



Issues about governance: The case of SOEs operating under monopoly situation

Pierre Bauby

Summary

- * This paper focuses on specific issues regarding the governance of SOEs operating under monopoly situations, either natural monopoly (network industries) or a legal or *de facto* monopoly, territorial and/or temporal monopoly,
- * and advances some proposals on these issues - in particular the link between the regulation, evaluation, control and modernisation of SOEs
- * The paper presents a survey of the literature, which reveals a lot of studies on some of these topics, but very few on the link between them and such SOEs'
- * After an introduction on the 'governance' concept, we look at the main issue (asymmetries of information and expertise between Public authorities and SOEs) and on the strategic role of public authorities, their rights and duties; then on 'organizing authorities' and the different paths of their implementation; the importance of the evaluation and stakeholders' participation to meet quality and efficiency

Governance

Governance is a pluri-disciplinary concept

- * The concept reflects the complexity of issues, approaches and actors
 - * territorial (local/regional/national/European/global)
 - * economic (public/private/mixed/associative/social/cooperative actors)
 - * social (the expression of users through their participation)
 - * political (individual-citizen/society)
- * As enlarged collective decision-making model, the concept of governance offers a prolific approach to apprehend the growing complexity of issues, as it encompasses :
 - * collective action
 - * strategic approach
 - * power relationships
- * Efficient governance requires the organisation of the systematic expression of citizens evolving needs, as well as of all stakeholders

Governance need to be multi-level and multi-actors

The main issue : Asymmetries of information and expertise between Public authorities and SOEs

- * In case of “natural monopoly”, the State may deem it more cost efficient to own such enterprises directly rather than to regulate privately-owned monopolies (OECD, 2015)
- * Even after opening of the markets to competition, there is still a part of the infrastructure that continues to fall within the scope of a “natural monopoly” in most sectors (networks)
- * In all cases, operator owns better information on the system, which creates asymmetry of information, competence, expertise, etc. compared to other actors
 - “capture of the regulator by the operator”
 - conditions for possible abuse of its monopoly / oligopolistic situation
- * The paper takes EDF as typical reference of such situation
 - EDF, French SOE that had had the quasi-monopoly of generation, transport, marketing, export and import of electricity during 50 years in France

Strategic role of the State

Rights and Duties of Public Authorities in respect of SOEs

Strategic role of State and more generally of all Public authorities is needed.

Decision-making **powers** require the respect of a certain number of **obligations**.

Rights and duties go hand in hand and are now subject to **EU acquis**, too :

- * **neutrality** principle : the free choice of ownership of enterprises (nationalisation or privatisation) (Art. 345 TFEU)
- * **non-discrimination** and **equal treatment** principles : the statute of the enterprise does not confer it an advantage compared to its competitors
- * **transparency** principle : a clear definition by public authorities of “their (SOEs) missions” or “particular tasks”
- * **the free choice of the organisation model** of these missions and tasks (natural or legal, territorial and/or temporal monopoly; comparative market) has to respect the **proportionality** principle
- * the **clear definition of the financing model** for each service, either by the public budget or by users or with the participation of other private or public funds or a combination of all these forms
- * the setting up of regulatory bodies, as well as the evaluation and control, and the participation of stakeholders, should be made

The concept of “organizing authorities”

- * Such responsibilities suppose that Public authorities own or develop real capacities of steering, control and evaluation of SOEs
- * They have to define in each case the “organising authorities”, which define the public missions and are responsible for their implementation
- * An “**organizing authority**” is a public authority that
 - has the final responsibility for the organisation and operation of a socio-economic system,
 - steers it by deciding the model of organisation and funding and
 - arbitrates among different or contradictory expectations of stakeholders
- * Public authority can act in an authoritarian or hierarchical manner, but the concept of organising authority tends to refer to a **governance approach** :
 - **associating** different stakeholders and encouraging their participation at all levels
 - putting into **debate** the main choices and arbitrations before adopting decisions
 - being **accountable** for its actions

How could the organizing authority perform its duties?

Several paths have been proposed

- * For some, **free market and competition (privatisation and liberalisation)** would be the best way to find the optimum of any public authority
 - this would make impossible economic, social, territorial and temporal equalisations and would lead to the dismantling of public missions
- * Another path would be the **reinforcement of the state and bureaucratic controls** but such approach
 - underestimates the role of users and the partnership role of municipalities and local authorities
 - perpetuates the financial leadership of the State, and
 - it has not been able to balance the structural information asymmetries between operators and organising authority
- * For our part, we would explore another path aiming to collect and share more information (needs, demands, experiences etc.) among stakeholders, which public authorities are “missing”
 - by moving from a “two players” game (between “regulator” and operator(s)), from a regulation by “experts” to a **regulation by “actors”** (workers and their trade unions ; individual and industrial, small and big users, at each territorial level)
 - the association of all stakeholders could be a mean to reinforce the governance of SOEs

Implementing evaluation

Evaluation is essential for SOEs evolution in time and space, to better meet the changing needs of consumers, citizens, community and society, and therefore it should focus on :

- * the relevance of the decisions regarding the organisation and the financing of services

 - no one “model” “fits all” solution

 - better balance between monopoly and competition, between economic, social and environmental aspects, between the various concerned territories, between different possible financing modes, etc.

- * the economic and social efficiency of each service operator, on its effectiveness and performance in meeting needs

Therefore **evaluation** should be

- * **multi-criteria**, by defining indicators that cover all objectives and missions, by combining them

- * **multi-actors**, to take into account the expectations and aspirations of all stakeholders concerned

- * **multi-level**, at each level of territorial organisation of the community.

Why and how to involve Stakeholders participation?

Reversing the traditional (top-down) approach and starting from individual and collective needs and their evolution by organising their expression through multiples ways

→ Stakeholders have many information, capacities and expectations which could serve the regulation and modernisation of SOEs

Using the multiple means available to organize the systematic expression of needs and of their development:

- * direct feedback, opinions or proposals to SOEs
- * make use of the NICT to inform (about expectations, needs, opinions, claims) and interact (interaction between users and SOEs and among users)
- * other forms of oral and written communication (such as citizens' panels, etc.)

→ Social demand could be aggregated, before being submitted to several expertises, as there is never a single answer to a question or issue but several possible solutions

→ Choices and arbitrages are to be made after public debates and collective deliberations

Better efficiency and quality

The implementation of the democratic participation of actors concerned combined with the strive towards a regulation by actors and a multi-criteria and multi-level evaluation allow for a **new type of regulation to develop strategies of modernisation**

- * Focusing regulation on stakeholders' participation and public deliberation is a variant of "sunshine regulation"
 - operators could be constraints to voluntary change their practices without formally imposing them to do so
- * Putting issues under public scrutiny and transitioning out of "face-to-face" relationships is a mean that could prevent and limit corruption, fraud, clientelism and politicisation risks

The objectives of modernisation and regulation initiatives are to provide better quality services at lowest price for the community and its users

Setting stakeholders as key elements of the systems and of its regulation is a mean to encourage the monopoly and SOEs to improve their efficiency and the quality of the service

