AN ASSESSMENT OF THE IMPLEMENTATION CHALLENGES OF THE POWER COMPACT

January 2020

Benjamin Boakye II Sylvana Zuanah II Charles Gyamfi Ofori

ACEP Africa Centre for Energy Policy

Oxfam

TABLE OF CONTENT

LIST OF TABLES

LIST OF FIGURES

LIST OF BOXES

LIST OF ABBREVIATIONS

ACEP	Africa Centre for Energy Policy
BSA	Bulk Supply Agreement
CEO	Chief Executive Officer
COSECA	Coalition of Stakeholders on the ECG Concession Agreement
CP	Conditions Precedent
CS	Conditions Subsequent
ECG	Electricity Company of Ghana
GAPVOD	Ghana Association of Private Voluntary Organisations in Development
GDP	Gross Domestic Product
GoG	Government of Ghana
GSA	Government Support Agreement
IFC	International Finance Corporation
LAA	Lease and Assignment Agreement
MCC	Millennium Challenge Corporation
MDA	Ministries, Departments and Agencies
MERALCO	Manila Electric Company
MiDA	Millennium Development Authority
NEDCO	Northern Electricity Distribution Company
NEWCO	New Company
PDS	Power Distribution Services
PPA	Power Purchase Agreement
PSP	Private Sector Participation
PUWU	Public Utilities Workers Union
RfEoI	Request for Expression of Interest
RfP	Request for Proposals
RfQ	Request for Qualification
SAIDI	System Average Interruption Duration Interruption
SAIFI	System Average Interruption Frequency
TUC	Trade Union Congress
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Government of Ghana (GoG) and the Millennium Challenge Corporation (MCC) of the United States signed the second compact of the Millennium Challenge Compact (The Power Compact) in 2014 to improve the efficiency of Ghana's power sector to support economic growth and reduce poverty. Under the terms of the Compact, Government of Ghana through its implementing agency, Millennium Development Authority (MiDA) was to be granted US$498.2 million. The program was to implement, among five other projects, the Electricity Company of Ghana (ECG) Financial and Operational Turnaround Project through a Private Sector Participation (PSP) agreement.

The government with advice from International Finance Corporation (the transaction advisors) chose a concession under the various PSP options, which eventually led to the selection of Manila Electric Company (MERALCO) as the concessionaire to manage the assets of ECG. As per the terms of the Request for Proposals (RfP), the new company had to meet a minimum 51 percent local content requirement. Consequently, MERALCO, after winning the bid, partnered three local companies and an Angolan company to form a consortium known as Power Distribution Services (PDS) Ghana, to enter into an agreement with Ghana.

Prior to the transfer of ECG's assets, PDS was required by the Transaction Agreements – Lease and Assignment Agreement (LAA), and Bulk Supply Agreement (BSA) – to satisfy 45 Conditions Precedent. Critical among these conditions was the provision of a Demand Guarantee or Letter of Credit issued by a qualified bank. PDS however could not produce the required demand guarantees and proposed an alternative in the form of insurance guarantees. This was approved by government on the advice of MiDA and the transaction advisors (IFC and Hunton)

The said guarantees were produced two days to the transfer date, which made it difficult for due diligence and verification by ECG who was the main party to the LAA and the BSA. On the assurance of MiDA, government admitted the guarantees subject to subsequent verification by ECG. Further investigations by ECG and government show that the guarantees could not have been accessed by ECG if the need arose because of inherent misrepresentation and the capacity of the reinsurer to absorb the liabilities.

The arrangement was suspended after PDS had operated for only three months and was thereafter terminated by the government of Ghana on October 18, 2019. This paper highlights the events and challenges that led to the short-lived operation of PDS and the concession agreement. The summary of findings are given as follows;

1. **The introduction of 51 percent local content was without a plan to raise a required minimum investment of $250 million**. Although the local content requirement was seen

as a compromise on various contentions around the introduction of foreign ownership to the management of ECG, there was no robust plan to ensure that the capital could be assembled locally.

2. **MERALCO did not select capable partners to take up the 51 percent local content**. As the technical and financial lead of the consortium, MERALCO had a responsibility to select capable Ghanaians who could contribute their share of investment.
3. **MiDA did not ensure that due diligence was carried out on the local partners who became part of the consortium.** As part of the requirement in the RfQ, MiDA was supposed to do a due diligence on all members of the consortium to assess their capabilities and the net worth of the consortium which was deemed not to be less than $400 million.
4. **Parliament also failed to do due diligence on the structure of the consortium even though they had suspicions of incapacity of the local companies.** The substance of the argument shifted into political debate between the minority and majority in parliament. While the minority demanded due diligence, the Majority emphasised on the local content.
5. **MiDA ignored the concerns of ECG.** Throughout the PSP, ECG was seen as "anti PSP" and therefore was ignored in the key decisions around the concession. MiDA assumed the role of ECG in the LAA and negotiating on their behalf. In the specific case of the guarantees, MiDA facilitated a change from bank guarantees to insurance guarantees.
6. **The role of the transaction advisors did not live up to expectation.** Upon the realisation that the consortium did not have the capacity to provide the needed guarantees, the transaction advisors proceeded to propose steps to PDS' proposal of converting bank guarantees to insurance guarantees. This deepened the risk of PDS not investing the required amounts in the distribution sector over the five-year period.

The paper therefore recommends the following guidelines for similar future engagements;

1. Government's policies need to be optimised ahead of their implementation. This involves a stress testing and a simulation of all possible scenarios to ensure mitigation of all possible drawbacks.
2. Parliament should have standard due diligence criteria that allows them to offset political interest and focus on a defined practice of evaluating agreements before approvals are made. This ensures that in the long run, the interest of the country is protected without unnecessary delays from non-performance of the approved agreements.
3. Governance of state agencies must be strengthened to prevent excessive control by the executive branch of government.
4. Within the current setting of political interference of state institutions, private sector participation is still an optimal option for improving service delivery and performance of strategic government-controlled entities such as ECG.

INTRODUCTION

Background

The Government of Ghana (GoG) signed the Millennium Challenge Compact II also known as the Ghana Power Compact, with the Millennium Challenge Corporation (MCC) of the United States of America in August 2014. Under the terms of the MCC, the GoG through its implementing agency, the Millennium Development Authority (MiDA) was to be granted US$498.2 million as total program fund to improve the efficiency of the power sector to advance growth of the economy and reduce poverty.

Prior to the compact, Ghana experienced significant challenges in the power sector which had negative impact on the economic growth of the country. In 2013, Ghana's non-oil GDP growth reduced from 8.8 percent in 2012 to 6.6 percent,[1] which reduced further to 3.9 percent in 2014. The negative growth is as a result of power supply deficits that adversely affected the manufacturing and service sectors of the economy.[2] Within this period, shortfalls in power generation worsened to peak at a 1:2 on and off schedule of power supply.[3] This load shedding resulted in revenue losses to the power sector estimated to be about $1.042 billion.[4]

The government of Ghana opted to use the MCC funds for the transformation of the power sector over two other constraints to economic growth identified in a study by the USAID and MCC. The study identified three constraints to Ghana's economic growth namely; insufficient and unreliable power, lack of access to credit and insecure land use rights.

The Power Compact was aimed at improving the reliability and quality of electricity supply. It was also designed to improve regulation, power generation, transmission, distribution and energy access by households and businesses. However, about 73.5 percent of the funds were earmarked for the improvement of the distribution sector (ECG and NEDCO), of which 86 percent was allocated to improvement in electricity distribution in southern sector – the operational area of the Electricity Company of Ghana (ECG). The greater proportion of the funds was allocated to ECG because of its large customer base. In 2012, about 90 percent of total electricity was distributed by ECG, which covered about 83 percent of customers supplied with power. [5]

---

[1] https://www.statsghana.gov.gh/gssmain/fileUpload/National%20Accounts/2015_Annual_GDP_September_2015_Edition.pdf

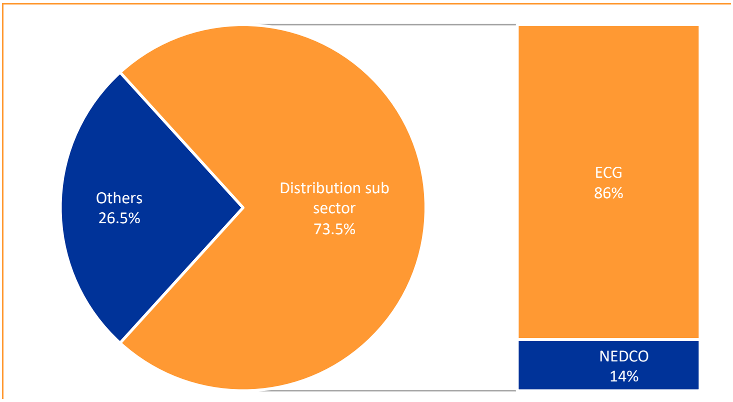
[2] Energy Commission (2015). *2015 Energy (Supply and Demand) Outlook for Ghana. Available at http://energycom.gov.gh/files/Energy%20Outlook%20for%20Ghana%20-%202015.pdf*

[3] Consumers had 12 hours of power supply and 24 hours of power cuts.

[4] Institute of Statistical, Social and Economic Research (2015). Electricity insecurity and its impact on micro and small businesses in Ghana.

[5] Energy Commission (2017). *National Energy Statistics 2008-2017;* IFC (2014). Due Diligence and Private Sector Participation Options Study in Ghana's Distribution Sector.

Figure 1: Percentage distribution of funds in the MCC Compact II



The operational and financial health of the distribution companies had been deteriorating from the onset of Ghana's power challenges. For example, between 2011 and 2012, ECG's losses had increased from GHS 57.4 million to GHS 136.3 million. In 2012, the company recorded a mean System Average Interruption Frequency Index (SAIFI) of 93 times a year and a mean System Average Interruption Duration Interruption (SAIDI) of 214 hours. These were above the annual regulatory benchmark (per LI 1935) of SAIFI and SAIDI values of 6 times and 88 hours respectively. NEDCO also recorded losses of GHS 46.7 million in 2012, with annual SAIFI and SAIDI values of 135 times and 106 hours respectively[6]. These operational and financial challenges justify the decision of government to channel the MCC funds to the power sector, particularly its distribution subsector.

Overview of Millennium Development Authority (MiDA)

Millennium Development Authority (MiDA) was established by The Millennium Development Authority Act, 2006 (Act 702, 709 & 897 as Amended). The objective of the Authority is to oversee, manage and implement the Programmes under the Millennium Challenge Account. These programmes are geared towards poverty reduction through economic growth.

MiDA is governed by a board that is composed of eleven voting members and three non-voting members. The governing board of MiDA is composed of the chairperson, representatives from the Ministries, Departments and Agencies (MDAs) whose functions are

[6] IFC (2014). Due Diligence and Private Sector Participation Options Study in Ghana's Distribution Sector.

of direct relevance to the authority, the private sector and a non-governmental organisation. The current membership of the board are;

1. Chairperson
2. Representative from Ministry of Energy
3. Representative from Ministry of Finance
4. Representative from Ministry of Trade and Industry
5. Representative from Ministry for Business Development
6. Representative from Ministry of Gender, Children and Social Protection
7. Representative from Attorney General and Ministry of Justice
8. Representative from the Private Enterprise Federation
9. Representative from the Association of Ghana Industries
10. Chief Executive Officer of MiDA
11. Representative from the Ghana Association of Private Voluntary Organisations in Development (GAPVOD).

With regards to the Power Compact, the government of Ghana appointed MiDA as the procuring entity (managers of the Compact) and the Board of MiDA as the decision-making body in February 2016. The Authority was directed by government to engage ECG and other key stakeholders in the PSP process.

Box 1: Background to MCC Compact

In 2014, Ghana entered into a Millennium Challenge Compact which sought to provide a grant of about $498.2 million to fund investments in Ghana's power sector. The compact's goal was to advance growth of Ghana's economy and reduce poverty through the power sector. Specific objectives of the Compact were to:

1. Increase private sector investment and the productivity and profitability of small, medium and large-scale businesses
2. Increase employment opportunities for men and women
3. Raise earning potential from self-employment and improved social outcomes for men and women.

To address these objectives, the program consisted of six projects namely:

1. The ECG Financial and Operational Turnaround Project
2. The NEDCO Financial and Operational Turnaround Project
3. Regulatory Strengthening and Capacity Building Project
4. Access Project
5. Power Generation Sector Improvement Project
6. Energy Efficiency and Demand Side Management Project

Options for Private Sector Participation

MCC with the Government of Ghana through Ministry of Energy commissioned International Finance Corporation (IFC) to conduct due diligence on Private Sector Participation (PSP) options for the distribution subsector. The considered PSP options were management contract, lease, concession and a partial or full privatisation. In addition to these options was the business as usual option which did not consider any PSP. The essence of the due diligence was to recommend the appropriate PSP option to meet the following objectives of government for the power distribution subsector:

1. Improving the quality of service, efficiency and finances of distribution companies to support achievement of middle-income status.
2. Mobilising private capital.
3. Minimising the financial burden on the Government.
4. Achieving universal coverage by 2016.

The due diligence report recommended that the lease, concession and privatisation options could address the objectives of government for ECG. The financial analysis of the options recommended concession as the best option for government and the potential private investor. For NEDCO, the due diligence report recommended management contract as the best option for government. However, NEDCO could not proceed with their agreement, hence the PSP agreement for the company could not materialise. This resulted in the grant being redirected to meet other needs. NEDCO cited two main reasons for the failure to proceed with the turnaround project. First, stakeholders of the company were dissatisfied with the conditions of the management contract and second, there was limited time to meet all the conditions precedent clauses, which included securing a transaction advisor to work with all the stakeholders to reach the terms of reference of the management contract.

Government subsequently confirmed its decision to have a concession agreement for ECG in line with the recommendations by the IFC. The ECG concession was to be in force over a period of 25 years but was subsequently reduced to 20 years after a change in government. During this period, the assets and electricity distribution network were to be leased to the concessionaire while ECG remained the owner of the assets; at the expiration of the concession contract, the operation and management of the assets would revert to ECG.

Concerns of labour on the concession

The initial conversation surrounding the private sector participation aroused series of concerns particularly from labour unions within the sector such as the Public Utilities Workers Union (PUWU) with support from Trade Union Congress (TUC). PUWU and TUC jointly organised a demonstration in 2015, to register their disapproval with the PSP process. At the time, the union indicated that the fundamental challenges with the power sector were not with power distribution but limited generation capacities. Beyond the fundamental challenges, they also acknowledged that ECG had challenges that were mainly politically imposed. In August 2016, PUWU issued a statement citing the specific challenges of ECG as follows:

- Managerial and governance inadequacies impacting negatively on staff morale and discipline
- Political interference in the administration of the company
- Non-payment of bills by the government and state institutions; especially the MMDAs
- The lack of cost reflective tariffs (Inherent subsidies not paid by GOG)
- Inadequate power generated which affects volume of sales and turnover
- Transmission capacity related challenges

The key fear from their concerns was that the concession could lead to job losses and increased tariffs among others. PUWU recommended a disciplined managerial and governance transformation approach devoid of political interference other than PSP. In addition, the union also recommended that state institutions meet their payment obligations to ECG, realistic and cost reflective tariffs had to be in place, and the ECG had to be listed on the Ghana Stock Exchange. [7] These recommendations were largely shared by many including ACEP. However, their sustainability could not be guaranteed within the political economy that promotes interference in the affairs of state institutions.

MiDA also specifically responded to some of the concerns raised by PUWU. They explained that the decision to proceed with the ECG PSP arrangement was taken after a broad-based consultation process and in-depth technical and financial reviews, recognising the need for significant investments in the distribution subsector. Further, MiDA indicated that an improved distribution subsector would eventually result in reduced tariffs. To mitigate the concerns of the union about potential job losses, MiDA provided assurance that the government had gone to great a great extent to ensure that the jobs of ECG staff were guaranteed for a period of five years during the concession period. Although MiDA did not provide detailed indications on job security after the five-year guarantee period, it described how an efficient distribution system will create more jobs along the power sector. On the issue of local content, MiDA explained government's determination to ensure high levels of local participation in the ECG PSP transaction. [8]

---

[7] These were highlighted in a press statement issued by the PUWU in 2016 concerning their opposition to the PSP. Full statement available at http://www.world-psi.org/sites/default/files/attachment/news/press_statement_puwu.pdf

[8] https://www.mida.gov.gh/pages/outreach/readnews/mida-s-response-to-press-statement-by-the-public-utility-workers-union-puwu-of-the-tuc-on-the-private-sector-participation-in-ecg-under-the-second-compact-of-the-millennium-challenge-corporation-of-usa-and-the-government-of-ghana#fndtn-news

Other stakeholder engagements on the process

ACEP initiated a dialogue with relevant stakeholders on the PSP process in 2014 to deepen transparency and consolidate concerns and contributions from stakeholders for the attention of government and MCC. These stakeholders included civil society organisations, development partners and NGOs. This was followed up with a multi-stakeholder forum, where analysis of the PSP options and other projects under the MCC were presented by ACEP and KITE. MiDA was cooperative in these engagements. At the forum, the then Board Chairman of MiDA, Prof. Samuel Sefah Dedeh assured stakeholders that MiDA was committed to transparency and deepening of public engagements on the compact to ensure the attainment of the objectives of the compact. These engagements continued through the decision of government to opt for a concession model for the PSP in 2015.

After continued agitation of workers, some civil society actors formed the Coalition of Stakeholders on the ECG Concession Agreement (COSECA), a platform to engage government on their concerns, and the concerns of labour unions on the PSP. The organisation described its membership as

> ***"drawn from groups with diverse and ideologically irreconcilable positions on the PSP, but who have found it necessary to reach out to each other in the supreme interest of Ghana, to work with the government and key stakeholders towards a consensus on how to enhance the ECG reform programme in ways that are more beneficial to the country and mutually acceptable to key stakeholders, including the workers."***

COSECA wrote to government raising concerns about the Compact which includes the governing law of the contract, local content policies, the role of ECG and the regulators, the tenure of the concession and labour issues. In a letter dated 30th May 2017, the Ministry provided responses to the concern raised by the coalition. The concerns and responses are summarised in Table 1.

Table 1: Concerns and recommendations of COSECA and response from government

Concerns	Recommendations	Government's Response
Governing law of the contract	Clarify wording in clause 7.1 of the contract to prevent wide interpretation which could undermine the power of the laws of Ghana.	This was a standard provision for many international agreements. In addition, although the compact is governed by international law, the concession arrangement covering the Lease and Assignment Agreement (LAA) will be governed by Ghanaian law.
Local content policies	Incorporate local suppliers of raw materials in the RfP as an additional provision in the PSP.	Ghanaian companies will have at least 51 percent stake in the new company that will be formed as a result of the PSP.
The role of ECG and the regulators.	ECG should monitor the implementation of the contract and should receive periodic report on the operations and performance of the concessionaire. Also, the role of the regulators must not be compromised.	ECG as the asset owner has the right to monitor the activities of the concessionaire of which performance assessment and other non-regulatory functions are included. The Compact agreement will not in any way usurp the regulatory powers of PURC and Energy Commission.
Tenure of concession which was originally 25 years	Provide a five year term of the concession, with a possibility of extension, as this allows for effective monitoring.	The contract term is 20 years and there will be Key Performance Indicators (KPIs) which the concessionaire is required to meet every year.
Labour issues	To prevent legal termination of appointment of staff of ECG and payment of severance packages, a Joint Venture was recommended. This allows for ease in the transit of staff to the concessionaire without severance.	Staff will be grandfathered to the NEWCO, hence the security of their jobs was guaranteed.

Formation of stakeholder committee

A Stakeholder committee was inaugurated in 2017 in the presence of the MiDA Board which included the Attorney General, Minister of Finance, Minster of Energy, Chief Executive Officer of MiDA and MiDA Board Chair. This Committee was formed as required by the MCC Compact, which comprised of representatives from government, the private sector, media and Civil Society Organisations. The committee was tasked to ensure continuous stakeholder engagements during the process of the Compact II programme. Also, it was charged to review at the request of the Board, specific documents and reports that related to the Private Sector Participation agreement in ECG.[9]

The Committee held its first meeting on 3rd October 2017 to deliberate on the RfP and emerging concerns of PUWU. After the meeting, MiDA gave the RfP document to the Committee for further review and advise. Members of the committee expressed support for the Compact and its ability to result in the reform of the distribution subsector. The Committee provided recommendations on issues surrounding labour, structure of PSP, MiDA's relationship with stakeholders and local content requirements. Box 2 provides a summary of the Committee's recommendations to MiDA.

Inauguration of the Stakeholder Committee by the MiDA Board

MiDA Board

Stakeholder Committee

Unfortunately, the Committee did not live up to its usefulness as MiDA failed to provide any response to the Committee on their concerns and recommendations. MiDA did not engage the Committee further throughout the process though several attempts were made by the Committee to engage MiDA. Subsequent processes that led to the selection of Manila Electric Company (MERALCO) and its local partners as the concessionaire were deemed to have been shrouded in secrecy as there was little or no engagements with the committee on the process.

[9] https://www.mida.gov.gh/pages/outreach/readnews/seven-member-ecg-psp-stakeholder-committee-inaugurated-2#fndtn-news

Box 2: Summary of recommendations of Stakeholder Committee

1. Government should resolve outstanding labour concerns by working with the leadership of PUWU to avoid potential court actions which can delay the progress of the PSP arrangement.

2. To ensure security of jobs after the takeover, MiDA should reconsider the option of partial privatisation or a structure that keeps ECG as part of the PSP (preferably a joint venture) that allows for smooth transition after the PSP period.

3. MiDA should be more assertive in advising the Minister of Energy to ensure that a consensus is reached and a less divisive posture is adopted among stakeholders.

4. In the event where raising local capital to satisfy local content provision becomes challenging, MiDA must proceed with foreign capital. This was to prevent the derailment of the process as a result of challenges in raising local capital.

5. MiDA should undertake a serious public awareness campaign on the Compact. For example, Meet The Press series which would address the erroneous perception in the public that ECG is up for sale.

THE BIDDING PROCESS

Prequalification

The process began with the issuance of the Request for Expression of Interest (RfEoI) in September 2015.[10] By the deadline of submission of expression of interest, 83 local and foreign companies had expressed interest to participate in the concession arrangement. MiDA started an international competitive tendering process through a launch of the Request for Qualification (RfQ) and subsequent Request for Proposals (RfP) in the third quarter of 2016. The RFQ was to select the best initial offering that satisfied technical experience in electricity distribution, experience in developing countries and financial capacity to invest in the ECG. The RFQ attracted 11 applicants out of which six were prequalified. The prequalified companies were from Ghana, South Africa, India, Philippines and Italy. Prequalified companies were invited to submit bids towards the ECG PSP arrangements.

[10] See MIDA 3rd Quarter Report available at https://www.mida.gov.gh/pages/view/275/3rd_Quarter_2015_Report_Final.pdf

Box 3: Companies that applied for prequalification

Name of Company	Country
Engie Energie Services S.A**	France
Enel S.P.A **	Italy
Manila Electric Company **	Philippines
Consortium of Eranove S. A., The Quantum Group Limited and CI-Energies.	France/Ghana/Cote D'Ivoire
Actis GP LLP	UK
Consortium of CH Group, EDF SA, LMI Holdings and Veolia SA **	Ghana/ France
Consortium of Sahara Electric Limited, Egbin Power Plc and Ikeja Electricity Distribution Plc.	Nigeria
Consortium of The Tata Power Company Limited and CDC Group Plc **	India / UK
Butec Utility Services S.A.L	Lebanon
Pallow Ghana Limited	Ghana
Consortium of BXC Ghana Limited, Xiaocheng Technology Stock Company Limited and Shaanxi Regional Electric Power Group Company Limited **	Ghana / China

**** Prequalified companies**

Two bidders' conferences were held on the ECG PSP process. The First Bidders' Conference was held in May 2017 which was participated by the bidders except ENEL S.P.A, which withdrew from the process in October 2016.[11] The First Bidders' Conference was a forum to discuss the structure of the ECG PSP arrangement and to promote interactions between prequalified applicants and the government.

Prior to the second bidders conference in October 2017, the three components of the RfP which were relevant to the transaction; the Rate Setting Guidelines, Sale License and the Distribution License were given to the shortlisted applicants for review. The Rate Setting Guidelines provided the principles and methodology for which tariffs are set by PURC. The sale and distribution licences provided terms under which sale and distribution of power under the compact would be done. The Second Bidders' Conference allowed shortlisted applicants to seek clarity from MiDA and other agencies on the terms and conditions of the concession outlined in the RfP document. Engie Energie Services had earlier withdrawn in September 2017 before the conference.

Following the Second Bidders' Conference, MiDA issued the final revised RFP to the four Shortlisted Applicants in December 2017. There were three main revisions made to the RfP

[11] See https://www.mida.gov.gh/pages/view/196/Concession_Statement_8_Aug_2019_Final_MiDA.pdf/news

document. First, the local content requirement was increased from 20 percent to at least 51 percent. Second, the tenure for the concession was reduced from 25 years to 20 years. lastly, the staff of ECG were given a five-year assurance of employment. These amendments were made to reflect government's objective of increasing local participation in the PSP process and increasing the control and viability of ECG.

Bid Submissions

On March 26, 2018, MiDA closed the submission of bids for the ECG Private Sector Participation (PSP) transaction. Subsequently, the evaluation of the technical proposals began and the Financial Proposal opening occurred on April 16, 2018.

Out of the six companies that were prequalified, bids were submitted by only two companies – the BXC consortium and Manila Electric Company (MERALCO).[12] Media reports indicate CH Group Consortium's concern over the minimum 51 percent local content requirement in the new RfP and further explained that such a restriction would affect the bankability of the concession.[13] In a press statement dated 20th February 2018, MiDA confirmed receipt of a letter from one of the consortia, expressing concern over government's policy to have 51 percent local content in the concession structure. Consequently, the CH group consortium was reported to have withdrawn on March 26, which was the deadline for submission of proposals. The Tata Consortium was also reported to have withdrawn earlier on February 12, 2018.[14] The effect was that the stronger companies in the bid with higher net worth abandoned the process.

Table 2: 2016 net worth of some shortlisted companies in the ECG PSP arrangement

Company	Net worth (USD million)
Engie Energie	49,992
Enel SPA	57,833
MERALCO	1,510
CH Group, EDF and Veolia SA*	47,646
Tata and CDC group	6,846
BXC, Xiaocheng Technology Stock Company Limited and Shaanxi Power Company**	195

* Information on CH Group's net worth was not publicly available

** Only Xiaocheng Technology Stock Company's net worth was publicly available

[12] See https://www.mida.gov.gh/pages/view/575/Q1_Jan_Mar_2018_Report_Compact_II.pdf

[13] https://www.graphic.com.gh/business/business-news/51-ghanaian-ownership-of-ecg-problematic-consortium.html

[14] https://www.mida.gov.gh/pages/view/196/Concession_Statement_8_Aug_2019_Final_MiDA.pdf/news

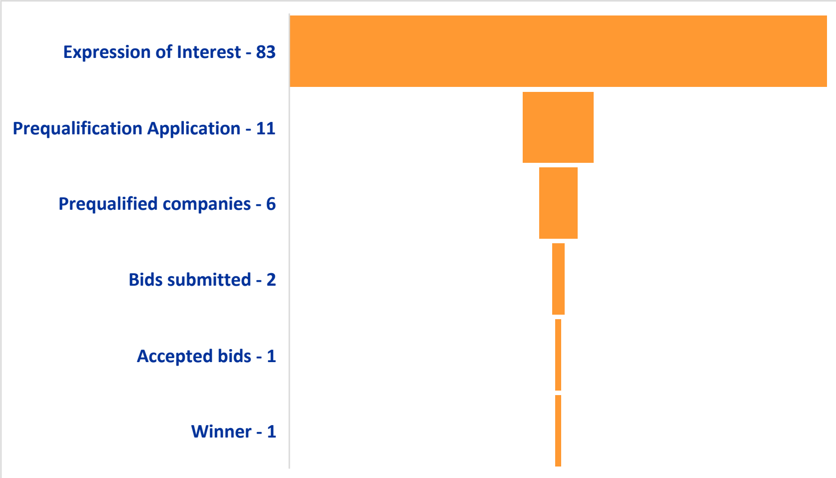
As part of extension to accommodate the new demands by government, MiDA changed its rules to allow shortlisted applicants participate and win the bid even before showing evidence of meeting the minimum local content requirement. This meant that the local companies who would be majority shareholders in the eventual concession agreement did not necessarily have to be part of the bid process. The implication is that the majority shareholders skipped the due diligence done during the process of prequalification and bid evaluation which bordered on financial capacity, corruption risks and conflict of interest. MiDA did not set up a new process to assess the eventual majority shareholders.

BXC consortium was disqualified on the basis of some contracts it had previously signed with ECG which according to MiDA amounted to a conflict of interest. BXC sought legal redress and filed an interlocutory injunction on the PSP process. However, the injunction application was dismissed by the court to allow the PSP process follow its normal trajectory.[15] It is surprising to note however, that the issue of potential conflict of interest was not initially determined before BXC consortium was prequalified. Companies and Consortia were mandated to submit an affidavit that confirmed that each member of the company or consortium was not subject to a conflict of interest or a potential conflict of interest with any entity that had influence over the transaction (See Box 4). The association of BXC with ECG was public knowledge and how MiDA could not determine the potential conflict of interest at the level of prequalification is not only intriguing but questions the sanctity and effectiveness of the process.

MERALCO therefore became the sole candidate and the automatic winner in April 2018 after the technical and financial evaluation of its proposal. The withdrawal of the companies and consortia on the back of local content demands and the eventual disqualification of BXC rendered the bid process uncompetitive and denied the state of any potential of obtaining higher financial proposals.

[15] https://www.mida.gov.gh/pages/outreach/readnews/press-release-dismissal-of-bxc-injunction-application-3#fndtn-news

Figure 2: Number of companies throughout the bid process



Formation and Composition of Power Distribution Services

A consortium of local companies was formed to meet government's 51 percent local content requirement in the PSP. The other 49 percent was held by MERALCO and Anergia SA, an Angolan power company. The joint consortium (of both local and foreign companies) was known as "Power Distribution Services Ghana (PDSG)". Table 3 shows the breakdown of ownership. This arrangement shows that the company that went into the bid shortly after collapsed into a minority shareholder with only 30 percent holdings in the new company. Significantly, the other four companies which make up 70 percent of total shares did not go through the bid process which demanded due diligence.

Table 3: Companies in the PDS consortium

Partners	Origin	Shares
Manila Electric Company	Philippines	30%
TG Energy Solutions Ghana	Ghana	28%
Anergia SA	Angola	19%
Santa Baron Ventures	Ghana	13%
GTS Engineering LTD	Ghana	10%

In a statement issued by MiDA in August 2019, the following is how they explained the due diligence that was done on the PDS consortium:

> ***"A due diligence exercise carried out on MERALCO, in 2016 and 2018, established that the Entity supplies power to over 6.3 million customers across 22 cities in the Philippines. This exceeds the minimum qualification criteria in the bid, which stipulated that the technical operator of the Concession must have, among others, operated an electric utility with not less than one million customers or two electric utilities, with a minimum of five hundred thousand customers each. Founded in 1903, the 116-year old power distributor had a market capitalization of $7.4 billion in 2017.***
>
> ***To meet a major requirement for local participation in the RfQ released to Pre-qualified Applicants in April 2016, MERALCO partnered with three Ghanaian private sector entities as equity partners. The Consortium incorporated Power Distribution Services (PDS) Ghana Ltd, with MERALCO being the technical and financial lead in the PDS Consortium.***
>
> ***Documents submitted to MiDA indicate that MERALCO is the largest single Shareholder in the PDS Consortium with 30% shareholding. MERALCO demonstrates the requisite technical expertise, financial capacity, and overall experience to manage the assets and operations of ECG…. MiDA had no hand in the selection process for members of the PDS Consortium or the share-structuring arrangements of the Consortium. Since no Ghanaian entity has ever operated any such utility, it was apparent that Ghanaian Members of the winning Consortium could only be equity investors." [16]***

This explanation raises fundamental concerns;

a. The financial capacity of MERALCO as a single bidder was enough to meet the financial requirement of the bid (net worth of $400 million) as represented in Table 2. However, the financial position of the 70 percent shareholder of the consortium remained unclarified. The net worth of the various members of the consortium had implication on the financial position of the consortium and their ability to invest the proposed $580 million in ECG. This was a fundamental duty of MiDA to ensure that each member of the consortium had the financial capacity to absorb their liability in the consortium. MiDA's assertion that MERALCO is the financial lead could not have been construed to mean that MERALCO was going to shoulder the financial burden of all

[16] MiDA's statement on the ECG PSP transaction. Available at https://www.mida.gov.gh/pages/view/196/Concession_Statement_8_Aug_2019_Final_MiDA.pdf/news

the members of the consortium. Therefore, the capacity of the individual members to fund their share of cost was important to the whole PSP process and the function of MiDA.

b. MiDA was supposed to do their work of ensuring that members of the consortium met the demands of the PSP process. The RfQ required that due diligence was to be done on each member of the consortium before being prequalified. Also, changes in the membership of any prequalified consortium required that the new consortium meets the requirements in the RfQ. MiDA's claim that they had nothing to do with the selection of the membership of the PDS consortium is not a substitute for the due diligence that had to be performed on each member of the consortium as required by the RfQ.

Box 4: Affidavit for confirmation

Bidding companies and consortia were required to submit an affidavit from each member of a consortia to confirm that each member;

1. Has not been convicted by a final and binding judgment for a crime committed in the course of performing its professional activity;
2. Does not have unsettled tax liabilities in respect of judgments awarded by any Court or similar proceedings in the period of three (3) years prior to the publishing of the RfQ, save in each case to the extent that it has made a suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
3. Does not have liabilities on the grounds of sentences rendered in criminal or misdemeanour proceedings in the period of at least three (3) years prior to publishing of the RfQ;
4. Neither it nor to its knowledge any Relevant Person (including as applicable any member of the consortium) has been convicted of fraud, bribery, corruption, collusion, or money laundering or for a criminal act involving dishonesty, physical violence, harm to human life, trafficking in persons, or trafficking in controlled substances, nor is under investigation for, such criminal activities;
5. It is not subject to a conflict of interest or potential conflict of interest which arises from a relationship between it, its employees, or any Relevant Person and any GoG ministry, departments, agency, or body or their officials or employees which has have direct or indirect influence in the scope or manner of execution of the Transaction, or the conduct of the Tender, and which relationship can give rise to reasonable concerns about the impartiality (in relation to it) of the Tender or the Tender Evaluation Committee;
6. Is not excluded from a bid or other public process in Ghana, and is not:
   a. debarred from financing by any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 (www.crossdebarment.org) for the activities required to carry out the obligations of the Concessionaire and to build and operate the Project;
   b. listed on any financial sanctions lists promulgated by the UN Security Council or its Committees, pursuant to any Resolution under Chapter VII of the Charter of the United Nations; or
   c. engaged, and it does not engage, in operations (directly or through any subsidiary) or transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees pursuant to any Resolution under Chapter VII of the Charter of the United Nations or national sanctions in Ghana.

TRANSACTION AGREEMENTS AMONG PDS, ECG AND GHANA

Parliamentary approval

The concession agreement which contained the Lease and Assignment Agreement (LAA), Bulk Supply Agreement (BSA) and the Government Support Agreement (GSA) was laid before Parliament for approval on July 10, 2018. The Joint Committee on Finance, Mines and Energy deliberated on the agreement on July 16 and subsequently presented a report on the agreement to the plenary on July 18, 2018. Parliament approved the concession agreement on July 24, 2018.

The discussions of the agreements in Parliament repeated many of the contentions that had been raised by the public domain.[17] The Joint Committee on Finance, Mines and Energy used a day to review the three agreements which some members of the Committee thought was a rushed process and failed to answer questions that were fundamental to the objective of improving the financial viability and quality of service of the power distribution sector. Key among the concerns that came from the Minority included the capacity of the local partners in the PDS consortium and the beneficial ownership of the various entities. Some members of the Committee therefore requested Parliament to conduct due diligence on the companies. However, at the time of debating the agreements on the report of the Committee at plenary, due diligence had still not been done.

While the Minority sought to probe the process and capacity of the local partners, the argument of the majority focused on the structure that gave 51 percent to local companies and security of employment for ECG staff. This banter swept under the carpet the key consideration of ensuring that the consortium was strong enough to deliver on its financial obligations.

Fulfilling critical conditions precedent

An essential condition for the transfer of rights and obligations of the parties under the agreement was the satisfaction or waiver of 45 Conditions Precedent (CPs) to the transfer date. In the event that the CPs had not been satisfied or waived by the parties by the transfer date of December 30, 2018, the parties could agree to convert from Conditions Precedent to Conditions Subsequent (CS) or terminate the agreement without incurring any liability to either party. The conversion from CP to CS allows for those unsatisfied conditions to be met after the transfer date.

[17] Excerpts from Parliamentary proceedings on 24th July 2018. Available at https://www.parliament.gh/epanel/docs/pb/24th%20July%202018.pdf#viewer.action=download

In the specific case of the agreement, transfer date was extended on two occasions (February 1, 2019 and March 1, 2019) to allow the parties to meet the most critical conditions before the assets of ECG could be transferred to PDS. The critical outstanding CPs were;

a. Tariffs set in accordance with the PURC Rate Setting Guidelines (CP4)
b. BSA Payment Security (CP24)
c. Lease Payment Security (CP31)

MCC and Ghana government had agreed on March 1, 2019 deadline for the transfer of assets of ECG to PDS. Failure to meet this deadline would result in a loss of the grant of US$190 million allocated to remedying the ailments of the electricity distribution company.

PURC was required to issue tariffs in line with Rate Setting Guidelines to guarantee revenue to PDS which had delayed because government said it was negotiating the price of gas which was a key element in the tariff methodology. To meet the requirement of CP4, government issued an agreement to provide a cash flow of one-twelfth of revenues to be received by PDS before any entity is paid along the value chain.

PDS was required to raise payment securities of US$350 million in the form of either Demand Guarantees or Letters of Credit issued by a qualified bank. However, PDS was unable to raise the needed payment securities. In a statement, MiDA explains why PDS could not raise the needed guarantees.

> ***"… A key element for the transaction was the PURC's Major Tariff Review. PDS argued that PURC had been unable to review tariffs and that at prevailing tariffs, its projected losses were too significant to enable it to arrange a project financed letter of credit facility, which would have enabled it to issue letters of credit as the Payment Securities, as envisioned by the Transaction Agreements Through Cal Bank, PDS therefore proposed to provide Payment Securities issued by insurance companies, with local insurance companies taking the lead as is required by Ghanaian law, and reinsured by one or more re-insurers."*** [18]

It is important to point out, that the CP4 letter was issued to mitigate the very challenge explained by MiDA. The agreement by the Minister of Finance to give one-twelfth of the cash flow of the distribution sector to PDS was in line with the proposed revenue requirement by PDS. It is however intriguing that MiDA and IFC would advise government to alter the required payment securities from demand guarantees or letters of credit to insurance guarantees.

At that point, the evidence of the inability of the consortium to raise financing was incontrovertible. MERALCO, who was described as the technical and financial lead on the

[18] MiDA's statement on the ECG PSP transaction. Available at https://www.mida.gov.gh/pages/view/196/Concession_Statement_8_Aug_2019_Final_MiDA.pdf/news

transaction is claimed to have over a hundred years of experience in power delivery, with a market capitalisation of over $7 billion in 2017 could not provide the guarantees. This raises fundamental concerns on how MERALCO, having demonstrated the requisite technical and financial capacity could not leverage on its resources to produce the demand guarantees.

On February 27, 2019, PDS submitted the payment securities in the form of insurance guarantees to MiDA. This was purported to have been issued by local insurance companies as the primary insurers, with Al Koot Insurance and Reinsurance Company, based in Qatar as the reinsurer.

It is evident that MERALCO did not participate in the effort to raise the demand guarantees. When government altered the guarantees to insurance guarantees, the total fees paid to raise the guarantees was $12.25 million; out of which $7 million was the insurance premium and $5.25 million was to be paid to Cal Bank for advisory services. Two of the local partners TG Energy Solutions (on behalf of TG by Philip Ayesu) and Santa Baron Ventures mobilised $8 million before the transfer date and later the balance of $4.25 million was paid from operating cashflows from the distribution of power.

The role of ECG in the PSP transaction

ECG was the recognised party in the LAA and the BSA approved by Parliament since the two agreements were signed between PDS and ECG. The decision to waive the two critical CPs on the provision of payment guarantees rested with ECG. The evidence shows that PDS rather engaged MiDA to facilitate and accept changes to the guarantees. According to the Ministry of Finance[19], PDS requested MiDA to accept demand guarantees issued by an A-rated insurance company even though per the agreement this was supposed to be the decision of ECG. Disagreeing with the change from bank guarantees to insurance guarantees, ECG had insisted on cabinet approval and parliamentary ratification but could not proceed further with it based on the advice received from the Minister of Justice & Attorney General. This confirms that ECG as the sole party granted the powers to alter the guarantees outlined in CPs 24 and 31 did not agree to the changes proposed by PDS and endorsed by MiDA. The Ministry of Finance confirms that ECG was compelled to accept the insurance guarantees to meet the MCC timelines. On evidence, some key conversations around the guarantees did not involve the ECG directly, but rather the board chairman. On February 27, 2019, MiDA sent scanned copies of the demand guarantees by email to the Ministry of Finance, with the board chairman of ECG in copy.

> ***"PDS has now submitted the executed Guarantees. Kindly find attached scanned copies of the Guarantees (We are working to produce better quality scans). We would be grateful if you could receive your authorization***

[19] Statement from the Ministry on the termination of the PDS Concession

> ***to accept the guarantees. The approved texts of the guarantees are also attached."*** [20]

In defining their role in the CP committee, MiDA explained that its role was ***"…that of a coordinating unit, aggregating information, providing advice to Government and facilitating the timely execution of activities by the Parties to the Transaction Agreements."*** However, the role of MiDA in the negotiation shows that they were more than what they claimed they were. Key conversations on the guarantees happened between MiDA and PDS even though ECG was the recognised party in the transaction as approved in the LAA by Parliament. The insurance guarantees were sent to MiDA who kept the original copies and sent scanned copies to the Ministry of Finance, copying the Board Chairman of ECG. ECG could not get the assurance from MiDA and the transaction advisors on the validity of insurance guarantees from Al Koot before the transfer date.

MiDA confirmed in their statement that for contracts of this nature

> ***"…the Parties are required to carry out their respective due diligence on the various aspects of the transaction. Due to the cost of the Guarantees and the time within which transfer usually occurs, it is industry practice and typical for Guarantees to be issued on the date of Transfer or very close to the Transfer Date making it impossible to carry out extensive due diligence on Guarantees received. The presumption in law is that a Guarantee which is tendered is valid. This is based on the principle in law that the Parties are acting at all times in good faith. In the instance of the ECG Concession, the Guarantees were received at approximately 4.00 p.m. on February 26, 2019. On February 28, ECG wrote to Al Koot to verify the validity of the Guarantees. This process commenced prior to the Transfer Date, not because there was any indication of any problem with the execution of the Demand Guarantees, but simply because it is the normal process in transactions of this nature…***[21]***"***

This means that MiDA presumed the guarantees to be valid while ECG on the other hand was pushing to obtain information on the validity of the guarantees prior to the transfer date. According to the ministry of Finance, MiDA confirmed the validity of insurance guarantee on March 13, after PDS had assumed the assets and operations of ECG on March 1, 2019.

[20] This was an excerpt of the email sent by MiDA to the Ministry of Finance.
[21] MiDA's statement on the ECG PSP transaction. Available at https://www.mida.gov.gh/pages/view/196/Concession_Statement_8_Aug_2019_Final_MiDA.pdf/news

AFTERMATH OF THE CONCESSION AGREEMENT

Insurance validity and suspension of the concession

Having failed earlier to receive confirmation from MiDA, ECG wrote directly to Al Koot on February 28, 2019 to ascertain the validity of the insurance guarantees.[22] On June 24, 2019, ECG received response from Al Koot which noted among others the following;[23]

1. Al Koot is not authorised by its constitutional documents to underwrite counter party and trade risk;
2. The Guarantees purportedly issued in respect of the Transaction is not an approved product line;
3. The Demand Guarantees were not executed by authorised signatories of Al Koot;
4. The letter dated 13th March, 2019 forwarded by MiDA to ECG purporting to confirm the issuance of the Demand Guarantees was part of the misrepresentation in respect of the purported issuance of Demand Guarantees to secure the transfer of assets of ECG to PDS, as the signature on the letter was forged.

In summary, Al Koot refused to accept any liability for or obligations in connection with the transaction of demand guarantees on behalf of PDS. Whiles MiDA and the transaction advisors contend that the report was valid, government held a contrary opinion that further investigations were necessary. This led to government's decision to suspend the PDS agreement pending investigations into the presence or absence of demand guarantees.

Government commenced an investigation to understand the issues regarding the alleged fraudulent insurance guarantees. The team was led by the Minister for Interior, and included the Deputy Attorney-General & Minister for Justice, officials from the Ghana Police Service and Ministry of Finance. Even though government had announced an investigation into the matter, MiDA also commissioned FTI Consulting to conduct a forensic audit. This decision was made at a special board meeting, where key government ministries (Ministry of Finance, Ministry of Energy, and the office of the Attorney General and Ministry of Justice) on the MiDA board were absent.[24] MiDA's forensic audit was completed ahead of government's investigations which started earlier.

---

[22] The transaction advisors claimed that they provided ECG with contact details other than those provided in demand guarantees. However, ECG also claims that their attempts to contact Al Koot was based on their own internal due diligence.

[23] Statement from the Ministry on the termination of the PDS Concession

[24] Minutes of 31st special meeting of the Board of Directors of MiDA. Available at https://www.mida.gov.gh/pages/view/643/31ST_SPECIAL_MEETING_MiDA_Board_Summary_of_Minutes_pdf.pdf

The FTI Report

The report from FTI concluded that it did not identify any information to suggest wrongdoing on the part of MiDA, PDS and the other local finance companies involved in the transactions on the demand guarantees. The report also highlights the following:

1. The delay in announcing new tariffs and the delay in agreeing on a list of Power Purchase Agreements (PPAs) caused difficulties for PDS to obtain financial information relevant for project financing (Sections 1.1 and 1.2 of the FTI report).
2. PDS' inability to raise payment securities in the form of demand guarantees or a letter of credit from a qualified bank was as a result of the consortium lacking the required level of capital for such a transaction (Section 1.3 of the FTI report).
3. There was evidence to show that the primary insurance companies had not completely analysed and understood the risk they were assuming by agreeing to issue a demand guarantee on behalf of PDS (Section 3.1 of the FTI report).
4. It was evident that the concerns of ECG on the procedures in the issuance of demand guarantees were ignored (Section 3.6 of the FTI report).
5. The officer who purportedly acted on behalf of Al Koot did not have the authority to bind the company as far as the demand guarantee in question was concerned (Section 12 of the FTI report).

The FTI report however fail to answer fundamental questions about how the MiDA ascertained the validity of the insurance guarantee purported to have been signed by Al Koot. According to the FTI report, MiDA was advised to work with PDS and the insurers to ascertain the validity of the insurance guarantee and were given specific steps to ***"Confirm identity and ability of reinsurers to pay"*** and to ***"Confirm identity and ability of primary insurers to pay.***" [25] The evidence as quoted from MiDA's statement show that they rather presumed the validity of the insurance instead of confirming it as advised by the financial advisors. According to the ministry, MiDA forwarded a purported confirmation of the demand guarantees by Al Koot to ECG. While the transaction advisors claim to have advised ECG to go beyond the contacts on the demand guarantee to ascertain its validity, it is unclear whether MiDA applied this advice on itself when it sought the validity of same. Subsequent events through ECG's inquisition which led to the denial by the executives of Al Koot show that MiDA's effort were limited in establishing the validity of the guarantee.

[25] Excerpt from the FTI report

The Cancellation of the PDS Agreement

From the investigations, government was convinced that the insurance was not valid, and ECG could not have accessed if it became relevant as stipulated in the LAA. Consequently, government announced the termination of the concession agreement on 18th October 2019. A statement signed by the Minister of Finance expressed government's firm opinion on the absence of a demand guarantee, hence their decision.

According to the Ministry, the evidence of the non-existence of a demand guarantee was in breach of the articles 2.6 and 5.11 of the LAA which was also applicable to the BSA. Thus, a termination of the transaction agreements was to follow as a necessary consequence in line with the provisions under the agreements.

Millennium Challenge Corporation could not agree with government's decision to terminate entirely the PDS concession agreement. In a letter dated October 18, 2019, MCC provided a summary of principal terms which would lead to the reinstatement of the suspended concession rights of PDS. This followed a meeting between the Minister of Finance and the Secretary to the President (representatives of Ghana), and the Principal Deputy Vice President and the Resident Country Director-Ghana of MCC (representatives of MCC). The letter provided four general principles;

1. Maintain the framework and the terms and conditions of the existing transaction agreements, unless otherwise agreed to by all parties;
2. Ensure at least the same level of investment commitment in the distribution sector as was committed to in the existing shareholders agreement;
3. Maintain MERALCO in its current roles of financial lead shareholder, operational lead shareholder and developing country lead shareholder
4. Facilitate the equity participation of potential Ghanaian institutional investors in the transaction in a fair and transparent manner, while honouring the rights of the existing shareholders, the local ownership requirements and the transfer restrictions of the GSA.

In the letter, government was to exercise these principles by formally announcing the reinstatement of the concession rights of PDS, lifting the suspension of the LAA, BSA and GSA, and causing the Energy Commission to lift the suspension of PDS' retail supply license. On the part of MCC, it was to release the MiDA Tranche II funding and authorise the resumption of activities toward the development of a regional compact which involves Ghana. This was to be executed by October 30, 2019.

The meeting occurred on a Friday and according to the Ministry, they requested for a three-day extension to carry out internal consultations before executing the action steps outlined by MCC. However, MCC insisted on the execution of the letter by midnight October 18 which was the same day.

According to the Ministry, the content of the letter was contrary to an earlier meeting between the President of Ghana and the CEO of MCC in September 2019, which produced an understanding to discontinue the concession by both parties. It explained that the President of Ghana and the CEO of MCC had committed to a restructuring plan which was to be executed before December 31, 2019. This further informed their decision not to execute the letter and proceed with subsequent termination of the agreement.

The proposal by MCC to allow equity participation of institutional investors and maintain MERALCO was a tacit admission by MCC that the problem of the concession was with the local partners. While the proposal reflects ACEP's position, it was also important to recognise that MERALCO could not be pardoned for assembling local partners that did not show capacity to invest in the consortium.

Following the termination of the concession, MCC confirmed that the Tranche II funding of $190 million under the Compact was no longer available to Ghana. The termination however did not affect the commitment of the Corporation in implementing the Tranche I funding of $308 million under the Compact.

CONCLUSIONS AND THE WAY FORWARD

The ECG private sector participation had the potential to transform the power sector through the reduction of technical and commercial losses, enhancing revenue collection and promoting the financial health of the power sector value chain. These challenges emerged from prolonged politicisation and mismanagement of the utility to the point where substantial investment was required to fix the problem. The best option was not for government to continue to inject money into a system that was not independent of political decisions but to attract private capital. Government subjected the reforms of the power sector to the second compact of the MCC to support the process of introducing private sector participation into the distribution sector.

After five years of engagements and the transfer of ECG's assets a private investor, the concession arrangement could only last for three months. The key reasons to the failure are identified as follows;

1. **The introduction of 51 percent local content was without a plan to raise a required minimum investment of $250 million**. MiDA in 2017 revised the RfP based on new government's policy to have a minimum of 51 percent local content. Although this was seen as a compromise on various contentions around the introduction of foreign ownership to the management ECG, there was no robust plan to ensure that the

capital could be assembled locally. This contributed to the withdrawal of some prequalified companies from the bid which resulted in an uncompetitive bid process.

2. **MERALCO did not select capable partners to take up the 51 percent local content**. As the technical and financial lead of the consortium, MERALCO had a responsibility to select capable Ghana entities who could contribute their share of investment.
3. **MiDA did not ensure that due diligence was carried out on the local partners who became part of the consortium.** As part of the requirement in the RfQ, MiDA was supposed to do a due diligence on all members of the consortium to assess their capabilities and the net worth of the consortium which was deemed not to be less than $400 million.
4. **Parliament also failed to conduct due diligence on the structure of the consortium even though they had suspicions of incapacity of the local companies.** The substance of the argument shifted into political debate between the minority and majority in parliament. While the minority demanded due diligence, the Majority emphasised on local content.
5. **MiDA ignored the concerns of ECG.** Throughout the PSP, ECG was seen as "anti PSP" and therefore was ignored in the key decisions around the concession. MiDA assumed the role of ECG in the LAA and did negotiations on their behalf. In the specific case of the guarantees, MiDA facilitated a change from bank guarantees to insurance guarantees and presumptuously confirmed the validity of the guarantees when ECG raised concerns.
6. **The role of the transaction advisors did not live up to expectation.** Upon the realisation that the consortium did not have the capacity to provide the needed guarantees, the transaction advisors proceeded to provide steps for the conversion of bank guarantees to insurance guarantees as proposed by PDS. The advisors should have detected the potential risk of PDS' inability to invest the required amounts in the distribution sector over the stipulated five-year period.

In light of the findings, the following recommendations are made for subsequent PSP arrangements;

1. Government's policies need to be optimised ahead of their implementation. This involves a stress testing and a simulation of all possible scenarios to ensure that possible drawbacks can be mitigated. In the specific case of the local content provisions, government could have analysed the potential of the private sector to participate and model the nature of invitation required to raise the needed financing for the PSP. In that situation, transparency becomes a key ingredient to share information and encourage prospective local partners to invest.
2. Parliament should have standard due diligence criteria that allows it to offset political interest and focus on a defined practice of evaluating agreements before approvals

are made. For instance, parliament should have a standard for checking fraud, value for money, and financial capacity of companies and individuals dealing with government. This ensures that in the long run, the interest of the country is protected without unnecessary delays from non-performance of the approved agreements.

3. Governance of state agencies must be strengthened to prevent excessive control by the executive branch of government. In the PSP process, ECG was side-lined, and their role was assumed significantly by MiDA because they were led by political appointees and could not assert themselves on principled points of divergence. This questions the mode of appointments to these institutions who were supposed to operate in any other corporate business.
4. Within the current setting of political interference of state institutions, private sector participation is still an optimal option for improving service delivery and performance of strategic government-controlled entities such as ECG.

Africa Centre for Energy Policy
Avenue D, Hse. No. 119D, North Legon
P.O. Box CT2121 Cantonment, Accra,Ghana
Tel. +233 302 900 730
info@acep.africa
www.acep.africa

Cover page image source:ETEnergyworld