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Public-private partnerships in Spanish Ports: Current status and future prospects

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ABSTRACT

Public-Private Partnerships (PPPs) have proved to be more than adequate as a means to develop transport infrastructure, especially in the case of large-scale infrastructure such as ports. However, under certain specific circumstances they can lead to certain failures, and so huge public losses. Both the country's hard-hit economy and its vast experience in PPP investments make Spain an ideal case to analyse the successes and failures of these types of contracts, at a time of severe public investment constraints and need for real efficient execution of projects. This paper aims to provide an up-to-date review of PPP experiences in Spanish ports under a legislative framework which fosters public-private cooperation. More explicit and exhaustive contract terms, proper risk assignment, a higher control over demand forecast in port projects, and certain competition concerns are identified as the main requirements for future policy actions.

1. Introduction

Spain's coastline is the longest of any state within the European Union (EU). In addition, its location, close to the axis of one of the major Motorways of the Sea (MoS)[1] routes, underpins its establishment as a strategic area in international shipping, as well as a logistics platform for southern Europe. The economic impact of port facilities in the country is such that 53% of external trade with the EU goes in and out of the country through ports, while the figure is 96% for flows to and from other countries. Moreover, port activity represents around 20% of GDP in the Spanish transport sector and 1.1% of national GDP, generating direct employment totalling more than 35,000 jobs directly and a further 110,000 indirectly, according to the Spanish Ministry of Public Works.

Legislation has provided for the improvement of the Spanish port system's competitive position in an open and globalized market, establishing a system of self-managed Port Authorities (PA). These are required to operate according to business criteria under the coordination of *Puertos del Estado* (PdE), a public body dependent on the Ministry of Public Works. Within this framework, it is intended that the management of significant ports corresponds to the so-called "landlord" model, in which the PA is not limited to being a provider of port land and infrastructure and regulating the use of public domain, but also directs port activity. The role of ports now exceeds its traditional role as merely a site for loading or unloading goods and passengers, as they have become business centres that should be integrated in an intermodal logistics chain.

The current Spanish port system is governed by the principle of financial self-sufficiency, both for each of the PAs and for the system as a whole, constituting one of the cases that fully respond to the EU guidelines for funding transport systems and infrastructure. Thus, substantial ports receive no funds from the state, and cover all of

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[1] MoS is one of the most ambitious axes of the TEN-T. The EU description of this project reads, "MoS builds on the EU's goal of achieving a clean, safe and efficient transport system by transforming shipping into a genuine alternative to overcrowded land transport. The concept aims at introducing new intermodal maritime-based logistics chains to bring about a structural change to transport organisation: door-to-door integrated transport chains. It will also help implement the policy initiatives on the European maritime space without barriers, the maritime transport strategy for 2018 and will positively contribute to CO_2 reductions, which is of paramount importance in the context of climate change. (…) They are designed to shift cargo traffic from heavily congested land networks to where there is more available spare capacity – the environmentally friendly waterways. This will be achieved through the establishment of more efficient and frequent, high-quality maritime-based logistics services between Member States." (Suárez-Alemán, 2013).

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their operating expenses[2] and capital investment through funds generated from their operations (cash flow), private investment, grants from European funds in certain cases and, exceptionally, external debt (which, according to PdE, has grown from under 10% in early 90s to around 40% over the economic crisis). Regarding private investment, Public-Private Partnerships (PPPs) have proved in recent years to be a quite adequate vehicle in facilitating the development of transport infrastructures, benefitting the public sector in terms of meeting the need for financial capital and risk reduction, and taking advantage of the private sector's skills in managing efficiency.

Besides the UK, Spain is the largest European user of private finance in transport infrastructure (Acerete et al., 2010) and the home country of the leading PPP transportation developers worldwide (Roumboutsos et al., 2013). Given this long-standing use of the PPP delivery model, and given how Spain was particularly hard-hit by the economic crisis, the country is an appropriate case study to investigate the role of PPPs.

Recently, the concession model has received particular attention in Spain, not only from regulators and researchers, as is commonly the case, but also from the media and the general population. The latest wave of economic news with regard to inadequate budgets, incomplete works or public losses has put the concession system in the spotlight. This has particularly affected transport infrastructure, such as road or rail. From 2008 to 2014, the government has paid out €10 bn to cover excess spending on construction projects on roads, rail and ports: €5.12 billion to modify already completed works, €4.1 billion to cover cost overruns, and €900 million for the expropriation of land.[3] In some cases even the threat of bankruptcy to operators of infrastructure has been resolved by the state's assuming responsibility for part of the debt. In light of the above, the European Union has recently asked the Spanish government for a more rigorous investment scheme for transport infrastructure.[4]

With regard to Spanish ports as an example of expansive infrastructure that requires substantial capital investments, almost 30 PPP projects have been registered since the last legislative reform, accounting for an investment of approximately €1200 million. This paper aims to review the theory on port concessions with a focus on concerns about misconduct and possible incentives for misconduct in the Spanish system. The research purpose is to shed light on aspects of the system that require improvement if concession scandals are to be removed from the headlines. With this objective, and from a conceptual and descriptive analysis, our approach is based on the identification of the different risks associated with these projects, such as overcapacity, the increase of market power held by some companies, or the non-specification of risk allocation in contracts, that may be especially important in times when public expenditure accountability is a major concern.

The structure of this paper is as follows: after reviewing the theory and international practice on PPPs, we focus on the Spanish port system, paying special attention to public and private investments and risk allocation in recent decades. From here we analyse the recent PPP experiences in Spanish ports by describing the 26 largest Spanish port or terminal concessions in the last twenty years. We then undertake a current PPP port case study, which leads to the final section in which we discuss challenges that presently should be addressed.

2. PPP in transport infrastructure: theory and trends

Traditional economic theory acknowledges the existence of some goods and services that should be offered to society even when the market will not do so. Under a public-service economy, public goods and services have been provided by the public sector. However, sometimes the public sector is inefficient in trying to address market failures and actually generates some others nonmarket or governmental imperfections. This is one reason why the presence of the public sector has diminished in some markets since the 1970s (Alland and Trabant, 2008). Concerns about governmental performance, together with funding needs, necessitated a search for new formulae to deliver some public services through private entities.

2.1. The traditional theory

Infrastructure services, mainly electricity, water, sanitation, telecommunications and transport, are vital for modern economies. In some cases, sole public provision of those services has resulted in limited coverage, high investment requirements and lower efficiency and quality levels (Guasch, 2004). As such, the introduction of private participation in infrastructures is considered crucial. Private participation in the infrastructure sector seems to have improved efficiency, productivity and service quality (Guasch et al., 2013; Andrés et al., 2007; Trujillo and González, 2009). However, some members of society might consider privatising public entities as equivalent to giving private companies the right to do as they please with public goods, so the regulation of concessions becomes essential (Guasch et al., 2013). Accordingly, privatization processes suggest a trade-off between efficiency and social objectives; those in favour believe it increases operational efficiency and innovation and those opposed maintain that it permits abuse of consumers, employees and the environment (Guasch et al., 2013; Cullinane and Song, 2002).

In this context, private participation may adopt different structures, depending on such factors as ownership, risks, benefits, responsibility and service delivery (among others). There are various organizational alternatives ranging from the purely public to entirely private. PPP can be defined as a procurement process to provide services or deliver assets through public and private sector cooperation (World Bank, 2011). Although, there is no a single conception of PPP worldwide and so, as stated in The European PPP Report 2009, 'the concept of a PPP equates only to a concession where the services provided under the concession are paid for by the public.' In its Green Paper on PPPs (COM, 2004), the European Commission recognised that the following elements normally characterise a PPP:

- The relatively long duration of the relationship, involving cooperation between the public partner and the private partner on different aspects of a planned project (...);
- The method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players (...);
- The important role of the economic operator, who participates at different stages in the project (design, completion, implementation, funding) (...);

[2] Law 27/1992 set up the so called *Fondo de compensación interportuario* (Compensation fund), established under the principle of solidarity with the mandate of reallocating resources among ports to ensure the state-owned port system self-financing. PdE as well as PAs contributes to the Fund in accordance to law criteria and limitations. The administration of the Fund corresponds to PdE.

[3] Source: *El Pais*, 2014. http://elpais.com/elpais/2014/05/13/inenglish/1399990193_399229.html?rel=rosEP.

[4] Source: *Cinco Dias*, 2014. http://cincodias.com/cincodias/2014/06/05/empresas/1401986019_171891.html.