

Private to Public: International lessons of water remunicipalisation in Grenoble, France

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• Abbreviations

ADES: Association Démocratie Ecologie Solidarité

AMF: Association des Maires de France

CES: Conseil Economique et Social

CFDT: Confédération Française Démocratique du Travail

CGT: Confédération Générale du Travail

cm: cubic metres

COGESE: Compagnie de Gestion des Eaux du Sud-Est

CRC: Chambre Régionale des Comptes

DGCCRF: Direction générale de la consommation, de la concurrence et de la répression des fraudes

EPIC: établissement public à caractère industriel et commercial local

FF: French Francs

FNCCR: Fédération Nationale des Collectivités Concédantes et Régie

GdE: Générale des Eaux

LdE: Lyonnaise des Eaux

OTV: Omnium de Traitement et Valorisation (Vivendi-GdE engineering subsidiary)

PCF: Parti Communiste Français

pcm: per cubic meter

PPP: public-private partnership

PS: Parti Socialiste

RPR: Rassemblement pour la République

SDA: Société Dauphinoise d'Assainissement

SDEI: Société de Distribution d'Eau Intercommunale

SEG: Société des Eaux de Grenoble

SEREPI: Société d'Exploitation des Réseaux d'Eau Potable Intercommunaux

SGEA: Société Grenobloise de l'Eau et de l'Assainissement

SITA: Société Industrielle de Transports Automobiles SA

SIVOM: Syndicat Intercommunal à Vocation Multiple

UDF:

US\$: US Dollars

VAT: Value Added Tax

- **Notes on company names and terminology**

Suez-Lyonnaise is used to refer to the group now called simply Suez, whose water division is now named Ondeo. At the start of the events in Grenoble the company was known as Lyonnaise des Eaux, later as Dumez-Lyonnaise des Eaux, and then as Suez-Lyonnaise des Eaux before its current name of Suez.

Vivendi-GdE is used to refer to the group known as Generale des Eaux (GdE) until 1998, when it was renamed Vivendi, and then Vivendi-Universal in 2000. In the same year the division dealing with public services became a company called Vivendi Environnement, whose water section is Vivendi Water.

Régie – a municipal operation, capable of various forms, which has separate accounts from the council but is 100% owned and controlled by the council.

Concession, affermage, contract, delegated management – are used to reflect French usage as far as possible when discussing Grenoble. In discussions of the international implications, 'concession' is used broadly to cover all forms of privatisation or delegated management of water or sanitation systems.

- **Full version**

This paper is a condensed version of a full report on Grenoble, to include details of events, which will be published by PSIRU in September 2001.

1 Introduction

Grenoble is a city in south-eastern France, with a population of about 150,000. Water supply and sanitation in the city of Grenoble were delegated under *affermage* contracts to a subsidiary of Suez-Lyonnaise in November 1989. The sanitation service in the region of greater Grenoble (population 372,500) was delegated earlier, in 1985, to a joint venture owned equally by Suez-Lyonnaise and Vivendi-GdE

These privatisations of water supply and sanitation in Grenoble were facilitated by bribery of local politicians; they were costly to the citizens of Grenoble, because the companies charged more than was justifiable by their expenditure, and exploited privileged access to subcontracting; and there was throughout a lack of transparency and accountability.

After a decade of political activity directed at the contractors, and a series of civil and criminal court cases, Grenoble city council finally decided in the year 2000 to terminate the private contracts and replace them (with one partial exception) by a municipal service through two new régies.

The experiences of Grenoble provide a number of important lessons about the management, regulation and financing of water supply and sanitation.

Table 1 : Services covered by Grenoble contracts and remunicipalisations

	Grenoble City water	Grenoble city sanitation	Grenoble region sanitation	Aquapole treatment plant
1989-1995	Contract: COGESE		Concession: SDA	
1996-2000	Contract: SEG			
2000 >	Regie: water supply	Regie: sanitation		Concession: SDA

2 The Grenoble city water and sanitation contracts

2.1 The award of the contract, 1989

In 1984, the then Mayor of Grenoble Alain Carignon, initiated a new policy in favour of private sector participation in gas, electricity and water services. Carignon was a prominent member of RPR, the party whose general secretary from 1976 to 1978 was Jérôme Monod, then chairman of the major water company Lyonnaise des Eaux (now part of Suez).

In 1989, Carignon proposed privatisation of the city's water services to Suez-Lyonnaise subsidiary COGESE (Compagnie de Gestion des Eaux du Sud-Est).

The deal went ahead in spite of strong opposition led by the ecologist party ADES (Association Démocratie Ecologie Solidarité) and the trade unions (CGT and CFDT) , which included strikes,

demonstrations and a court petition against the privatisation plan from the trade unions, consumers and citizens associationsⁱ. Despite this opposition, Grenoble city council voted on 3rd November 1989 to award a 25-year long water supply and sanitation contract to COGESE.

The 1989 privatisation ended more than a century of municipal provision of water supply in Grenoble. At the time of privatisation, municipal water supply was very efficient in the light of the extremely low price to consumers and good quality of water supplied and service provided. Municipal management was also financially sound as, despite the low water price, the service was profitable and regularly contributed to the municipal budget.

2.2 Corruption and convictions of Carignon and Suez-Lyonnaise executives

In 1994 examining magistrates in France began examining a number of public service concessions for corruption, including the Grenoble deal. They concluded that the water service was privatised in exchange for contributions by Lyonnaise des Eaux to Carignon's electoral campaign, and other gifts, totalling over FF 19 million, and prosecuted Carignon, and two executives of Suez-Lyonnaise.

In 1995 both Carignon – who was by then minister of communications in the central government – and Jean-Jacques Prompsey, a Lyonnaise des Eaux executive, who was by then chief executive of the worldwide business of SITA, Lyonnaise's waste management division – were convicted of respectively accepting and paying bribes, and sentenced to prison. These sentences were increased on appeal, to 4 years and 1 year respectively. The courts also ruled that the corrupt deal had damaged consumers and allowed consumers to claim compensation, fixed at a total of FF 300,000 by the Chambéry Cour d'Appel on 10th June 1998 ⁱⁱ.

2.3 The costs of the corrupt contract

The COGESE contract proved costly to the citizens of Grenoble, because the company used a number of techniques which inflated the prices charged to consumers.

2.3.1 Charging for 'entry fees'

As part of the contract, the company agreed to pay to the municipality "entry fees" worth FF226million, with annual payments each year ⁱⁱⁱ. This economic inducement to privatisation was subsequently paid for by the consumers, because COGESE recovered the cost through charging users: the "entry fee" thus became an indirect form of taxation. In May 1999 the Grenoble Tribunal Administratif declared illegal the part of water supply and sewerage tariffs imposed by COGESE which recovered the "entry fees" ^{iv}. This practice is now generally illegal in France, as French law requires water operators to charge consumers only for the service provided ^v.

2.3.2 Exclusive works contracts

COGESE had exclusive rights to nearly all works contracts, which was therefore an extra source of profits for Lyonnaise des Eaux additional to the contract itself. COGESE annual reports, however, did not account for these profits from works contracts ^{vi}.

2.3.3 Indexing of prices

COGESE manipulated indexation in two ways which resulted in over-charging. Firstly, base prices were fixed at their value on 1st January 1989 rather than 1st July 1989 ^{vii}. Eau Secours estimate that this added between 4% and 5% to prices during this period. Secondly, users were charged using the price level at the time of invoicing, established after applying indexation from base values on 1st January and 1st July each year, rather than the price at the time of consumption; this was declared illegal in May 1999 by the Grenoble Tribunal Administratif. ^{viii ix}. Eau Secours estimate that from 1989 to 1995 over 51% of invoices were inflated by these techniques, by a total of FF 21 million.

2.3.4 Fictitious accounting

COGESE reported losses each year, and then added each year the amount it would have paid if it had taken out a loan to balance its accounts. By 1993, this practice meant COGESE was reporting FF 7 million debt service although true debt interest was only FF 2.88 million. COGESE claimed that this was a way to remunerate the shareholders without taking out a loan to balance its accounts. The Chambre Régionale des Comptes however condemned the company for creating fictitious costs which would have remained for long in the company accounts even after the operator had broken even ^x.

2.3.5 Cost to citizens

The CRC estimated in 1995 that the total cost of these practices to the citizens of Grenoble, over the 25-year life of the COGESE contract, was in excess of FF 1 billion. ^{xi}

Table 2 : Cost to citizens of COGESE practices

Source	CRC estimate over 25 years; excluding VAT)
Costs to Consumers (Excess Charges)	FF 830m
Excess Costs to Taxpayers	FF 179m
Total Excess Costs (1989-2014)	FF 1,009m

2.4 Renegotiation – the public-private partnership

In 1995, the courts convicted executives of Suez-Lyonnaise, and the former mayor, of corruption. The 1995 elections also changed control of the municipality, with the new majority led by the socialist party and the ecologist party ADES. ADES favoured termination of the contract and remunicipalisation, but the majority was deterred by the prospect of having to pay compensation of between FF 150m and FF 400m, including the return of the entry fees.

In May 1996 a new company was created, Société des Eaux de Grenoble (SEG). It was 51% owned by the council, and 49% by Suez-Lyonnaise; the council appointed 7 directors, the company 5; but Suez-Lyonnaise held a veto over all major decisions and specifically over any decisions on investment policy, conclusion of contracts with other municipalities, modification of agreements with Grenoble municipality and modification of personnel ^{xii}.

But SEG then immediately sub-contracted water supply and sanitation for 15 years to another company, Société Grenobloise de l'Eau et de l'Assainissement (SGEA) which was 100% owned by Suez-Lyonnaise. And SGEA acquired most of the expertise - only 5 people were transferred to the joint venture SEG, the other 82 staff were transferred into SGEA, the 100% Lyonnaise operating subsidiary ^{xiii}.

2.4.1 Liabilities and dividends – boosting Suez-Lyonnaise profits

The new joint venture, SEG, had a number of financial advantages from the point of view of Suez-Lyonnaise. It meant that Grenoble city council accepted to share liability for any damage caused by COGESE, for example damage to consumers. Also, the municipality took on FF 30 million of COGESE debt ^{xiv}.

The entry fees were declared illegal, and water prices were reduced as a result, with consumers gaining FF 11.9 m. However, the loss of entry fees cost the city council a total FF 22.7 million, which represented a loss to citizens as taxpayers. The difference meant that Suez-Lyonnaise gained by FF11 m. ^{xv}

The council also agreed to hand over part of its entitlement to dividends from SEG to Suez-Lyonnaise, to compensate for the 'losses' suffered by COGESE in the previous 5 years. Lyonnaise got FF 51m., and the city council got FF12.75 m ^{xvi}. But the "losses" suffered by COGESE were fictitious (see above) , and included the cost of entry fees for which they had illegally charged users. Under the renegotiated deal these costs would instead be paid for by the city council giving up its dividends.

2.4.2 Tariffs rise for reduced consumption

The contract also provided that the price of water would increase if consumption fell below 12.8 m. cubic metres a year. In a city where consumption was already falling, this formula meant that prices increased immediately ^{xvii}.

Eau Secours estimate that in fiscal year 1996 alone, tariff increases brought to SEG excess income of FF 13.7 million for water and FF 2.3 million for sanitation.

2.4.3 Cascade of sub-contracts to Suez-Lyonnaise

Sub-contracting by SEG to the Suez-Lyonnaise subsidiary SGEA also resulted in Lyonnaise des Eaux enjoying an increasing proportion of profits: SEG guaranteed that it would increase the payments to SGEA in the 6th and the 11th year of the sub-contract, without SGEA adopting any new operating risks.

On turn, SGEA subcontracted several services to Lyonnaise des Eaux at extremely high prices - including legal services, accounting, insurance and property management, human resources, customer services, technical assistance, vehicles, equipment procurement, information technology and SGEA management. As a result, SGEA recorded losses, which corresponded in reality to profits for other Lyonnaise des Eaux subsidiaries. And it was all protected by a guarantee that SEG/SGEA losses would be compensated for by the municipality upon termination of the contracts ^{xviii}.

2.5 Termination and remunicipalisation

2.5.1 Court rulings declare both contracts illegal

ADES however continued with the legal fight and, in October 1997, the original decision to delegate the water service to COGESE was annulled by the French Conseil d'Etat for being illegal ^{xix}. ADES also challenged the validity of the 1996 renegotiated contract with SEG, and in August 1998, Grenoble Tribunal Administratif declared void the City Council decisions to delegate the services to SEG/SGEA as the procedure was not publicised nor competitive^{xx}. The Tribunal Administratif ruling also cancelled water rates imposed by SEG, which still incorporated the "costs" of corruption, and the statutory rules allowing SEG to invoice users, and in May 1999 the water supply and sewerage tariffs imposed by COGESE were declared illegal for being indexed retroactively and compensating the "entry fees" disbursed to the municipality ^{xxi, xxii}. All charges for the whole period 1990-1998 had thus been invalidated.

2.5.2 Remunicipalisation

The city council then debated various options and finally, on 20th March 2000, voted to re-municipalise water supply under a "*régie* à autonomie financière et personnalité morale" – a municipally-owned enterprise formally separate from the council. This form was chosen as the best option to enable the transfer of all staff who had been employed by COGESE and then SEG or SGEA ^{xxiii}.

3 The Grenoble region sanitation concession

A similar sequence of events unfolded in relation to sanitation in the metropolitan region of Grenoble. This aspect has been less publicised.

3.1.1 The options: municipal or private

In 1983 the syndicate of municipalities of the metropolitan region of Grenoble (SIEPARG) carried out a review of the sanitation service. They developed a detailed plan based on the continuation of a municipal service, including investment in a new wastewater treatment plant, Aquapole. ^{xxiv} However this plan was abandoned in April 1985, when SIEPARG awarded a 25-year long concession for sanitation services to Société Dauphinoise d'Assainissement (SDA), a joint venture formed by Degremont (owned by Suez-Lyonnaise) and OTV (owned by Vivendi-Generale) ^{xxv}.

3.1.2 A non-competitive and costly private concession

This concession was given to SDA without any competitive tender; and SDA itself was a joint venture between the two major water groups of France. It was also the more expensive option: the regional audit office later showed that the consumer had to pay 2.71F pcm for the private option as against 2.05 F for the municipal option. ^{xxvi} It has been claimed that this choice was made in return for political donations distributed to the political parties in accordance with their representation on SIEPARG - FF 70 million to the RPR-UDF, and FF 30 million to each of the PS (Socialist Party) and PCF (Communist Party). ^{xxvii}

3.1.3 Renegotiation in favour of concessionaire

Between 1985 and 1993, the concession was renegotiated nine times in favour of the concessionaire. The investment required from SDA was reduced, while its profits were increased. In practice, although the rationale for privatisation was to tap private finance, the majority of finance for the

wastewater treatment plant was procured by public sector bodies – the municipalities and the Agence de l'Eau.

3.1.4 Political opposition

The elections of 1995 resulted in a change in political control in Grenoble, and the new majority negotiated some revisions to the contract in May 1996 and again in 1998:

- more systematic information and greater transparency from the concessionaire, with penalties for failure to produce the required information.
- SDA's rate of return was cut from 14.31% to 9.70%, cutting prices by FF 0.63 pcm.
- The municipalities raised a loan to buy investments already made at a favourable price of 81M FF: this increased tariffs by FF 0.25 pcm; As a result, there was a net decrease in the price of wastewater of FF 0.38 pcm - a cut of 8%.^{xxviii}

3.1.5 Remunicipalisation

The 1997 report of the Chambre régionale des Comptes exposed in more detail how the wastewater concession was marred by numerous problems with performance and costs and lack of transparency. This prompted further action by the municipalities, culminating in re-municipalisation of wastewater services. Another renegotiation in 1998 introduced higher service standards, cut the company's profit margins still further, reduced wastewater charges by a further FF 0.09 pcm^{xxix}. In January 2000 a new municipal *régie* was created to take over sanitation services for the region from SDA (and also the sanitation service for the city, from SEG). Only the Aquapole treatment plant itself was left under a private concession with SDA.^{xxx}

Table 3 : Summary chronology of Grenoble privatisations and remunicipalisations

Date	Event
April 1985	Privatisation of sanitation in Grenoble region to SDA (Suez-Lyonnaise and Vivendi-GdE)
November 1989	Privatisation of water and sanitation in city of Grenoble to COGESE (Suez-Lyonnaise)
June 1995	Elections result in change in political power to socialist/green group.
November 1995	Former mayor and Suez-Lyonnaise executives convicted of corruption
May 1996	Renegotiation. Creation of SEG (joint venture between Grenoble and Suez-Lyonnaise)
1996 - 1999	Court cases, audit reports, further renegotiation
January 2000	Remunicipalisation of sanitation services in Grenoble region
March 2000	Remunicipalisation of water supply in Grenoble

4 Comparable events in France and internationally

4.1 Problems of private water in France: the 1997 Cour des Comptes report

The problems of the delegated contracts are not unique to Grenoble, but have been seen in a number of cases in France. A report in January 1997 by the French audit office, the Cour des Comptes,

identified recurrent problems, including lack of competition, lack of transparency, excess pricing, and the problem of unequal relations between municipalities and multinationals: ^{xxxix}

- **Lack of competition** : *"repeated use of the negotiated procedure, nearly always with the same companies" and "A tendency to extend existing contracts" without subjecting them to tender, which has created "substantial profit margins".*
- **Lack of transparency**: *"The lack of supervision and control of delegated public services, aggravated by the lack of transparency of this form of management, has led to abuses" - in one city, Metz, the private water company did not submit any accounts to the city council for 20 years; in Bandol-Savary (near Toulon) a Vivendi company charged the council twice over for the same treatment, every year.*
- **Price rises**: Water prices have risen at an average rate of 10% per year in France since 1992, but most of all where water has been privatised. The companies claim that most of this is due to the heavy investments required, but the report found many cases where price rises had no possible link with investments: *"The increase in prices has to be seen in relation to the privatisation of services"*
- **Unequal power** - the report repeatedly emphasises the disparity between the local authorities and the three giant companies. The system *"left elected councillors on their own, without support, to deal with conglomerates wielding immense political, economic and financial power"*^{xxxix}.
- **Corruption** – by the time the report came out there had also been criminal convictions for corruption to obtain water in Reunion, and Angouleme. ^{xxxix}
-

4.1.1 The problems in Paris – February 2000

Another audit report exposed a similar series of problems with the water of Paris itself, privatised since 1985 to two PPPs, one involving Vivendi, and the other Suez-Lyonnaise. The report itself has been kept secret by the auditors, but a press article published some findings: the report referred to *"an excessive price for water"*; stated that *"the administrative, legal and financial arrangements are characterised by an absence of financial transparency"*, and was not satisfied with the accounts submitted by Suez-Lyonnaise - the auditors estimated that the company's "true profit margin is two and a half times the officially reported figure"; while Vivendi transferred money destined for repairs to the parent company, and carried out less repairs than it claimed. ^{xxxix}

4.2 International examples

The problems are not confined to France, or to French-owned water companies. International experience with water supply and sanitation shows remarkable similarities with the problems emerged in Grenoble. Recent reports from Tallinn and Valencia indicate that the creative techniques are alive and well.

- Corruption and political party links

There is evidence or public allegations of payment of bribes to officials or politicians (eg Milan, Italy; Lesotho; Ghana); or indirect inducements to politicians (Nairobi, Kenya; Tallinn, Estonia). There are also cases where water multinationals have formed joint ventures with cronies of politicians to obtain concessions, including Manila, Philippines; Jakarta, Indonesia; Cochabamba, Bolivia. ^{xxxix}

- Lack of transparency

Secretive decision-making processes, and non-competitive contracts, have been common in a number of concessions (e.g. Budapest, Hungary; Potsdam, Germany; Guayaquil, Ecuador) especially where regimes have been undemocratic (e.g. Casablanca, Morocco under the late King Hassan; Jakarta, Indonesia under former president Suharto); and the multinationals prefer the contract documents to remain secret (eg Gdansk, Poland; WSSA, South Africa).^{xxxvi} Once the decision to delegate management is made, lack of transparency may also lead to ineffective monitoring of the private operator.

- Price fixing and sub-contracting

The details of price-fixing mechanisms are not surprisingly little publicised. There are a number of cases where prices have been forced up within a year or two of a concession being started, where the assumption in the original contract about the level of demand turned out to be too high, and the real level of demand was then used as a justification for large price rises (eg Rostock, Germany; and most recently Dolphin Coast, South Africa). There are known cases where privileged access to sub-contracting has been part of a concession agreement, or a proposed concession eg Szeged, Hungary; Lodz, Poland.^{xxxvii}

4.2.1 Valencia – new costs after a century

The city of Valencia in Spain will tender for a new water concession from next year, 2002. The existing concession, which is held by Aguas de Valencia (Avsa), a subsidiary of the French multinational SAUR, is coming to an end – after 100 years. In late 2000, Avsa told the council that a forgotten agreement made in 1962 obliged the council to contribute towards the workers pensions, but the council has not made these payments – so Avsa is now owed 14 m Euros, which will have to be repaid through an addition to the tariffs.^{xxxviii} In early 2001, the city council was further told that if the tender is won by another company, then Avsa will claim 54m Euros in compensation for loss of future profits – on the advice of PriceWaterhouseCoopers.^{xxxix}

4.2.2 Tallinn – new charges in the first year

Tallinn, capital of Estonia, privatised its water company in January 2001. It is now controlled by International water – a company registered in the UK, which is 50% owned by the USA construction company Bechtel, and 50% owned by Edison SpA, part of the Italian group Montedison.

Tallin Water was an efficient municipal company, and in May 2001 it reported that in the year 2000, its last year of municipal ownership, it had recorded a small profit of 24m. Estonian kroons (about 1m Euros). The new owners however decided to pay themselves a dividend of 182m EK (about 7.5m Euros). International Water explained that Tallinn Water was overcapitalised : "European water companies have on the average of 47 percent of borrowed or external capital and 53 percent of shareholders' capital. In Tallin Water, that proportion was very much in favour of the shareholders' capital and payment of dividends was a good means to change it".^{xi}

Later in the same month, the company demanded that the city council should pay an extra 2.5 m Euros per year for surface water drainage – although in the past the costs of this service had been covered by the water tariffs. The council would thus be paying a second time for this service.^{xii}

4.3 Other terminations and remunicipalisations

Grenoble is not the only place in the world which has terminated private water concessions or contracts. Other such terminations include:

Table 4 : Terminated water concessions and operating contracts

Country	Concession	Date of termination	Multinational involved
Argentina	Tucuman	1997	Vivendi
Trinidad	Country	1998	Severn-Trent
Germany	Potsdam	1999	Suez-Lyonnaise
Thailand	Pathum Thani	2000	RWE-Thames Water
Bolivia	Cochabamba	2000	International Water
France	Grenoble	2000	Suez-Lyonnaise, Vivendi

Source: PSIRU Database

5 The lessons – a dynamic political process

The lessons of Grenoble are of global relevance. The model of delegated management through concessions, or 'public-private partnerships', the same model as experienced at Grenoble, is being promoted as the preferred solution of the World Bank, the Global Water Partnership and many other bodies, and most of all by the multinational groups.

The information that has emerged from Grenoble should improve our understanding of the economic, administrative and political processes at work in private concessions, delegated management or public-private partnerships in water. The reality does not at all resemble the concept of public-private partnerships as a partnership of equals between private operators and public representatives.

The lessons should affect decision-making processes. The economic and political risks of private water management may be much higher than is often recognised, by comparison with the risks of public sector operation.

5.1 Dynamics and contracts

The first lesson is that the whole process at Grenoble was extremely dynamic. The concessions served as a starting point for goal-seeking initiatives and negotiation, rather than a common document of equal partners trying to make it work. This did not start with the public, political challenges and negotiations; the dynamic alteration of the terms of the service was happening, at the companies' initiative, before the public responses.

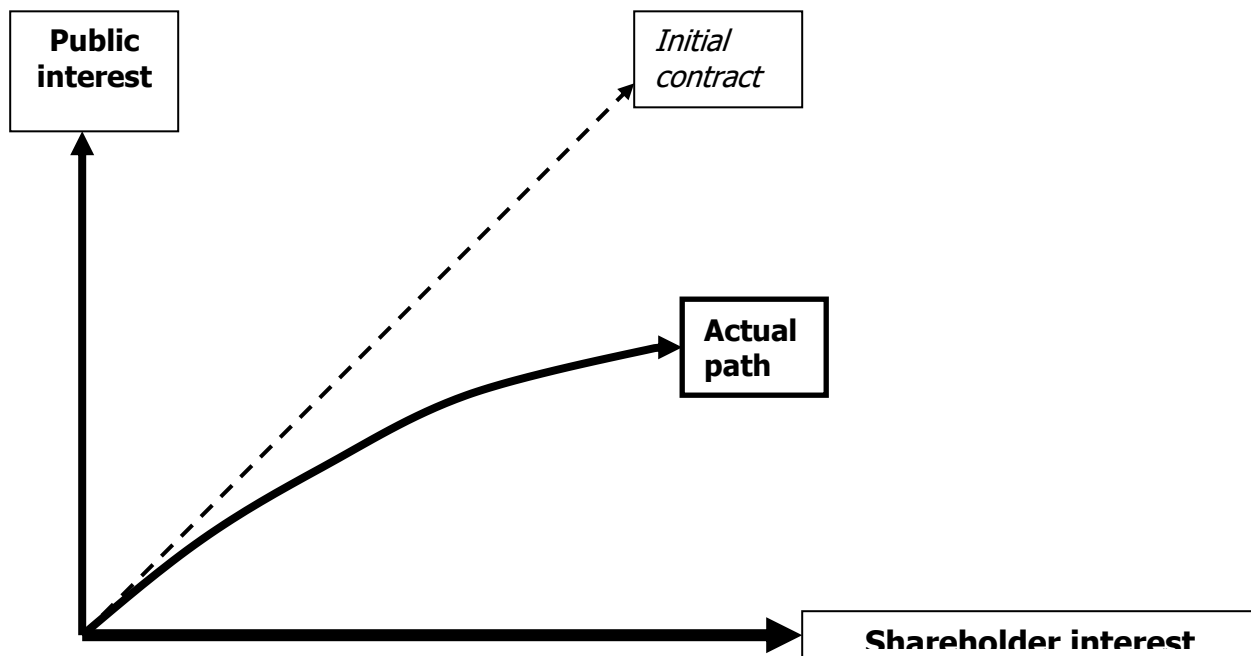
This strengthens and perhaps extends the conclusion of a recent report on the Jakarta water concessions, which argued that they illustrated the limitations of contracts: *"The contract instrument cannot cope with the combined challenge of a long time horizon, high uncertainty, difficult to define service and problematic environment. What results are soft targets, squishy outputs, and endless negotiations"*^{xlii}. The problem may be more general than this suggests: the partners at Grenoble were operating in much easier circumstances, yet the contracts still failed to provide much effective constraint on even the price of the service delivered.

5.2 Strategic behaviour of multinationals

One element in this process is the clear and persistent pursuit of shareholder interest by the companies in Grenoble, especially Suez-Lyonnaise. This behaviour is quite normal and central to private businesses - both Vivendi and Suez have targets for the rate of return to be delivered to their shareholders, and their managers are surely rewarded for helping to achieve this role, not for helping to deliver water to the poor.

Yet this central fact about private enterprise is rarely acknowledged in papers on privatisation of water or PPPs. Much advice centres on the importance of attracting companies, and even emphasising the need to create a 'favourable' (ie weak) regulatory climate. The terminology of 'public-private-partnership' (PPPs) is misleading in this respect, implying that such concessions are arrangements between partners sharing the same goals.

Table 5 : Dynamic interest-seeking and contracts



Grenoble shows that the company's goals often conflict with the interests of water users and citizens. It should be a working assumption that any private company will seek to maximise its returns, and the question should be asked at the outset, before privatisation, what the potential costs are of this. The key point is that such behaviour is predictable, and indeed was predicted in Grenoble itself, by Christian Lacroix, who wrote in 1985: *"The privatisation of commercialised local services in Grenoble, despite the assurances given today by M. Carignon, may take us down a very dangerous road with long-term damaging consequences for the water users of Grenoble - expensive private services, whose control by elected politicians and users will become very difficult in future years, reflecting the vagueness and secrecy which surrounds their establishment today."*^{xliii}

5.2.2 Huge gains, low risk

The case of Grenoble also demonstrates that the potential gains to a company for engaging in this behaviour are great, while the risks are relatively low. Although this was perhaps the most public failure to get away with these tactics, where Suez-Lyonnaise executives were convicted and the concession terminated, their losses have been fairly small. Two (replaceable) executives spent time in prison, the illegal entry fees were repaid to the company, no real losses were made during the period. There have been no subsequent disqualification from contracts in France or anywhere else. ^{xliv}

This combination of high gain and low risk means that it is worthwhile for a multinational company to invest in the resources, for example legal and financial advisors, to exploit these opportunities as far as possible.

5.3 The range of corrupt relationships

Grenoble also illustrates the wide range of corrupt channels which can potentially be used by concession-seeking companies in relation to political institutions. As the table shows, many of these were used at Grenoble, but there are others.

The importance of corruption in this context is not the illegality of it, which depends on what the law happens to be in the place it occurs (what Carignon and Suez-Lyonnaise were convicted for in Grenoble might well have been legal in the UK). The concern is that these mechanisms all create distorted incentives for politicians or officials to favour privatisation over public provision, and then to select the company which offers the best inducement rather than the best service.

This was apparent from the outset in Grenoble, where even a major political grouping in a prosperous city in France was extremely susceptible to the financial patronage of a multinational company. This apparently extended to all parties in respect of the SDA concession, as it appears to have done in relation to school building contracts in the Ile-de-France in the 1980s and 1990s, where the same companies were involved. ^{xlv}

Table 6 : Corrupt devices to secure concessions

Corrupt device		Examples from Grenoble (or elsewhere)
Political donations	To particular party	SLE – to RPR/Carignon
Political donations	To all parties	SDA – to all parties
Personal connections with political party	Party-company positions	Monod chair of Lyonnaise, secretary of RPR
Bribes	To politician	Angouleme, France
Bribes	To official	Lesotho
Entry fees / canons	To municipality	Paid by COGESE to Grenoble city council
Payments to avoid competition	To municipality	France – renewals without tendering
Joint venture with political crony	Partner company – political link	Jakarta

5.4 Technical and legal measures

The technicalities of the over-charging at Grenoble are fascinating, the more so because similar techniques were reintroduced into the re-negotiated joint venture.

Table 7 : Techniques for overcharging used by Suez-Lyonnaise

Method	Contract (COGESE, 1989-95)	Joint venture (SEG, 1996-99)
Entry Fees	- Recovery of entry fees paid to city council through charging users	- City council forego eliminated entry fees
Tariff Formula	- Inflation indexing on wrong base - Retroactive invoicing inflating bills	- Adjustment to consumption levels / price increases if consumption steady
Subcontracting	- Exclusive rights to works contracts - Privileged access to subcontracting / Discriminating against other bidders	- Water supply and sanitation subcontracted to SGEA (100% LdE) / decreasing remuneration of SEG vs. increasing remuneration of SGEA - SGEA subcontract services to LdE (e.g. legal services, accounting, customer services, technical assistance, vehicles, IT, management of SGEA)
Creative accounting	- Inflated costs of debt service - Transfer of receipts to LdE after first 11 years of contract - City council to finance works without recovering costs	- City council share liability for damages caused by COGESE (e.g. damage to consumers) - City council assume FF 30 million of COGESE losses - City council forego dividends in favour of LdE
Legal powers	- secrecy of documents	- effective veto for SLE over decisions, despite minority shares

Sources: ADES; Eau Secours; CRC Rhône-Alpes, November 1995; SEG

The key question is how common these practices are: and the answer is likely to be at least as difficult to establish in other cases as it was in Grenoble. There is enough evidence – see previous section - to suggest that, at least, water companies are very aware of the possibilities and the importance of accounting and charging practices, and that this awareness is not restricted to France, or to the two largest French companies, as the two recent examples below suggest.

It thus seems advisable for all public authorities considering water privatisation to familiarise themselves with these practices, their cost, and the authority's capacity to curb them, before embarking on an invitation for private tenders.

5.5 State capacity

The contracts exploited the citizens for excess profits in a variety of ways which were hidden from view until the regional audit body *Chambre régionale des Comptes Rhône-Alpes*, and court cases brought by ADES, exposed crucial data. Until then, the contracts were characterised by lack of transparency, and sophisticated financial extortion. The unravelling of the corrupt concessions at Grenoble has two key features - strong state institutions and a vigorous political process.

The state agencies involved included the examining magistrates, who in France have a marked degree of autonomy and power to investigate even members of the political and economic elite; and the powerful autonomous public audit agencies of the Cour des comptes and the Chambres régionales des comptes; and the courts, which heard both criminal and civil cases.

Other countries cannot rely on these bodies to rescue them from similar problems. These institutions have a power which is unusual by the standards of most developed countries, and developing countries are most unlikely to be able to rely on such bodies.

This is an aspect of a wider argument, that where state capacity is limited, privatisation is an especially dangerous option.^{xlvi}

5.6 Political activity and intervention

A central role was played by the political activity of a party, ADES, and its leaders, supported by other groups, notably the user-based organisation Eau Secours, and the trade unions. ADES gained increasing electoral support for their critique of the private concessions, and also persisted with a series of court cases which forced disclosure and finally won declarations that the contracts were illegal.

The activity in Grenoble also shows that persistent political intervention into privatised water operations is of great benefit in uncovering and enabling the reversal of unjustified exploitations of the system. This applied to the detailed exposure and criticism of technical operations, including eg sub-contracting practices, not simply to broad guidance every few months. It seems important that this kind of political intervention is encouraged, rather than curbed by a blanket condemnation of 'political interference'.

This point suggests the importance of distinguishing 'political intervention' from disreputable practices sometimes described as 'political interference' in water. Interference by politicians in order to further the advantages of their party – eg by demanding unjustified price cuts, or appointments of political supporters or 'cronies' – is rightly criticised as damaging to the integrity of water as a public service. However, the case of Grenoble shows that, contrary to conventional wisdom, such political interference may be instigated by private companies – the 'cronies' put in place are the companies themselves, the unjustified economic choices are to favour expensive private solutions ahead of better public sector ones.^{xlvi}

This reflects similar findings in analyses of water privatisations elsewhere. Recent analyses of Cartagena^{xlvi} and Cordoba^{xlvi} suggest that the political institutions have an essential function in representing the interests of the poor – if these bodies are weak, the poor are effectively unrepresented, and the company interests will dominate the concessions. And recent report to the ILO includes case studies of Hungarian water operations which suggest that decision-making benefited from a highly political debate, in both a privatised and a public sector water service.¹

5.6.1 Political action or regulation: OFWAT in the UK

In the UK, too, political intervention now appears to have much greater impact than the autonomous activity of a regulator. From 1989 to 1997 the UK water regulator OFWAT was relatively inactive, allowing the companies to make considerable profits; after the 1997 election of a new Labour

government, a windfall tax was imposed on the private water companies, and OFWAT was persuaded to initiate far tougher controls on the UK water companies.

It is interesting to consider what, if anything, is the difference between the behaviour of OFWAT and the behaviour of a traditional civil service, reflecting changes of political control while maintaining a continuity of expertise. It would clearly be contrary to public interest in a democracy to argue that elected representatives should lose their powers to civil servants, yet this may be the effect of arguing for an 'independent regulator' - the neutralising of political interest. Compare the USA model of regulation, which does incorporate political action and activity.

5.7 The public sector model

The case of Grenoble also shows the importance of the option of a public sector model, as, at the least, a necessary condition for good decision-making in the public interest.ⁱ In Grenoble, the legal and practical possibility of a municipal *régie* enabled the municipality, after 10 years, to choose a solution which was better than any negotiable with the multinational.

The option is of most relevance at the initial stages.ⁱⁱⁱ Improved tendering procedures do not provide this choice: they allow authorities to choose which multinational to give a concession to, but the result is always a private concession: there is no evaluation of their proposals against a public sector option. It is therefore counter-productive for financial institutions such as the World Bank to impose conditionalities which require privatisation, thus preventing the public sector option from being entertained from the outset.

Historically, there was a widespread European movement to remove these services of public interest from the private sector and run them instead by public authorities, for reasons of efficiency and accountability.ⁱⁱⁱⁱ (The water companies which now dominate privatised public services in water across the world, Vivendi and Suez-Lyonnaise, are historically the odd isolated survivors of that process, dinosaurs of a species that was eradicated elsewhere: it is unwise to ignore the majority experience. Even if the concern is to create the cutting edge of competition, in these sectors the competitor most feared by the private companies is the public sector: while it is understandable that the companies should be pleased if there is no consideration of a public sector provision.

5.8 Final advice

There are some simple practical advice points to be offered. These steps should be taken before deciding whether to invite tenders for a privatisation or PPP of any kind:

- Develop a public sector proposal for the same service or project so that there is a real alternative, and a benchmark against which to assess any private bids
- Consider whether the state or municipality has the institutional capacity to audit and if necessary prosecute a multinational company which abuses a concession
- Consider whether there is enough vigorous political activity to effectively drive investigations and remunicipalisations if necessary

- Plan decision-making procedures, evaluations, and regulatory structures and economic forecasting on the assumption that the companies have every incentive to use the techniques of corruption and price-fixing if the rewards outweigh the risks.

ⁱ TH.P., « Non à la liquidation », Le Dauphiné Libéré: 06/06/89; Pierre Frappat, « Grèves et manifestations à Grenoble contre un projet de privatisations du service des eaux », Le Monde: 03/07/89; « Grenoble sous pression », Le Figaro: 06/07/89; A. C.-D., « Concession du service des eaux à Grenoble: contestation syndicale », Les Echos: 12/07/89 ; Marie-France Reymond, « Problème de robinet à Grenoble », Le Figaro: 12/09/89.

ⁱⁱ Cour de Cassation chambre criminelle du 08/04/1999, pourvoi n°060 98-84539, Prompsy Jean-Jacques et autres.

ⁱⁱⁱ (1989 values). Chambre régionale des Comptes Rhône-Alpes, Observations définitives de la gestion des services de l'eau et de l'assainissement de la commune de Grenoble (Isère): 24/11/95 (pp. 5-7); Groupe de Travail de la mission pour l'eau, Rapport sur l'eau : 16 octobre 1995, pp. 9-10

^{iv} Tribunal Administratif de Grenoble du 12 mai 1999, no 982087, M. Comparat.

^v EauSecAnalysis.doc, p. 4.

^{vi} Chambre régionale des Comptes Rhône-Alpes, Observations définitives de la gestion des services de l'eau et de l'assainissement de la commune de Grenoble (Isère): 24/11/95 (p. 25-26).

^{vii} EauSecAnalysis.doc, p. 1.

^{viii} Tribunal Administratif de Grenoble du 12 mai 1999, n° 982087, M. Comparat.

^{ix} EauSecAnalysis.doc, p. 1; EauSecoursArchives.doc, p. 2.

^x Chambre régionale des Comptes Rhône-Alpes, Observations définitives de la gestion des services de l'eau et de l'assainissement de la commune de Grenoble (Isère): 24/11/95 (p. 21).

^{xi} Ibid.

^{xii} ADES, Eau de Grenoble –Autopsie d'un "Waterl'Eau"!, July 1996, p.17.

^{xiii} Source: Raymond Avrillier, ADES; ADES, Eau de Grenoble –Autopsie d'un "Waterl'Eau"!, July 1996, p.17.

^{xiv} Source: Raymond Avrillier, ADES; ADES, Eau de Grenoble –Autopsie d'un "Waterl'Eau"!, July 1996, p. 54.

^{xv} Source: Raymond Avrillier, ADES; ADES, Eau de Grenoble –Autopsie d'un "Waterl'Eau"!, July 1996, p. 21.

^{xvi} SEGschema.gif.

^{xvii} EauSecoursKj.doc, p. 1.

^{xviii} ADESlegal.doc, pp. 2-3.

^{xix} Arrêt du Conseil d'État n° 133849 le 01/10/1997.

^{xx} Tribunal Administratif de Grenoble du 07/08/1998 no 962133, 964778, 964779, 964780, 98481 et 98482, M. Betto et autres.

^{xxi} Tribunal Administratif de Grenoble du 12 mai 1999, no 982087, M. Comparat.

^{xxii} Clauses réglementaires annulées par le jugement du tribunal administratif de Grenoble du 7 août 1998.

^{xxiii} Séance du Conseil Municipal du 20 mars 2000, Rapport d'Annie Deschamps, Maire adjoint chargée de la Gestion Déléguée, sur le délibérations D14 et D15.

^{xxiv} Chambre régionale des Comptes Rhône-Alpes, Rapport d'Observations définitives de la Chambre régionale des Comptes: 18/12/97, pp. 4.

^{xxv} The municipalities of the metropolitan region presented the 25-year Aquapole operation contract as a "controlled" concession ("concession contrôlée"). As noted by the Chambre régionale des Comptes Rhône-Alpes in a critical report published on 18th October 1997, the formula of "controlled" concession was meaningless from the legal point of view ("la concession qualifiée de "contrôlée" (formule dépourvue de fondement juridique)") Chambre régionale des Comptes Rhône-Alpes, Rapport d'Observations définitives de la Chambre régionale des Comptes: 18/12/97, pp. 4.

^{xxvi} "Bien que l'objet des investissements ne soit pas identique dans les deux cas (collecteur et 1ère tranche de la station dans l'étude SIEPARG, station en deux branches dans la concession), les montants de travaux sont similaires. La solution de la concession ne s'est pas traduite par une économie pour l'utilisateur, celui-ci devant ainsi supporter une redevance plus élevée : 2,71 F contre 2,05 F, soit un écart de 0,66 F/m³." (Chambre régionale des Comptes Rhône-Alpes, Rapport d'Observations définitives de la Chambre régionale des Comptes: 18/12/97, pp. 4)

^{xxvii} Avrillier, R. & Descamps, P. (1995) Le système Carignon (Paris, Éditions La Découverte), p. 181

^{xxviii} Chambre régionale des Comptes Rhône-Alpes, Observations définitives sur la gestion du service d'assainissement de l'agglomération grenobloise: 18/12/97 p.10-11

- ^{xvix} ADESmetro.doc, p. 4.
- ^{xx} ADESlegal.doc, p. 3; *Délibération de la Métro du 18 février 2000, rapporteur Raymond Avrillier (MétroRégie.doc)*. the only exception is the operation of the Aquapole wastewater treatment plant itself, which remains the responsibility of SDA (presumably on the grounds that immediate purchase of the plant is an unattractive option).
- ^{xxxi} *Cour des Comptes: La gestion des services publics locaux d'eau et d'assainissement. Rapport public particulier. Janvier 1997.* See www.ccomptes.fr/Cour-des-comptes/publications/rapports/eau/cdc72.htm
- ^{xxxii} *Le Monde*, 28th January 1997
- ^{xxxiii} *Reuters* 01/07/97; FT 10/10/96
- ^{xxxiv} *Canard Enchaîné* 16 February 2000. This was previously available at www.electricecafe.org/Canard/CC000216.html.
- ^{xxxv} For these and other cases of corruption involving multinationals and privatised services see the PSIRU anti-corruption project site at www.psiru.org/corruption/index.htm and the report on "Privatisation, Corruption and Multinationals" at www.psiru.org/reports/9909-U-U-Corrupt.doc
- ^{xxxvi} For more details on the issue of secrecy of contracts see PSIRU reports on 'Transparency' at www.psiru.org/reports/2000-03-W-Htrans.doc and on 'Privatisation and democracy' at www.psiru.org/reports/9906-U-U-Polit.doc
- ^{xxxvii} See further 'Water pricing' at www.psiru.org/reports/2000-03-W-Hprice.doc
- ^{xxxviii} *Expansion (Madrid)*, November 22, 2000, 283 words, *Mantiene Tarifas Valencia Obliga A Avsa A Pedir Un Credito Para Las Pensiones*
- ^{xxxix} *Expansion (Madrid)*, January 17, 2001 *Informe De Pricewaterhousecoopers Valencia Pagara A Avsa 54 Millones Si Rescata La Concesion*
- ^{xl} *Baltic News Service* May 8, 2001 *Tallinna Vesi To Pay Out Eek 182 Mln In Dividends*
- ^{xli} *Baltic News Service* May 31, 2001 *Estonian Capital At Loss Over Fee For Surface Water Drainage*
- ^{xlii} Okke Bradbaart, "Privatizing Water: the Jakarta Concession and the limits of contract". Paper presented at a KITLV Jubilee Workshop 'water as a life-giving and deadly force' Leiden 14-16 June 2001
- ^{xliii} Avrillier, R. & Descamps, P. (1995) *Le système Carignon (Paris, Éditions La Découverte)*, pp. 180. Translation by PSIRU.
- ^{xliv} Their main loss was probably in telecomms - Carignon was arrested and charged when he was Minister of Communication, just about to award a new cell-phone license, which was widely expected to go to Suez-Lyonnaise. Following the arrest, the license was awarded to another operator.
- ^{xlv} *Le Monde* 10/12/98
- ^{xlvi} See for example "Privatising water – BOTT and hydropolitics in the new South Africa" K. Bakker and D. Hemson . *South African Geographical Journal* (2000) 82 (1), 3-12
- ^{xlvii} (Tallinn Council may provide an interesting example of 'damaging' interference in both ways. In 1999 it artificially reduced water prices for electoral gain, to the alarm of the EBRD which had financed the municipal water company's investment; then in 2000 it agreed to privatise the company, to a joint venture which at once lavished generous salaries on the part-time directors, including some councillors, and payment of excessive dividends which partly benefited the city council).
- ^{xlviii} *Establishing and Implementing a Joint Venture for Water and Sanitation Services in Cartagena, Colombia* Andrew Nickson January 2001 <http://www.ghkint.com/pdf/Cartagena.pdf>
- ^{xlix} *The Cordoba Water and Sanitation Concession, Argentina* Andrew Nickson January 2001 <http://www.ghkint.com/pdf/cordoba.pdf>
- ^l Report by Robin Simpson to ILO, forthcoming.
- ^{li} The existence of alternatives is not however a sufficient condition for public interest decision-making. This was shown at the start of the sanitation concession in Grenoble, where a clearly advantageous public sector option was rejected in favour of the private concession. There also has to be a vigorous and transparent political process.
- ^{lii} See the PSIRU booklet on the public sector water option 'In Public Hands' June 2001 www.psiru.org/reportsindex.htm
- ^{liii} For an illustration of this point in the case of water see Katko, T.S. 1997. "Water! - Evolution of water supply and sanitation in Finland from the mid-1800s to 2000. FIWA"