Opposition grows to Agbar's home rule

A heated debate is raging over the legality of a recent concession award to Spanish water services company Agbar. The outcome could have major repurcussions for the company's footprint in its home city.

The recent decision by the metropolitan area of Barcelona (AMB) to award a 35-year integral water cycle concession for greater Barcelona to Spain's largest private operator Agbar without an open tender is facing concerted opposition from private sector water operators, NGOs and municipalities.

Agbar and its subsidiary Sorea already manage water supply in 28 of the AMB's 36 municipalities, including Barcelona city, and have had a strong presence since the mid-19th century. With the inclusion of wastewater – up to now the responsibility of the public company EMSSA – Agbar's operation will become a virtual monopoly in the metropolitan area.

When Ricard Gomà, deputy mayor of the Barcelona municipality of El Prat de Llobregat and a member of AMB's governing council, questioned the decision, he was told that "because Agbar already enjoys a near-monopoly on water provision in the metropolitan area, it is legitimate to award the concession without an open tender."

When questioned by GWI, AMB said a tender process was unnecessary because "creating the joint company only changed the management model for wastewater treatment and water supply, but did not alter existing rights and concessions."

Aigua és Vida, a coalition set up to oppose the awarding of Catalan municipal water concessions to private sector companies, argues that the real motive for avoiding an open tender is Agbar's current precarious legal position with regard to its Barcelona operations.

Coalition spokesman Eloi Badía told GWI that, since a court ruled in 2010 that it has no legal contract of concession or award of service for the water supply operation it runs in the city of Barcelona, Agbar "has been operating in a legal vacuum.

"They know they have to regularise their situation. Defining the 35-year concession as a continuation of the contract that Agbar obtained in 1997 to operate the Abrera WTP is the means that Agbar and AMB have devised to resolve the legal problem," he said.

The arrangement is as follows: Agbar will have 85% of a joint company – to be called Aguas de Barcelona – which will operate all retail sewerage and wastewater services in metropolitan Barcelona and deliver drinking water provision in 28 municipalities for the concession period.

The AMB will retain a 15% share of the new company, based on a €50.5 million valuation of its assets, while Agbar's assets have been valued at €286 million. The 'new' Aguas de Barcelona will pay an annual canon of €20 million which, according to AMB, "will not be passed on to consumers via the tariff", but which Ricard Gomà insists "will inevitably raise prices for users."

A well-placed source within the Catalan water administration told GWI that, "since SGAB [Agbar] has no prior contract of concession, the whole process is illegal," adding that "Aguas de Barcelona can only obtain the money to pay the canon via the tariff".

Agbar's private sector competitors are also convinced that AMB's award of the concession to Agbar is illegal, and an industry source told GWI that at least one firm is presenting a legal challenge to the decision. A number of municipalities and the political party ICV have also raised formal objections to the way the process has been carried out.

The lack of open tendering is not the only target of criticism. Luís Babiano of AEOPAS, the public sector water operators' association, argues that AMB's role as a regulatory authority will be compromised by its involvement with Agbar in operating water services. "It seems that Agbar is a company with privileges that place it above the law," he said.

According to Eloi Badía of Aigua és Vida, "the lack of transparency and of any external auditing in the assignation of assets" within the new joint company is another major flaw in the process. "The relevant documentation has not been put online, and what documentation is available fails to clarify on what grounds assets such as Barcelona's sewerage network – which has been fully paid for and transferred to the public administration – have been assigned to Agbar," he said.

Amazingly, the controversy has been virtually ignored by the Catalan and Spanish press despite the size of the business at stake – which AEOPAS estimates is worth €330 million – and the heat which has been generated as a result. The issue is, however, certain to be subjected to a close examination in the courts, and the ultimate verdict may be decided by the European Court of Justice.

Agbar turned down an invitation to contribute to this article.

Counting the monopoly money

How much further can Agbar leverage its seemingly untouchable position of dominance in Barcelona's water services market?

The monopoly situation in metropolitan Barcelona's water sector could become even more accentuated if a consortium headed by Agbar is awarded the 50-year concession for ATLL (Aigües Ter Llobregat), the public sector bulk water operator for the Barcelona region.

Eloi Badía of Aigua és Vida believes it will be "very difficult for any company other than Agbar to operate the ATLL concession if the Aguas de Barcelona deal is allowed to go through" (*see main story*).

Two consortia presented bids for the ATLL concession by the 6th October deadline: Agbar with the Australian and Canadian investment funds First State and Caisse de Dépôt, respectively and Acciona with Brazilian bank BTG Pactual.

According to the business daily Expansión, Agbar will have a 25% share, Caisse de Dépôt 33% and First State 30% with CASSA (Companyia d'Aigües de Sabadell) and other investors holding the other 12% in the Agbar consortium. Long-term debt financing has apparently been agreed with Spanish banks, including CaixaBank.

In the Acciona consortium, both main parties will have a 39% share, with private investors making up the other 22%.

Faced with the need to reduce debt, the Catalan water agency (ACA) put the concession out to tender last August. The concession-holder will make an upfront payment (canon) of €300 million and then a further €700 million over the 50-year life of the concession.