HOW TO MAKE A THIRD-PARTY ACCESS AGREEMENT WORK FOR THE SHARED USE OF MINING INFRASTRUCTURE IN GUINEA'S NORTH-WEST CORRIDOR

Framework Step:

STEP 3. Unlock opportunities for in-country shared value creation: local workforce and supplier development; shared infrastructure (power, water and transport)

3.2 Shared infrastructure
3.2.3 Shared use of transport infrastructure

3.2.3. A What can host governments do?

- Provide a clear and effective regulatory framework for multi-purpose and multi-user infrastructure, to ensure a financially sustainable and effective model as well as clear access conditions based on objective criteria and simple adjudication and arbitration mechanisms.
- Avoid exclusive access or monopoly pricing for the transport services on the infrastructure by any other users or new players
- Develop an effective co-ordination mechanism in a non-fully integrated situation and consider double-track railway options to reduce the co-ordination costs of multiple users.
- Facilitate/mediate discussions between users, operators, etc.

3.2.3. B What can extractives industries do?

- With due regard to anti-competitive concerns, collaborate with other extractives sector companies from the same basin to determine the potential for shared value through the development of shared transport infrastructure. Collective rail and port infrastructure might be the more cost-effective solution for all parties.

3.2.3. C Host governments, extractives industries and civil society can work together to:

- Devise mutually beneficial arrangements concerning transport infrastructure.
- Raise awareness of the general public and stakeholders on the economic and financial benefits of shared-use infrastructure

Tags:

☐ local employment
☐ local supplier participation and development, including SMEs
☐ marginalised groups (women, indigenous people)
☐ skills development and upgrading
☐ access to credit
☒ shared infrastructure (transport, water, power)
☐ technology transfer
☐ innovation
☒ economic diversification
☐ Other: ________________

Problem Statement:

Guinea holds 26% of the world's bauxite reserves but only contributes to 7% of global production. Without sufficient infrastructure and supporting arrangements, those reserves cannot be developed in a cost-effective way. The North-West Corridor, a 135 km railway and a port owned by the state, was subject to a concession agreement with the long-standing bauxite producer, the Compagnie des Bauxites de Guinée (CBG). Before the shared use infrastructure agreement was reached in 2015, there was no mechanisms or clear regulatory framework in place, allowing other mining projects at various development stages in the same region, to use the existing railway.

Parties Involved:

- The Ministry of Mines and Geology: supervises the mining sector and was representing the Republic of Guinea as the minority shareholder in CBG during the negotiations.
- The Agence Nationale de Développement des Infrastructures Minières (ANAIM): is the state agency that owns the railway and port infrastructure. ANAIM is not involved in day-to-day management. That responsibility has been delegated to CBG through the concession agreement.
- The Compagnie des Bauxites de Guinée (CBG): is a joint venture controlled by Alcoa/Rio Tinto and Alcan/Dadco, with a 49% state share. CBG is the concessionaire, manager, operator and one of the users of the railway infrastructure.
- Chemin de fer Boké (CFB), which is owned by CBG, is responsible for the coordination and management of the multi-user infrastructure.
- The Compagnie de Bauxite et d'Alumine de Dian-Dian (COBAD), owned by RusAl is one of the users of the infrastructure.
- Guinea Alumina Corporation SA (GAC), owned by Emirates Global Aluminium (EGA) is one of the users of the infrastructure.
- The World Bank: provided technical support and advice to the government and funded the state external counsel.
- CPCS Transcom Limited, Infrastructure Development Consultants: is an external consultancy firm, which facilitated the negotiation process leading to the final agreement.

Common ground:

Guinea has promising minerals potential. Its bauxite deposits alone are estimated to be one third of the world's known reserves. Undeveloped bauxite deposits need to be mined in a cost-effective manner and supported by suitable rail and port infrastructure to facilitate access to export markets. Given the financial constraints to develop additional infrastructure, the government of Guinea decided to explore a partnership with CBG to upscale the use of the existing railway in the Boké region, serving multiple users and purposes. A shared use infrastructure agreement was reached between the government, CBG, COBAD and GAC, whereby CBG continues to operate the railway line as the concessionaire but also provides access to other users at a cost that is determined based on the transported tonnage. CBG also operated the locomotives and the wagons. This provided CBG with control and other users with a lower cost service compared to a scenario in which a third-party operator had been involved.

The government also benefitted from the shared use through increased mining activities, which generated additional mining royalties.

Actions taken*:*

In 2010, the World Bank published a feasibility study on mining and infrastructure in Guinea. The need for the government to develop an infrastructure "master plan" was recommended by the World Bank in 2011. The master plan, initiated in 2013 and completed in early 2014, prioritised infrastructure projects for extractive-led growth with a focus on leveraging existing railway infrastructure for multi-user and multi-purpose arrangements. The concession renewal with CBG provided a window of opportunity to implement one of the key recommendations of the World Bank report and the government's master plan, which was the shared use of mining infrastructure.

The infrastructure is owned by the National Agency for the Development of Mining Infrastructure (ANAIM). CBG, the concessionaire and railway operator, committed to granting third-party access to the railway as part of the concession agreement with ANAIM. During negotiations with CBG, COBAD and GAC, the government aimed at (a) renewing the infrastructure concession with CBG and (b) negotiating an infrastructure access agreement with the two most advanced new mining projects in the region, owned by COBAD and GAC in order to increase the extraction of bauxite. During the negotiations, the government realised the need for an independent third party mediator to assist the parties to reach a compromise and conclude the shared infrastructure agreement successfully.

At the government's request, CBG, COBAD and GAC negotiated a Multi-User Agreement (MUA) over the shared use of the railway infrastructure in the Boké region, culminating in a contractual framework setting out governance arrangements and covering operational and cost-related matters. The agreement defines the common user rules for the Boké railway, the Sangarédi Kamsar railway and the port of Kamsar. The 135 km rail line goes from Sangarédi to the Kamsar port and supports existing bauxite exports. Thanks to the government's determination to open up the railway in the Boké region to third parties and the provisions in the concession agreement with CBG enabling third-party access, an agreement over the shared use of the railway was reached in June 2015, granting access to COBAD and GAC.

The MUA has its own governance structure. It outlines the decision-making processes, which include the management of CFB and two committees, the Technical Committee and the User Committee. CFB is responsible for all day-to-day operational decisions. On investment and technical matters, CFB requires the endorsement or review of the Technical Committee (e.g. planning process for expansion, technical parameters for new users). For the majority of financial, commercial or governance issues the User Committee's approval is required. Both committees operate on a consensual basis, i.e. decisions cannot move forward without consensus. If consensus is not reached, the Technical Committee must draft strategic options for consideration by the Users committee. The Technical Committee has two representatives from each user, two representatives from the concessionaire and three state representatives. The governing rules include provisions in respect of voting rules and appointment of the chair. The User Committee has a similar structure but the concessionaire does not have a formal voting right. Decisions are also taken by consensus. The agreement regulates the pricing based on the transported tonnage, revenue management or issues related to network expansion. Users share the investment costs and operational costs based on a cost-recovery basis, and based on a formula with a take-or-pay component and a variable use component. Expansion and the inclusion of new users are treated as part of the agreement and are subject to an approval procedure that involves the concessionaire, the Technical and Users Committee.

In case of disagreement, disputes are to be settled through private arbitration. These might include disagreement on the financing of railway expansion or capacity allocation. An issue that required resolution was the spatial distribution of operational zones at the port. The zone allocated in the agreement to one of the new mining projects (GAC) was in conflict with the rights of CBG at the port zone. This technical issue was settled through arbitration. To avoid additional disputes, potential obstacles were anticipated and addressed in the agreement, such as provisions related to the financing of additional capacity. In this respect, each user finances the creation of additional capacity for their use; or operating costs of CFB: these are covered in proportion to the tonnage transported for each user.

The railway remains primarily a mining logistics infrastructure with multiple users, although CBG operates 3-5 times a week a passenger.

Obstacles:

- The main obstacle was the absence of any precedents or regulatory framework. As such, the shared use agreement was built from scratch. These included: defining the initial operational scheme (who would operate, under what conditions, and with what rolling stock), but also questions of how to measure capacity; assessing investments and financing from each party, establishing an appropriate governance structure (in the absence of applicable regulations); establishing performance criteria for the operator; and dealing with insurance issues and force majeure within the shared use contract, taking into account the differences of each mining company. The government seized the opportunity to relaunch two major projects for the development of the North-West area. On the basis of the experience acquired, the government developed a plan for broader infrastructure development , backed by an enabling regulatory framework.
- Beyond managing these elements, the contract also had to deal with future evolution, in particular how to deal with new entrants to the agreement. Potential challenges remain as there is no straightforward answer to ensuring sufficient flexibility for the governance and operational mode with the potential increase in the number of parties.
- A number of issues were not fully dealt with as part of the agreement and represent implementation challenges today, including the question of how to allocate capacity during the construction phase (as the capacity increases gradually) and who is responsible for delays in the construction phase. The agreement allows each user to increase its capacity. However, in order to do so it is necessary for new entrants to submit the request to the concessionaire and get the agreement of the User Committee and to finance the necessary impact studies prior to increasing capacity.

Enabling factors:

- From the outset, the Ministry of Mines and Geology set the shared use of infrastructure as a priority objective. In 2008, the Ministry of Mines and Geology started a series of infrastructure planning seminars on the North-West Corridor. The World Bank established a team for the purpose of analysing the linkages between spatial allocation of resources and growth and development.
- The fact that the existing infrastructure was owned by the state provided the Ministry of Geology and Mines with significant leverage to guide the objectives.
- The concession agreement between ANAIM infrastructure and CBG included an enabling provision for CBG to grant provision for third-party access to the infrastructure by other mining companies authorised by the Government/ANAIM, under conditions to be defined by the concessionaire CBG.
- In 2010, the World Bank advised the Guinean government to focus on high impact/high feasibility projects: “In the short term, the Government and development partners should concentrate public resources and donor assistance on infrastructure projects, which satisfy the twin-conditions of (i) having a high growth and/or development impact, and (ii) display advanced preparation and reasonable ease of implementation.” The North-West Bauxite Corridor was among the listed projects.
- The concurrent timing of the concession renewal and the progress with the development of the other two mining projects greatly facilitated the advancement of the agreement as all stakeholders were at mature stages and ready to move forward.

- The availability of experienced advisors (legal, financial and commercial/technical) from all parties to facilitate discussions and address trade-offs was one of the crucial enabling factors.
- Some of the potential obstacles were addressed in the agreement, e.g. each user finances the creation of required additional capacity.

Lessons Learned

- In the absence of a regulatory framework and regulator for shared use of infrastructure, key enabling conditions for the successful negotiation of a multi-user infrastructure agreement include: (1) the government's commitment to shared use, (2) leverage on companies to encourage commitment based on existing contractual provisions, (3) alignment around timing and interests of various stakeholders.
- No one-model-fits-all: the model chosen will depend on the leverage and interests of individual stakeholders at a given time in a given geography. An effort should be made to create a governance structure that is adaptable and works efficiently.
- The agreement on the shared use of railway infrastructure enables all three mining projects to move forward and transport their minerals to the port. Operational issues are still not yet fully understood, but the consensual governance structure and the aligned interests of the parties to ensure overall efficiency leads to relatively smooth operations. The governance structure outlined in the agreement has proved to be effective in managing disagreements. While this structure is functional with three users, adjustments may be required if more users were to join the agreement due to increasing complexity.