Doraleh Container Terminal, Djibouti

Full Description

Project Summary:

Background

Djibouti is located strategically in the Horn of Africa between the Gulf of Aden and the Red Sea and adjacent to the Suez Canal, one of the world's busiest shipping lanes. Its port – the Djibouti Port – serves as Djibouti and landlocked Ethiopia's main seaport. To leverage this strategic opportunity and to diversify its port operations, the Djibouti government decided to build a new container terminal in Doraleh, a location just outside Djibouti City. It elected to pursue PPP to construct the new container terminal – the first-ever PPP in Djibouti.

Project Structure

The Djibouti government and Dubai Ports (DP) World, a Dubai-based, multinational port terminal operator, entered into a joint venture (JV) called the Doraleh Container Terminal SA (DCT). DCT is 67 percent owned by PAID (Port Autonome International de Djibouti – the authority of the old port of Djibouti) and 33 percent owned by DP World. The JV is responsible for the development, financing, design, construction, management, operation, and maintenance of the container terminal under a 30-year, Build-Operate-Transfer (BOT) PPP structure. The concession agreement came into effect in February 2004, with the option for two, 10-year renewals. The agreement stipulated that the Djibouti government could not grant concessions for any other port and free zone facilities within Djibouti during the contract period. The contract also granted DCT the right to appoint most DCT board members, despite being a minority shareholder. This right allowed them to retain control of the JV's management and operations.

The total project cost was estimated at USD 396 million. Of this, USD 263 million came from five banks (Bank of London and the Middle East, Dubai Islamic Bank, Islamic Development Bank, Standard Chartered Bank, and WestLB AG – with guarantees provided by the Multilateral Investment Guarantee Agency totalling USD 160 million. The main financing was provided under an Islamic, Sharia-compliant structure, with a 10-year tenor that included a two-year construction phase; with another USD 103 million provided by the African Development Bank and Proparco under a 10-year senior loan. The remaining investment cost was financed through equity. The project generates its revenue from terminal handling charges, while the government also receives income through import and export taxes.

Lessons Learned

The terminal, with an annual capacity of 1.5 million shipping containers, was opened in 2009 and has created around 10,000 direct and indirect jobs. It was regarded as Africa's most advanced container terminal, equipped with modern facilities that offer world-class productivity of 34m/hour/crane average. It has been reported that the net income of the new terminal ranges between about USD 55 to 80 million per year.

In February 2018, however, the government of Djibouti unilaterally terminated the 30-year contract with DP World, stating that the move was intended to "save the country's sovereignty and economic independence." The government also accused DP World of bribing the head of PAID to get advantageous terms for the concession. Concurrently, the government of Djibouti seized control of the terminal, forcing DP World employees to leave the country. It was reported that, in 2013 before termination, the Djibouti government sold 23.5 percent of PAID's shares to China Merchant Holding International (CMHI). Following the sale of these shares, PAID signed a deal with CMHI to build the new Doraleh Multipurpose Port, which opened in

2017.

Following the unilateral termination, DP World commenced arbitration against Djibouti before the London Court of International Arbitration. DP World accused Djibouti of breaching the agreement by revoking DP World's exclusive rights and developing a partnership with CMHI on various port projects. DP World also denied the allegations of corruption, given that the agreement was approved by the Djibouti parliament. The Tribunal found in favor of DP World, finding that the contract with the government of Djibouti is still valid and binding. The Tribunal awarded DCT USD 385 million plus interest for Djibouti's breach of DCT's exclusive rights and another USD 148 million for historic nonpayment of royalties, plus costs and fees incurred in arbitration. To date, the government of Djibouti has yet to respond to the arbitral award. DP World is also pursuing litigation against CMHI before courts in Hong Kong SAR, China. A wholly publicly owned Djiboutian company called SGTD now runs the Doraleh Container Terminal.[1]

The case exemplifies private partner concerns about the possibility of expropriation when entering into PPPs, especially in emerging PPP markets where there is little past practice. Prospective private partners are likely to insist on robust, contractual protections against such adverse actions, with equally reliable dispute-resolution mechanisms, including international arbitration, as well as assurances that such arbitral awards are ultimately enforceable. This is vital to protecting the private partner's investment over the life of the PPP.

Footnote 1: Case source(s): http://www. transportevents. com/presentations/ Mozambique2015/ MTBS.pdf Accessed on May 27, 2019.

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