What if the TTIP Changed the Regulation of Public Services?
Lessons for Europe from Developing Countries

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Abstract

This paper argues that the TTIP negotiators may be underestimating some of the risks associated with the treatment of public services. De facto opening the door to supranational regulation of key public services may be well intended to protect investors. But when the bargaining power of these investors operating in non-competitive markets (which is the case for most public services) becomes excessive as a result, the experience of developing countries in interactions with many of the same large players points to risks. It is likely that outcomes in terms of the usual policy criteria (efficiency, equity and fiscal viability) will not be as positive as promised in an environment in which regulation ends up weaker (because it is captured or less specialized). Ignoring these lessons and failing to internalize them in the design of negotiation is likely to cost Europe.

1. Introduction

The fact that the protection of public services has been a recurring concern in the Transatlantic Trade and Investment Partnership (TTIP) debates, suggests, at the least, a lack of clarity on the specific content of the negotiation and on its outcome. The EU officials keep repeating that TTIP will not be different on this front to previous trade deals which have all provided solid guarantees to fully protect public services. But consumers, workers and other stakeholders are concerned.

The main guarantee claimed by the negotiators is that EU governments cannot be forced to privatize and remain free to keep public services ... public. The commitment covers health, education, transport and water and sanitation and applies to all government levels. This seems fine and enforceable on paper. However, it becomes less fine when the EU argues that TTIP will not affect governments’ ability to operate public monopolies or grant exclusive rights to a

1 We are grateful to R. Schlirf for useful discussions and in particular V. Ginsburgh, for useful comments and suggestions. Any misinterpretation or mistake is ours.
particular private supplier. How credible this is, depends largely on two dimensions on which the international experience has not always been reassuring.

The first is that there is the possibility that the changes in the rules of the game built in TTIP actually lead to a new wave of privatizations of public services as global firms (both European and North American and possibly others benefiting from jurisprudence) may see an opportunity to compete more aggressively for the right to control these large markets with large residual monopolistic components. There is no guarantee that it will happen, but there is no reason to assume it will not happen either. This is not a matter of concern on itself if regulation works well. However, unless the negotiators anticipate the possibility, it seems reasonable to wonder whether the regulatory capacity of many governments is sufficient to take on the changes if these happen. The experience suggests that a bit of caution is in order as discussed later.

The second, and most important one, is how conflicts will be solved in the future since the TTIP changes the rules of the games in this respect, more so in practice than the European negotiators without much experience with interactions with the large players in the sector seem to anticipate. The US and the European regulatory traditions in public services are quite different and there is a risk for countries keen on attracting new private investment from the US to close the financing gap in the sector to have to deal with the differences without being equipped to do so. And yet, the desire to improve the investment climate will include a progressive adjustment in the European traditional regulatory approaches to increase the odds of attracting foreign private capital in the public service sector. History (as discussed later in the context of developing countries) demonstrates that this is likely to lead to conflict between large multinationals and host governments. Ready or not, conflict will happen.

For now, the official European Commission (EC) position is that, in case of conflict, national rules will prevail and US companies will not be allowed to sue for loss of profit. This is a bit less credible than it seems at first sight. It is because one of the mechanisms for arbitrating disputes is known as Investor-State Dispute
Settlement (ISDS) which essentially, in practice, is a form of international private arbitration. This form of arbitration can overrule many national decisions by a regulator and that’s a political and social problem.  

Essentially, this implies that there is a layer of regulation above national regulation. The TTIP solution thus sends the wrong signal if countries are not keen on changing their regulation: “if you don’t adjust it, it will be done by a supranational de facto regulator”. Indeed, to avoid national rulings, TTIP de facto allows an appeal of national decisions to supra-national arbitration. It would be rational for most players in the sector when they are not happy with a national decision to simply appeal to get the decision out of the hands of national regulators, even when these are independent of national political pressures. This could be a killer for national regulatory agencies empowerment. Moreover, switching from specialized regulators to non-specialized judges or arbitrators (who are essentially lawyers specialized in commercial law) reduces the sector specificities of decisions. It could minimize the risks of partial or full expropriation, but not really be a guarantee of technically robust decisions consistent with commitments, obligations and entitlement of all parts, taken in the public interest. This is a regulator’s job, not a non-specialized judge’s job. Even in smooth interactions, the reconciliation of perspectives on regulation will be challenging since the design of regulation is quite anchored into national preferences.

For anyone familiar with conflict in between governments and private operators and investors in infrastructure services in developing countries, this is not just a theoretical possibility. Worse yet, it sounds familiar and there is evidence on the consequences of failing to manage regulation and conflicts right in the context of public services. In the last 25 years, regulators have been regularly overruled by arbitrators (and whether this was right or not is irrelevant here and is

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2 To calm the concerns over this possibility, the European Commission proposed in mid-2015, two additional options: a multilateral investment court (e.g. the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL)) and a bilateral appeal body with seven judges. The EU suggests that, in case of conflict, investors would be free to select their preferred approach.

3 And there are many more issues to be sorted out before the EU suggestion is implemented. For instance, there is no appeal option on these arbitrations which can also lead to huge punitive compensations not necessarily related in any analytical form to damage linked to the conflict.
itself debatable in cases in which the legal battles are about the ex-post renegotiation of risks allocations, what matters is that overruling is a fact of life). The result is that the outcome of the increased opening to large private operators in the sector has not been as expected in terms of efficiency, equity and fiscal costs. The outcomes demonstrate that what sounded like good intentions ex ante often boiled down to cheap talk ex-post because the challenges of implementation of the good intentions were not internalized in the policy design.

The main purpose of this paper is to summarize the evidence of the costs of regulatory failures when new large scale foreign investments change the governance structure of the regulation of key public services, namely infrastructure services. The evidence has been there for a while but so far, it has largely been ignored by European authorities. Yet the main global private players (construction companies, service operators and financial actors) are, to a significant extent, the same as those likely to try to make the most of the new opportunities offered by TTIP. For them, easier entry rules allowed by TTIP are equivalent to the sector's liberalization in developing countries and offer a real opportunity to expand their market and their controls.

To argue the importance of the lessons from the developing countries infrastructure privatization experience in understanding the risks brought by the TTIP in public services, the paper is organized as follows. Section 2 provides some more specific insights as to why the experience is relevant to Europe. The rest of the paper covers the impact of reforms in terms of the main policy criteria used by researchers in their assessments, namely financial/fiscal viability, cost and productive efficiency, governance/accountability and equity/distributional concerns of the PPP. We conclude with a brief summary of the main messages.

2. On the relevance of the developing countries’ experience for Europe.

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4 Europeans tend to ignore learning from mismanagement in developing countries for their own good because they assume that they have now reached a much higher ability to deal with challenges than poorer countries. The evidence on debt management since 2008 suggests otherwise. Europe has been making mistakes similar to those observed in debt crisis in Latin America not so long ago.

5 For an earlier assessment of the impact of privatization of infrastructure see Estache and Philippe (2012). In some ways, the second half of this paper is an update of the diagnostic conducted 4 years ago.
Although to many casual observers, Europe may be too developed to be able to learn anything from developing countries, the rest of this paper suggests otherwise. Many European are still quite de facto underdeveloped in their handling of market failures in public services (think of the explosion of energy poverty in many countries stemming from the mismanagement of tariffs structures and/or subsidies, think at the underinvestment in the greening of mobility or in the transmission needed to support the switch to greener energies for example). In many European countries, the implementation of regulations continues to be more political than technical (and Belgium is a good illustration of this bias). This political management of the interactions with the private sector is likely to be challenged by the increased empowerment of private players in infrastructure allowed by TTIP. This may be good when political interference violates initial commitments made to investors. It will be bad if and when political interference is not the issue, but disagreements on how to share the rent in a monopolistic activity is and this is more common that often recognized by public services privatizations champions and there are many very diverse experiences to document this.

The diversity of experiences with PPPs in infrastructure is at least partially driven by the fact that the financial, institutional, social and political contexts are essential determinants of success. Europe is just as heterogeneous as Asia or Latin America and this seems to be underestimated by debates that focus too much on efforts to standardize policies. Ignoring heterogeneity is dangerous and this is built in the design of regulation implied by TTIP.

To get the real picture, policy analysts need a more analytical look at the stylized facts than the one emerging from political speeches on the prospects for new private participation. And here again, there are observations relevant to the TTIP debates. For instance, looking at where private money goes in infrastructure suggests that large private players are quite risk averse. For politicians who bet on TTIP to free a restrained private willingness to develop the sector, it may be useful to keep in mind that hard (i.e. risky) times slow enthusiasm and result in a much higher cost of capital and hence higher average tariffs for regulated services. The stylized facts on
flows speak for themselves. Private investors finance less than 10% of the needs of the sector (20% of the actual expenditures of the sector which are about 50% of what is needed). But in the process, get governments to package the sectors to minimize risks. The importance of creams skimming in infrastructure is easy to underestimate, leaving the high cost component of the sector to be operated and financed by the public sector. This is not a painless fiscal outcome.

One interpretation is that in many countries, the weak market for PPI seems, thus, to be due more to a lack of access to international capital linked to increased risk aversion—sui generis or driven by regulation in the source countries—than to a lack of interest of potential host countries. Europe should then not be worried since it can count on better credit ratings and strong support from the Juncker Plan. But the more careful look at the evidence discussed later will point to more complex challenges, including frustrations among local stakeholders with discrepancies between the political promises made when “selling” privatization and observed outcomes. The record has not always played in favor of politicians and hence of the potential host countries. And this is a lesson that TTIP negotiators may have missed.

Finally, it is useful to point that the evidence available on these debates is quite skewed. When trying to distinguish between promises and outcomes for developing countries, a large part of the available analysis has been produced by key stakeholders (international organizations, consulting firms and financial actors involved in the deals). While there is no doubt that most of the information is factual, some of the analysis can be part of advocacy efforts. Is this not also the case for the evidence produced for and against the TTIP in general? The limits between advocacy and objective analysis are hard to define in this area as in many others. Widely available credible and relevant data are however poor on many key dimensions and this explains why academic peer reviewed publications provide much less evidence to support the assertions made by all other sides. The evidence is a lot more complex to interpret than political speeches argue. This is just as true

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6 This implies a need to rely more on domestic savings to meet the large infrastructure needs but in most of the concerned countries these savings are low. The main exception is Asia and this also explains why there are fewer international project finance deals in that region.
for developed and developing economies. Message oriented anecdotes used to generalize tend to be favoured over complex detailed analytical results that are hard to communicate.

The sum of the evidence available, however, provides enough lessons that deserve consideration in the debates on how to make the most of the opportunities offered by private public partnerships in a way that is fair to all parties involved.\(^7\)

### 3. On the fiscal impact

Although not always recognized, the need to address fiscal concerns has often been the main initial justification for the demand for PPI by the governments of developing countries. This is also a common policy promise in Europe, opening the European market will give access to more capital to finance significant investments in public services governments can no longer afford because of fiscal concerns. Where the capital comes from, even with other norms in mind for regulation, should not matter according to those who champion more access to private capital for public services.

The idea is usually to cut subsidies to the sector and increase cost recovery. Users would have to pay and stop relying on a public financing for their consumption through implicit or explicit subsidies. In addition, operational and capital expenditures are to be reduced to make the most for the large margin for cost savings in these sectors. Note also, that the fiscal balance of the sector is expected to be improved thanks to indirect higher taxes on the sector and through the sale or rental of assets.

The evidence in developing countries is neither close to theoretical predictions, nor to political promises. The expected fiscal savings were not always achieved in the medium or even the long run. Eventually, renegotiations often led the public sector to commit to reintroducing subsidies. In net present value terms, the

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7 This is simply an obvious implication of an interpretation of the relevance of the Condorcet Jury paradigm to the analysis of multiple sources of partial evidence on a specific policy area.
potential short term fiscal profits from large scale PPIs were usually offset by the long-term additional costs emerging from contract renegotiations. Water or urban transport privatizations in poor regions provide many anecdotes illustrating this observation (See Iles (2005) for transports and Estache and Grifell-Tatje (2013) for Mali’s water deal). The fiscal consequences have usually not been accounted for ex ante and this maybe one mistake to avoid as new deals get put together if the TTIP succeeds.

Managing subsidies has proven to be challenging in many other ways. They have often been a source of conflicts when they result in tariff structures such that different users get different signals) and this has also become a concern in Europe. Think of the differences in prices for water used for irrigation and residential water use which may imply implicit or explicit subsidies or taxes on some users. This can lead to tensions between the two types of users, which private operators are not keen to deal with but which public operators are more used to manage. Similar tensions can arise in sectors in which water is a major input and different countries follow a different view on its pricing and price structures. Think of the pricing of shared international water sources in the Middle East which can lead to tensions between farmers of different countries which do not coordinate pricing rules.

These tensions could easily arise in the context of TTIP if the bargaining power of private operators becomes large enough to allow economically rational but politically challenging price discrimination. The tensions would be all the more important that different water pricing and subsidies strategies would impact comparative advantages for any sector with a production anchored in water consumption.

In sum, increasing the scope for foreign private participation in public services can easily lead to fiscal tensions. Subsidies are often going to be part of the PPI’s financial sustainability in many of these activities. Ignoring this is, at best, naïve. This has not been managed well in developing countries and unless Europe and the US internalize the lesson, it is going to lead to tensions if TTIP is implemented.
4. On efficiency

A plethora of papers shows that more operational freedom from political interference allowed by the private management of small and medium projects under PPI can pay off in terms of efficiency if competition is implemented. This is particularly obvious in countries where public procurement is poorly organized. Indeed, when public sector rules limit or distort competition to deliver infrastructure, such as roads, water and sanitation facilities, costs tend to be higher and both users and taxpayers pay more than they should (Estache and Limi, 2011).

However, when the project is large enough to imply a partial or total privatization of the sector, it can be associated with important sector specific institutional changes. This notably includes the need to interact with a regulator who is independent from political interference. The evidence on this broader vision is largely in favor of PPI on average. PPI usually increases both total factor and labor productivity, at least in the short and medium run. But will it continue to be in favor of increased private participation if conflicts are not settled locally as would be the case with TTIP?

Bad outcomes are not rate. There are many cases necessitating renegotiations which reset each time the measurement of efficiency gains. Moreover, the success of a deal or a project does not imply success of the whole sector. As mentioned earlier, authorities often unbundle the sector to facilitate project specific deals ensuring high profit margins and leave risky or less attractive activities under the responsibility of the public sector and make cross-subsidies less and profit margins less likely. The usual outcome results in reducing quality, investment or even output in the residual part of the sector. The poorest provinces of Argentina offer brutal illustrations of this cream-skimming problem. The restructuring in European railways also provides an illustration, and this, at a time where modal switch from road to rail has to be enforced to reduce pollution.

It is just as crucial to recognize that any effort to increase the private role in the operation and the financing of a public service sector requests ex ante and ex

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8 Since PPIs are relatively recent, there is little to say about the long-run.
post effective competition and regulation to achieve efficiency gains and ensure that the gains are shared with users and taxpayers rather than simply turned into pure rents for operators and their investors (Jamasb et al. (2015). This is not only a theoretical finesse. It matters in practice. The econometric evidence on the impact of reforms, regulatory decisions and renegotiations abounds and varies across sectors (Estache and Wren-Lewis, 2010). It is positive in the telecoms (Gasmi et al. (2011) and transportation sector (Serebrisky (2011) and Trujillo et al (2013), because competition works well but the story is a lot more complex for electricity (Jamasb et al (2015) and water and sanitation (e.g. Mande Bafua (2015) or Marques and Berg (2011)). The story is quite negative in the road sector. The large number of renegotiations of toll roads may be the best indicator of the failure to achieve politically and financially sustainable improvements in the sector. This has been an issue identified by the Spanish and the French administrations in their own countries, with many of the (same) private companies active in emerging economies.

Overall, this evidence shows that well-functioning competition seems to be what matters to efficiency rather than ownership. This is consistent with the TTIP overall goals. But the devil is in the details and competition ex ante (at the stage of the procurement bid) is just as important as competition ex post (the benchmarking part to complement regulation). On both fronts, most European countries are far from best practice (Florio, 2013). Moreover, competition ex-post is often limited and this increases the relative importance of regulation. We know however, that at stages of development, conflicts on regulation make regulation weaker. And this is likely to happen under TTIP since there is a strong margin for a supra-national regulation which limits the scope for heterogeneous national regulatory preferences. If this happens, sector performance will be damaged as discussed next.

5. On governance
Economists but also political scientists have been very effective in recent years at increasing our collective awareness of the various dimensions of governance, from
weak institutions surrounding PPI to the overwhelming politics of PPI. The impact of the creation of regulatory agencies may be the most common theme across sectors in the governance literature. The diagnostic summarized by Dagdeviren (2009) is that regulatory effectiveness is quite weak in developing countries. Few enjoy the necessary independence needed to lead to the potential efficiency payoffs (Yang and Lee, 2008). Wren-Lewis (2010) suggests that badly governed independent regulatory agencies (IRA) can even have a negative impact on efficiency. But once more, this is not just a developing country story. There are equivalent weaknesses in continental Europe (Florio (2013)). And there is no reason to believe the lessons from developing countries on the consequences of poor governance do not translate well to Europe.

Electricity and telecoms are the sectors in which the institutional changes achieved have been the most important; they usually led to creating autonomous (but not always) independent regulators (Ba & Gasmi, 2011; Balza et al., 2013, Eberhard et al., 2008). In those cases, the regulator supervises the new actors of a usually more competitive market if the reform has managed to go that far. The evidence on the impact of these institutional changes is mixed but it yields the overall message that is quite supportive of efforts to beef up institutional reforms.

They can improve investment. In telecoms, the reforms have improved access prices and access rates, including for the poor (Li and Price, 2011; Mohammed and Strobl, 2011; Howard and Mazaheri, 2009). In Latin America, Montoya and Trillas (2009) show that they had a positive influence on network penetration as well. For electricity, Ba and Gasmi (2011) and Balza et al. (2013) find that regulatory agencies have a significant influence on the performance of firms and improve access to their services. But this is not a robust results since Estache and al. (2009) find no positive influence on access rates to electricity.

In fact, the limits of the impact of the reform are linked to political interferences with the regulatory processes. In water and sanitation, regulatory bodies had less predictable effects on investment because these agencies are seldom autonomous enough to be able to protect investors from political preference swings. This may
hurt but not always. In Africa for example, half of the Sub-Saharan countries which
implemented regulation in the water sector, achieved significant improvements
even if the autonomy of regulatory agencies is questionable (Mande Bafua, 2015; Mbuvi et al., 2012). But in Latin America, regulatory agencies were unable to
prevent exceptionally high contract renegotiation rates in roads and rail (Guasch, Laffont and Straub, 2008). Across regions, renegotiations can end up in
international arbitrations. In most cases, when this happens, the disputes are linked
to disagreement on regulatory tariff adjustments (Paterson (2006)).

The main overall lesson broadly relevant to the debates on the TTIP is that there
is a plethora of evidence that the introduction of solid independent regulatory
agencies may be useful to improve performances (access, efficiency and quality) and
cut corruption cases which are more common in Europe than sometimes recognized
by politicians (e.g. Greece, Spain, Italy and Belgium all offer their fair share of cases
in infrastructure activities). But independence is not that common in Europe. And
one of the lessons from developing countries is that political interference with
regulatory commitments leads to high costs to users and taxpayers. The
renegotiation of renewable contracts in Spain (by a conservative government) or
Belgium (by a socialist government) offer powerful evidence that regulatory
weakness is not just a developing country issue. In both cases, users have been
brutally hit by the financial consequences of renegotiations. These are likely to be
higher under the threat of supranational arbitration under the proposed TTIP
arrangements.

6. On equity and fairness

Two broad dimensions characterize equity: Access and affordability. Access
is about investment and the importance of access to infrastructure in the day to day
life of the poor – which is nothing new for anyone working on development. Roads
lead to schools and schools eventually lead to better paid jobs. There are many
case studies and anecdotes that tend to confirm the basic positive intuition on

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9 See Trillas and Xifre (2016) and Trillas (2016) for two useful complementary surveys.
10 This note represents the views of the authors and should not be attributed to any of the organizations they are affiliated with, nor to IFC, the World Bank or any of its members countries or agencies. Any mistake or misinterpretation is theirs and theirs only.
improvements in access, whether financed through PPI or public money. Access to electricity, water or basic telecoms services is close to 100% in most European countries, but since the beginning of the Great Depression, affordability is an increasing problem. This may be the key policy dimension to focus on when considering the changes that may affect average prices and tariff structures resulting from the increased bargaining of large providers brought about by the TTIP.

Two aspects are needed to ensure financially and fiscally sustainable affordability: (i) the right price level through the correct choice of technology and service quality and (ii) the right price structure. Getting the price right for both the operator and the user, in particular the poor one, is an active policy decision that requires regulators to ensure a match between project design and users’ ability to pay. This is central to the linkages between poverty and PPI. All dimensions of quality, including technological choice, drive the average cost and hence price. In contrast, costing and pricing techniques drive the price structure, which may be even more important to equity. What this means is that the freedom operators enjoy in conducting price discrimination defines the level of efficiency but also the affordability of access.

The evidence for developing countries suggests that it is not only hard to get a significant improvement in access from a PPI, but it can also be quite a challenge to ensure affordability. The evidence also shows that there are large differences across sectors and countries. In general, the main message is that for telecoms things worked out well — mostly thanks to the technological revolution of the sector (Andres et al., 2013; Gasmi et al., 2011). In other infrastructure sectors, where efficiency gains have been achieved from PPI (and matching reforms), regulation was not designed to pass these gains on to residential users, and the poor were often the main victims as a result of an improper monitoring of affordability. The evidence is quite robust for electricity and water\textsuperscript{11} and points to the importance of ensuring the fair treatment of various categories of users, a theme also quite

\textsuperscript{11} Andres et al., 2013; Dagdeviren, 2009; Jamasb, 2015.
common in Europe where some users are better organized than others to defend their rights. For electricity, Andres et al. (2013) report that in Latin America, industrial users have in fact been much better treated than residential users. However, they also show that price increases were relatively small and achieved with significant improvements in service quality. Kundu and Mishra (2011) reach a similar conclusion for India where prices decreased — except for farmers which include many poor — and quality increased.

The difficulty is, however, that affordability has to be reconciled with the need to recover costs and minimize fiscal support. The problem is that it is often the lowest income groups connected that tends to support the largest financial burden. Banerjee et al. (2008) show that in Africa, low-volume consumers had to face higher prices than average or high-volume consumers. Boccanfuso et al. (2009c) note that the main reason for which average water tariffs increased was simply the need to catch up with a too often postponed cost recovery in Ghana, Senegal, Mali or Zambia. For Latin America, Andres et al. (2013) find similar facts. Water prices did increase during the transition and the post-transition periods. The same happened in the transport sector (Evenhuis and Vickerman, 2010). Gassner et al. (2009), however, found no evidence of price increases in the water sector due to PPPs. Their choice of dataset, time period and econometric identification strategy are all possible explanations for this very different result.

The broad message is simple: tariff structures matter to affordability, all the more so when cost recovery needs to be improved to cut subsidies. And it is just as relevant in Europe. The explosion of energy poverty in Europe suggests that this has not been internalized yet. In 2015, a report financed by the European Commission (Insight_E, 2015) showed that, while many EU countries do have measures in place to protect vulnerable people, nearly 11% of the EU households are unable to adequately heat their homes at an affordable cost.

An additional dimension of interest is the need to match affordability and technological choice and increased private participation (Nagayama, 2009). It is indeed not unusual for well intended reformers to omit that quality has a price and
that aiming at top quality may have unfortunate affordability effects. The push for renewables in the energy sector has revealed similar issues in Europe during recent years but it has not really been internalized in regulatory designs.

In sum, for anyone thinking that equity and fairness risks associated with the poor regulation of private or commercialized public services is not relevant to the push for further reforms in the sector linked to the TTIP, it may be worth thinking again. Digging into the details shows that the core problem of access and affordability identified in poor countries as a result of poor regulation are increasingly similar among the poor in Europe. They reflect the slow ability of regulation to adjust to social concerns when needed (Hall, 2015 and Romero, 2015). If the scope for renegotiation of regulation through the supranational appeal system is serious, the ability of national governments to regulate prices to protect the poor will further be constrained. In an environment in which the middle class is shrinking, this should be a concern.

7. So, what are the main messages to remember?

Although many of the lessons from developing countries are relatively well known among policymakers and academics working in development economics, they do not enjoy the same level of appreciation in the developed world and, in particular, in Europe. Yet a few of them are quite relevant to the current debates on TTIP largely because they should ideally be dealt with by national regulators who may not have the necessary leverage to deal with them if the currently proposed arbitration rules are put in place.

The first lesson is that efficiency gains are not a sure outcome of the increased access to foreign private capital and skills in the public service sector and yet, this is one of the main promises associated with increased liberalization for increased access to private know-how and capital. For the desired outcomes to be observed, solid competition for the markets, across markets and where possible, in the market is needed. And when competition is not possible, solid regulation is needed. A
regulation with limited capacity and autonomy linked to the dependence on supranational rules defined in conflict situations rather than built on consensus is not consistent with what defines sustainable regulation. Moreover, if managed without concern for sovereign preferences for the trade-off between efficiency and equity, the sustainability of any decision will be at risk. Ignoring the technical, social and political peculiarities of public services is likely to lead to conflict.

The second lesson is that, even when efficiency increases, the equity costs may be unbearable politically and ethically without robust regulation. The evidence from developing and European countries is that the poor will not necessarily benefit and this is a social risk which may have been underestimated by the TTIP negotiators. Once more, solid regulation is needed to minimize the social risks and this is one thing TTIP is not capable of delivering under the current proposals. And unfortunately, the record on dealing with efficiency equity trade-offs has not been impressive in the years that lead to the 2008 crisis and in the management of this crisis.

The third relevant lesson is a corollary of the first two lessons. Governance also matters and politics tend to hurt a lot more than is understood by (even non-corrupt) politicians, by biasing decisions to embellish the short run in a sector that requests a long term vision. Investments in most public services are about long term commitments given the long lived nature of the assets involved. They are not just about deals, they are also about guaranteeing the strength and autonomy of regulatory institutions. The tools to get there are well known and relatively easy to build. We understand the constraints and the challenges to use these tools in a better way, among other things, thanks to the many conflicts that have already gone to international arbitration. And we also understand how to develop institutions that work for everyone — investors, users and taxpayers. But if politicians (and negotiators) have no craving for the transparency allowed by the tools that are available and matching accountability and if national regulation is overruled by supranational regulation, rents will explode... and the poor and the taxpayers will lose. Just like they did in developing countries.
References


Costa Carvalho, A.E, L. Menezes Bezerra Sampaio (2015), “Paths to universalize water and sewage services in Brazil: The role of regulatory authorities in promoting efficient service”, Utilities Policy, Utilities Policy 34, pp1.10


Estache, A. and E. Grifell-Tatje (2013). “How (un)even was the distribution of the impacts of Mali’s water privatization across stakeholders?”, Journal of Development Studies, Volume 49 (4), April, pages 483-499


Iles, R. (2005), Public Transport in Developing Countries, Elsevier: Amsterdam.


