ACEP Africa Centre for Energy Policy

Interim Statement on the Termination of PDS Concession
29th October 2019

The government of Ghana announced the termination of the Private Sector Participation (PSP), the concession, in the Electricity Company of Ghana (ECG) between the country and the Power Distribution Services (PDS). This decision was arrived at after over a month's delay in government's commitment to communicate its decision to the public following the detections of defects on the guarantees submitted by PDS. ACEP is of the opinion that the decision to terminate the contract is a credible response to domestic technical appreciation of the challenges with the guarantees and the ultimate burden on the government to protect the assets of ECG. It does not necessarily absolve government of blame from the poor management of the PSP process.

Many Ghanaian experts agree that the structure of the insurance guarantees and the denial of Al Koot Insurance, the assumed reinsurer to have underwritten the insurance policy in line with established corporate guidelines, made the insurance invalid to protect the interest of Ghana in the transaction. This exposes significant weakness in duty of care to have ensured that MIDA, the transaction advisors, Donewell Insurance and Cal Bank were dealing with the right people in Al Koot Insurance. Government investigation also concludes that the insurance was invalid.

The FTI report which was commissioned by MIDA and endorsed by MCC differ in that opinion. In fact, MCC maintains that the guarantees were valid based on the FTI report. This, however, does not make the individual who came to Ghana to interview stakeholders for the FTI report a better expert than any Ghanaian we have heard commenting on the guarantees. Ghanaians are being told that the papers presented to MiDA as insurance are legitimate even though the individuals claimed to have signed them challenges the legitimacy and validity of the insurance.

The FTI report failed to answer a very fundamental question about how MiDA and the transaction advisors (IFC and Hunton Andrews Kurth ("Hunton")) ascertained the validity of the insurance before the transfer date to give effect to their trumpeted advice for a cut-through clause which would have allowed ECG to activate the insurance on default by PDS. If MiDA and the advisers were minded to check the established approval and authorization processes in Al Koot, they would have realized that the manager who worked with Jo Australia to consummate the transaction lacked the capacity to do so. What is even shocking is that a transaction of that scale could be negotiated with a junior employee of Al Koot and none of the advisors raised concerns. MiDA kept the original documents with no apparent focus on ensuring that the insurance was valid. It later took ECG, who were only given a photocopy of the insurance guarantees accepted by MiDA, to question the validity of the guarantee.

This is a wakeup call for the government to establish systems which can test and challenge advice from IFC and other international consultants. Transparency is the primary litmus test that could help harness local expertise in transactions of national interest.

In ACEP's analysis of the FTI report published on the 9th of September, 2019, ACEP was convinced that the FTI set out to exonerate MiDA, IFC and Hunton, the transaction advisors, from the poor job delivered to the Ghanaian people on the PSP transaction. The advisors started failing when;

1. **The bid process left Meralco emerging as the sole candidate:**
   When Government introduced 51 percent local participation into the concession without a clear and transparent process to raise local investment, the signal was on the wall that inefficiency and politics were being injected into the process. In the due diligence report conducted by IFC before the concession option was chosen, the IFC noted that one of the key legal recommendations for a successful PSP was to **ensure a politically independent and stable management of ECG**. When the government was changing the rule to make it possible for some individuals to participate in the concession without competition, it was the ideal time for the advisors to alert the MCC that the concession was failing.

2. **The subsequent formation of the consortium that proved to be weak on the fundamental requirements of the PSP:**
   Having won the bid on the strength of its technical and financial proposal, Meralco was allowed to form an independent Special Purpose Vehicle (SPV), a private company limited by shares in Hong Kong to participate in the PDS consortium. This was a smart and deceptive way for Meralco to isolate its performance in ECG from the parent company. It is therefore wrong to assume that the financial capacity of Meralco was available to the new company (Meridian Power Venture) and insulated from fronting. The contract also had no provisions to ensure that financial and technical capacity of Meralco would be available to the new company at all times during the transaction. This leaves room for Meralco to offload its interest in Meridian anytime it wants. This arrangement is also unfair to businesses that could have set up a similar SPV, recruited the qualified technical hands to participate in the bid and possibly provide better investment options for the takeover of ECG. It is also important to note that ECG were not offered the opportunity to ascertain the true ownership structure of Meridian Power Venture.

3. **Changing the required Bank guarantee to insurance guarantee:**
   The advisors actively convinced government that it was alright to change the guarantees. However, the FTI report painted a picture that the choices were without their influence.

Our checks reveal that the said forensic investigation by FTI received input from MiDA before the final report was submitted. Conversely, all other individuals who made inputs into the process did not have the same privilege to comment on the report before it was finalized.

Beyond the skewed arguments in the report, this process of working with MiDA to finalize the report rendered the job of FTI dependent on the wishes of those who assigned them.

The Impact of the cancelations

The PSP provided Ghana an opportunity to transform the distribution business of the electricity sector. ACEP believed in the process from the beginning until it turned secretive and became a class conversation. This is the genesis of the fiasco which threatens the sustainability of the commitment to attract private investment into the sector. It is regrettable that the MCC funds will not be available to retool the process on the back of a report which failed to deliver on its term of reference.

However, it must be noted that reforming the distribution sector is important to Ghanaians as it is to the American Businesses and other foreign participants in the sector. While the government of Ghana will continue to answer questions from the Ghanaian people for not optimizing the opportunity, if it is unable to immediately find a credible alternative, the MCC will also have to explain to the American businesses who need the power sector to be liquid to pay for services and investments. The honest position on the PSP and reforms of the power sector is that it benefits both Ghana and America.

While Ghanaians will suffer uncertainties and reliability concerns in the power sector, American businesses will lose out on improved cashflow from, and supply of, equipment for the existing power infrastructure and the potential growth in demand for electricity that the PSP could promote. In fact, many of the generation investments tied to General Electric turbines can only justifiably proceed with an improved demand for power. The third Compact which hangs in a balance was an opportunity to extend electricity supply to neighboring countries such as Burkina Faso and Mali which would have allowed more power plants to proceed with construction. This is why it is important for the two countries to continue to engage on the future of the power sector.

The Way Forward

With or without MCC, Ghana must commit to fixing the distribution segment of the power sector. The key problem that brought ECG to its current state is excessive political influence and poor management. It is the same political influence that initiated the failure of the PSP. Therefore, the way to fix it is to ensure that a transparent process is instituted to attract investment immediately.

ACEP recommends that government initiates a new concession process outside the MiDA framework and assemble tier two pension fund managers and life insurance funds to take majority stake in the concession. The concession should not be dominated by government-controlled agencies such as Social Security and National Insurance Trust (SSNIT) or Ghana Infrastructure Investment Fund (GIIF). However, these funds can pick up minority interest in the concession. Additionally, 10 Ghanaian individuals and or businesses should be hunted to invest at least two $2 million annually for five years to pick up 20 percent interest in the concession. The concession arrangement should accommodate technical backstopping by an experienced distribution company from anywhere in the world. The following framework is therefore proposed;

Investors	**Shares**
Tier Two Pension and Life Insurance Funds	55%
Other Institutional investment (SSNIT & GIIF)	25%
Individual and or private investment	20%

This arrangement also holds a permanent fix to the challenges of the distribution segment of the power sector through eventual transfer of ownership of the asserts of ECG to these local investment vehicles.

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