



The regulatory function in public-private partnerships for the provision of transport infrastructure

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ABSTRACT

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Transport infrastructure regulation
Public-private partnership
Concession
Infrastructure charging
Bundling

A wide range of contractual arrangements are increasingly being used by the public sector to materialise the delegation of transport infrastructure provision tasks to the private sector, over long periods of time. This paper addresses the issue of transport infrastructure regulation in the specific context of public-private settings. Starting by the discussion on the concept of Public-Private Partnership (PPP) it is stressed that, despite the different meanings that can be found in the literature, it is possible to define a PPP by using a core group of characteristics, such as the bundling of services and the transference of a relevant part of the risks to the private sector on a long term basis. Regarding the action of the regulator, we look at three dimensions of efficiency that are expected to be pursued at the strategic level of regulatory action. However, it is acknowledged that the regulatory function is in practice rather complex since it requires balancing a multiplicity of other objectives or goals, which may vary according to specific economic conditions. In the domain of pricing, the review carried out suggests that since “first best” assumptions are not met in the “real world” it hardly seems possible that the short run marginal cost pricing “canon” could be directly used to shape pricing policies. Consequently, when considering the application of the standard neoclassical marginal cost pricing approach it is pertinent to ask whether the second best solutions can lead to efficient outcomes that might be accepted by the stakeholders. Bundling construction and maintenance tasks into a single long term contract, which is a typical characteristic of “standard” PPPs, could theoretically bring cost benefits since it allows for the possible internalization of any positive externalities that may be generated during the whole project life cycle. The economic rationale for the bundling of construction/maintenance with financing services is that it enhances the likelihood of submission of realistic bids at the procurement stage. In addition, the chances of the contractor sticking to the agreed contractual terms, after contract award, are potentially increased given the higher exposure to financial risk.

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1. Introduction

Recent years have witnessed a strong trend toward private sector participation in transport infrastructure provision. At this respect, it is possible to identify a wide spectrum of options to materialise this participation, ranging from full privatization to “standard” procurement of services. In the vast space between these two extremes we find multiple forms of contractual arrangements between the public and private sector. These are generically labeled as Public Private Partnerships.

This paper is dedicated to the issue of regulation of Public Private Partnerships in the transport infrastructure sector. Since the term Public Private Partnership (PPP) is indistinctly applied to describe

a wide range of contractual arrangements between the public and private sectors it is worth taking a closer look at the definition of PPP. Therefore, we start by addressing this issue in Section 2.

The successful implementation of transport infrastructure PPPs requires a strong coordinated and integrated effort of the public and private sectors, given the complexity of the involved processes. The public sector is responsible for the regulatory action that takes place across the entire life cycle of the project, including the definition of the delivery model, the selection of the service provider, the specification of the contract and its monitoring. Section 3 provides some insights into the structure of the regulatory system of transport infrastructure PPPs as well as to the regulatory objectives to be pursued, from an economic perspective. Since efficiency is expected to be the primary reason for preferring a particular model of infrastructure provision to another, special attention to this topic will be paid.

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Sections 4 and 5 of this chapter respectively address two key components of regulatory action that are relevant for transport infrastructure PPPs. The first concerns the issue of infrastructure charging, focusing on the prescriptions of economic theory and highlighting the arguments for the adoption of “realistic” policies deviating or departing from canonical theoretical models. A particular topic of interest in this area, addressed in Section 4, is the debate between the advocates of full cost allocation approaches and the supporters of the standard neo-classic marginal cost pricing approach. The second, which is particularly pertinent in the early stage of formulation of the PPP, concerns the bundling of transport infrastructure services. In this area, the discussion is dedicated to the economic rationale of two common approaches to bundling: one is the bundling of construction and maintenance services and the other the bundling of construction/maintenance with financing services. Both bundling approaches can be generally found in transport infrastructure PPPs. It should be stressed that the theoretical review as well as the empirical examples presented in this chapter focus on the particular case of road transport infrastructure, although much of the insights and findings are also applying to PPPs in other transport modes. The final section contains a synthesis of the conclusions.

2. The Public Private Partnership concept

In the specific context of transport infrastructure provision, the term Public Private Partnership (PPP) is used in the legal, economic and finance jargon with multiple meanings. It is indiscriminately applied to describe a wide range of contractual arrangements between the public and private sector for the provision of infrastructure.

There is still no clear definition of what constitutes a PPP. This might result from the fact that PPPs fill a vast space between traditional procurement and full privatisation of production (full direct provision by the government is also possible but not often implemented). The concept of PPP is also difficult to define due to the persistent controversy concerning what “partnership” really means. To Boeuf (2003) “the only consensus is that there is no one-size-fits-all definition of PPP”. To this author, a PPP could be classified as a form of Public Sector Participation, being the latter a broad but stabilised concept, covering all possible forms of private sector participation, including full privatisation.

Although a definition of PPP is still to be adopted at the level of the European Community law an attempt to define the concept of PPP can be found in the “Green Paper on Public–Private Partnerships and Community Law on Public Contracts and Concessions”, presented by the European Commission (Commission of the European Communities 2004). According to this document, “in general, the term refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service”.

To the European Investment Bank (European Investment Bank 2004) the term PPP covers a wide range of situations. It should be taken as a “generic term for the relationships formed between the private sector and public bodies often with the aim of introducing private sector resources and/or expertise in order to help provide and deliver public sector assets and services.” Therefore, the term is commonly used to describe a multiplicity of working arrangements from “loose, informal and strategic partnerships, to design build finance and operate (DBFO) type service contracts and formal joint venture companies.” One can also refer to a possible distinction between Private Sector Participation (PSP) and PPP (Boeuf, 2003).

However, from EIB’s perspective, the “key feature of a PPP is that it involves a risk sharing relationship between public and private promoters, based on a shared commitment to achieve a desired public policy outcome.” Thus, a main distinguishing feature that determines whether a project is considered as a PPP or as traditional procurement lays on whether or not a sufficient amount of risk has been transferred to the private partner, on a long terms basis.

The World Bank has also provided its own perspective on the concept of PPP. According to the “Operational Guidance for World Bank Staff – Public and private sector roles in the supply of transport infrastructure and services” (World Bank and Public Private Infrastructure Advisory Facility, 2003), the following forms of private sector participation in transport infrastructure can be characterised as PPPs, in cases where risks are shared between the public and private sectors:

- Management contracts, in which the government pays a private operator to manage the infrastructure and retains much of the operating risk.
- Lease contracts, in which a private operator typically pays a fee to the government for the right to manage the facility and takes on most of the operating risk.
- Concessions for existing transport infrastructure (Brownfield concessions), in which a private agent takes over the management of a state-owned undertaking for a given period during which it also assumes significant investment risk.
- Concessions for new transport infrastructure (Greenfield concessions), in which a private agent or a public-private joint venture builds and operates a new facility for the period specified in a contract. The infrastructure generally returns to public sector control at the end of the concession period.

Full or partial divestitures, i.e. the cases in which a private entity takes, respectively, full or partial control of the infrastructure by buying an equity stake in a state-owned enterprise through an asset sale, public offering, or mass privatization programmes, are not defined as PPPs, from the World Bank’s optic.

Since PPPs may typically encompass a series of activities such as design, construction, operation of services and financing, several permutations are found in practice. Some of the possible permutations are schematically presented in the Table 1, proposed by Yescombe (2007).

It should be noted that the permutations presented in the Table 1 do not exhaust all possible alternatives. Other acronyms can be found in the literature since there is not a universally accepted terminology for the various types of PPP arrangements. Some of examples of such diverse terminology are presented below:

- Build-develop-operate (BDO);
- Design-construct-manage-finance (DCMF);
- Buy-build-operate (BBO);
- Lease-develop-operate (LDO);
- Build-own-operate-transfer (BOOT);
- Build-rent-own-transfer (BROT);
- Build-lease-operate-transfer (BLOT);
- Build-transfer-operate (BTO).

To retain is that such distinctions aim at representing possible alternatives for bundling of activities delegated to the private sector under a PPP scheme.

In short, in spite of the attempts that have been made to specify the “unique” features or characteristics of a “typical PPP,” the

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