLA VARGAS OCHOA, “Peru desperdicia el 42% de agua potable”, El Comercio (Peru), 18 April 2003; <http://barrioperu.terra.com.pe/sedacaj/nosotros/nosotros.htm>.

²⁰⁷ See El Agua es a todos <http://www.redes.org.uy/pdfs/folleto%20agua.pdf> ; Hacia un URUGUAY SUSTENTABLE

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²⁰⁸ AMBIENTE-URUGUAY: No a la privatización del agua. Raúl Pierri. <http://www.ipsnoticias.net/print.asp?idnews=31860> (English version) URUGUAY: Referendum Gives

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²⁰⁹ Source: "CAF; State-owned basic services good if sustainable", Business News Americas, 9 May 2007.

²¹⁰ Source: "Triple A moves forward on Soledad waterworks", Business News Americas, 5 May 2003.