VERKEHR UND INFRASTRUKTUR

Privatisierung der Verkehrsinfrastruktur

Erfahrungen mit Public Private Partnership (PPP) in Österreich und Europa

Tagungsband

37

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Verkehr und Infrastruktur
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Privatisierung der Verkehrsinfrastruktur

Erfahrungen mit Public Private Partnership (PPP) in Österreich und Europa

Tagungsband

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Vorwort

Public Private Partnership oder PPP – also die Mobilisierung privaten Kapitals zur Erfüllung staatlicher Aufgaben ist besonders im Bereich der öffentlichen Infrastruktur sehr modern und vielgelobt. Public-private-partnership ist gewissermaßen eine milde Form von Privatisierung. Prof Budäus von der Universität Hamburg betrachtet sie als „Durchgangsstadium zur vollständigen Privatisierung", um die notwendige Legitimation für Privatisierung herzustellen.

PPPs sind auch im aktuellen Regierungsprogramm verankert: Dort ist die Errichtung eines Kompetenzzentrums für PPP-Projekte vorgesehen. Und soeben haben Finanzministerium und Verkehrsministerium einen ersten Bericht über bisherige österreichische PPP-Projekte auf Bundesebene vorgelegt.

Gerade bei der Errichtung von Infrastruktur sind Privatunternehmen, die im Auftrag der öffentlichen Hand tätig werden, nichts Neues. Was unterscheidet PPP davon? Der Begriff PPP selbst umfasst in der Praxis eine Vielzahl formaler und vor allem auch eine Vielzahl realer Beziehungsformen zwischen Staat und Privatunternehmen mit auch unterschiedlicher Machtverteilung. Es wäre müßig, sie alle aufzuzählen. Der Begriff hat aber auch eine andere, an der Öffentlichkeitswirksamkeit orientierte Seite: Er weckt durch das Wort Partnerschaft zweier scheinbar gleichrangiger Partner ähnliche Assoziationen wie der Begriff Win-Win. Die naheliegende Frage ist daher, sind PPP-Projekte tatsächlich immer win-win-Situationen? Die Selbstdarstellungen laufender oder abgeschlossener Projekte tendieren zu dieser Aussage. Viele Analysen führen aber auch zu anderen Ergebnissen.

Die Frage nach dem win-win wird zwar oft beantwortet, etwa mit dem Argument, beide Seiten könnten ihre spezifischen Stärken einbringen. Sie wird allerdings kaum je empirisch belegt. Veröffentlichte Bewertungen solcher Projekte erfolgen – wenn überhaupt – zumeist nur durch die Projektbetreiber, was ihre Beweiskraft einigermaßen schwächt. Das gilt erst recht für Österreich, wo es überdies auch noch nicht allzu viele solcher Projekte gibt.

Ist es also möglich, dass gleichzeitig das beteiligte Kapital entsprechende Gewinne erzielt und dennoch die Kosten für die öffentliche Hand gesenkt werden? Die heutige Veranstaltung soll in dieser Frage einiges an Informationen bringen. Mit den beiden sogenannten Partnern ist die Evaluierung aber möglicherweise noch nicht erledigt. Ein positiver Ausgang für die öffentliche Hand wird zumeist mit geringeren budgetären Kosten gleichgesetzt. Eine hinreichende Aussage über das Gemeinwohl ist das noch nicht: Geringere Kosten können auch durch höhere Belastung der Bürger, durch geringere Qualität der Dienstleistungen oder aber schlicht durch schlechtere Bezahlung oder Arbeitsbedingungen der Arbeitnehmer erzielt werden. Die Klärung dieser Fragen ist daher für uns ein wichtiger und notwendiger Teil der Evaluation.

Und noch ein Punkt erscheint wichtig: Die Reduktion auf den finanziellen Aspekt -„billiger oder teurer“ - lenkt auch davon ab, dass PPP auch eine demokratiepolitische Dimension aufweisen: Die langfristige Bindung der Projekte an einen privaten Partner nimmt der öffentlichen Hand oft wichtige Gestaltungsspielräume.

Für die AK jedenfalls sind folgende Grundsätze unabdingbar:

- Wo PPP-Projekte geplant sind, muß es eine über den Wahlzyklus hinausreichende breite Diskussion über künftige Effekte geben. Dazu gehören nicht nur Effekte auf den öffentlichen Haushalt, sondern auch auf die Arbeitnehmer – auf ihre Einkommen, ihre Arbeits- und Lebensqualität.
- Entwicklung und Finanzierung der öffentlichen Verkehrsinfrastruktur muss grundsätzlich eine zentrale Gestaltungsaufgabe des Staates bleiben.

Wien, April 2008

Wolfgang Lauber
(AK Wien)

Inhaltsverzeichnis

PPP – Europäische Erfahrungen

PPP - ein sinnvolles Instrument für Österreich?

Beiträge der TeilnehmerInnen an Podiumsdiskussion

PPP – Europäische Erfahrungen

1. PPP für Verkehrsinfrastruktur in Österreich und den Nachbarstaaten

Georg Hauger, Institut für Verkehrssystemplanung, TU-Wien

Einsatz von PPP zur Finanzierung
hochrangiger Verkehrsinfrastruktur

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Hoffnungen

Augsburger Allgemeine

A8-Entscheidung noch im April?
Augsburg/Berlin (AZ). Die Chancen für einen Ausbau der A8 zwischen Ulm und Augsburg nach dem privaten Betreibermodell steigen wieder.

Artikel vom 03.04.08 - 19.35 Uhr

Rückschläge

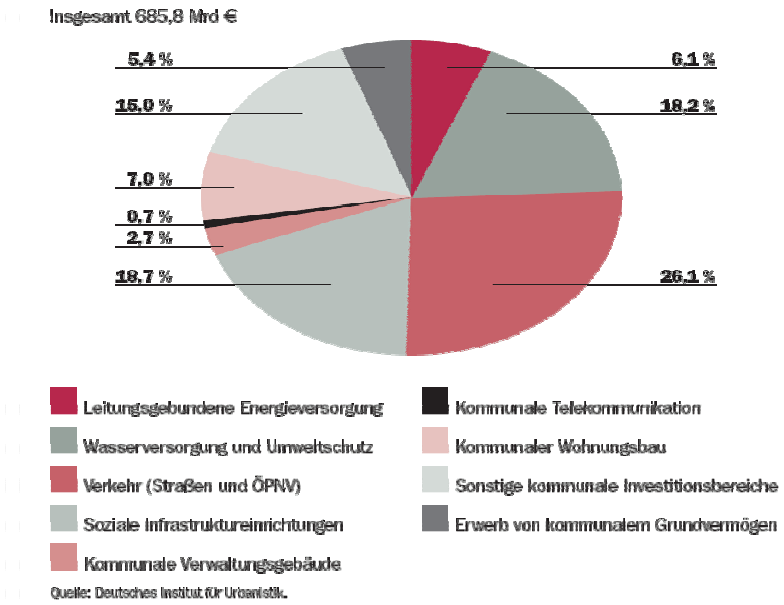
taz.de

Londons U-Bahn
Untergrund wird wieder städtisch
Nachdem das private Betreiberkonsortium Insolvenz angemeldet hat, will sich die Stadt nun lieber wieder selbst um die Sanierung der U-Bahn kümmern.

Inhalt

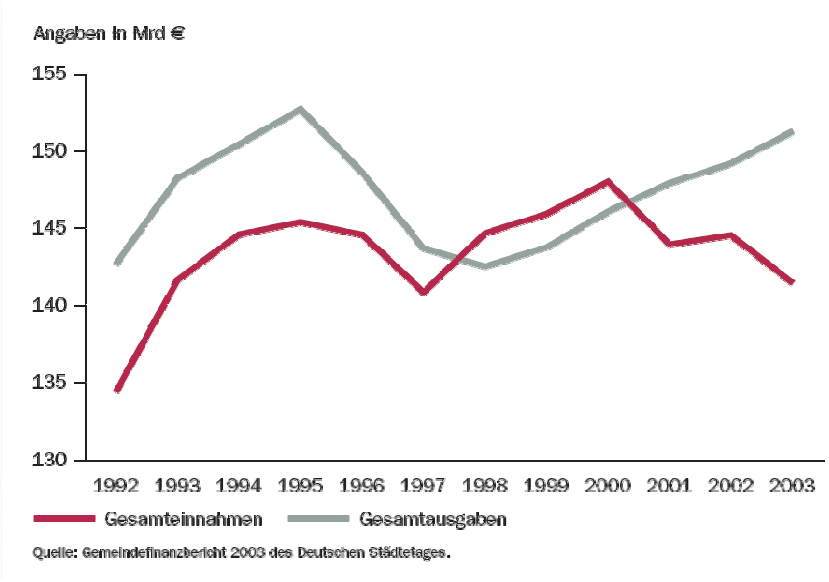
- Public Private Partnership (PPP) im Überblick
- PPP-Projekte für hochrangige Verkehrsprojekte im internationalen Vergleich

Kommunaler Investitonsbedarf 2000-2009 in Deutschland



Georg Hauger | AK Vortrag am 09.04.2008

Entwicklung der Kommunalfinanzen



Georg Hauger | AK Vortrag am 09.04.2008

Wozu PPP?

Das Hauptproblem, das durch die öffentlich-privaten Partnerschaften (PPP) gelöst werden soll, sind die

- **unzureichenden öffentlichen Mittel** für Planungen zugunsten von
- **volkswirtschaftlich rentablen**,
- jedoch **betriebswirtschaftlich unrentablen** Projekten.

Georg Hauger | AK Vortrag am 09.04.2008

Gefahr, daß

- Investitionen unterbleiben
- Qualitäts- und Sicherheitsmängel, Umweltaspekte
- Wachstums- und Entwicklungschancen beeinträchtigt sind
- Verluste von Standortvorteilen

Marktversagen vs. Staatsversagen

- Marktversagen
  - the usual suspects
  - Gründe für staatliche Interventionen
- Staatsversagen (Public Choice)
  (durch staatliche Eingriffe in den Markt verursachte, suboptimale Ergebnisse)
  - mangelhafte Güterallokation
  - **Ineffizienzen**
- → PPP als Lösung/Möglichkeit?

Definition von Public Private Partnership 1/4

- Public Private Partnership (PPP) ist ein Oberbegriff für verschiedene Formen projektbezogener Zusammenarbeit zwischen öffentlichen Körperschaften und privaten Akteuren.
- Die Zusammenarbeit kann **informell** oder **formell** institutionalisiert sein und bezieht sich im Wesentlichen auf Projekte der Stadtentwicklung und auf **Bau** oder **Betrieb** oder **Finanzierung** von Infrastruktur.
- Die öffentlichen Partner sind meist Gebietskörperschaften (Gemeinden, Bundesländer, Gesamtstaat, EU).

Definition von Public Private Partnership 2/4

- Ursprung 1940er USA
- Seit Mitte der 1980er Modebegriff im deutschen Sprachraum zur Lösung kommunaler Probleme
- Grundgedanke: Private können schneller & effizienter agieren
- Ziel: Bürgerinteressen gut vertreten & Gemeindebudget schonen

Definition von Public Private Partnership 3/4

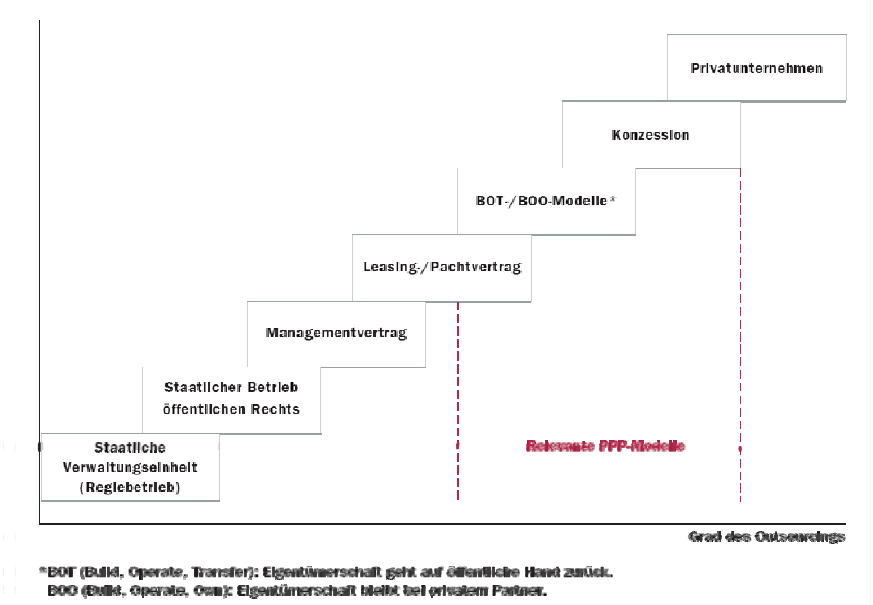
- PPP im **weiteren Sinne:** Zusammenarbeit auf eher informellem Wege, mit gemeinsamen Handeln zur Erzielung von Ergebnissen, die ein Partner alleine nicht erreichen kann. (z.B. Leasing- und Mietkaufmodelle)
- PPP im **engeren Sinn:** Interaktion zwischen öffentlicher Hand und Privaten mit Prozeßcharakter mit dem Ziel Effizienzgewinne über den den **Lebenszyklus** zu lukreieren, bei der es um
  - das Erreichen komplementärer Ziele geht,
  - Synergiepotentiale erschlossen werden können,
  - die Identität und die Verantwortung der Partner intakt bleiben und
  - die Zusammenarbeit (gesellschafts-)vertraglich formalisiert ist

Definition von Public Private Partnership 4/4

- PPP als gemischtwirtschaftliche Gesellschaften des öffentlichen und privaten Sektors mit unterschiedlichen Anteilen an Kapital- und Risikobeteiligung

  (von Privaten als Auftragnehmer mit ganz bei der Kommune verbleibendem Risiko bis hin zu 100% privater Beteiligung ohne wirtschaftliches Risiko für die öffentliche Hand)

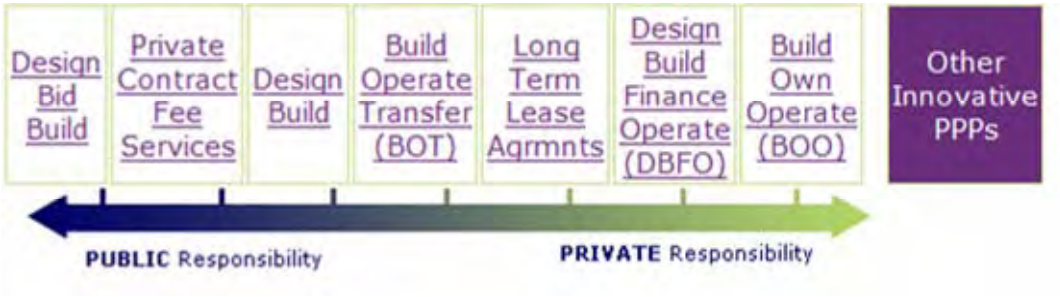
Grad des Outsourcings



Modellformen

- Betreibermodell
  (Verantwortung gegenüber den Bürgern bleibt beim Staat – Staat hebt auch Nutzungsentgelt ein)
- Konzessionsmodell
  (Privater kann seine Kosten direkt über Entgelte von Nutzern finanzieren)
- Kooperationsmodell
  (Staat und Privater gründen ein gemeinsames Unternehmen mit privater Rechtsnorm)

Ein Überblick aus Übersee



Quelle: United States Department of Transportation - Federal Highway Administration

Warum PPP bei Verkehrsinfrastrukturprojekten?

- hoher Finanzmittelbedarf
- hohe Risiken
- gänzliche Überlassung an Private politisch oder wirtschaftlich (Rentabilitätslücke) nicht opportun

Verkehr	Ver-/Entsorgung	Öffentlicher Hochbau	
Straßen, Brücken, Tunnel	**Energie** Erzeugung, Verteilung	**Verwaltung** Rathäuser, Finanzämter, Ministerien	**Sicherheit** Polizeigebäude, Justizvollzugs-anstalten, Kasernen
Flughäfen	**Wasser** Gewinnung, Aufbereitung, Verteilung, Kanalisation	**Gesundheit/Alter** Krankenhäuser, Altersheime	**Freizeit/Kultur** Sportstätten, Museen
Wasserwege, Häfen	**Abfall** Abfuhr, Beseitigung, Aufbereitung	**Bildung** Kindergärten, Schulen, Hochschulen	**Sonstiges** Messegelände, Gewerbegebiete
Öffentlicher Personennahverkehr			

Beitrag der öffentlichen Hand 1/2

- Machbarkeitsstudien
- Übernahme der Planungskosten
- Bauzuschüsse, Zuschüsse während der Betriebsphase
- Zurverfügungstellung von Grund und Boden
- Beschleunigung der Behördenverfahren

Beitrag der öffentlichen Hand 2/2

- Geförderte Kredite, staatliche Garantien, Gewährung nachrangiger Darlehen
- Steuerbegünstigungen
- Konzessionserteilung für eine bereits bestehende Anlage, deren Erlöse in die Projektfinanzierung übernommen werden
- Garantierter Mindestertrag aus Betrieb
- Risikoübernahme

Rahmenbedingungen für PPP im Verkehrsbereich

- Hohe Investitionskosten
  (auch bedingt durch Sicherheits- und Umweltstandards)
- Hohe Austiegskosten
- Lange Kapitalbindung
- Hohe (schwer kalkulierbare) Projektrisiken
  (insbesondere während der Entwicklungsphase)
- Externe Nutzen nicht einfach in Einnahmen umsetzbar
  (Erreichbarkeitsverbesserung, Standortaufwertung, Reduktion von Unfall- oder Schadstoffkosten)

Ökonomische Eigenschaften von Verkehrswegen

- Öffentliches Gut
  - natürliches Monopol
  - externe Effekte
- Toll goods
  - Nichtrivalität im Konsum
  - Ausschlussprinzip gegeben

PPP-Grundmodelle

Infrastruktur-finanzierung	Eigentum an der Infrastruktur	Betrieb der Infrastruktur	Art des Models
privat	privat	privat	Betreibermodell
öffentlich	privat	privat	Erstellermodell
öffentlich	öffentlich	öffentlich	"Traditionelles" Modell
privat	öffentlich	öffentlich	Auftragsmodell
privat	privat	öffentlich	Konzessionsmodell

Georg Hauger | AK Vortrag am 09.04.2008

PPP Modelle

design, build, deliver, own, operate, maintain, transfer, subsidise

- FBOOT: finance, build, own, operate, transfer
- BOO: build, own, operate
- BOL: build, operate, lease
- DBOM: design, build, operate, maintain
- DBOT: design, build, operate, transfer
- BOD: build, operate, deliver
- BOOST: build, own, operate, subsidise, transfer
- BRT: build, rent, transfer
- BTO: build, transfer, operate
- BOT: build, operate, transfer

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Das BOT-Modell

- Projektgesellschaft (Konzessionsgesellschaft) erhält vom Staat eine Konzession für die Finanzierung, den Bau und den Betrieb eines Projektes verliehen.
- Die Konzessionsgesellschaft kann projektspezifisch eigenständig Verträge schließen.
- Am Ende der Konzessionsdauer wird IS an den Staat übertragen (Konzessionsvertrag).

Schattenmaut

- Tatsächliche Maut
  - nicht einhebbar
  - zu gering (nicht kostendeckend)
- Entgelt für Private über Schattenpreise (Schattenmaut)

PPP „neue“ Philosophie

- Lebenszyklusbetrachtung
- „komparative“ Risikoteilung
- → Staat als Nachfrager, nicht als Anbieter
  - Qualitätsorientierung bei der Leistungsbeschreibung
  - Leistungsorientierung bei der Vergütungsregelung (Verfügbarkeitsmechanismus)

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Wirtschaftlichkeit(sbeweis)

- PPP muß wirtschaftlich mindestens ebenso günstig sein wie konventionelle Realiserungen
- Keine Beschränkung auf Finanzierungskonditionen
- Auch Risikokosten beachten (Baukostenüberschreitungen, ungenau geplante Betriebskosten)
- GB: Public Sector Comparator (PSC)
  Vergleich der Cashflowbarwerte aller Realisierungsvarianten (Referenzprojekte) inklusive aller direkten und indirekten Kosten (Risken)

- Investitionskosten
- Finanzierungskosten
- Unterhalt- und Betriebskosten
- Transaktionskosten
- Risikokosten

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Vorteile von PPP 1/3

- Realisierung **zusätzlicher** Projekte, die sonst aufgrund knapper Mittel nicht oder erst später umgesetzt werden könnten.
- Entlastung der öffentlichen Haushalte durch Auslagerung. „Budgettricks".
- Durch Teilnahme Privater (Investoren und Kreditgeber) kann Glaubwürdigkeit und Akzeptanz erhöht werden.
- Private Partner sind besonders bestrebt, Bauzeiten und Kostenrahmen einzuhalten.

Vorteile von PPP 2/3

- Vermutete Effizienzsteigerung und Kostenreduktion durch Einbindung von Privaten, die Marktgegebenheiten genau beachten und Fehlinvestitionen vermeiden.
- Leistungsqualität wird gesteigert und Leistungssicherheit erhöht („Management-Know-how", „Branchen Know-how").
- Auslagerung von Konzeption und Planung und Betrieb kann im Gegensatz zu herkömmlichen Ausschreibungs-verfahren eher zu innovativen Lösungen führen und Verwaltung entlasten.

Vorteile von PPP 3/3

- Reduzierung der politischen Einflußnahme und dadurch geringere Behinderung unternehmerischer Entscheidungen.
- Verkürzte Entscheidungswege gegenüber öffentlichen Verwaltung.
- Flexibilität in Personalangelegenheiten
- Zusätzliche Einnahmen für die öffentliche Hand bei Anlagenverkauf.

Nachteile von PPP 1/4

- Zusätzliche Risiken privater Finanzierungsformen, die bei öffentlicher Hand nicht gegeben sind (Konkurs, Ausführungsrisiko).
- Finanzierungskosten sind wegen dieser Risiken gelegentlich höher.
- Wirtschaftlichkeit der Projekte ist oftmals von zusätzlichen öffentlichen Investitionen abhängig.

Nachteile von PPP 2/4

- Quersubventionierung von unrentablen durch rentable Bereiche nicht mehr möglich.
- Benutzungsgebühren, die über die Kostenbedeckung hinaus auch einen Gewinn für die Privaten beinhalten sollen, können politische Komplikationen mit sich bringen.
- Möglicherweise Bevorzugung betriebswirtschaftlicher Gesichtspunkte gegenüber ökologischen und anderen gemeinwirtschaftlichen Gesichtspunkten.

Nachteile von PPP 3/4

- Private sind bestrebt, gewinnbringende Aufgaben zu übernehmen; unrentable Aufgaben verbleiben bei der Öffentlichen Hand.
- Kosten werden möglicherweise zulasten der Leistung eingespart (Qualitätsverlust).
- Trotz geringerer Einflußnahme verbleibt Verantwortung der Aufgabenerfüllung [teilweise] bei der öffentlichen Hand.

Nachteile von PPP 4/4

- Weniger Bürokratie wird möglicherweise durch langwierige Projektvorbereitungen und begleitende Regelungen wettgemacht
  (komplexe Regelungen und komplizierte Verträge über lange Zeiträume bezüglich Risikoaufteilung, Tarifgestaltung, Ertragsbegrenzung, Subventionen).
- Lange Vertragsdauer führt zu Monopolstellung des Privaten (fehlender Wettbewerb).
- Derzeit oft noch Vertrauensdefizit durch Vorurteile auf beiden Seiten

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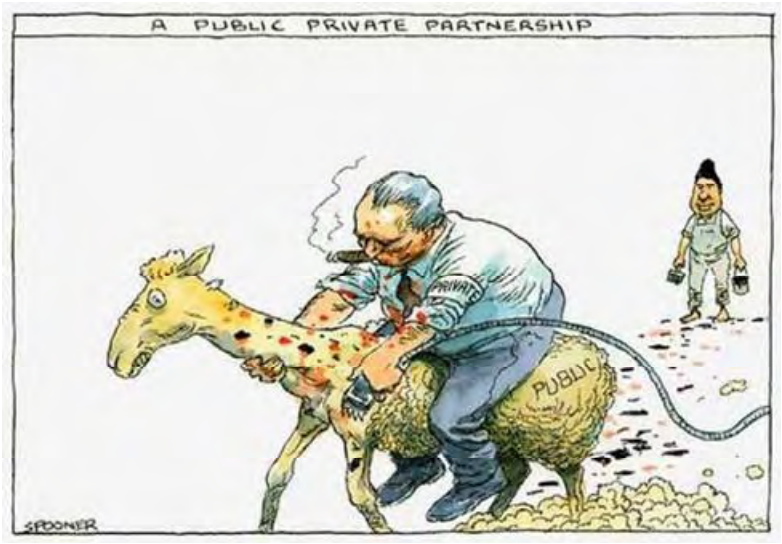

Derzeit keine realisierten PPP-Projekte

- Schweiz
- Slowakische Republik
- Slowenien
- Tschechische Republik
- Ungarn

Realisierte Projekte

Österreich

- B1 - Umfahrung Ebelsberg bei Linz
  - Eröffnung: 9. Juni 2000
  - Länge: 5,4 km
  - Gesamtinvestitionssumme : 94,5 Mio. €
  - Außerbudgetäre Finanzierung
- Güterterminal Graz-Süd/Werndorf
  - Öffentliche Anlage für den kombinierten Ladungsverkehr
  - Eröffnung: 26. Juni 2003
  - Betreiber: Cargo Center Graz [CCG]
  - Gesamtinvestitionssumme: 110 Mio. €
  - Mitfinanzierung durch Europäische Investitionsbank (EIB) in Höhe von 40 Mio.€

Georg Hauger | AK Vortrag am 09.04.2008

Burgau - Attersee

Georg Hauger | AK Vortrag am 09.04.2008

Realisierte Projekte

Deutschland

- Warnow-Querung in Rostock (B103)
  - Straßentunnel mit 4 km Streckenlänge
  - Eröffnung: 12. September 2003
  - Bauvolumen: 356 Mio. € („F-Modell")
- Travequerung Lübeck („Herrentunnel" B75/B104)
  - Straßentunnel mit 0,8 km Streckenlänge als Ersatz für baufällige Brücke
  - Inbetriebnahme 2005 („F-Modell")

Realisierte Projekte

Italien

Maut-Autobahnstrecken

- 5.593 km (91% des gesamten Autobahnnetzes)
- Konzessionsmodell (Laufzeit 30 Jahre)
  - (F)BOOT-Modell
  - Betriebswirtschaftliche Amortisation durch Mauteinnahmen
  - Direkte Investitionszuschüsse oder Zinsenzuschüsse für Infrastrukturbereitstellung durch den Staat
  - Am Ende der Laufzeit Übertragung in Staatseigentum (Neuausschreibung Betrieb)
- 24 privatwirtschaftlich organisierte Gesellschaften
  - davon Autostrade per l'Italia (Autostrade): Netz 2.855 km (53%)
  - Restliche Gesellschaften: Netze zwischen 20 km und 314 km
- Neue Strecken:
  - 1992-1996: 215,5km
  - 1997-2001: 23,9km

Vorgesehene/laufende Projekte

Österreich

Straße

- Autobahn A5 (Nordautobahn) (Wien – Staatsgrenze CZ)
- Schnellstraße S1 (Wiener Außenring Schnellstraße) (Abschnitte)
- Schnellstraße S2 (Wiener Nordrand-Schnellstraße) (Abschnitte)

Schiene

- Strecke Summerau – Spielfeld-Straß (Ausbau) (Investitionssumme: ca. 650 Mio.€)
- Brenner-Basistunnel
- Bahnhofsprojekte in Wien
- Güterterminal Wien-Inzersdorf

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Vorgesehene Projekte

Deutschland

Straße

- a) Privat finanzierter Fernstraßenbau („F-Modell“)
  - Neu- und Ausbau, Erhaltung und Betrieb von Bundesfernstraßen durch von Privaten selbst eingehobenen Mautgebühren
- b) Betreibermodelle für Autobahnabschnitte („A-Modell“)
  - sechs- bzw. achtspuriger Ausbau von Autobahnabschnitten, Erhaltung und Betrieb durch Private

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Vorgesehene Projekte

Deutschland

- a) Privat finanzierter Fernstraßenbau („F-Modell“)
  - Fernstraßenbauprivatisierungsgesetz (1994)
  - Private:
    - Neu- und Ausbau, Erhaltung und Betrieb von Bundesfernstraßen
    - Einhebung der Mautgebühren
  - Staat (Bundesministerium für Verkehr):
    - Festlegung der entsprechenden Straßen oder Bauwerke
    - Festlegung der jeweiligen Höhe der Mautgebühren
    - Bereitstellung einer Anschubfinanzierung (bis 20%)

Vorgesehene Projekte

Deutschland

„F-Modell“

Kriterien für die Festsetzung der Mautgebühren

- entstehende Kosten innerhalb des Konzessionszeitraumes
- durchschnittlicher Vorteil der Benutzung unter Berücksichtigung von:
  - Wegstrecke
  - Fahrzeugart
  - zulässigem Gesamtgewicht
- Häufigkeit und Zeitpunkt der Benutzung

Vorgesehene Projekte

Deutschland

nach „F-Modell“

(Stand: Januar 2004)

Land	Maßnahme	Länge (km)	Geschätzte Baukosten (Mio €)	Sachstand
BW	A 8: Mühlhausen-Hohenstadt, Albaufstieg	8,0	348	Gemeinsame Erklärung Bund/Land zum Betreibermodell vom 15.10.2001
SH/NI	A 20: Elbequerung nordwestlich Hamburg	9,0	511	Machbarkeitsstudie liegt vor, keine Linienbestimmung
B	A 100: Neukölln-Landsberger Allee	8,7	809	Machbarkeitsuntersuchung liegt vor, Abschluss
HB	A 281: Weserquerung	4,4	237	Machbarkeitsuntersuchung positiv;
BY	B 21: Kirchholztunnel Bad Reichenhall	3,7	77	Machbarkeitsuntersuchung liegt vor, Abschluss
RP	B 50n: Hochmosel-übergang Wittlich/Bernkastel	19,4	131	Bis zur Klärung planungsrechtlicher Fragen zurückgestellt
NW	A 52: Verbindung der A 40 mit der A 42 (Essen)	8,7	377	derzeit Machbarkeitsuntersuchung
	7 Projekte	65,9	2.579	

Quelle: Alfen; Mayrzedt; Tegner, 2004, S.52

Georg Hauger | AK Vortrag am 09.04.2008

Vorgesehene Projekte

Deutschland

- b) Betreibermodelle für Autobahnabschnitte („A-Modell“)
  - Private:
    - Ausbau zusätzlicher Fahrstreifen
    - Erhaltung und Betrieb aller Fahrstreifen
  - Staat:
    - Einhebung der Mautgebühren und Weiterleitung an Private
    - Bereitstellung einer staatlichen Anschubfinanzierung (50%) aus Straßenbauhaushalt (Ausgleich für nicht durch Maut erfasste Kfz)

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Vorgesehene Projekte

Nr.	Land	Straße	Strecke	Länge	Sachstand
1	BW	A 5	AS Baden Baden – AS Offenburg	38,9	Machbarkeitsstudie abgeschlossen
2	BW/RP	A 61	AK Frankenthal – AD Hockenheim	38,1	Machbarkeitsstudie in Bearbeitung
3	BY	A 8	W Bubesheim – AS Augsburg West	45,6	Machbarkeitsstudie in Bearbeitung
4	BE/BB	A 10	AD Havelland - AD Schwanebeck	40,8	Machbarkeitsstudie in Bearbeitung
	BB	A 24	AS Neuruppin/Süd - AD Havelland	31,3	Machbarkeitsstudie in Bearbeitung
5	HE	A 67	AK Darmstadt – AS Lorsch	20,5	Machbarkeitsstudie in Bearbeitung
6	NI	A 1	AD Buchholz- Bremer Kreuz	74,8	Machbarkeitsstudie abgeschlossen
7	NW	A 1	AK Lotte/Osnabrück – AK Münster/Süd	49,6	Machbarkeitsstudie in Bearbeitung
8	NW	A 40/ A 44	AK Dortmund/Ost (B236) – AK Werl	26	Machbarkeitsstudie in Bearbeitung
9	NW	A 57	AK Strümp – AK Köln Nord	37,4	Planung als A-Modell eingestellt
10	NW	A 4	AS Düren – AK Kerpen	18,4	Machbarkeitsstudie in Bearbeitung
11	NW	A 2	AK Kamen – AS Beckum	31,2	Machbarkeitsstudie in Bearbeitung
12	SH/HH	A 7	AD Bordesholm – AS HH-Othmarschen	70,7	Machbarkeitsstudie in Bearbeitung
			Gesamt	523,3	

Quelle: Alfen; Mayrzedt; Tegner, 2004, S.52

Deutschland

nach „A-Modell“

(Stand: Februar 2004)

Vorgesehene Projekte

Tschechische Republik

Straße

- Schnellstraße R 35 (Olomouc – Mohelnice)
  (geplanter Baubeginn: 2005; Investitionssumme: 16 Mio. €)
- Schnellstraße R 4 (Praha)
  (geplanter Baubeginn: 2005; Investitionssumme: 46,6 Mio. €)
- Schnellstraße Praha – Stara Boleslav)
  (geplanter Baubeginn: 2005; Investitionssumme: 17 Mio. €)

Schiene

- Schnellbahn Praha – Ruzyne
  (Investitionssumme: 250 Mio.€)
- Bahnhofsverlegung Brno

Vorgesehene Projekte

Ungarn

Straße

- Autobahn M6 (Abschnitt Érd – Dunaújváros)
  - Länge: 52km
  - Projekt noch nicht vollständig genehmigt)

Schiene

- Vorortelinien (S-Bahn-Linien) im Raum Budapest (Idee)

Gescheiterte Projekte

Deutschland

- Strelasundquerung (B96n zur Insel Rügen) („F-Modell“)

  Gründe:
  - Politische Forderung nach Aufrechterhaltung einer mautfreien Parallelverbindung

  Realisierung:
  - Finanzierung aus öffentlichen Haushaltsmitteln

Gescheiterte Projekte

Tschechische Republik

- Autobahn D 47 (Lipnik nad Becvou – polnische Staatsgrenze)
  - Länge: 80,1km
  - Betreiber: H&C Housing&Construction-Izrael, Vertrag vom 25.06.2002
  - BOT-Projekt über 25 Jahre
  - Zahlung einer Schattenmaut durch den Staat, abhängig von Währungskurs, Inflationsrate und Verkehrsstärke)

Gründe:

- Fehlende Transparenz und Nachvollziehbarkeit im Zuge des gesamten Auswahlverfahrens
- Verdacht auf nichtrechtskonforme Abwicklung der Vertragvergabe seitens der Regierung
- Verdacht auf Korruption

Realisierung:

- aus öffentlichen Haushaltsmitteln; geplante Fertigstellung bis 2008

Gescheiterte Projekte

Ungarn

- Autobahn M1 (Abschnitt Györ – Hegyeshalom)
- Autobahn M5 (Abschnitt Gyál – Kiskunfélegyháza)

Gründe:

- zu geringe Auslastung
  (bestehende mautfreie Parallelverbindung!!)
- zu hohe Mautpreise (M1)

Realisierung:

- Übernahme durch Staat

Erfahrungen

- **Schwächen**
  - Wenig effiziente Risikoverteilung: (finanzielle Lasten zu sehr bei öffentlicher Hand)
    (Linz-Ebelsberg; „F-Modell" Deutschland)
  - Mangelnder Umsetzungswille in Politik und Verwaltung
    („F-Modell" Deutschland)
  - Zu geringes „Know-How" bei Behörden und Betreiberwirtschaft
    („F-Modell" Deutschland)
  - Falsche Auswahlkriterien bei Projekten
    („F-Modell" Deutschland)
  - Politische Forderungen (z.B. mautfreie Parallelverbindungen)
    („F-Modell" Deutschland; M1 Ungarn)
  - Rechts- und Investitionsunsicherheit durch Gesetzesmängel
    („F-Modell" Deutschland)
  - Wenig Einfluss der Privaten auf Erlösseite
    („A-Modell" Deutschland)
  - Geringe Einnahmensicherheit (z.B. bei Störungen)
    („A-Modell" Deutschland)
  - Kritische Streckenlängen für Betriebsoptimierung
    („A-Modell" Deutschland)

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Erfahrungen

- **Stärken**
  - Realisierung zusätzlicher Projekte, die sonst aufgrund knapper Mittel nicht oder erst später umgesetzt werden könnten
  - Einhaltung von Bauzeiten und Kostenrahmen
  - Kostenersparnisse durch Kooperation und Flexibilität
    (Terminal Werndorf; „A-Modell" Deutschland)

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Zukunft?

- Spezielle PPP
  - auf Kommunalstraßen
  - besondere Konstellationen
- Verbesserung vorhandener Modelle
  - Konzessionslaufzeit verlängern
  - Anschubfinanzierung um Ergänzungsfinanzierung erweitern
- Neue Modelle (z.B. Verfügbarkeitsmodell)
  - unabhängig vom Risikofaktor Verkehrsprognosen
  - bewertet wird die Qualität der bereitgestellten IS (bonus/malus denkbar)

Einsatz von PPP zur Finanzierung hochrangiger Verkehrsinfrastruktur

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2. The Experiences with PPP in the road sector in Europe

Jean Shaoul, Business School, University of Manchester

The University of Manchester
Manchester Business School

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Importance of the topic in EU

- Need for low cost transport for single market (T-TENS)
- Increasing interest in EU and internationally for privately financed transport
- But roads are highly capital intensive
- Long payback period if at all
  - High initial cost
  - High but infrequent maintenance cost
  - Low annual operating cost
  - Traditionally public sector – too risky for private sector

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Examine:

- Types of PPPs
- Prevalence in Europe
- Problems
- Research literature
- Experience of using private finance to build and operate roads in Spain and UK
- Costs to the various stakeholders: government, concessionaires, providers of finance and road users
- Evaluate the claims that the turn to private finance
  - provides additional investment (Spanish argument)
  - transfers risk and provides value for money (VFM) (UK argument)
  - Affordable (UK argument)

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Types of PPPs – umbrella term

- Various models and confusing terminology
- PFI or DBFO – contractual arrangement – state pays
- Free standing project – concession or franchise – user pays
- Free standing project – concession or franchise – user pays + some government contribution (capital and/or user subsidy)
- Joint venture or ownership project where state or users pay = PPP
- New roads or upgrade old roads
- Distinguish between finance for capital cost and funding to pay finance and operating costs

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Potential problems?

- Commercially viable over concession period
- Concession period shorter than road life
- So usually require government contribution even when privately financed
  - Capital – grant, loans, guarantees
  - Annual subsidy or shadow tolls
- This then blurs the line between public/private expenditure
- Creates government sanctioned monopolies
- Who bears the cost when things go wrong?

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Road PPPs in EU

- Transport largest PPP sector
- Information difficult to find – no database
- National and regional
- 2005 annual capital value of roads, excluding UK, €9.3bn
- 2006 - €7.7bn
- Spain - the longest experience of private roads
- Spain and UK – largest users of private finance in roads in EU

Number of PPP road projects in EU – Jan 2006

	Roads (toll)	Roads (shadow toll or availability)	Roads (payment mechanism unknown)	Bridges	Tunnels	Total
Spain	35	17	2		5	59
UK	1	22		3		26
Portugal	4	7			1	12
Greece	6		1	1	1	9
Italy	4		5			9
France	5			1	1	7
Ireland	3			3		6
Hungary	2	3				5
NL		2	3			5
Germany					2	2
Poland	2	1				3
Finland		2				2
Total	**62**	**54**	**11**	**8**	**10**	**145**

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Research literature (i)

- Little research on the cost of the financing method in transport
- Most research descriptive, broadly supportive, little financial evidence
- Silva, Freeman (World Bank)
  - Generally successful
  - Some problems
    - lack of demand,
    - renegotiations,
    - bailouts,
    - governments have taken over the projects

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Research literature (ii)

- Estache and Serebrisky (2004 - importance of appropriate political and regulatory framework to make it work
- Ehrhardt and Irwin 2004 – recent projects – more favourable regime – grants, guarantees for loans, subsidies, etc
- Boardman *et al* (2005) – review of North American experience - private sector adept at ensuring that they can walk away from problems
- EIB (2005): key impact that projects were implemented

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Early road concessions in Spain

- Starts 1967 due to lack of public finance
- Private toll roads in Spain v public tolls elsewhere
- State backed guarantees for foreign loans and exchange rate insurance
- Early 1980s financial crisis due to oil prices and road user demand
- Renegotiation, provision of state loans and subsidies, three contracts taken over by state
- Concessioning stops in 1982

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Recent concessions in Spain

- 1991 Maastricht criteria
- 1996 return of Conservative government
- New law – extending period of concessions
- Renegotiation of existing concessions on favourable terms and without going out to competitive tender
- New concessions with toll charges
- Beneficial accounting regime with real economic effects
  - Reversionary fund
  - Treatment of financing expenses
- Favourable toll charge system to cover reversionary charge and rises linked to inflation
- Late 1990s shift to shadow toll concessions – autonomous governments

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Private finance for roads in UK

- 1980s/early 1990s - some free standing projects with user tolls
  - Second Severn Bridge
  - Dartford crossings
  - Channel Tunnel
  - Skye Bridge (government contribution)
  - M6 Toll road
- 1993 Private Finance Initiative (PFI) – DBFOs in roads
  - Shadow toll
  - Availability payments

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Annual cost of private finance

Data from companies' accounts	Spanish toll roads (2003)	Spanish shadow roads (2003)	8 UK DBFO shadow roads (2004)	UK M6 Toll road (2006)
Revenues	€ 1,428m	€ 57m	£176m	£51m (2/3 expected level)
Operations and maintenance	43%	44%	41%	55%
Interest payable	17%	40%	47%	88%
Tax payable	19%	0%	5%	0%
Post tax profits	38%	26%	36% (Affected by refinancing gains)	Losses
Financing as % revenues	55%	56%	83%(Affected by refinancing gains)	88%

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Additional annual cost of private finance to state or user

Data from companies' accounts	Spanish Toll Rds Euros (m)	Spanish shadow toll roads (Euros m)	8 UK DBFOs (£m)	UK M6 Toll (£m)
Year ending	2003	2003	2004	2006
Interest payable on debt	238	22	82	45
Post tax profit	546	14	20	-21
Total cost of capital (interest and post tax profit)	784	36	63	45
Interest payable at then prevailing public sector rate	7% 288	4% 20	8% 74	4.5% 34
Extra cost of private finance	496	16	71	11
Extra cost of private finance as % income from state or user	35%	28%	40%	16%

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Impact on tolls - Spain

- If assume public funding and tolling:
  - Public debt approx 4%
  - Private debt = 7% (understated because of public support)
  - So conservative additional = 3%
- Additional cost of debt is €4.8bn over 9 year period,
- More than cost of new construction (€ 2.5bn)
- 55% annual cost is cost of finance
- 43% annual cost is additional cost of private finance
- So under public finance, tolls would be nearly half current charge - road users paying in effect nearly double

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But this is after public support

- Rose from €201m to €423m
- Largest element exchange rate insurance relating to 5 old concessions (more than original cost of roads or 80% of cost of new roads)
- So old roads mortgaged the future
- Compensation for tariff capping
- Small capital grants
- 13% debt = Participative loans at public sector rates of interest

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Shadow toll concessions - Spain

- Only been functional for two years
- Same broad findings
- Smaller projects than toll roads at approx €133m per road or €688m total
- Little direct public support
- Low interest payable 4.5%
- 11% return on shareholders funds
- Annual cost of finance is 56% of toll revenues
- Additional annual cost of private finance is 28% toll charge
- So gov could do it for 2/3 price

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UK shadow tolls

- DBFO based on shadow tolls
- Very expensive, £6bn over 30 years, £220m pa
- Paid the capital costs (£590m) in three years
- Private sector's annual cost of finance 67% income
- Additional annual cost of private finance = risk premium = £61m pa = 40% of total annual cost
- Underestimate of total cost of private finance due to subcontracting to sister companies
- Impact on Highways Agency budget? Affordability?
  - £300m pa or 20% Highways Agency's budget for 8% its network
  - Proposed M25 widening >> £300m pa or 40% budget

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UK M6 toll road

- Traffic much less than expected
- Operates at a loss
- Lobbying for new roads and development in area
- Took out larger new loan – over longer period
  - Paid back old loan
  - Paid £300m + to parent company
  - Heavily in debt with low revenues
  - Risks?
- Using £112m to build a link road to M6 toll road
- While free road to state and users
  - Unsolicited proposal
  - Queue jumps capital prioritisation
  - Corporate requirements dictate road building programme

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Completed projects – toll crossings

- Dartford Crossings
- High traffic flows
- 16 years
- Cost of finance/revenues= 20%
- Additional cost of private finance = 8%
- Conservative, using very high rate of gov interest, excludes financing costs via subcontracting

- Skye Bridge
- Low traffics flows
- £15m public construction costs, £7m subsidies, £27m termination fee
- Terminated after 10 years
- Cost of finance/revenues= 50%
- Additional cost of private finance = 31%
- Conservative, using high rate of gov interest, excludes financing costs via subcontracting

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Risks and rewards

- Little information to assess risks and rewards
- Inadequate reporting by both public and private sectors
- Data is aggregated so cost invisible
- *Freedom of Information* and the *Audit Commission Act* provide little redress
- More information to Credit Ratings agencies for Stock Market than to public
- Little or none *ex post* scrutiny and evaluation

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Conclusions (i)

- Some information not in public domain due to commercial confidentiality
- Detailed financial evidence
- Direct and shadow tolls provide similar consistent results re cost of finance
- Private finance
  - Broadly similar results in Spain and UK
  - Confirms the literature

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Conclusions (ii)

- Private finance
  - Creates additional costs for taxpayers and users
  - Does not provide additionality
  - Has not transferred risks commensurate with costs
  - Creates additional risks for taxpayers
  - Default risk – government assumes large private sector debt
  - Distorts rational capital programme in favour of roads that can deliver a cash flow
  - Does not provide accountability to the public
  - Unable to see whether public expenditure and investment is sustainable
- Taken together, evidence undermines case for private finance in roads

3. PPPs in Europe

Jean Shaoul, Anne Stafford and Pam Stapleton,

Manchester Business School, University of Manchester (April 2007)

Introduction

While the UK is seen as the model for PPP type arrangements, the European Union (EU) has a significant role in relation to both transport in general and PPPs. The purpose of this paper is to understand the role of the EU in the context of both transport and PPPs, chart the scale of PPPs in roads in Europe and the experience of Spain, the earliest and largest user of private finance for roads in Europe.

This paper briefly outlines the development of transport policy in the EU. With the move towards the Single Market in the late 1980s, transport policy increasingly came within the EU's remit. It encouraged the liberalisation and deregulation of transport and communications and the development of major arterial road and rail links to move both freight and people. It was in this context that PPPs began to be seen as a possible way of procuring the finance for the Trans-European Network that some member states could not otherwise afford.

The paper then reviews the development of PPP policy in the European Union, which while very supportive of the policy of using private finance, has been late to formulate an explicit policy on PPPs. Although not itself a major commissioner of PPP projects, the EU is both the overall market regulator and legislative body in terms of government procurement to ensure competition and transparency for the prospective contractors, it increasingly determines the way that PPPs are commissioned and operate. The paper outlines some of the regulatory issues posed by PPPs in relation to state aid, financing, the procurement process, first movers, subcontracting and competition, the classification of PPPs for public expenditure purposes and the responses to the EU's Green Paper on PPPs.

The paper charts the spread of PPPs in roads, which has required extensive political and financial support. It outlines the different levels of government support, payment mechanisms and ownership structures in the member states, and the key players in the PPP market. It then reviews the experience of Spain, the first country to use private finance for roads, which was not without problems. As PPPs are relatively new, there has as yet been little research in other countries that analyses or evaluates the implementation of the policy, as opposed to describing the procurement process.

The EU and transport policy

As transport policy embraces a very wide range of issues, only those issues directly relevant to this study: the development, financing and ownership of transport infrastructure, are considered here.

The 1956 Spaak Report had drawn attention to three aspects of transport policy that would need to be covered by the founding Treaty of the European Economic Community (EEC), the precursor to the EU: non-discriminatory pricing, the development and financing of infrastructure investment, and the formulation of a common transport policy. But member states were so deeply divided that the Treaty was an awkward compromise and did not directly deal with transport policy, and such provisions as there were, Articles 70 and 71(1), the original Treaty as amended by the 1997 Treaty of Amsterdam and 2001 Treaty of Nice, were treated as though they exempted transport from the general liberal tenor of the Treaty.

It was only in the 1980s that the European Court of Justice brought transport more directly into the EEC's sphere of competence when it ruled that anti-competitive regulations applied to transport, thereby opening up transport to liberalisation and deregulation. A second development was the 1987 Single European Act that introduced qualified majority voting to transport, one of the key areas where unanimity had proved to be an obstacle to the development of the single market. Since then, there have been deregulatory measures in all modes of transport that have paved the way for the break up and privatisation of state owned enterprises and new entrants to the transport market.

In the 1980s, the major European corporations lobbied for the expansion of large scale investment in transport as part of a broader policy of restructuring production in Europe and played a major role in placing Trans-European Networks (TENs), which covered not just transport but energy and telecoms, on the political agenda. Several new Articles, now 154-6, were added to the 1991 Treaty on the European Union that provided for the development and financing of TENs. These gave the Community power over cross border infrastructure. The Transport Network (TEN-T) that included high speed trains, waterways and airports as well as 12,000 kms of new motorways was thus written into the Maastricht Treaty.

A semi-official High Level Panel on Private Finance for TEN-T was established. At the 1994 Essen Summit, the European Council adopted 14 major transport projects, mostly rail, as priority projects crucial to the development of the internal market, although they were largely to be funded nationally. It announced €4.2bn worth of funding in the form of capital grants for the seven years 2000-2006, and endorsed the calls from the industry for public private partnerships, thereby supporting private finance for such projects.

In 1996, the cost of the TEN-T projects was estimated at €400bn by 2010. But six years later, only 20% of the total TEN-T had been completed as costs escalated. At that rate, it would take 25years to complete the network. The nature of EU aid, capital grants, and their

small scale, were perceived as a limiting factor. In the light of the *European Initiative for Growth*, the list of 14 priority developments was increased to 30 in 2004, again largely rail schemes.

In the context of other road schemes, further EU legislation in 1995-96 enabled the selection and financing of a substantial number of smaller projects, with the EU's poorer regions receiving substantial financial support from the EEC's regional and cohesion funds.

While the Commission is supportive of PPPs, it concluded that they provided only a partial solution to the problem of financing transport infrastructure (EC 2003a). The Commission' proposals to expedite the projects included road tolling, measures to modernise the EU's procurement rules, guidance as to how to account for PPPs in national budgets and the development of a European guarantee instrument to be backed by the Commission and Member States (EC 2003b), issues which are discussed in the next section. PWC (2004b) called for the Commission to allow its funds to be used for 'availability payments' or recurrent expenditure as well as capital grants, arguing that this would permit the procurement of road and rail projects via a PPP structure, thereby leveraging in private finance in addition to public finance from member states.

The EU and PPPs

Although historically the EU has been neutral as to the ownership of assets (Article 295 of the Treaty), having no policy on privatisation *per se*, since 1999, the European Commission's policy has been to increase the amount of private finance for infrastructure, particularly in the transport sector. It views PPPs as one mechanism for achieving several broader policy objectives: levering in private finance, avoiding fiscal constraints on public borrowing and improving the infrastructure. It is part of a wider push to regulate public markets so that they mimic private markets, eliminate procurement practices that favour national champions, and create an international market. It is also bound up with moves to open up and deregulate public services via the so-called Bolkestein Directive, first introduced in the European Parliament in February 2006. But while the EU has embraced the liberalisation agenda, there is as yet no EU PPP policy *per se* as there is in the UK.

The Council of Ministers endorsed the use of the PPP mechanism at their meeting in December 2003 and the EU is supportive of PPPs in certain areas. For example, the European Council called on the EC to "explore how best to mobilise private financing support of the *European Initiative for Growth* and consider how best to promote PPPs". The *European Initiative for Growth* (EC 2003b) called for the creation of "the right regulatory, financial and administrative conditions to boost private investment" and "the refocusing of public expenditure towards growth enhancing areas without increasing public budgets". Thus partnerships were seen as a way of boosting investment without increasing public debt, thereby fulfilling political and macro-economic objectives, the additionality argument.

There have been a number of EU statements and reviews concerning PPPs, listed in Table 1. Many of them relate to PPPs in the context of transport, particularly the TENs pro-

gramme (Trans European Transport Network), in part at least because it has a budget allocation, albeit small in relation to the programme. The *van Miert Report* called for more use to be made of PPPs for this purpose and for the expansion and the development of PPPs and the regulation of public contracts through Community law (EC 2003c). Others have sought to facilitate PPPs in new member states and accession countries so that grants for environmental and transport projects would be available for PPPs (PWC 2004a).

Table 1 EU policy documents and initiatives relating to PPPs 1993 to date

Date	Reports	Source
1993	White Paper on growth, competitiveness and employment	Com(93) 700
1997	High level Group on PPP financing of TEN-T projects (known as the Kinnock report)	Com (97) 453
2000	Commission's Interpretative Communication on Concessions under Community Law	OJEC (2000/C 121/02)
2000	Proposal for a Regulation of the Council and Parliament concerning the granting of aid for the coordination of transport by rail, road and inland waterways	COM (2000) 5
2001	White Paper on European transport Policy for 2010: time to decide	COM (2001) 0370
2003	Guidelines for successful public private partnerships – DG Regio and dissemination at a series of international conferences	DG Regional Policy
2003	A European Initiative for Growth – Investing in Networks and Knowledge for Growth and Jobs	COM (2003) 690
2003	Communication from the Commission: developing the trans-European transport network: innovative funding solutions and Proposal for a Directive on the widespread introduction and Interoperability of Electronic toll collection systems	COM (2003) 132
2003	High Level Group Report on the TEN-T network (known as the Miert report)	DG Transport (2003)
2004	Eurostat proposals on accounting treatment of PPPs	CMFB and Eurostat news release (STAT/04/18) February 2004
2004	Green Paper – EU consultative paper on PPPs and Community Law on Public Contracts and Concessions	COM (2004) 327 May 2004
2004	Resource book on PPP case studies	DG Regio June 2004

Notes:
DG Regio is the Directorate-Generale Regional Policy
COM is the series reference for documents produced by the European Commission
OJEC is the Official Journal of the European Communities, now renamed the Official Journal of the European Union
CMFB is the Committee on Monetary, Financial and Balance of Payments Statistics

But EU procurement law, which is follows the framework for public procurement procedures provided by the *Agreement on Government Procurement*, administered by the World Trade Organisation to which most countries are signatories, does not define PPPs. Nor does EU law provide a specific set of rules governing the procurement of PPP projects. Indeed, with the wide range of arrangements that fall under the PPP umbrella, "a specific PPP directive would be difficult to formulate and even harder to apply" (Economic and Social Committee 1998: para 5.1.2). There is therefore a good deal of uncertainty about the compatibility of European public procurement rules and PPPs, which has not been clarified by the European Commission. This uncertainty relates to the contractual nature of the privately financed project from the perspective of EU procurement law and the types of procedures to be used for awarding contracts.

PFI or contractual models where the public agency pays the private partner may be either a public services or a public works contract depending upon the intention of the public authority, the contract's specification and the ownership of the underlying asset. While the intention is usually to procure services, the lack of contract specificity which typifies PFI projects leads to negotiations with the preferred bidder prior to financial close that change the nature of the deal and raises questions about the VFM and legality of its procurement process. If the asset is to be owned by the public authority, then this is likely to form the basis of a public works contract. If on the other hand, it is to be owned by the private contractor, then the deal is likely to be a public services contract. The classification of the deal as either a public services or public works contract determines the procurement route. If it is a services contract, then there is a lower threshold for advertising the contract and the public authority may proceed under the more flexible negotiated procedure. A public works contract on the other hand has a much higher threshold for advertising, but must use the restricted procedure and is excluded from using the negotiated procedure.

Where the public authority is awarding a contract or concession, often known as a free standing project, where the user pays the concessionaire, is a grey area with inconsistent treatment for the two different types of concessions. A public works concession above a certain threshold is subject to the Public Works Directive. But public service concessions, which typically relate to more politically sensitive services, were excluded from the Public Services Directive and thus fall outside the remit of EU public procurement rules.

PWC (2004a), one of the major proponents of the policy, called for greater certainty about EU rules on procurement and funding in relation to PPPs, the funding by the EU of specially created PPP units and a central task force to assist member states, like the UK's Partnerships UK, in creating the institutional capacity to negotiate such deals. It emphasised the importance of clarifying existing rules as they relate to PPPs over developing new ones.

Notwithstanding the definitional issues surrounding PPPs, the Commission's desire to extend the private sector's role in the delivery of public services means that it has had to address a range of key issues, including:

- The need to clarify public procurement rules for PPPs in the context of complex negotiations and state guarantees;
- The procurement rules for concessions, the oldest form of PPPs in Europe;
- Clarity over the issue of state aid and PPP;
- The need to develop new financing instruments, support for PPPs at EU level and institutional capacity for PPPs in the public sector;
- The need for clear rules governing the life of the contract, which can be expected to change over time and therefore opens up questions about the necessity of reopening a competitive bidding process;
- The need for a clear and consistent framework, including how they should be accounted for in both the annual accounts and national budgets.

The Commission therefore issued a consultative Green Paper (EC 2004) to examine these and other issues and to seek views of the industry on whether it was necessary to improve EU law in this area. In the event, the Green Paper dealt largely with PFI or contractual arrangements rather than concessions and joint ventures, and thus did not resolve a number of issues. Furthermore, it was pre-empted by comprehensive Directives on public procurement published one month earlier, whose aims were to open up national public procurement markets in the EU to other member states, with the result that the Green Paper has now lapsed.

Each of these key issues as they relate to this research, some of the issues raised by the Green Paper and the response to the Green Paper are discussed in turn, in order to understand the direction of the EU's thinking on PPPs.

Procurement rules

As explained earlier, the type of PPP arrangements: contractual, co-ownership and those that do not fall into either category determine which the procurement rules apply. PPPs that qualify as public contracts are subject to the detailed provisions of the Procurement Directive. While most PPPs fall within this regime, some do not, including service only concessions, which *must* follow the negotiated procedure arrangements, joint ventures and privatisations, defence contracts, and some explicitly exempt services such as training. Within the UK, public authorities also have UK public law obligations, to act fairly, reasonably and take into account relevant considerations, and if they act outside these restrictions they are open to judicial review.

There are basically two types of procurement procedures for public service contracts, the negotiated procedure and competitive dialogue. Under Article 30, the negotiated procedure (as opposed to the restricted procedure used for clearly defined commodities as in public works contracts), is used for large contracts awarded by public authorities where the nature of the services, the risks and scale are such that it is not feasible to draw up exact specifi-

cations to allow prior pricing. It is the required route for service only concessions. It is by far the most common method of PFI procurement in the UK. The negotiated procedure is divided into stages: an initial pre-qualification stage concerned with the technical, managerial and financial resources of the bidders; the invitation to submit proposals (an intermediate stage for very large projects); the invitation to tender; and finally the selection of preferred bidder. However, as shown earlier, some negotiation frequently takes place after the selection of the preferred bidder.

Article 29 of the Procurement Directive therefore introduced the competitive dialogue procedure, a new procedure designed for PFI type contracts in order to restrict the widespread use of the negotiated procedure for major projects in some member states, particularly for large DBFO projects. It does not however explicitly restrict the use of the negotiated procedure to situations where competitive dialogue is not available. Under the competitive dialogue procedure, the public authority discusses the form of the contract and the potential specification with potential bidders, possibly in successive stages, before the key tender documents are issued. Once the tender documents have been finalised based on those discussions, the dialogue is closed and the bidders base their proposals on them. The contract is awarded to the most economically advantageous tender without any further negotiations.

The competitive dialogue is therefore less flexible than the negotiated procedure, since negotiations can only take place during the early stages of the process. But since the bidders are unwilling to incur the costs for technical, legal and financial due diligence, lenders are usually unwilling to complete due diligence in the early stages of the process. It has therefore been standard practice in PFI procurement to make adjustments after due diligence has been completed to provide comfort to the lenders, although this has on occasion meant substantial revision to the project. It would therefore seem that the procedure would not after all preclude further negotiation after selection of the bidder. That is, the issue of contractual changes during the life of a project has not been resolved.

This has generated considerable controversy, particularly in the UK where this practice is prevalent. In a number of high profile UK cases, the final project differed from that originally advertised. While contracts include mechanisms for handling minor changes, there have been concerns that there have been major modifications leading to a new or extended contract that has gone to the existing contractor under conditions where the competitive pressure had been lost.

The Green Paper considers that *any* contract changes:

> *"have the effect of calling into question the principle of equality of treatment of economic operators" (EC 2004)*

This would require that any substantial modification should be considered as a new contract and therefore subject to a new round of competition. It is indeed true that such changes are usually seen as an opportunity for the private sector to take advantage of their

"monopsonistic" position at the expense of the public sector, since the public sector is essentially "locked into" one supplier (Lonsdale 2005). However, the Green paper's requirement is unlikely to be a practicable solution for either party, as the renegotiation of the UK's NIRS2 (Edwards and Shaoul 2003) reveals, making the policy inoperable. Rather, it is likely to deter the private sector from agreeing contracts if every substantive change had to be re-tendered.

The Green Paper points out that secondary legislation lays down the exceptional circumstances that would permit additional works or services without competition, but insists that such exceptions be interpreted restrictively. It specifically cites the example of extending a motorway concession to cover the cost of completing a new section (as has occurred in Spain) and warned against the practice of combining profitable and non-profitable activities so that a new activity is awarded to an existing concessionaire without competition.

PPPs and State Aid

The EU generally prohibits State Aid to private enterprises except under tightly defined conditions such as support for underdeveloped regions, the promotion of a project of common European interest, restructuring, and to pay for externalities. If public subvention does not satisfy these conditions, then it constitutes State Aid and any subsidies must be refunded and the enforceability of any guarantees is uncertain. As yet the issue of State Aid and PPPs has not been a major issue. But if financing structures are developed that include State Aid and/or European grant financing, then there would be a need to ensure compatibility between PPPs and State Aid rules. Where there is a competitive tender process, the scope for legal challenges under the State Aid rules is limited. However where the negotiated procedure is used, should there be alterations to the contract after the selection of the preferred bidder, there is a risk of a legal challenge.

In 2002, the Commission made one of the few rulings on the issue, in the context of the London Underground PPPs. Here the government, which had originally expected to terminate all grants to London Underground, had announced a grant to cover the cost of investment under the PPP and that the private sector debt would be guaranteed, after selection of the preferred bidders. The Commission ruled that that this grant did not constitute State Aid and thus the PPP contracts did not breach EU rules. It confirmed the principle that the state should pay for any externalities. Its decision appears to imply that complex infrastructure projects can be awarded after extended tender procedures involving alterations to the contracts and government grants and after the appointment of the preferred bidder, without automatically constituting State Aid and thus potentially an unfair advantage. The Commission found that public procurement rules had been followed; and that the maximum potential transfer of value to the bidder was reasonable for contracts of this type. In addition, it found that that the combination of the continuous review process, the arrangements for subcontracting by competitive tender, the commercial incentives built into the contract, and

London Underground's audit rights served to limit the payment mechanism departing from the market price in future years.

But it is possible that this issue could be become more important in future PPPs. Should the State Aid rules be breached, the consequences could be serious for the private sector. If the payment mechanism is deemed to be too generous, then the government could be ordered to reclaim the excess. Perhaps even more importantly, any state guarantees, on which financiers may be relying, may be unenforceable.

PPPs and financing instruments

In order to develop the use of private finance in major infrastructure projects, it is argued that there is a need for the EU to develop additional financing mechanisms. The European Investment Bank (EIB), funded by member states and accountable to the European Parliament, has played a major role in promoting PPPs by providing finance for PPPs and particularly transport projects, and developing new financial instruments and initiatives. Furthermore, it is represented on various bodies concerned with PPP issues. The EIB, which lends at lower rates than commercial banks, serves to reduce the cost of borrowing, a benefit that has not always been passed on to the public authority (EIB 2005), and its imprimatur facilitates additional loans elsewhere in the financial market. In effect, this permits public sector credit with private sector returns.

The **European Initiative for Growth** (2003b) lists several instruments which the Commission believes are relevant here:

- The provision of third party equity or quasi equity alongside grant aids and contributions from the public authorities. For example, under the TENs Financial Regulation, some of the budget may be used for equity or quasi equity investments in projects;
- Securitisation;
- The EIB's Structured Finance Facility which contributes to the provision of debt finance for the early, pre-construction stages of projects;
- The European Guarantee Instrument to cover specific risks in TENS projects in their post construction phase.

But it is far from clear that the lack of finance for PPPs is a problem. Shortage of finance has not generally been a problem as purchasers, such as pension funds, view PPP projects as quasi government debt that meets their needs for long term investment. In addition, a number of European banks are buying low rated PPP debt to balance their high risk debt. Where the projects are structured in ways that make it attractive to the private sector and are affordable to the public sector, then finance has usually been forthcoming. In other words, the broader political support for the project, including public contributions, are crucial for determining its financing, not the lack of institutions willing to lend.

More importantly, the financial sector has sought to mitigate its risk by securing explicit or implicit guarantees from government and/or purchasing government backed securities. In this context, it is worth noting that the UK government has introduced a Credit Guarantee Facility (CGF) (Treasury 2003), whereby the roles of financing and risk taking are separated in an attempt to cut the cost of finance by 5-10%. Under CGF, the government issues bonds at lower cost on the gilt market and passes them onto the project company at market rate. In order to mitigate risk, the government takes a guarantee of repayment from a commercial institution such as a bank or monocline provider. As yet, however, few UK PPPs have been financed in this way.

First movers

The issue of first movers or unsolicited proposals has been another contentious issue. The Green Paper supports proposals that "first movers" should have some privileged treatment to maintain the incentive to initiate proposals for public spending on their projects. But such proposals enable extra contracts or less competitive contracts and create the potential for both corruption and higher costs for the public agency since they preclude the evaluation of alternatives. Many of the world's most controversial private infrastructure projects originated as unsolicited proposals to governments leading to "many negative experiences" as the World Bank has noted (Hodges 2003).

Subcontracting and compulsory competitive tendering

Since, under current rules, the main contractor is not required to submit all its contracts to competitive tendering, many project companies subcontract to their sister companies, the usual practice in UK PFIs. The Green Paper recommends that the prime contractor should be required to submit all its contracts to compulsory competitive tendering. Although this is not required in the UK, it is worth noting that London Underground did demand that Metronet, one of the London Underground PPP companies before its demise, put out all its subcontracting to tender in attempt to rein in its projected £2bn overspend. In the event, however, Metronet collapsed before this was implemented.

The Green Paper also calls for compulsory competitive tendering when the public sector contracts with an arms length public company or corporatised public body. This would therefore widen the scope of PPPs to include arrangements that include operators that are public enterprises not belonging to the general government sector, so called 'project vehicles' and in effect provide a mechanism for increasing external outsourcing.

The classification of PPPs for public expenditure purposes

A key motive for PPPs has been the desire on the part of governments to evade the EU's fiscal constraints that limit the amount of public debt. The private sector also supported this as it believed that it would encourage the turn to private finance. In this context, PWC (2004a) therefore argued for the structuring of deals and the development of national ac-

counting rules that would permit transactions to be scored as off balance sheet, thereby evading the constraints on public debt imposed by the Stability and Growth Pact.

But it was unclear, until the ruling by Eurostat in February 2004, whether assets underpinning the services provided under PPP were classified as non-government assets and thus both the assets and their corresponding debt obligations recorded off the government's balance sheet. Under Eurostat's ruling, unless the private partner bears the construction risk and either the availability or demand risk, then the asset will count as a public sector asset. While this was widely viewed as a measure to rein in off balance sheet projects, in practice these are easy requirements to fulfil. It would seem therefore that the Commission has moved from neutrality in relation to ownership to a preference for private ownership.

Response to the Green Paper

While there were about 200 responses to the Green Paper, largely from governments, both regional and national, there was no consensus that PPPs needed further regulation. Many thought that it would be better to wait to see how the new procurement Directives would work. There was generally little concern about the lack of homogeneity. In fact, the corporations saw this as a definite advantage, as the complexity favoured the sophisticated operator with experience and regulatory and market knowledge. Most responses did however seek clarification of the position relating to concessions and choice of private sector partners by "institutionalised PPPs" where there is a joint public/private-owned public service entity. The EC's response to the consultation was to commission a study into the current practice for procuring PPP services within the EU and the impact of a new EU legislative initiative to regulate the procurement of concessions. But as of November 2007, this had not been published.

Road PPPs in the EU

In 2005, the annual capital value of signed deals in the EU, excluding the UK, had reached €9.3bn, before falling back to €7.7bn in 2006. Italy, Spain and France had signed the largest number of private finance deals. By far the largest PPP sector is transport, particularly roads and motorways. Rail, tunnels and bridges also feature among the largest projects. It is however extraordinarily difficult to get information about signed PPP deals as there is no one database of signed PPP contracts in roads or indeed any other sector in the European Union, and such information as is available is incomplete. Data collected for this study shows that by the end of 2005, the 25 countries that make up the EU had signed at least 145 PPP type arrangements for the construction and maintenance of roads, bridges and tunnels, by far the largest sector by value financed by the EIB (EIB 2005). As Table 2 shows, these projects are funded by different combinations of tolls, private finance and taxpayers' money via shadow tolls, which are usually volume-based payments by the public sector on behalf of users.

Table 2 The number of PPP road projects in the European Union

	Roads (toll)	Roads (shadow toll or availabi-lity)	Roads (unknown payment mechanism)	Bridges	Tunnels	Total
Spain	35	17	2		5	**59**
UK	1	22		3		**26**
Portugal	4	7			1	**12**
Greece	6		1	1	1	**9**
Italy	4		5			**9**
France	5			1	1	**7**
Ireland	3			3		**6**
Hungary	2	3				**5**
Netherlands		2	3			**5**
Germany					2	**2**
Poland	2	1				**3**
Finland		2				**2**
Total	**62**	**54**	**11**	**8**	**10**	**145**

Sources: various
Note: Signed deals as at Jan 1 2006

The very first road projects were signed by Spain, which signed 15 projects, all for toll roads, between 1967 and 1975. There was then no activity until 1987 when both the UK and Ireland signed bridge projects, and Spain signed a tunnel project and another toll road. By the end of 1995, 28 projects had been signed including two road projects from Hungary, the first of the accession countries to utilise PPPs in roads, though both projects subsequently failed. In 1996, the UK's Highways Agency signed the first eight DBFO shadow toll projects and Greece began signing projects as part of its PPP toll road program. In 1997, Finland signed the A4 road and Poland signed their first two projects. In 1998, Spain began a new programme of road building with PPP type arrangements, using shadow payments for the first time on two of them. In 1999, a further 14 projects were signed including the Herrentunnel in Germany and the first of Portugal's SCUT programme. By the end of 1999,

there were at least 65 signed projects. After that, the number of signed deals grew quite fast and by the end of 2005, 145 projects had been signed.

The extent and pace reflects both national political priorities and national legal frameworks. By far the largest user of private finance in roads by capital value is Spain, with about €14.5bn of projects by 2006. It is also the longest user: its experience of private finance going back to 1967. The UK comes second with about £3.3bn of PPPs. Other major users of private finance include Portugal, Greece, France, Italy, Ireland and the Netherlands. Some have an active PPP road building/upgrading programme. While France and Italy used PPPs in the roads sector on an *ad hoc* basis, they are now beginning a more active PPP programme. Countries such as Germany, Hungary, Poland and Austria have used PPPs for individual projects rather than as part of a wider programme of PPPs. While Germany has now started a PPP roads programme at the state level, deals have yet to reach financial close. 12 countries have no signed roads projects. While some of these have signed PPPs in other sectors, most had not signed any deals and were not expected to do so. But taken together, given the long gestation period before such projects become operational, there are relatively few projects that are up and running.

Government support has played a key role in the expansion of PPPs as the experience of both the UK and Spain, discussed in the next section, shows. Indeed, PWC (2004b) has remarked that the extent of private sector involvement is chiefly associated with the political will of member states to promote them. This may take several forms. Firstly, the establishment of one or more PPP development units at central government level and/or in key departments, along the lines of the UK's Treasury Task Force and PFI units, in Austria, Ireland, the Netherlands, Denmark, Germany, Italy and Portugal, and secondly, the development of generic PPP legislation, as in Ireland, France, Germany, Portugal and Spain. Nevertheless, the complexity of such deals means that the procurement process is lengthy.

The payment mechanisms vary between countries. While several countries have toll roads, until very recently only Spain had privately owned and managed toll roads. In the 1990s, the UK used shadow tolls as its way of paying for its roads projects. In more recent projects, following criticism from the UK's National Audit Office of shadow tolls which transfers risk to the private sector which it is unable to control (NAO 1998, 1999), the UK has developed new payment mechanisms, such as availability payments linked to traffic speed and/or deductions for lane closures. Some payment systems aim to maximise safety. The UK and elsewhere, including Spain now use some mix of availability/shadow tolls for public DBFO schemes.

The PPP ownership structures vary between countries. In France, concessions tend to be held by single and national construction firms with relatively little bank involvement, whereas elsewhere concessions/contract are held by consortia that involve banks and construction companies, typically larger foreign companies and some smaller national firms. In other countries, the consortia, made up of international companies, subcontract to smaller local firms. The consortia are made up of shifting alliances of companies so that while the same companies win many of the deals, it is not generally the case that the same consortia

or SPVs win many bids. In so far as consortia have several projects, this is usually the result of takeovers.

Large scale projects require and attract a limited number of highly experienced bidders so there is limited effective *ex ante* competition even in the best organized tendering processes (Estache and Serebrisky 2004). It would indeed be highly unlikely to get more than three or four bidders for large projects as industry concentration means that there are few players. Some markets such as France, Spain and Italy are seen as 'closed' because of strong domestic contractors and as such conflict with the EU's desire for international markets. The UK, Germany, Belgium, the Netherlands and Portugal are perceived as more open.

Some six infrastructure companies have been involved in 50% of the 147 projects for which data relating to the partners were available and 16 in 90% of the projects, although more than one infrastructure company was involved in some projects. The Spanish companies (Dragados, Ferrovial, Abertis, OHL, FCC, Acciona and Sacyr) accounted for 52% of all new concessions and PPP projects over US$50m under construction and signed between 1985 and 2003, although some of these companies have since merged. British Companies (John Laing, AMEC, Balfour Beatty and Alfred McAlpine) accounted for 14%. French companies (Vinci-Cofiroute, EGIS, Bouygues, Alstom) accounted for 14% and Australian companies (Macquarie, Transfield) accounted for 9%. The French and Spanish contractor groups have done well outside their own domestic markets, as well as ensuring that they retain their position at home. The most usual methods to enter overseas markets include lending to an existing operation, finding a domestic partner, and merging with or acquiring a domestic organisation.

Concentration in the construction industry has increased in recent years following takeovers and mergers and this has led to reduced competition in PPP procurement (Stambrook 2005). This creates increased risk for the public sector because the companies are large and powerful enough to take on the regulators in the case of conflict and force contract renegotiation on more favourable terms (Molnar 2003).

While the information about the projects' financial backers and technical advisors is only available for about 90 of the 147 projects, it is clear that road PPPs frequently involve international financiers. The EIB has wholly or in part financed at least 50 such projects. The UK and Spanish banks have been involved in a number of the projects: Royal Bank of Scotland (16 projects), Banco Bilbao (15 projects) Banco Santander (9) and Lloyds TSB (9), in part also reflecting the predominant weight of these two countries in such schemes. The German banks are however more heavily involved than the number of German projects would suggest.

While the predominant mode of operation in the UK is non-recourse financing via a project vehicle, whether bond or debt, it is still common in the EU to see a form of short term corporate debt of six or seven years for the construction phase. Within the European banks, there are a limited number of banks with project finance experience. While the structured or

project finance teams are mainly based in London, the banks to whom those teams belong to are German, French, Dutch and British. In addition there are American and European investment banks with bond and debt teams and American monocline insurers that wrap the project risk for bond and debt holders. Thus, the banks with experience of project finance have been able to enter countries such as Italy and Spain, which traditionally have used corporate debt. In Germany, where the public authority effectively guarantees the repayment of the bank debt and hence underpins the Landesbanks that lend on such projects, two developments are likely to mean that Germany too will move away from corporate debt to project financing. Firstly, the European Court of Justice has criticised such arrangements under State Aid regulations and secondly, there are tighter provisioning requirements under Basle II for such arrangements with local banks. Thus, just as the corporations involved are international, so increasingly are the financing arrangements. Furthermore, as the projects become ever larger, the advantages of project finance, that serves to isolate risks, will become more apparent.

The major advisors are dominated by the international Anglo-Saxon partnerships and include financial consultants PWC (23 projects), the engineering consultants Halcrow (13), Bank of America (10 projects), legal advisors Denton Hall (10 projects) and Faber Maunsell, Hambros and Steer Gleave Davis (each with seven projects). The UK advisors, or the British affiliates of international firms, have generally led the field as the UK model is generally perceived as a good starting point in risk allocation.

Private finance for roads in Spain

Spain has been by far the largest user of private finance for infrastructure, with the private sector financing 20% of its infrastructure investment. Its private toll road programme began in 1967 with the offer of contracts of up to 50years to the private sector to build, finance, and operate roads, and the right to charge vehicles to use the roads, alongside free roads, as isolated concessions rather than a network. The 1972 Concession Law, superceded in 2003 by a new law that covers all types of PPP, including the PFI model, was primarily intended for roads. The turn to private finance would, it was argued, provide the finance for infrastructure that the state itself could not afford. In general, those roads that were most likely to be profitable were franchised.

The private roads were not, however, built without cost to the Spanish government or financial problems for the companies involved. According to Bel and Fageda (2005), the financial, fiscal, and commercial conditions of the franchises were such that almost every risk was borne by the government. In particular, it provided state backed guarantees for foreign loans and exchange rate insurance against any increase in the cost of finance raised by international loans, thereby reducing the concessionaires' exchange rate risk.

But several of the toll roads encountered financial problems because of high construction costs, the additional costs associated with tolling, and low revenues due to lower traffic volumes than anticipated, since many road users preferred to use the free roads. Spain's economic and exchange rate crisis of the 1970s and early 1980s following the rise in oil

prices in 1978-79 further undermined the financial viability of the concessions. Three had to be taken into public ownership in 1984, a large number of the foreign loans had to be renegotiated, state loans were made available, the remaining contracts had to be renegotiated and in some cases, public subsidies were given (Farrell 1997). By the end of 1994, the government had paid out 2.65bn ECU and had further liabilities of 1.5bn ECU in relation to foreign exchange guarantees that had not yet been called (Farrell 1997). So expensive was the experience that in 1982, the incoming Socialist Party government reverted to a programme of road building based upon conventional public procurement, contingent upon economic expansion, increased tax revenues and, after 1985, extensive funding from the European Commission.

In the 1990s, after the constraints on public debt imposed by the European Union, the incoming Conservative government once again turned to concessions for new roads. But by this time, the concessionaires, having formed in 1973 a trade association to promote their interests, had gained various legal, financial and accounting benefits from successive governments, which traditionally have had a close relationship with the construction industry. This was crucial in establishing a more secure financial regime for the private sector.

Firstly, the government passed a law to enable concessions of up to 75 years. Secondly, it renegotiated 13 year extensions to the existing agreements without entering into competitive bidding, legal under EU procurement law at the time and in some cases renegotiated the extensions in return for lowering toll prices, hence increasing traffic flows and thus revenues, or undertaking further investments in other motorways where financial returns might be low. According to Bel and Fageda (2005), the renegotiations resulted in huge profits for the companies.

Thirdly, the government acknowledged that huge subsidies would be necessary for many of the new toll franchises to enable them to sustain the low levels of projected traffic volumes and the consequent financial losses (Bel and Fageda 2005). According to Izquierdo (1997), half of the projected highways in the first phase of the new programme would require subsidies ranging from 40-65% of the total investment, which he expected to be in the form of ‘non-refundable subsidies’ or ‘refundable advance payments’, the then traditional forms of public support. In the event, the government changed its policy of supporting the concessionaires via direct subsidies and introduced what became known as ‘participative loans’, whereby the companies had access to cheap loans from the public authorities for some part of their financing requirements, and whose repayments were linked to their revenues from toll charges. Such arrangements, being scored as off the public sector’s balance sheet for fiscal purposes, served to circumvent the constraints on public debt.

Fourthly, the concessions have benefited from a favourable pricing regime. The contracts awarded before 1988 were subject to little price regulation. In 1990, legislation established annual indexation of the tariffs slightly below inflation: increasing by 95% of the Consumer Price Increase (CPI) of the previous 12 months, subject to the permission of the corresponding public authority. During the late 1990s, there were individual agreements with

each concessionaire to reduce tariffs and apply selective discounts, mainly to regular users.

In both 1997 and 2000, the government refused to allow charges to rise in line with rising and relatively high inflation. However, this did not lead to a corresponding reduction in post tax profits due to increasing motorway usage. The government's objectives in freezing the toll charges were to control inflation, improve the distribution of traffic by encouraging the use of toll motorways, because many of them were underused while the alternative free roads were heavily congested, and to share the rising profits between the concessionaires and road users. In other words, by freezing the toll charges, it sought to increase traffic flows and thereby their revenues. However, the freeze was later ruled illegal and the government had to compensate the concessionaires.

Since 2000, a new system of revising tariffs, based upon price cap regulation, has been applied to the central government's toll concessions. This method is also based on the CPI but adjusted according to actual as opposed to forecast traffic. In essence, the largest toll increases are granted to the roads with the lowest traffic increases, and the lowest to those with the largest increases. The net result of this form of regulation, including the reduction in prices, has been to increase the volume of traffic using the toll roads (Bel and Fageda 2005), and thereby their profits. The system is not however universal, as the autonomous regions continue to revise tariffs based on annual increases of 95% of the CPI.

Fifthly, as Yescombe (2007) notes, the procurement process is fast and low cost, with Spanish projects incurring bidding costs about one tenth those for a British PFI and procured within a much shorter time. This is apparently due to the greater amount of preparation by the public sector, including preliminary design, planning and environmental impact assessment, and prior consultation with the market before launching PPP tenders. In other words, greater costs are absorbed by the public sector directly and the private sector makes a much greater input into the nature of the projects it is willing to bid for.

Lastly and most importantly, the companies were able to secure a beneficial accounting regime that had real economic effects (Acerete *et al* 2009). The two most important benefits were the establishment of a reversionary fund, analogous to an additional depreciation fund, and the treatment of financing expenses such as interest payable.

Firstly, under Spanish accounting regulation, companies that operate an infrastructure concession, such as water or transport, whose assets will revert to the state at the end of the contract, could establish a reversionary fund. This became mandatory in 1999 for road concessionaires. Such a fund is created by making an allocation to a long term provision every year over the life of the concession, thereby increasing cost. Since the government accepts that the tariff must be set to cover not only the operating and financing costs but also the reversionary charge, this means that the road users must pay sufficient to cover this higher cost. In other words, the users will have fully paid for the asset over the life of the concession, which is shorter than the life of the asset. This allocation serves to increase the cash available to the company and is allowable for tax purposes.

Secondly, in relation to the treatment of financing expenses, in contrast to the international position, these can continue to be capitalised even after the asset becomes operational, subject to the existence of reasonable evidence that they can be recovered from future tariffs. While this is explained simply as a timing difference that should even out, in practice it serves to increase the returns to shareholders at the beginning of the contract, with no evidence to suggest that this will be reversed in the later years. Together, the reversionary fund and the treatment of capitalised interest have played an important part in consolidating the financial position of the concessionaire companies, enabling them to become a powerful force and global players in the road construction and operating business.

The use of private finance and tolls went alongside a further expansion of publicly procured and free motorways. By the end of 2004, 2,900km of private toll highways and 9,020km of free highways were in operation. Between 1995 and 2005, 19 private finance deals were signed, some being new developments for existing contracts. While eight were operational by 2002, some had still to open.

The Spanish PPP projects are dominated by the major construction companies and their subsidiaries. The financial investors play a much smaller role in financing the projects, as opposed to financing the companies. In effect, Spain operates as a market closed to foreign competition, although there is keen competition between domestic contractors. The road concessions have played an important role in boosting the construction companies' financial position and providing them with a launching pad to bid for similar deals overseas, particularly in Latin America.

In short, the Spanish experience is consistent with experience elsewhere in that concessions had to be renegotiated or taken over by the government when the concessionaires faced inadequate revenues due to users' dislike of tolls, and/or higher than expected costs (Silva, 2000; Estache and Serebrisky, 2004; Acerete *et al.,* 2009). The early contracts suffered from an overestimation of traffic volumes, the public's dislike of tolls, and the higher than anticipated costs, leading to the renegotiation and the public takeover of some concessions, and higher, but unquantified, costs for the government that appear to negate the stated objectives of the turn to private finance. The government's steps to make the more recent concessions more financially viable for the private sector were key to ensuring the financial viability of the projects and ensuring healthy returns to both the financiers and owners in the last 10 years (Acerete *et al* 2009).

Conclusion

The EU's enthusiasm for PPPs is linked to its wider deregulatory and pro-market agenda and the development of Trans-European Networks in transport. The Maastricht criteria have thus far provided the main rationale for PPPs in the context of a tight fiscal environment facing national governments. As such PPPs were promoted as a way of implementing the EU's transport policy. The EU does not however itself either commission or directly fund major transport schemes, although the EIB has been involved in financing a large number.

The lack of an explicit EU policy on PPPs and the diversity of practice in member states is viewed favourably by some large and powerful corporations, since the complexity favours the sophisticated operator with experience and regulatory and market knowledge. The use of private finance for public infrastructure is increasing and takes several forms, not all of which are identical to those in the UK, which makes regulation difficult.

The EU supports the use of private finance and Partnerships, and plays a major role in framing policy via its rules on procurement and competition that impact on PPP procurement. However, the position relating to concessions and choice of private sector partners by "institutionalised PPPs" where there is a joint public/private-owned public service entity is seen as requiring clarification and a more uniform practice.

While the EU's competition and procurement rules impact on the development and use of PPPs in member states, the expansion of PPPs is dependent upon the degree of political, institutional and regulatory support within each country. This, as the experience in Spain has shown, makes it imperative that there is full and timely disclosure of all the public subventions that may continue long into the future and/or may be called upon if things go wrong. The deregulation of transport and the growth of concessions and PPPs have been instrumental in creating large and powerful infrastructure companies, particularly in Spain, and financiers specialising in PPPs.

One implication of the creation of public markets in public infrastructure and services via PPPs and taking such arrangements outside the scope of public finance is that it is paradoxically the beginning of the end to public sector decision making and control of procurement. This matters since the private sector's objectives lie with profit maximisation whereas the public sector's, at least in principle, lie with the public interest. The inexorable logic of the move to markets is that the private sector initiates its own proposals for service delivery and submits its plans to the public authorities, as what are known as unsolicited proposals, which would entail the dismantling of public markets in favour of private markets. This in turn leads to an agency-like relationship between the private and public sectors in that the former provides the services and the underlying infrastructure on behalf of the latter, thereby attenuating governance.

Such a system needs extensive transparency and accountability, particularly on the part of the private partners if the public's needs and interests are not to be subordinated to those of the private sector and the VFM that lies at the heart of the Partnerships policy is to be achieved in practice. At very least, the regulation of the reporting of such transactions needs to recognise these requirements.

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PPP – ein sinnvolles Instrument für Österreich?

4. PPP und Autobahn am Beispiel A5

Klaus Schierhackl, ASFINAG

ASFINAG

PPP und Autobahn am Beispiel A 5

Privatisierung der Verkehrsinfrastruktur, AK Wien, 09.04.2008
Dr. Klaus Schierhackl, CFO, ASFINAG

1

ASFINAG

Inhaltsübersicht

- Die ASFINAG
- PPP Ostregion – Bonaventura
- Warum PPP?
- Lessons learned

2

ASFINAG

Die ASFINAG

3

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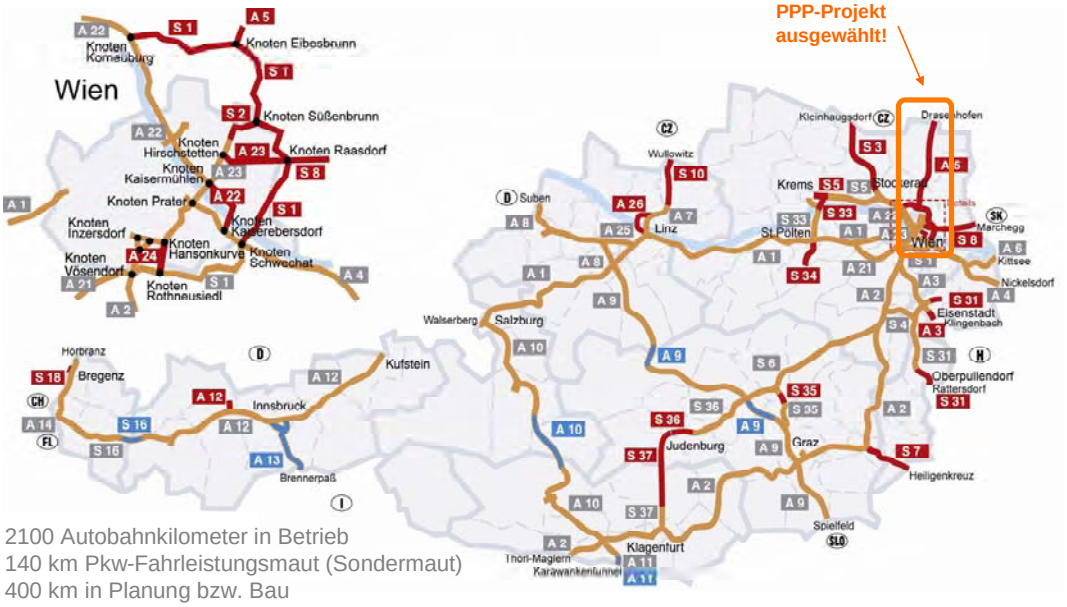
ASFINAG Netz & Projekte

Die Ostregion wurde für das erste PPP-Projekt ausgewählt!



- 2100 Autobahnkilometer in Betrieb
- 140 km Pkw-Fahrleistungsmaut (Sondermaut)
- 400 km in Planung bzw. Bau

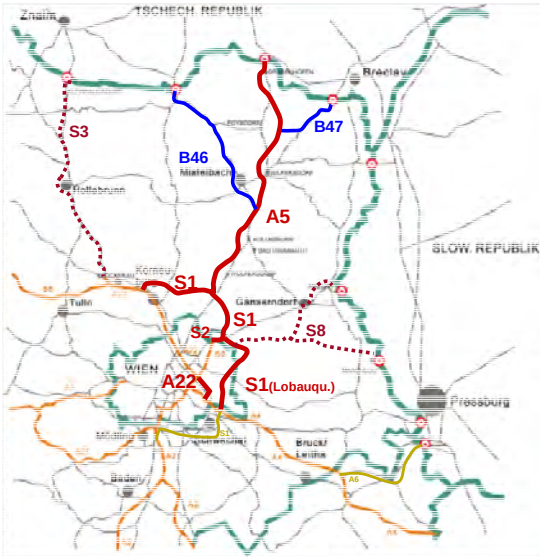
ASFINAG

Heutige Situation in der Ostregion

- Überlastete und verkehrsreiche Streckenteile in und um Wien!
- Schlechte Verbindung mit den stadtnahen und ländlichen Regionen nördlich von Wien!
- Keine effiziente Nord-Süd Verbindung mit der Tschechischen Republik!

ASFINAG

Die Ostregion in der Zukunft



Stufenweises (versch. Pakete) 113 km Straßenbauprogramm für das hochrangige **Autobahnen- und Schnellstraßennetz** in der „Ostregion“ mit:

- **A 5 Nordautobahn**
- **S 1 Wiener Außenring Schnellstraße**
- **S 2 Wiener Nordrand Schnellstraße**
- **A 22 Verlängerung (Kaisermühlen-A 4)**

Zusätzlicher Ausbau der **S 3** und **S 8** sowie des **Landesstraßennetzes** durch Niederösterreich mit den Straßen:
B46, B47

6

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PPP Ostregion – Bonaventura

7

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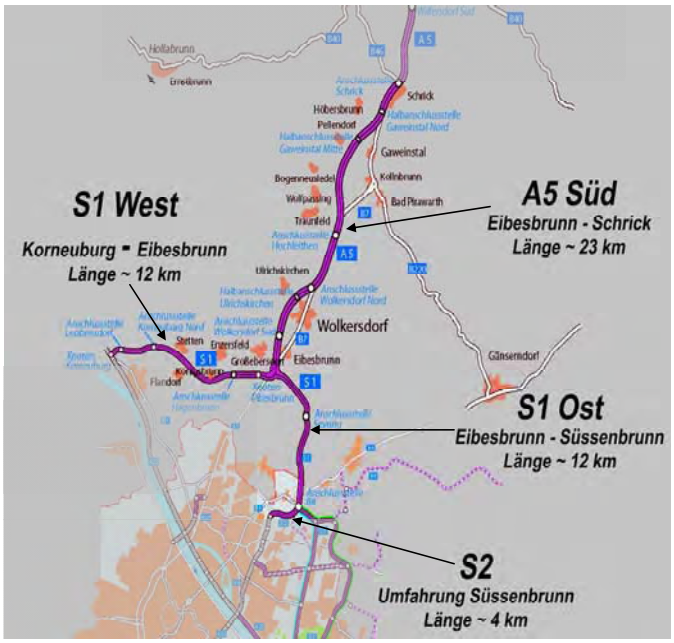
Netzumfang – Bonaventura



8

ASFINAG

Auswahl der richtigen Projektgröße

Folgende Parameter bestimmen den Umfang:

- Grundlegende Komplexität als erstes derartiges PPP-Projekt in Österreich
- Planungsstand der Streckenteile
- Genehmigungsstand der Streckenteile
- Relative Kalkulationssicherheit bzw. Risikoklarheit
- Finanzierbare Projektgröße in Hinblick auf benötigtes Eigen-, Fremdkapital und etwaige Zuschüsse (bankability)
- Wirtschaftlich sinnvolle, zusammenhängende Betriebsgröße

9

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Merkmale des Konzessionsmodells

- Finanzierung über privates Eigen- und Fremdkapital
- Bedienung ausschließlich aus den Projekt Cash-Flows
- Kein oder nur begrenzter Haftungsrückgriff auf die Gesellschafter
- Optimale und faire Risikoverteilung
- Kein Joint Venture mit ASFINAG

Spezifikum ASFINAG:

- Im Unterschied zu anderen PPPs ist die ASFINAG als Konzessionsgeber selbst ein privatrechtlich organisiertes Unternehmen

10

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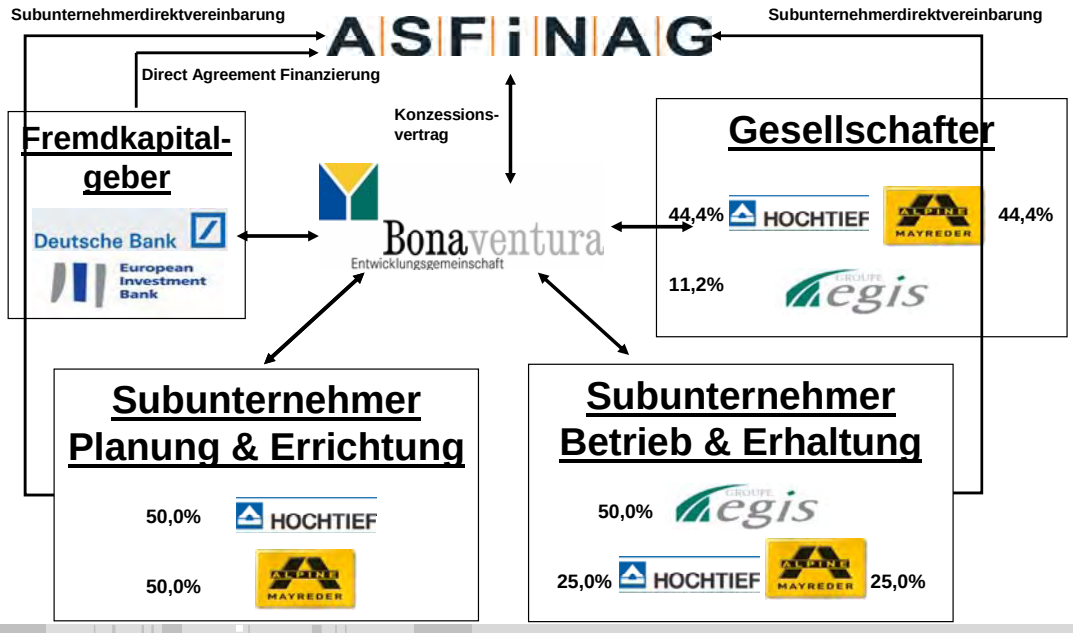
Vertragsstruktur



11

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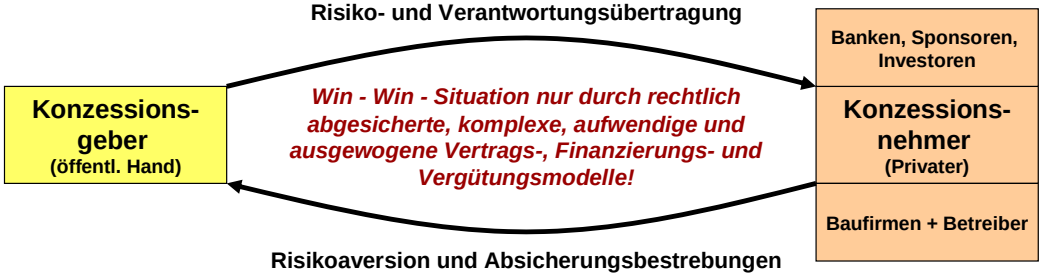
Risikoteilung

- Risikoteilung ist Kernelement eines PPP Vertrags
- Risikomanagementprozess zur
  - Identifikation
  - Bewertung
  - Zuordnung von Risken

„Teufelskreis“ Risikoübertragung



12

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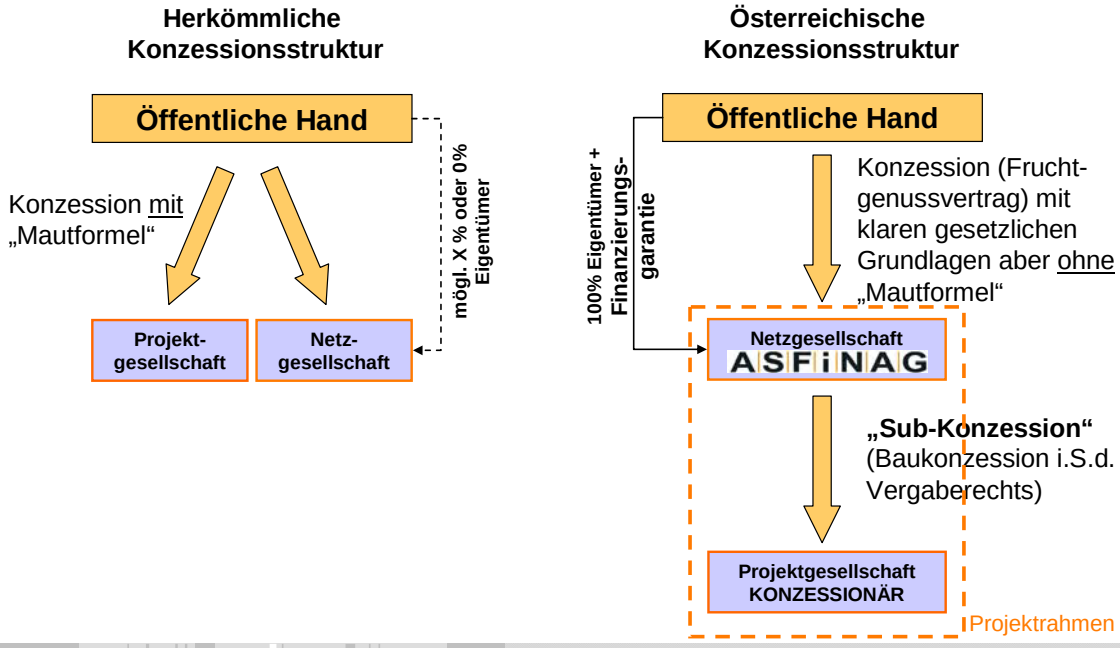
Atypische österr. „Konzessionsstruktur “



13

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Warum PPP?

14

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PPP-Modelle...

- ...verfolgen idR das Ziel, trotz budgetärer Restriktionen zu investieren
- ...sollen Synergietransfer zwischen öffentlicher Hand und privaten Organisationen ermöglichen
- ...stellen alternative Beschaffungsmöglichkeiten dar

15

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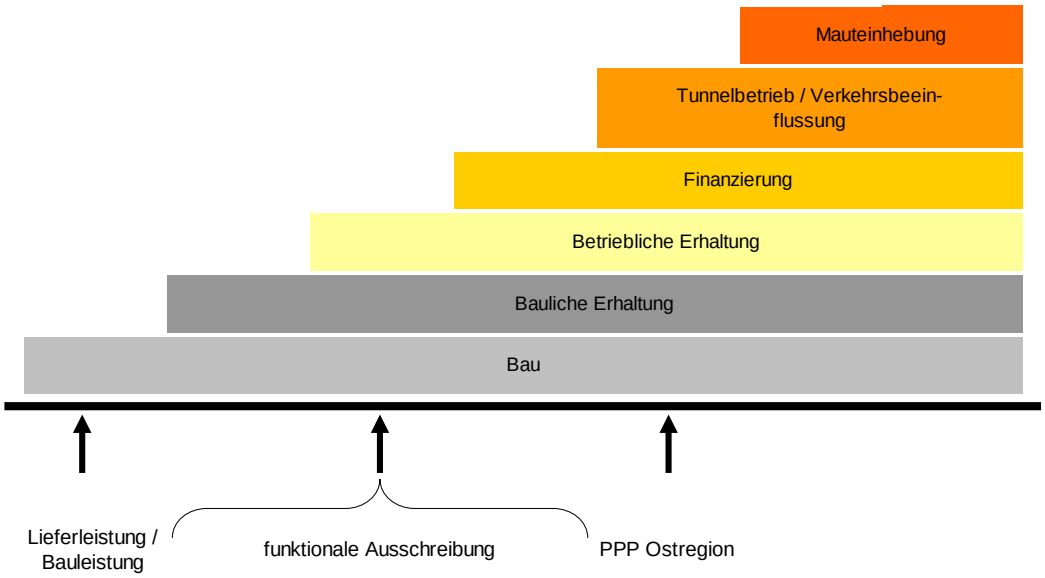
Beschaffungsalternativen



16

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Traditionelle Beschaffung vs. PPP

- Traditionelle Beschaffung bedeutet Ausschreibung von Teilleistungen
- PPP bedeutet gleichzeitige Vergabe aller Teilleistungen an einen Vertragspartner
- PPP bedeutet aber auch
  - Höhere Komplexität des Verfahrens
  - Aufwändigere Ausschreibung und Verhandlungen
  - Höherer Beratungsaufwand

  →erst ab bestimmter Projektgröße sinnvoll

17

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Warum alternative Beschaffung?

- Überlegungen für eine alternative Beschaffung über PPP
  - Günstigere Preise möglich wegen
    - großer Baulose
    - funktionaler Ausschreibung
    - Risikoübertragung
  - Private Innovationen möglich
  - Benchmarking (Best Practise!) möglich
  - Möglicherweise raschere Umsetzung durch Anreizsysteme (z.B. Vergütung)

18

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PPP Ostregion – Kernpunkte der Ausschreibung

- Konzessionär verantwortlich für
  - Planung,
  - Bau,
  - Finanzierung und
  - Betrieb
  - der 51 km langen Konzessionsstrecke
- Vertragsdauer: ~33 Jahre
- Funktionale Leistungsbeschreibung
- Technische Alternativen zulässig

19

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PPP Ostregion – Aufgabenteilung

PPP Ostregion

- Externer Betreiber
  - Detailplanung
  - Finanzierung und Errichtung der Autobahn
  - Betrieb und Erhaltung der Konzessionsstrecke

- ASFINAG
  - Umweltverträglichkeitsprüfung, Grunderwerb
  - Intensive Kontrolle des Betreibers
  - Vergütungszahlungen

20

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Lessons learned

21

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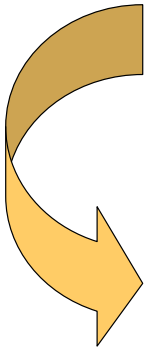
Decken sich die Erfahrungen aus dem Projekt PPP Ostregion mit der „Theorie“?

- Baukonzession Laufzeit ~33 Jahre
- Konzessionär verantwortlich für Planung, Bau, Finanzierung, Instandhaltung und Betrieb der 51 km langen Konzessionsstrecke
- Komplexe Vertragsgestaltung, aufwändige Ausschreibung und Verhandlungen, hoher Beratungsaufwand



- ✓ Niedrige Kosten für Bau und Instandhaltung
- ✓ Höhere Betriebs- und Finanzierungskosten
- ✓ Sehr innovative, jedoch komplexe Finanzierungsstruktur
- ✓ BBB-/Baa3 Rating mit Monoline Garantie auf AAA

22

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Lessons learned

1. Aufwändigere Ausschreibungsphase verursacht hohe Transaktionskosten
2. PPP förderte in Folge der Projektgröße alternative internationale Wettbewerbsstrukturen
3. Verhandlungsverfahren unter Aufrechterhaltung des Wettbewerbs ermöglicht erfolgreichen Risikoübertrag zu günstigen Konditionen
4. International übliche Vertragstrukturen sind nicht immer eins zu eins umsetzbar
5. Private, speziell Banken, haben Probleme mit vom internationalen Standard abweichenden Projektstrukturen

23

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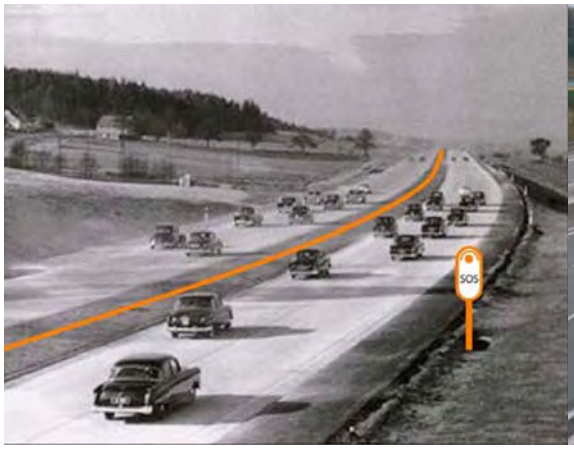
Die Autobahn im Wandel der Zeit

A1 West Autobahn (Bereich Böheimkirchen)



Eröffnung im Jahr 1958 ergänzt um Stahlmitteltrennung und erste Notrufsäule (Stand Ende 70er Jahre)

selber Streckenabschnitt im April 2008 → moderne Sicherheitstechnik, umfangreicher Lärmschutz, telematische Anlagen

24

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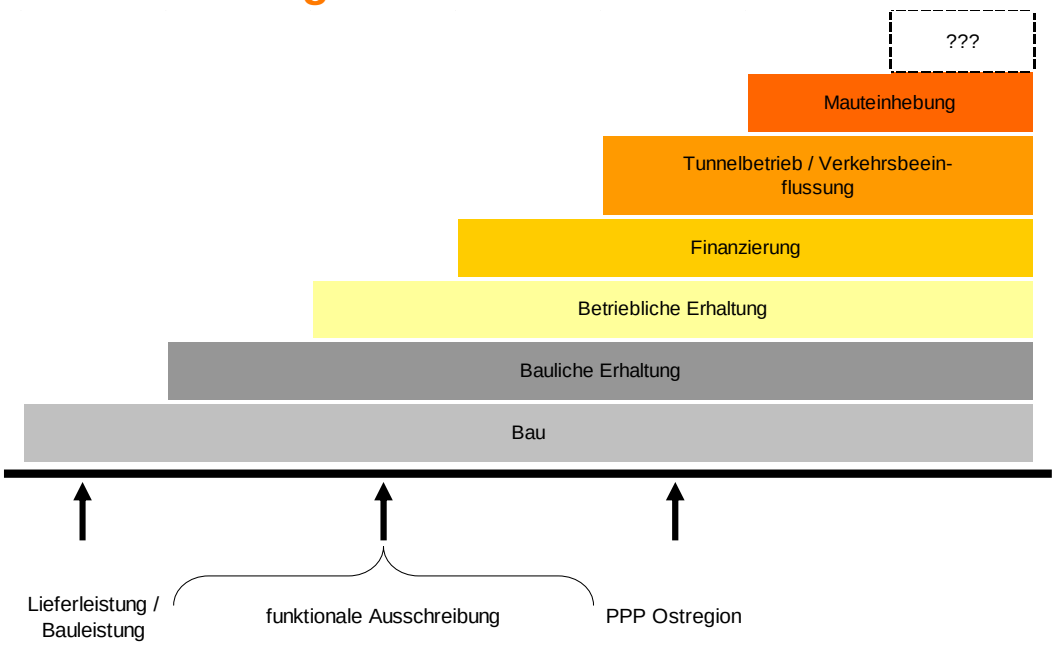
Beschaffungsalternativen



25

5. PPP und Schiene

Walter Brenner, Verkehrsexperte

Dipl.-Ing. Walter Brenner

Studienabschluss an der TU Wien:

Wirtschafts- und Planungsmathematik

Schwerpunkte: **Unternehmensforschung, Wirtschaft.**

Berufsbegleitende Weiterbildung: **Führung, Management, Qualitätsmanagement, Projektorganisation, Betriebswirtschaft, Public-Private-Partnership, Recht, Umgründungen, EDV, Konfliktmanagement, Verhandlungstechnik, PR, Rhetorik, Medien.**

Schieneninfrastruktur-Finanzierungsgesellschaft mbH (SCHIG): Geschäftsführer und Vorstandsvorsitzender
Rail Test Research GmbH (RTR): Gründungsgeschäftsführer
Eisenbahn-Hochleistungsstrecken AG (HL-AG): Generaldirektor u. Vorstandsvorsitzender

Aufsichtsratmitglied in verschienenen INFRASTRUKTUR- und VERKEHRSGESELLSCHAFTEN:
ASFINAG Autobahnen- und Schnellstraßen-Finanzierungs-AG, **BEG** Brenner Eisenbahn GmbH, **DAG** „Dachstein" Fremdenverkehrs-AG, **ESG** Linzer Elektrizitäts-, Fernwärme- und Verkehrsbetriebe AG, **GYSEV** Györ-Sopron-Ebenfurti Vasút Részvénytársaság, **HL-AG** Eisenbahn-Hochleistungsstrecken AG, **NSB** Fertövidéki Helyi Érdekü Vasút Részvénytársaság, **ÖKOMBI** Österr. Ges. f. d. komb. Verkehr GmbH, **Lb LVE** Lokalbahn Lambach-Vorchdorf-Eggenberg AG

Derzeit Geschäftsführer der BRENNER BMB MANAGEMENTBERATUNG GMBH

ARBEITEN:

⇨Wirtschaftlichkeitsberechnungen für Eisenbahn-Großprojekte seit 1975

⇨Verkehrsprognosen 1975-85

⇨Informationsmanagement und Statistik für die ÖBB 1980-1988

⇨Unternehmensstrategie und -planung für die ÖBB 1985-1990

⇨Assistent dreier Verkehrsminister (Streicher, Klima, Scholten) 1991-1996

⇨Bundesbahnreform 1992 (Trennung: Unternehmen – Bundeshaushalt und Verselbständigung der ÖBB; Entpolitisierung)

⇨Errichtung des Schieneninfrastrukturfinanzierungssystems SCHIG 1996-1999, mit dem bis 2003 insgesamt 15 Mrd. EURO Schieneninvestitionen finanziert wurden.

⇨1999 Gründung der PPP-Projekte Klima-Wind-Kanal (Rail Test Research) und Terminal Werndorf

⇨Erfolgreiche Umweltverträglichkeitsprüfung für 122 km Hochleistungsstrecken

⇨Baugenehmigung für 176 km Hochleistungsstrecken

⇨Fertigstellung von 65 km Hochleistungsstrecken

⇨Organisationsstudien, Markterhebungen, Kosten- und Finanzierungsmodelle

BRENNER MANAGEMENTBERATUNG GMBH

ANGEBOTSSCHWERPUNKTE
der Brenner-Managementberatung GmbH

•MANAGEMENTBERATUNG

•VERKEHR

- ➢Strategische Ausrichtung auf das geänderte europäische Umfeld
- ➢Organisationsoptimierung
- ➢Private-Public-Partnership (PPP)
- ➢Nutznießerorientierte Infrastrukturfinanzierung (NIF)
- ➢Infrastrukturprojekte und Bürgereinbindung
- ➢Verkehrsorganisation

MARKT- UND MEINUNGSFORSCHUNG

•SEMINARE und TRAINING

Brenner-Managementberatung GmbH
A-2700 Wiener Neustadt, Wassergasse 5 c, Tel. 0(043)664-2314065, walter.brenner@aon.at,
beim Landes- als Handelsgericht Wiener Neustadt FN 260985 b, DVR 2111669

Inhalt am 09.04.2008

- Sichtweisen - Zugänge
- Bisherige Finanzierungssysteme für die Schieneninfrastruktur in Österreich
- private-public-partnership (PPP) und private-sector-participation (PSP) für die Schiene
- Probleme der bisherigen Ansätze
- Abgrenzung: Nutzer - Nutznießer – Zahler
- Wirtschaftlichkeit von Infrastrukturprojekten
- Lösungsansatz: nutznießerorientierte Infrastrukturfinanzierung (NIF)

BRENNER MANAGEMENTBERATUNG GMBH

Investitionen in die Schiene

Sichtweisen:

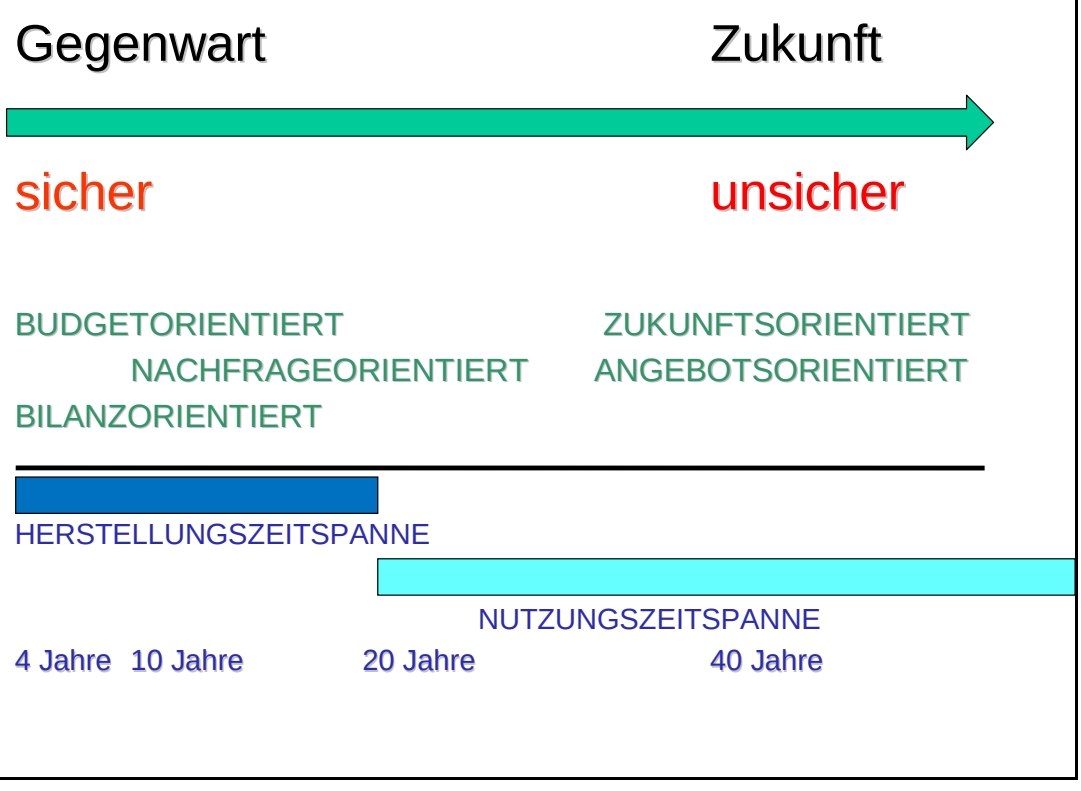
- Blick in die Zukunft → ZUKUNFTSORIENTIERT
- Belastung für das öffentliche Budget → KURZFR. BUDGETORIENTIERT
- Notwendig für Verkehrsteilnehmer →
  - Verkehrszahlen → NACHFRAGEORIENTIERT
  - Standortentwicklung → ANGEBOTSORIENTIERT
- Bilanz des Bahnkonzerns → BILANZORIENTIERT

Zugänge:

- Zukunftsinvestition
- Reduzierung der aktuellen Budget-belastung, Sparen
- Investition für Verkehrsteilnehmer
  - → Nachfragebefriedigung
  - → Angebote schaffen
- Kurzfristiger Finanzerfolg, MbOs der Manager

BRENNER EMB MANAGEMENTBERATUNG GMBH

Investitionen in die Schieneninfrastruktur sind meist LANGFRISTIG!



Finanzierung

Wer welche Finanzierungsbeiträge leistet, ist eine Frage

- **der Sichtweise und**
- **des Zuganges**

❖ **der Nutznießer (Profiteure) der Schieneninfrastruktur und**

❖ **derer, die sich als Vertreter dieser Nutznießer (Politik, Management, Meinungsbildner, …) sehen!**

BRENNER BMB MANAGEMENTBERATUNG GMBH

Nutznießer ≠ Nutzer

Rückblick – Nachkriegsjahre

Republik Österreich - BUND

Bahn

Infrastruktur war „da“ (aus Kaiserzeit) und für zu große Aufgaben (Kaiserreich, Drittes Reich) dimensioniert. → Hohe Erhaltungskosten, geringe Auslastung, unwirtschaftlicher Dampfbetrieb → **„SPAREN u. RATIONALISIERUNG“:**

- **teilweiser Rückbau (2-gl.→1-gl., z.B.: Wien - Schwechat, FJ Bahn, Graz - Spielfeld)**
- **Nebenbahnschließungen**
- **Elektrifizierung, Verschubbahnhöfe, Stellwerke, …**

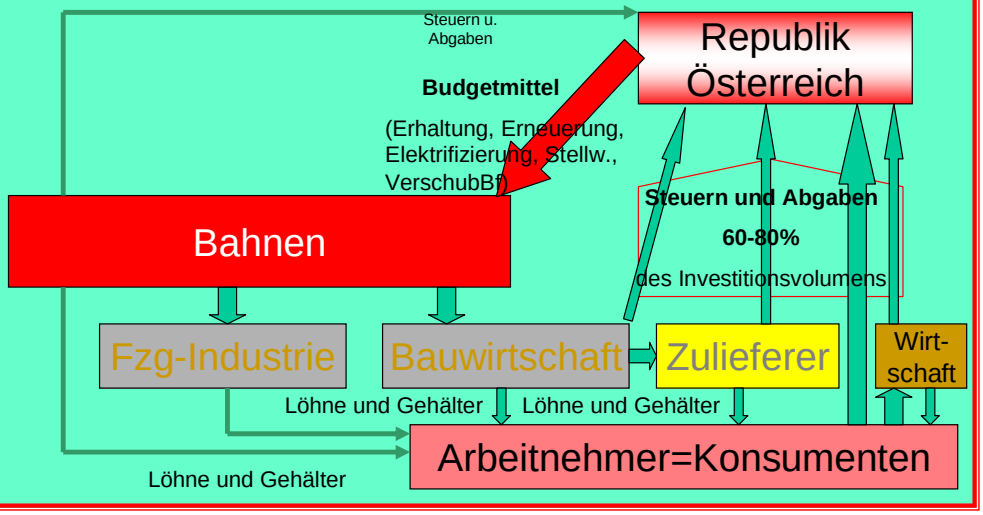
„Kostenreduktion“ war das Investitionsmotiv!

BRENNER BMB MANAGEMENTBERATUNG GMBH

Alte Finanzierungskonzepte für die Schiene

Rückblick – Alte Systeme (vor 1989)

öffentliche BUDGETFINANZIERUNG



Der Geldrückfluss an die öffentliche Hand aus Steuern und Abgaben war KEIN Thema.

Privater Anteil bis 1989

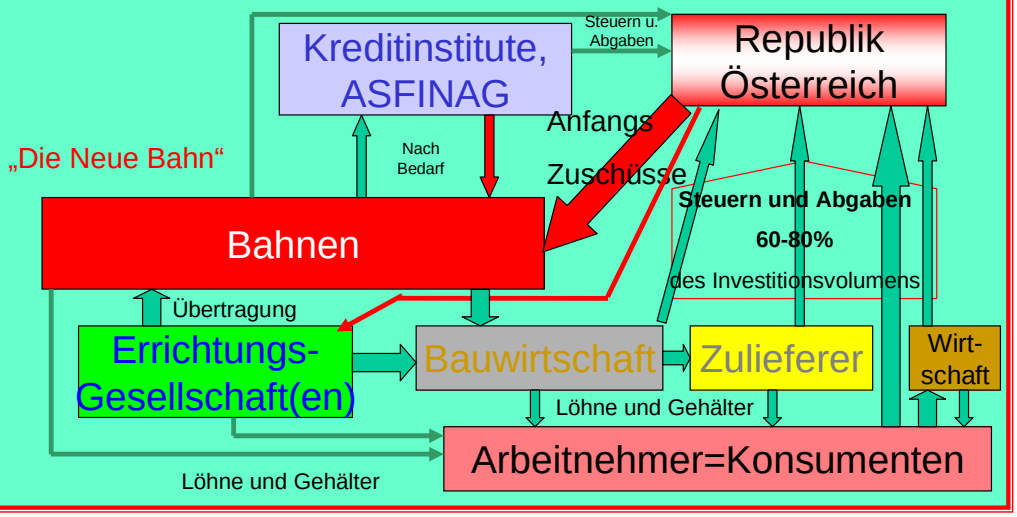
- **Errichtung und Lieferung von Anlagen**
- **Partnerschaften im Bereich der Bahnhofnutzung großer Bahnhöfe (Überbauungen z.B. Franz-Josefs-Bahnhof, Wien Mitte; Geschäfte u.s.w.)**

Völlig unabhängig davon:

- **Beförderung von Privatwagen**

Finanzierungskonzepte für die „**Neue Bahn**“

Rückblick – „Neue Bahn“ (1989-1996):



Der Geldrückfluss an die öffentliche Hand aus Steuern und Abgaben war bis 1995 KEIN Thema für BMÖWV und BMF.

Rückblick – „neue Bahn“ (bis 1996):

- **Infrastrukturbereitstellung als „öffentliche Aufgabe“ – als Nutznießer wurde die undifferenzierte „Allgemeinheit“ gesehen**
- **Ausgelagerte Gesellschaften (HL-AG, BEG) und ausgelagerte Finanzierung (ASFINAG) zur Beschleunigung**
- **„Schonung“ der Bundesbudgets**
  - **zunächst die ASFINAG (1989 und 1991) und**
  - **dann weiter die Eigenverschuldung der 1993 verselbständigten ÖBB-Gesellschaft sui generis –**

als Nutznießer wurde zunächst nur die „Allgemeinheit“, ab 1993 aber verstärkt das Unternehmen „ÖBB“ gesehen, dem ein IBE angelastet wurde

→ **Die Investitionen stagnierten nach dem raschen Verbrauch der ASFINAG-Mittel, da die ÖBB die Lasten („Eigenverschuldung“) nicht allein tragen konnte und wollte.**

Investitionsmotiv: Erweiterung und Modernisierung;

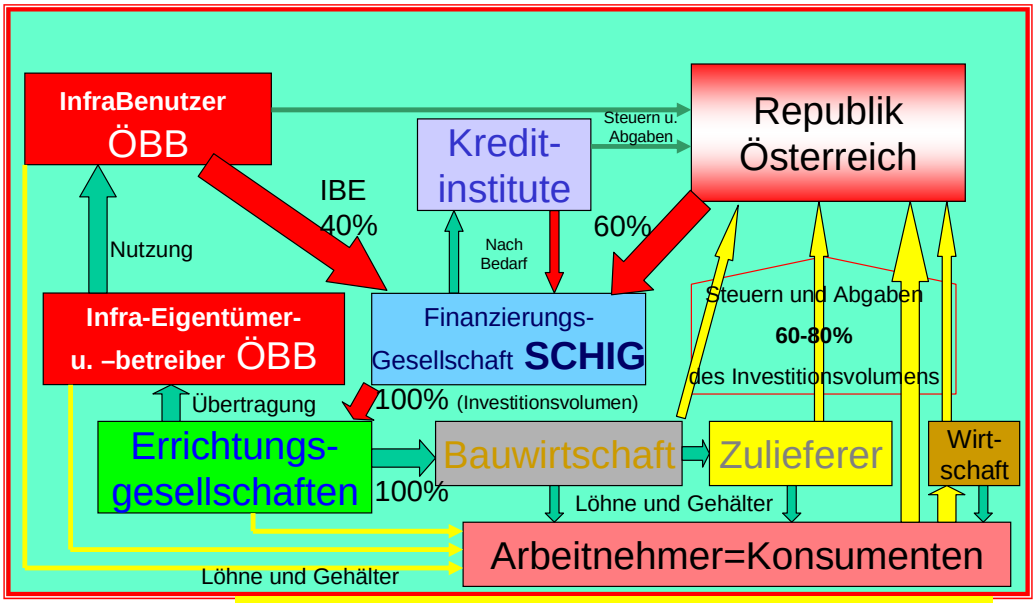
Geldrückfluss an die öffentliche Hand aus Steuern und Abgaben war bis 1995 KEIN Thema für BMÖWV und BMF.

Privater Anteil 1989 - 1996

- **Errichtung und Lieferung von Anlagen (primär: Bauwirtschaft, Ausrüstungswirtschaft, Fahrzeugbau)**
- **Gewährung von Krediten (primär Banken)**
- **Partnerschaften im Bereich der Bahnhofnutzung großer Bahnhöfe (Überbauungen, Geschäfte, usw.)**

Völlig unabhängig davon:
- **Beförderung von Privatwagen**

Rückblick – SCHIG-Modell (1997-2003):



Der Geldrückfluss (60-80%) an die öffentliche Hand aus Steuern und Abgaben war WESENTLICHER Teil der Konzeption.

Rückblick – SCHIG-System (1997-2003)

- Schieneninfrastrukturbereitstellung wurde als Grundlage für die langfristige Standortsicherung und als Voraussetzung für die verkehrspolitisch erwünschte Verkehrsverlagerung zur Schiene gesehen – als Nutznießer wurde
  - nicht nur das Schienenverkehrsunternehmen gesehen
  - sondern ERSTMALS auch der öffentliche Haushalt, in den große Geldmengen durch den volkswirtschaftlichen Multiplikatoreffekt der Infrastrukturinvestitionen fließen (geschätzt wurden 60-80% vom Investitionsvolumen)
- Der ursprünglich jährlich als Cash-Fluß vorgesehene Bundesanteil (60% der Investitionssumme) wurde allerdings vom Bund in einem immer größeren Ausmaß schuldig geblieben → wachsender Schulden- und Forderungsberg der SCHIG mbH

Mit dem SCHIG-System wurden 15 Mrd. EURO Investitionen finanziert.

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Privater Anteil nach 1997

- Errichtung und Lieferung von Anlagen (primär: Bauwirtschaft, Ausrüstungswirtschaft, Fahrzeugbau)
- Gewährung von Krediten, Anleihen
- Partnerschaften im Bereich der Bahnhofnutzung großer Bahnhöfe (Überbauungen, Geschäfte, usw.)
- erste PPP-Projekte in Österreich mit privaten Betreibern (Klima Wind Kanal, Cargo Center Graz)

Völlig unabhängig davon:
- Beförderung von Privatwagen

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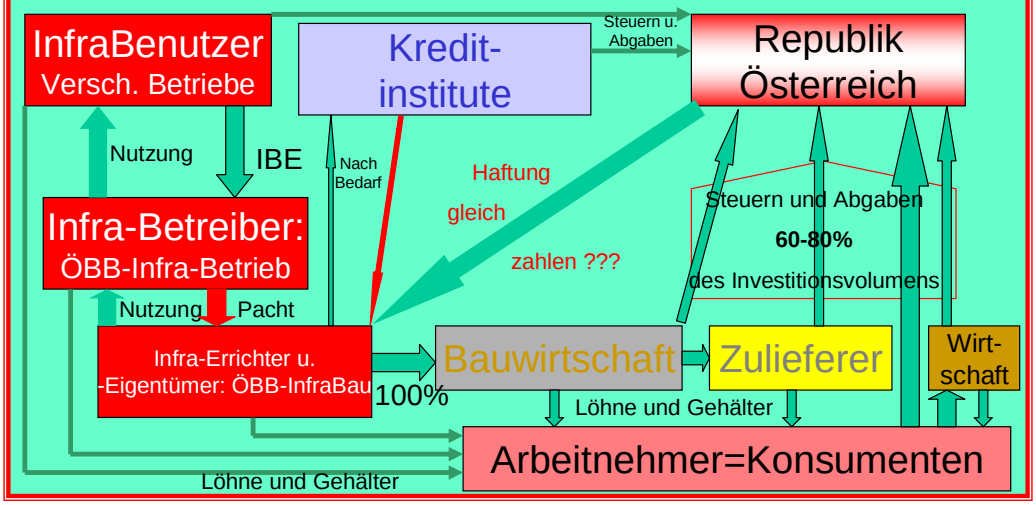
Derzeit
seit Bundesbahnstrukturgesetz 2003



Der Geldrückfluss an die öffentliche Hand aus Steuern und Abgaben wird wieder **KEIN Thema**.

Derzeitige Situation bei den öBB
seit 2004

Dominierende Sichtweise:

- **Schieneninfrastrukturausbau hat sich am Generalverkehrsplan zu orientieren.**
- **Schieneninfrastrukturfinanzierung ist Sache der öBB-Infrastruktur Bau AG.**
- **Seit 2007 Zuschüsse des Staates wegen IFRS * zwecks Bilanzierung**
- **Der Bund haftet für die von ihm genehmigten Vorhaben (Patronanz) – die Refinanzierung ist eine tickende Schuldenbombe für spätere Bundesbudgets und ungelöst.**
- **Nutzer zahlen IBE**

Die weitergehende Nutznießerfrage stellt sich höchstens für die Kostenbeteiligungen durch die Länder und Gemeinden.

IFRS=international Financial Reporting Standards

Privater Anteil derzeit

- **Errichtung und Lieferung von Anlagen (primär: Bauwirtschaft, Ausrüstungswirtschaft, Fahrzeugbau)**
- **Gewährung von Krediten (primär Banken)**
- **Immobilien-Partnerschaften im Bereich großer Bahnhöfe (siehe Bahnhof Wien)**
- **Die Nutzung des Schienennetzes erfolgt primär durch Bahnen direkt oder indirekt im öffentlichen Eigentum (PRIVATER Marktanteil verschwindend)**

Völlig unabhängig davon:

- **Beförderung von Privatwagen**

PPP-Projekte zwar im wieder Gespräch aber derzeit keine neuen konkreten Vorhaben.

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PSP und PPP

PSP (private-sector-participation) - nahezu immer gegeben:

Öffentliche Ausschreibungsverfahren - klar definierte Übernahme von Aufgaben durch Private

Risken der Privaten = „übliche“ Risken von Auftragnehmern

in der Regel: keine Risken des Geschäftserfolges des umzusetzenden Projektes für Private

PPP (private-public-partnership) - selten bei Schiene:

Risikobewertung - sehr hohe Anforderungen an das Vergabeverfahren
- hoher Bewertungsaufwand

Eisenbahninfrastrukturprojekte: lange Realisierungszeiten
sehr lange Nutzungszeiträume
→ hohe Unsicherheiten

sehr hohe Unsicherheit langfristiger Prognosen → hohe Risikozuschläge

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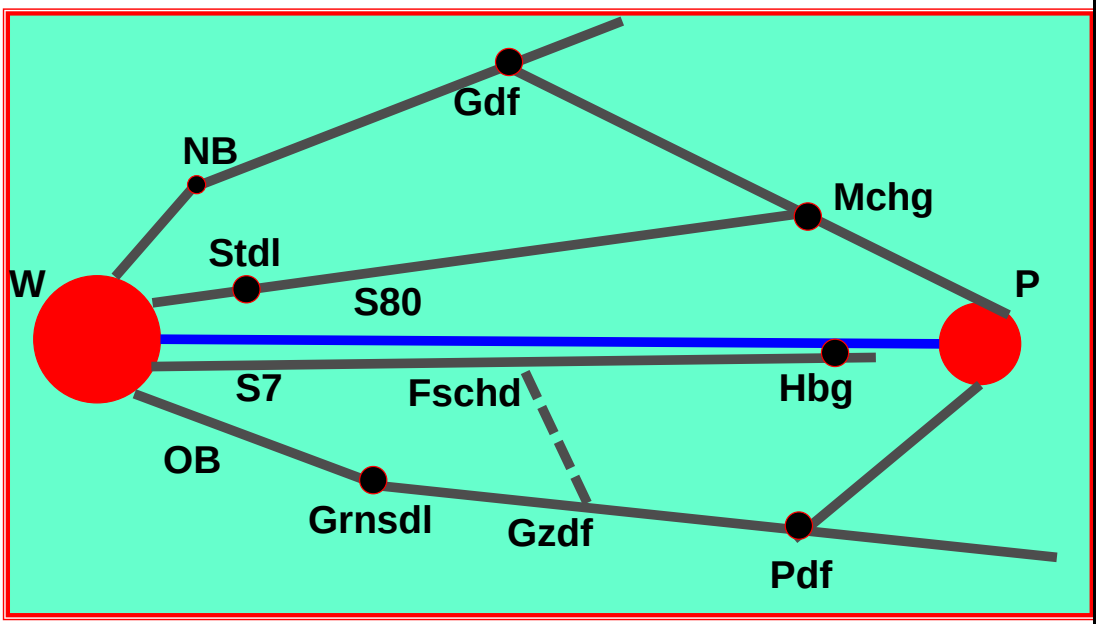
Privat ←→öffentlich

Spannungsfeld

PRIVAT		ÖFFENTLICH
-	Kreditbedingungen	+
-	"langer Atem"	+
-	umfassende Möglichkeiten	+
+	Vergabebürokratie	-
+	politische Erpressbarkeit	-
+	„gerechte" Gleichbehandlung	-

usw.

PPP Pressburger Bahn



PPP Pressburger Bahn - Fortsetzung

Überlegungen seit 1993

hohes Wachstum, hoher Nutzen zu erwarten

Probleme: **3-4 Streckenführungen**

Situation in Bratislava

Situation in Wien

PPP-Strecke würde in Konkurrenz zu ÖBB-Strecken stehen

PPP-Modelle für die Preßburger Bahn bisher nicht über Ansätze hinausgekommen

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Semmering Basistunnel

Bergstrecke **mit Museumscharakter, sehr kostenintensiv, für manche Verkehre nicht tauglich**

keine unmittelbaren Konkurrenzstrecken

- **Strecke über Ungarn: betrifft überwiegend andere Verkehre**
- **Süd-Ost-Spange: Neubau erheblich teurer (Tal- und Gebirgsquerungen)**
- **Wechsel-/Thermenbahn: länger, noch musealer, Ausbau noch teurer**
- **Pyhrnbahn: betrifft überwiegend andere Verkehre, Umweg, moderner Ausbau noch teurer**

Basistunnel 1: **1989 Planungs- und Bauübertragung an HL-AG, 1994 Baubescheid; NÖ Naturschutzbescheid immer wieder verzögert oder wegen Rechtswidrigkeit aufgehoben; 2005 Naturschutz-verfahren von den ÖBB endgültig zurückgezogen; altes Projekt damit unrealisierbar geworden**

Basistunnel 2: **seit 2005 in Planung, derzeit Trassenauswahlverfahren vor Abschluss; UVP und Baubescheid völlig offen**

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PPP Semmering Basistunnel

PPP-Überlegungen 1994-1998

hohe errechnete Wirtschaftlichkeit (Pasler und Partner)

PPP-Ausschreibung 1995
(7 vorqualifizierte Bieterkonsortien; alle von Baubranche dominiert)

1998 Aufhebung der PPP-Ausschreibung aufgrund der ungeklärten Naturschutzzuständigkeiten und des in Folge zu hohen Errichtungsrisikos für private Generalunternehmer

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PPP Klima Wind Kanal 1

Ausgangssituation: veralteter Klima Wind Kanal (40 Jahre alt) im Arsenal für Eisenbahnfahrzeuge

Ziel: leistungsfähiger moderner Klima Wind Kanal

Technische Daten:

- 2 Kanäle mit 100m und 31m
- > 250 km/h Windgeschwindigkeit
- Temperaturen: -45°C bis +60°C und „Soakroom“
- Schnee- und Beregnung
- Sonnensimulation
- Rollenprüfstände

Realisierung: 1999 – 2002 (kurzer Zeitraum, kaum Tiefbau, → geringe Errichtungsrisiken) 65 Mio €

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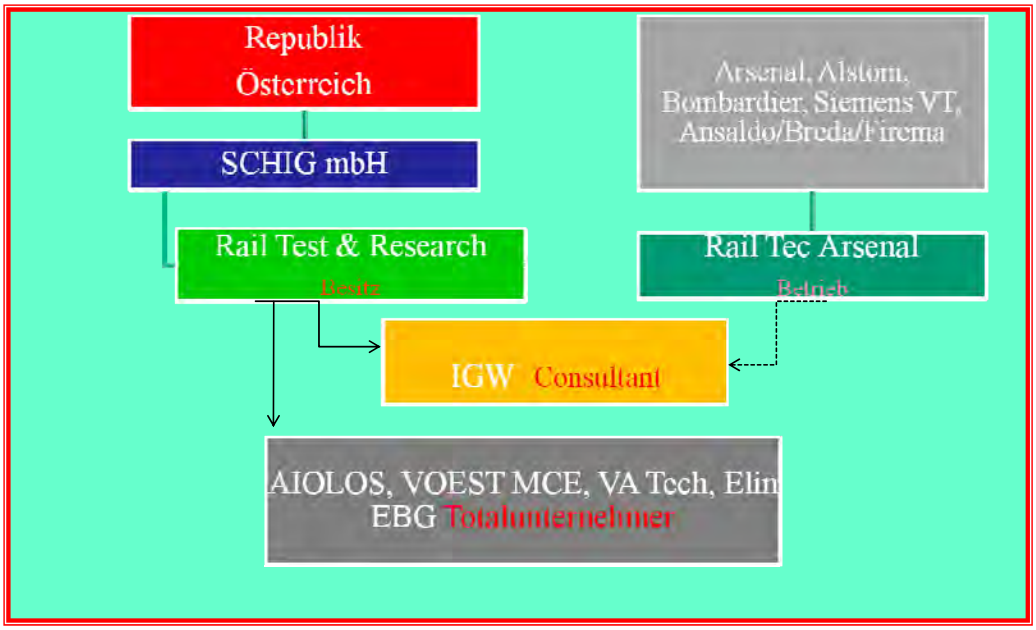
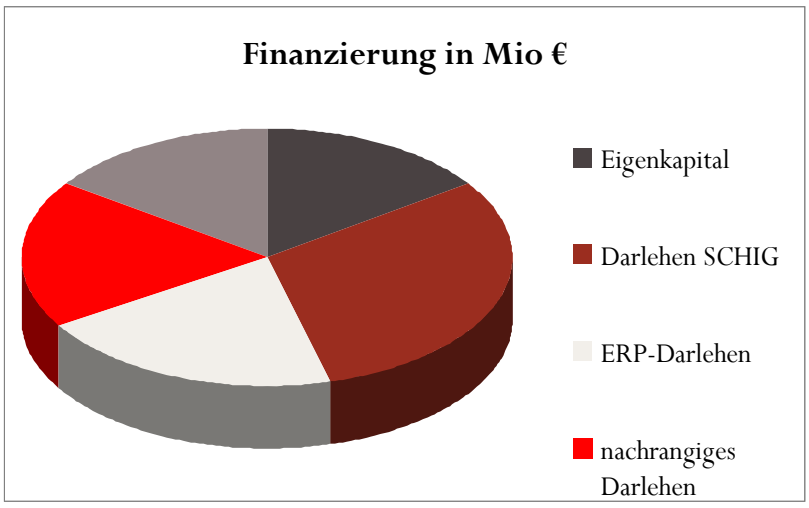
PPP Klima Wind Kanal 2



PPP Klima Wind Kanal 3



PPP Cargo Center Graz (Werndorf) 1

Ausgangssituation: zersplitterte Terminalaufgaben im Großraum Graz (Messendorf. Ostbahnhof, südl. v. Graz)

Ziel: leistungsfähiger moderner Terminal

Standortsuche: 1991-1992

erste PPP-Gespräche seit 1994

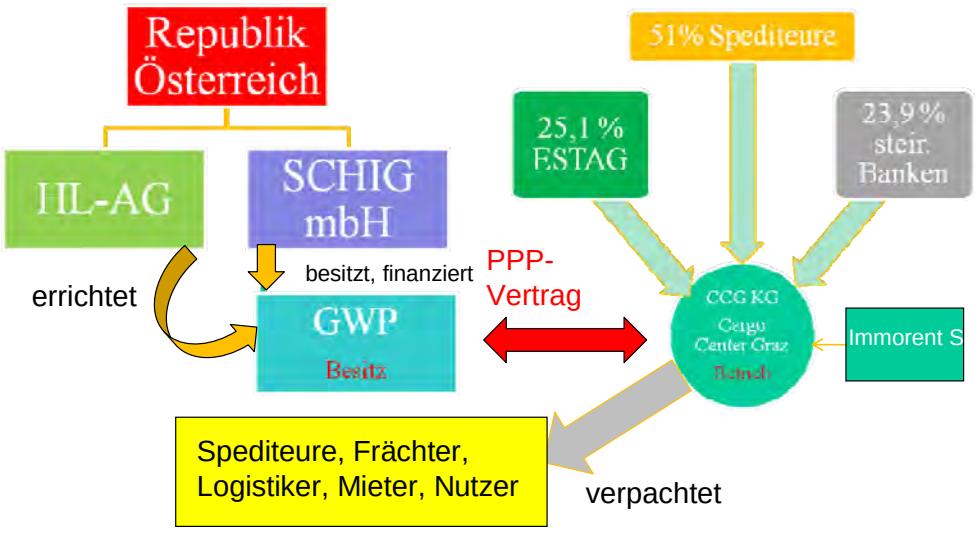
Planungs- u. Bauübertragung an die HL-AG 1997

1998 Beginn der Betreibersuche durch SCHIG$_{mbH}$

Technische Daten:

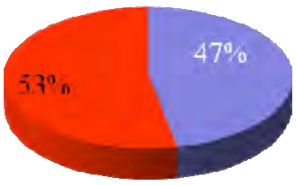
Realisierung: 1999 – 2003

PPP Cargo Center Graz 2



PPP Cargo Center Graz 3

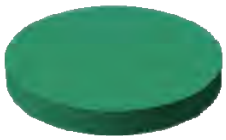
Finanzierung Infrastruktur 65 Mio €



- Zuschuss des Bundes finanziert durch SCHIG
- Vor-finanzierung durch GWP

30 jährige Rückzahlung durch Pacht

Finanzierung Absatzanlagen 40 Mio €



- finanziert durch Immorent Süd

20 jähriges Leasing

PPP-Ideen der SCHIG neu

- **Studie Prag – Linz** (Anmerkung: Bereits 1996 gab es eine Siemens Studie für ein PPP-Modell Berlin – Prag – Linz)
- **RoLa Terminal Regensburg** (Anmerkung: Die RoLa nach Regensburg ist schon eine lange Geschichte.
- **Erweiterung CargoCenterGraz um RoLa** (Anmerkung: RoLa war bereits im Ursprungsprojekt enthalten)
- **Cargo Center Wien (Inzersdorf)** (Anmerkung: eine fast unendliche Geschichte)
- **TunnelThermie (Tunnelerdwärme)** (Anmerkung: Schon 2001 von der HL-AG begonnen)

Quelle: Geschäftsbericht SCHIG 2006

Im Geschäftsbericht 2002 dieser Gesellschaft befanden sich noch PPP-Ideen für den Brenner-Basistunnel (Anmerkung: gibt es schon seit Anfang der 90-er Jahre) und für die Pyhrn Schober Achse.

PPP in Europa

„PPP“ (mit Einschränkungen):

Sieht man vom Flop des privaten Eurotunnelprojektes ab (Baukosten mehr als verdoppelt, 60 % weniger Passagiere als prognostiziert, Aug. 2006 Gläubigerschutz (Schutz vor Totalausfall der Forderungen)

stellen für die meisten mehr oder weniger „echten“ PPP-Projekte die zu hoch eingestellten Transportprognosen und somit Einnahmenerwartungen das Hauptproblem dar.

Das Problem der Kostenbeiträge der Nutznießer der Infrastruktur wird dabei ebenso systematisch umgangen, wie bei rein „öffentlichen“ Projekten.

1996-1998 EU-High-Level Group on Public-Private Partnership Financing of TEN Transport Projects: Banken wollen besicherte Kredite, Errichtungswirtschaft will wenig Kontrollen und Staatsgarantien für Baugrundrisiko

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Finanzielle Besonderheiten der Schieneninfrastrukturfinanzierung

- Langfristigkeit
- Kosten sofort, Nutzen relativ spät
- Öffentliches oder öffentlich bestimmtes Gut
- Betriebswirtschaftliche Aspekte sind nur ein TEIL der Investitionsentscheidung
- Nutzungsentgelt führt zum (Teil)Verlust des Status‘ als öffentliches Gut
- Nutzungsentgelte können im verzerrten Wettbewerb (keine Anlastung der externen Kosten bei der Straße) in der Regel nicht kostendeckend sein
- Komplexe Rechtsrahmen (z.B. EU-Regelungen)
- Nutzer sind nur ein kleiner Teil der Nutznießer

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Technische Besonderheiten der Schieneninfrastrukturinvestitionen

- Langjährige Herstellzeit
- Vieljährige Nutzungsdauer
- Vernetzung erfordert technische Anpassung an „alte“ Infrastruktur –Technologiebrüche sind schwierig
- Komplexes Umfeld → Kompromisse hinsichtlich Trassenführung und Ausstattung
- Öffentliche und komplexe Beteiligungsverfahren (z.B. UVP, EB-Verfahren u.s.w)
- Nutzung für breite Gruppe muss gegeben sein
- Abgestufter Kundenbegriff für Infrastruktur

Rechtliche Besonderheiten der Schieneninfrastruktur

- Hohe Genehmigungsrisiken (vor allem zeitlich)
- Vergaberecht erzwingt langwierige Vergabeverfahren
- PPP-Partner müssen teilweise zu einem sehr frühen Projektzeitpunkt gesucht werden → Auswahlentscheidung nur auf Basis von (langfristigen und daher unsicheren) Prognosen möglich

Warum waren Cargo Center Graz (CCG) und Rail Test Research (RTR) erfolgreiche PPP-Projekte?

•Klima Wind Kanal des RTR ist Quasi-Monopolist
•An CCG sind fast alle wichtigen Spediteure der Region beteiligt (→ Quasi-Monopolsituation)
→geringes Auslastungsrisiko und hohe (Betriebs)Wirtschaftlichkeit

•Kaum Baugrundrisiko bei beiden Projekten (keine Tunnel, keine komplizierten Brücken)

•Finanzierung in beiden Fällen durch SCHIG mbh mit Staatsgarantiekonditionen

•Politischer Wille hat beide Projekte begünstigt (Verfahren, Grundeinlöse,..)

•Kurze Planungs-, Genehmigungs- und Bauzeiten (4 Jahre RTR, fast nur konstruktiver Ingenieurbau; 7 Jahre CCG, Tiefbau und konstruktiver Ingenieurbau)

•Im Vergleich zu Bahnstrecken relativ kompakte Anlagengrößen, dadurch weniger Anrainergruppen

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Warum sind die Streckenprojekte nicht so erfolgreich für PPP?

•Konkurrenzstrecken beeinträchtigen die Betriebswirtschaftlichkeit
•Fehlende Internalisierung der externen Straßenkosten verzerren den Wettbewerb
•Lange Herstellungssdauern (Planung, Genehmigung, Bau) schaffen hohe Unsicherheiten (15-13 Jahre)
•Das begünstigt auch politische Unsicherheiten
•Viele Teilregionen betroffen durch gestreckte Anlagengröße, auch das begünstigt politische Unsicherheiten
•Tiefbaudominiert → Baugrundrisiko meist hoch (insbesondere bei Tunnelstrecken)
•Entscheidende Nutznießer (Profiteure) zahlen keinen entsprechenden Kostenbeitrag

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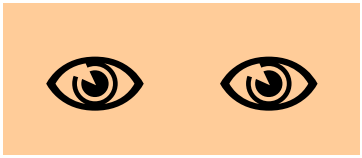
Auf der Suche nach **Zahlern**



UNTERSCHEIDE

Nutzer:

Nutzer ist, wird die Infrastruktur benutzt.

- **Eisenbahnverkehrsunternehmen**
- **Kunden der Eisenbahnverkehrsunternehmen**

Nutznießer:

Nutznießer ist, wer von der Investition in die Infrastruktur einen Nutzen hat.

- **direkte Nutznießer**
- **indirekte Nutznießer**

Kostenbeitragsrelevant für Infrastrukturinvestitionen ist

- **Nicht, wer Nutznießer ist,**
- **sondern, wer sich mit der Rolle als Nutznießer identifiziert !**

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Ursache für das Scheitern bisheriger Finanzierungskonzepte:

fehlende Identifizierung

der Nutznießer mit ihrer Rolle als Nutznießer

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Weitere Ursache für das Scheitern :

Wichtige Nutznießer profitieren als „Trittbrettfahrer“

Dazu zählt häufig auch die **öffentliche Hand**!!!

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Lösungsansatz

NIF

Nutznießerorientierte Infrastrukturfinanzierung

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ZIEL einer
NIF

Nutznießer = Zahler

**Es gibt keine Geldknappheit,
wenn
ein Vorhaben
WIRTSCHAFTLICH
darstellbar ist
UND
das auch belegt wird.**

DENN DANN FINDET

SICH EIN INVESTOR.

„Wirtschaftlichkeitsrechnungen“

Probleme

Das betriebs- und volkswirtschaftliche Rechnungswesen birgt eine Reihe von (internationalen) „Konventionsmängeln“, die in der Regel gedankenlos übernommen werden.

- **Es fehlen wirtschaftliche Indikatoren (z.B. know-how-Bewertung)**
- **Es fehlt eine Sozialbilanz.**
- **Es fehlen Wohlstandindikatoren.**
- **Es erfolgt eine „falsche“ „Betriebs“zuscheidung (d.h. Kostenkomponenten werden von unterschiedlichen Trägern getragen (Internalisierung, Externalisierung von Kosten).**

Mehr als ein Nutznießer

Schienenverkehrsinfrastrukturprojekte

- sind zumeist NUR für die Bahn allein betriebswirtschaftlich NICHT darstellbar
- Fast immer: gemeinwirtschaftliche und volkswirtschaftliche Effekte, die auch andere Nutznießer betreffen.

Diese Effekte werden zwar häufig dargestellt und manchmal sogar bestimmten Nutznießergruppierungen zugeordnet – bleiben dann aber im Raum stehen ohne zu Zahlungsflüssen zu führen.

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Nutznießer und Meßgrößen

Voraussetzung für

die Akzeptanz einer Wirtschaftlichkeitsrechnung

durch einen Nutznießer

ist, dass er die zu Grunde gelegten

Messgrößen **akzeptiert**

und

die Rechnung für ihn

nachvollziehbar ist.

Nutznießer - Zahler

Ein Nutznießer ist bereit, zum Zahler zu werden, wenn seine Zahlung **FÜR IHN wirtschaftlich erkennbar** ist.

Die häufigste Ursache für die mangelnde Zahlungsbereitschaft der Nutznießer liegt darin, dass die allenfalls vorgelegten Wirtschaftlichkeitsrechnungen

- günstigstenfalls zwar eine allgemeine Wirtschaftlichkeit erkennen lassen,
- nicht aber die Wirtschaftlichkeit für jeden **einzelnen** Nutznießer.

Vorgangsweise NIF

1. **Identifikation aller relevanten Nutznießer**
2. **Wirtschaftlichkeitsrechnung** (Berücksichtigung möglichst aller wirtschaftlichen Auswirkungen auf alle Nutznießer und möglichst plausibler und auf Eventualitäten abgesicherter Prognosen)
3. **Gesonderte Nutzenberechnung für JEDEN relevanten Nutznießer**
4. **Konsensherstellung (bezüglich SEINES Nutzens) mit JEDEM relevanten Nutznießer**
5. **Neue Wirtschaftlichkeitsermittlung nur mehr unter Berücksichtigung der Nutzengrößen, über die Konsens hergestellt werden konnte (d.h. es wird bewusst ein Teil des Nutzens weggelassen!)**
6. **Im Falle einer verbleibenden positiven Wirtschaftlichkeit: Kostenaufteilung nach dem Schlüssel der Nutzengrößen**
7. **Auf dieser Basis: Teil-Wirtschaftlichkeitsrechnungen für jeden Nutznießer, mit dem über seinen Nutzen Konsens hergestellt werden konnte.**
8. **Projekt(zahlungs)vereinbarungen mit den Nutznießern.**

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Sonderfall – öffentliche Hand

- **Mit „normalen“ betriebswirtschaftlichen Methoden ist der Nutzen meist nicht nachweisbar.**
- **Rechenmodell des österreichischen IHS (Institut für Höhere Studien, Wien): Auswirkungen von Schieneninfrastruktur-investitionen auf den Haushalt des Bundes, der Länder und der Sozialversicherungen**
  - **abhängig vom übrigen Investitionsniveau und anderen Größen der volkswirtschaftlichen Gesamtrechnung**

Ergebnis:

- **Sehr hoher Geldfluß an öffentliche Hand durch Schienenverkehrsinfrastrukturinvestitionen, wenn Investitionsquoten jährlich relativ konstant.**
- **Besonders hoher Geldfluß an öffentliche Hand, für solche Investitionen, die in Zeiten allgemein zurückgehender Investitionen relativ konstante Gesamtquoten wiederherstellen helfen.**

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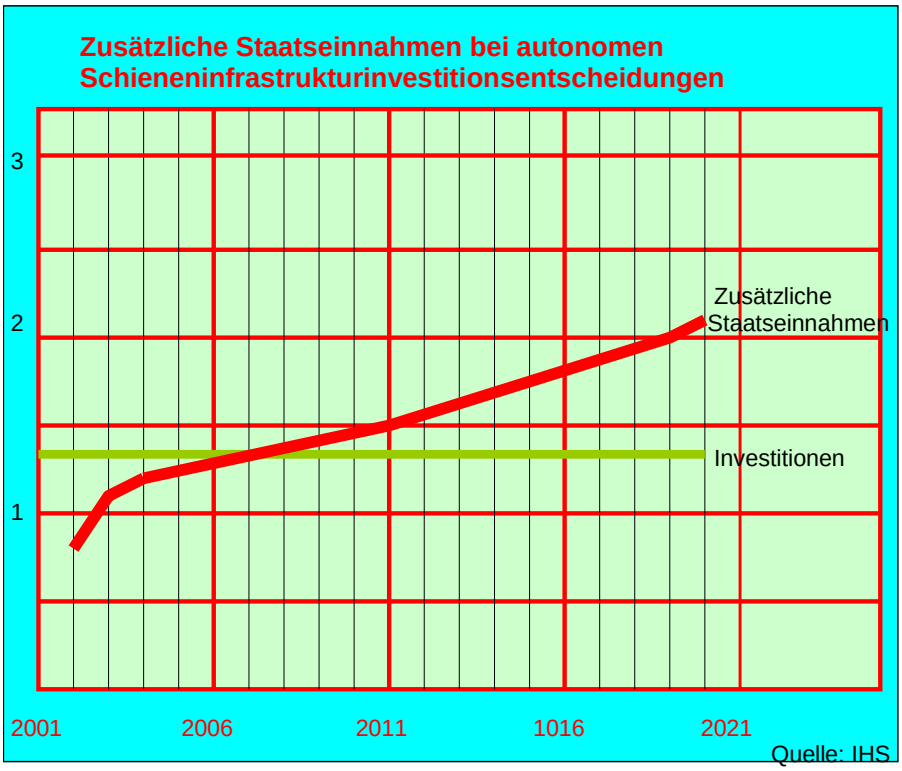
Ein Beispiel:



Unterlegt wurde ein konstantes Infrainvestvolumen von 1,3 Mrd. EURO/Jahr .

Somit deckt die Selbstrefinanzierungskraft mehr als 100% der Investitionen.

Sonderfall – öffentliche Hand

Das heißt kurzgefaßt:

Die öffentlichen Budgets sind ein besonders wichtiger Nutznießer von Investitionen in die Schieneninfrastruktur.

UND leider

EIN BESONDERS HARTNÄCKIGER TRITTBRETTFAHRER

Erfolgsfaktoren NIF

Zur erfolgreichen Durchsetzung einer nutznießerorientierten Infrastrukturfinanzierung (NIF) ist notwendig:

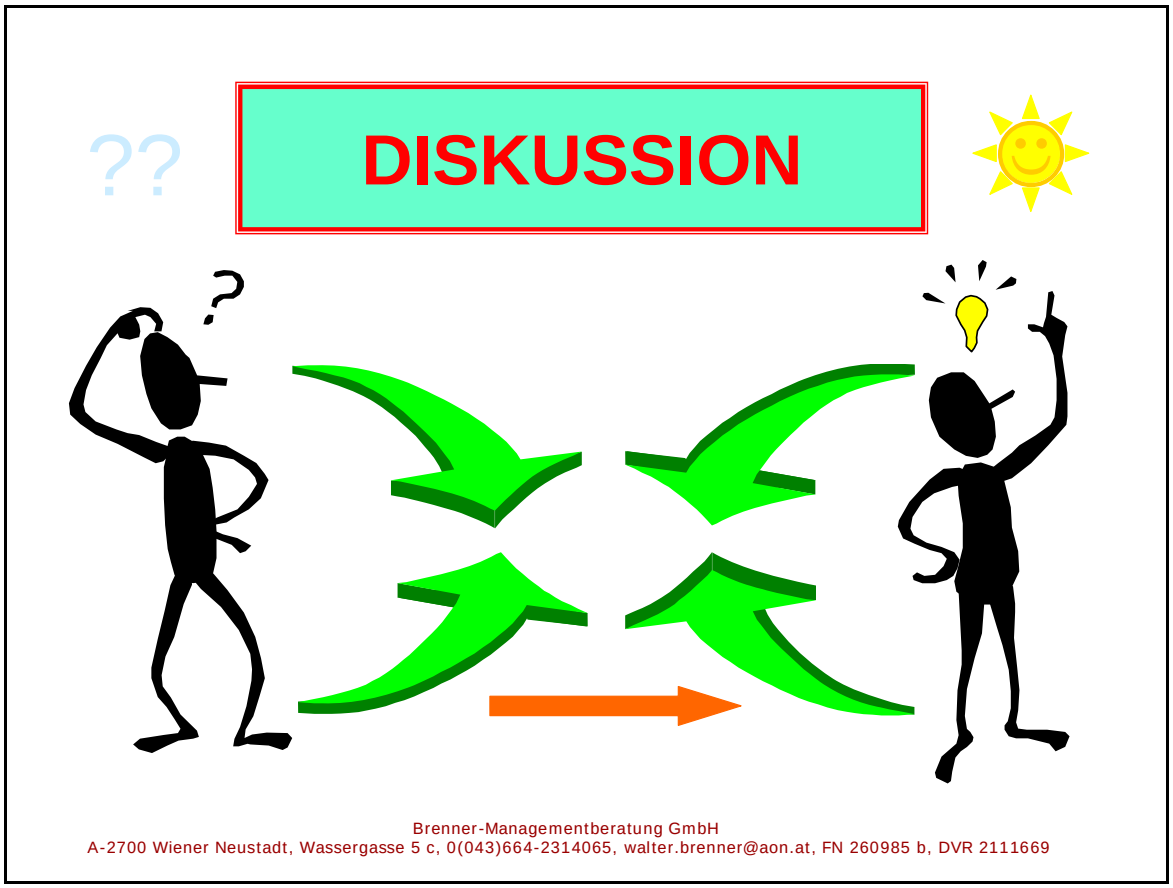
- Große Erfahrung auf dem Gebiet von Wirtschaftlichkeitsrechnungen öffentlicher Verkehrsinfrastrukturprojekte (betriebswirtschaftliches, gemeinwirtschaftliches und volkswirtschaftliches know-how)
- Ein gut moderiertes multidisziplinäres Projektteam
- Getrennte Rechenwerke für jeden Nutznießer
- Konsensherstellung mit jedem relevanten Nutznießer hinsichtlich seines Nutzens und seiner Wirtschaftlichkeit
- Faire Verhandlungen und Verträge hinsichtlich der Kostenbeteiligung der Nutznießer

Die BRENNER MANAGEMENTBERATUNG GMBH Brenner-Managementberatung GmbH ist ein erfahrener Partner für eine erfolgreiche Projektbegleitung ihrer NIF.

ZUSAMMENFASSUNG

- **Schieneninfrastruktur kann sich rechnen – für ein Verkehrsunternehmen allerdings nicht allein betriebswirtschaftlich !**
- **Die anderen Nutznießer müssen identifiziert werden !**
- **Die Wirtschaftlichkeit einer Kostenbeteiligung muss für jeden einzelnen Nutznießer gesondert nachgewiesen und die Mitfinanzierung paktiert werden !**
- **Die öffentliche Hand ist zumeist ein sehr großer Nutznießer !**
- **Der Weg der NIF ist aufwendig aber fair !**
- **Die BRENNER MANAGEMENTBERATUNG GMBH würde sie gerne auf diesem Weg begleiten und unterstützen.**

BRENNER MANAGEMENTBERATUNG GMBH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Beiträge der TeilnehmerInnen an Podiumsdiskussion

6. Brian Harris[1]

Introduction

Unite is the UK & Irelands largest trade union and was formed in May 2007 by a merger of Amicus and the Transport & General Workers Union (TGWU), we have over 2 million members.

We cover every conceivable industrial sector within the UK & Ireland, from the Public Sector including the Health Service (NHS) and Local Government Staff to Private industry including Financial Services (Banking and Insurance), Aerospace Industry, Motor Manufacture/Component Manufacture, the Construction Industry and of course the Transport Industry including Railways, Buses and Ferry organisations.

Public Private Partnership Experience

Unite has dealt many PPP situations within the UK economy from Public Sector building projects such as new hospitals or extensions to existing buildings, however the most relevant experience in relation to this conference is in the PPP contracts for the Maintenance and Infrastructure Renewal of the London Underground Network.

Unite has membership and recognition rights at both the Metronet and Tube Lines the private companies who won these PPP contacts in 2002/2003. Two of the contracts were won by Metronet Rail Ltd the third by Tube Lines.

Unite has held details discussions with both these companies over the future of their PPP contracts in light of the failure of Metronet in July 2007 when it went into PPP Administration. We have submitted written evidence to the UK House of Commons Transport Committee (see appendix 1) and also attended the committee to follow this up with oral evidence.

[1] Brian Harris, Unite Regional Officer, Unite – Amicus Sektion, UK

The conclusion of the Commons Transport committee was a damming report on the abject failure of the Private Sector companies to deliver on their contracts but also recognition from the government that PPP in this instance had failed (see appendix 2).

Unite is currently working with the PPP administrators of the two Metronet contracts in order to return them under a Public Sector banner in the form of nominated company under the control of Transport for London which is the Mayor of London's Transport Authority.

TFL are the only organisation who has shown a serious interest in taking control of Metronet which is another indication of the failure of the PPP Contract and process.

In conclusion I look forward to participating in the conference and hope that the UK experience from a Trade Union perspective is interesting and can in form the debate in Austria.

Brian Harris – Unite Regional Officer

Attached

APPENDIX 1

Memorandum of Evidence to the Transport Select Committee Inquiry into Public Private Partnership and the London Underground

1. Introduction

1.1 Unite Amicus Section is the UK's second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including transport, manufacturing, financial services, print, media, construction and not for profit sectors, local government, education and the health service. The union has just completed a merger with the TGWU to form the UK's largest union of over 2 million members.

1.2 At a time when investment in the UK's rail network is at an unprecedented level, Unite Amicus Section welcomes the decision by the Transport Select Committee to conduct a far reaching inquiry into the effect of PPP on the London Underground (LU).

1.3 Unite Amicus Section members are involved in all aspects of maintenance on the London Underground and are employed currently within both the defined public and private sector.

1.4 Our members are responsible for maintenance and repair of key elements of LU infrastructure including signaling, escalators, station lighting & electrics and communications equipment. In addition our members are also employed in the maintenance of the train fleets.

2. Benefits for Tube Passengers

2.1 Unite Amicus Section believe that whilst PPP has accelerated the financial investment of funds into the ongoing refurbishment of the LU network, it has not delivered within the timescale stated in the original contract.

2.2 This fact is evident when we consider that on the 23rd February 2007 Metronet Rail announced that it had awarded a tranche of six contracts for station upgrades outsi-

de of its tied supply chain. This was the first time Metronet Rail had moved out of its own supply chain and is clear and concise evidence that its own structure was failing to deliver on time and on budget.

3. Health and Safety

3.1 It must be understood that LU standards of health & safety have historically been over and above any statutory or legal requirements. Unite Amicus Section have concerns that the involvement of the private sector has increased the propensity for profit margins to become the primary motive behind relevant decision making.

3.2 Furthermore Unite Amicus Section is concerned that the increasingly complex networks of responsibility are diluting the direct involvement of experienced LU health & safety advisors.

3.3 In the union's opinion health & safety on the LU is now alarmingly fragmented. There is minimal interaction between safety committees that exist within LU and the private sector.

3.4 In the union's experience it is becoming increasingly difficult for operatives to address safety issues. This becomes more relevant when it is understood that many sites are in effect 'multi-user', engaging operatives from not only the defined public and private sectors but also sub-contractors.

3.5 The risks involved in such a fragmented and overly complex supply chain were brought into sharp focus on the morning of the 5th July 2007 when a Central Line train hit an object in the tunnel between Mile End and Bethnal Green. On investigation it was discovered that operatives from one of Metronet's shareholder partners Balfour Beatty had left a roll of industrial plastic sheeting too close to the track.[2] Clearly objective evidence does not exist to suggest that such an oversight is solely a result of private sector involvement in the LU, but there is sufficient anecdotal evidence to confirm that the structure that is currently in place does nothing to facilitate 'joined up thinking'.

3.6 The health & safety issues of the fragmented supply chain were further highlighted in March 2007 when 12 electricians were thrown off the Hainault station site after it was discovered they were doing a full shift on their day jobs before working on the LU in the evening.[3]

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[2] Construction News 4th October 2007

[3] Construction News 19th April 2007

4. Risk and 'Value For Money'

4.1 Unite Amicus Section believes that the very fact that Metronet Rail has now gone into PPP administration and is, in effect, being funded by Transport for London (TfL), provides objective evidence that on this occasion PPP has certainly not been 'value for money' especially for London tax payers. Not least when it is widely reported that TfL is paying Metronet £17 million[4] a week (roughly double the normal rate under their 2003 agreement) to keep the contractor and the railway operating during administration.

4.2 It should be noted that as recently as the 4th October it was being reported that the PPP Arbiter, Chris Bolt, had still to determine the exact amount Metronet was owed by LU for the first seven and a half years of its tube contracts, in order to have some idea of the complexity of the issues. A perspective of the scale can be seen when information suggests that this figure could be anywhere between £370 million and £1.1 billion.[5] The fact that the figure is so wide ranging doesn't exactly create the impression of prudent financial management.

4.3 This ambiguity was further highlighted in a recent statement from Tube Lines. When questioned as to whether they would consider a bid for Metronet they stated that, "We need more transparency about what is being sold before we would consider making a bid".[6]

4.4 Unite Amicus Section firmly believes that across the majority of the rail network there is little or no competition. The union believes that the private sector is taking only a marginal amount of the risks involved in both running and investing in the network. In this respect London Underground is no different.

4.5 The private sector that has been brought into the LU network is entirely confident in the fact that the Government cannot allow any part of the infrastructure to fail and therefore has a limited commitment in terms of long term investment in the industry. In effect the private sector can 'go bust' but the network must continue to operate, funded by the taxpayer.

4.6 The very fact that other private sector stakeholders are awaiting the publication of Metronet's valuation by investment bank Rothschild provides sufficient evidence that the private sector are unwilling to take any of the potential risks involved in undertaking its work.

4.7 Given the very nature of the private sector this should not be surprising. Equally it should not be surprising that the private sector enters those parts of the industry

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4 Construction News 4th October 2007

5 www.cnplus.co.uk/News/metronets_uncertain_future.html

6 Contract Journal 19th September 2007

where it can extract the largest profit margins whilst avoiding any unnecessary obligation to invest in the long term growth and expansion of the LU network.

5. Metronet Rail BCV & SSL in PPP Administration

5.1 The consequences of Metronet entering into PPP administration are significant, not least for increasing the financial burden on the taxpayer as outlined above.

5.2 The situation that has been allowed to develop calls into question the long term planned infrastructure improvements on the LU network. It will also act as a deterrent in sourcing long term financial investment.

5.3 Historically maintenance staff employed by the LU in the public sector were prepared to accept remuneration less than they could expect in the private sector for the additional benefit of stable and direct employment. The increasing role of the private sector has in part increased job insecurity.

5.4 The uncertainty that Metronet's administration has caused is creating the potential for skilled operatives to leave the LU network and seek stable employment elsewhere in the sector or in the wider construction and contracting industry, where demand for their skills is set to increase at least into the medium term. Headlines such as, "Metronet workers poised to walk out over late pay"[7], set against observations that the UK construction industry needs an additional 87,590[8] workers every year until 2011 to meet increasing demand, does not bode well for LU recruitment and retention policies.

5.5 Anecdotal evidence suggests that as specialist operatives, such as signaling technicians, leave the network the cost of employing them in the future through any kind of third party agency arrangement will inevitably increase the overall wage bill in the long term.

5.6 Despite reassurances from Metronet that the terms of PPP administration ensure that staff, suppliers and third party creditors will continue to be paid Unite Amicus Section believes that there will be the inevitable haemorrhaging of staff and suppliers that will further undermine the long term improvements to the LU infrastructure network.

Bob Rixham

National Officer – Railways, Buses & Ferries

Unite Amicus Section **October 2007**

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7 Contract Journal 18th July 2007

8 Construction Skills Network Report 2007

APPENDIX 2

The extract below is taken from the UK Parliaments Web site and is the UK Government Response to the 'House of Commons Transport Committee Second Report - \the London Underground and Public-Private Partnership Agreements'

Unite attended the committee and submitted both written and oral evidence on our experience of working within the PPP Contract.

Web link:
http://www.publications.parliament.uk/pa/cm200708/cmselect/cmtran/461/46104.htm

Introduction

This paper sets out the Government's response to the Transport Select Committee's report on London Underground and the Public Private Partnership Agreements (HC 45 published on 25 January 2008). The Government welcomes the interest that the Committee has continued to show in the Underground and the Public Private Partnerships (PPP).

The Underground now carries over a billion passengers every year and is central to the success of London's economy. This is approximately the same number as the entire national rail network in Great Britain, and represents a 65 per cent increase since 1993. Following years of under-investment and neglect, the PPP was implemented to deliver the vital maintenance and capacity upgrades necessary so that the network can cope with this increasing demand and ensure that London has a Tube system that we can all be proud of.

Metronet's collapse was a major disappointment to those with the interests of the travelling public at heart, and the Government is committed to ensuring that all parties learn the appropriate lessons for the future. The Government is also clear that this was predominantly a corporate failure, and that the structural weaknesses of Metronet led to its own downfall.

The Comprehensive Spending Review 2007 settlement for Transport for London, details of which were announced on 6 February,[1] provides the financial framework for the next ten years. This is the first step towards ensuring that the delivery of the maintenance and upgrade of the Underground is placed on a stable, long-term footing. Transport for London is the only party to have tabled a bid for the Metronet contracts and in the short term the contracts are likely to pass to their subsidiaries as an interim measure. The next step is to consider the restructuring of the Metronet contracts and what offers the best solutions for a lasting structure. A Steering Group has been established between the Government, Transport for London and others to develop options for this long-term structure. It is the Steering Group's ambition to report to the Secretary of State and the Mayor jointly by Summer 2008. It is clear that many of the issues identified by the Committee - including risk transfer, information rights and the role of tied supply chains - will form key parts of their deliberations. This report is a welcome and useful contribution to that work.

METRONET'S TIED SUPPLY CHAIN

1. We are not persuaded that Metronet's shareholders had any inclination to address the problem of the tied supply chain nor, as the intended beneficiaries of the system, did they have very much incentive to do so. (Paragraph 16)

There are clearly lessons to be learnt from the structure that Metronet adopted, and its inability to operate efficiently and economically in the delivery of the PPP contract requirements. To date Tube Lines appears to have been successful in delivering under a more competitive tendering structure, and belatedly Metronet was moving towards this model.

The Metronet model was perceived as the more traditional model for PPPs and Private Finance Initiatives (PFIs) but, in this case, the role of the executive team in separating the shareholder's interests from the supply chain was not properly developed and the necessary good corporate governance was not in place. In particular it was Metronet's inability to act independently of its shareholders when the deficiencies in its internal arrangements became apparent that was crucial to its collapse. Following the PPP Arbiter's Annual Report into Metronet in 2006[2] some action was taken. This included the appointment of Graham Pimlott as an independent non Executive Chair in January 2007,[3] and the decision not to continue to use Trans4m and award the station modernisation programme through competitive tender to third party contractors.[4] But this was too little, too late to make a material difference to the fate of the company.

2. When the bids for the PPP contracts were being assessed, it should have been possible for the Government and London Underground, then under national control through London Regional Transport, to foresee that Metronet's proposed tied supply chain model, which guaranteed the lion's share of work to its parent companies, did not include the necessary safeguards. The fact that such a management structure was judged to be capable of efficient and economic delivery seems extraordinary now that Metronet has collapsed but the ultimate recipients of the money which was paid to the company have walked away with limited losses. The Government must not allow this blurring between the roles of shareholder and supplier in future bids to carry out work by the private sector. Bids where competitive tendering for sub-contracts is proposed are likely to ensure that the best price is obtained. (Paragraph 18)

The PPP was thoroughly evaluated before the contracts were awarded using the public sector comparator. It was objectively scrutinised by independent observers including the National Audit Office (who reported in December 2000 on the methodology[5]) and Ernst & Young (who provided an independent review for the then Secretary of State[6]).

Tied supply chains can, in certain circumstances, lead to effective delivery. But it is very important that this structure is suitable for the particular contract, and that the role of the partners is very clearly distinguished from their role as contractors. In the case of Metronet this was not apparent, and with hindsight there was a lack of adequate incentives, policing and control within the Metronet consortium. This was noted in the PPP Arbiter's Annual

Report in 2006 on Metronet which identified that the company was unable to demonstrate the high standards of corporate governance expected, and it could not counter suggestions of a conflict of interest at shareholder level between the competing roles of managing the PPP company and providing services through the supply chain.

RISK BORNE BY INFRACO SHAREHOLDERS

3. The return anticipated by Metronet's shareholders appears to have been out of all proportion to the level of risk associated with the contract. The parent companies were effectively able to limit their liability to the £70 million they each invested in Metronet at the outset. Had Metronet survived, they would also have borne the cost of their own inefficiency along with a minimal amount—£50 million—of any other cost overruns. In the face of this very limited liability it is difficult to lend any credence to the assertion that the Metronet PPP contracts were effective in transferring risk from the public to the private sector. In fact, the reverse is the case.

Metronet's shareholders, had the company been operated effectively, stood to make quite extravagant returns. Now that it has failed, it is the taxpayer and the Tube passengers who must meet the cost. (Paragraph 25)

The PPP agreements struck a balance between the level of risk transferred to the private sector and that retained in the public sector. Previously a key risk on major enhancements on the Underground was cost overruns and inefficient delivery when the project had been managed by the public sector but delivered by the private sector. In the past the cost overruns and late delivery on the Jubilee and Central line projects of £1.4 billion and £200 million respectively were met by the taxpayer. However, since 2003 London Underground (as part of Transport for London) has gained a record of delivering projects successfully both within and outside the PPP (e.g. the redevelopment of Wembley Park station).

As the National Audit office stated in their report 'Were they good deals',[7] the PPP contracts offered nominal returns of up to 20 per cent. This reflected the unique nature of these contracts and was proportionate to the risks being borne. While this rate is higher than other PFI/PPP deals at that time, it was comparable to the expected rate of return on road PFIs, which then came in at around 15 per cent. However this rate of return to the shareholder was not guaranteed. It was dependent on the PPP companies delivering the significant improvements described in the contracts on time and on budget, and that they met their bid levels of performance. The National Audit Office surmised that the likely real rate of returns, at benchmark levels of performance, would be between 10 to 17 per cent. However, these levels of return were also dependent on efficient and economic performance. Under the PPP contracts the costs of inefficient and ineffective work remains with the PPP companies, regardless of the materiality threshold. But as noted by the Committee the effectiveness of this risk transfer within the PPP was based on the continuing solvency of the companies and their ability to pay for uneconomic and inefficient work.

RISK BORNE BY INFRACO LENDERS

4. In terms of borrowing, the Metronet contract did nothing more than secure loans, 95% of which were in any case underwritten by the public purse, at an inflated cost—the worst of both possible worlds. As with the shareholders, what minimal risk was borne by Metronet's lenders was disproportionately well rewarded, at the expense of tax- and fare-payers. Public sector negotiating parties must be hard-headed in their determination to achieve the best possible terms for financing private sector delivery organisations. The banks should be required to take on substantial risk to reflect the large sums of money available. Additional risk would also increase the incentive for lenders to look after their debt properly. A proper assessment should be made of the cost of higher-risk lending against that of guaranteeing large quantities of private sector debt in the event of a company's failure. If finance cannot be secured at reasonable terms without guaranteeing the vast majority of the debt, loans direct to the Government, which would enjoy the highest credit rating and significantly lower costs, would seem to be the more cost-effective option. (Paragraph 29)

The Government will always try to negotiate the best and most appropriate deal in any contract. But the greater the level of risk transferred to the private sector, the higher the price this will normally lead to as the lenders reflect this greater risk in the returns on offer. The Underground, in particular, represents a difficult area to clearly allocate and mitigate risk due to a number of challenges. These challenges include the ageing and unknown condition of some of its assets, the difficult and complex environment and the limited working hours available.

Any Government procurement would normally be subject to the appropriate level of scrutiny beforehand, including following the Treasury's Value for Money Assessment Guidance.[8] This process would consider the particular procurement routes and the financial options available, and wider factors such as the strategic benefits, the ability to create a partnership and risk share as part of the value for money evaluations undertaken. Current best practice by the Treasury also now requires a transparent funding competition to be held at the preferred bidder stage. Where the opportunity arises, refinancing can be used to reduce the costs of private sector debt. In the case of Tube Lines it was able to refinance its loans once the PPP contract was complete and this released benefits for both Transport for London and Tube Lines.

The role of lenders in monitoring Metronet's performance was very disappointing, and in particular the failure of the relevant parties to exercise their right to require an Extraordinary Review once it was clear that Metronet had exceeded their materiality threshold. The decision of the parties not to use the right to ask the Arbiter to provide an annual report on Metronet's performance in 2005, involving waiver by Metronet's funders of the right to oblige Metronet to seek such a report, also prevented early scrutiny of the scale of Metronet's difficulties in delivering the contract.

Lenders exposure should, 95 per cent security not withstanding, have been sufficient to incentivise full scrutiny of performance. It is not clear at this stage why Metronet was able to persuade them not to use those rights rigorously. But this is an area that we, together

with Transport for London, London Underground and the Arbiter, will be considering closely as we draw lessons from the experience of Metronet for any future delivery structure.

THE MATERIALITY THRESHOLD

5. Metronet's inability to operate efficiently or economically proves that the private sector can fail to deliver on a spectacular scale, although Tube Lines' performance provides an example of private sector innovation and efficiency. The evidence is clear: it cannot be taken as given that private sector involvement in public projects will necessarily deliver innovation and efficiency, least of all if the contracts lack appropriate commercial incentives. Future assessments of the comparative value for money of private sector-managed models for infrastructure projects should not assume a substantial efficiency-savings factor; a detailed assessment should be made of the suitability of the proposed structure of delivery organisations, of bidders' specific expertise and of the strength of the incentives to efficiency. It is worrying that the Government's confidence in such savings appears to stem from a belief that inefficiency is more endemic and irreversible in the public than the private sector. (Paragraph 32)

The Government is fully aware that the involvement of the private sector cannot always guarantee success, nor that they will deliver innovation, efficiency and economy. However there are also examples when the public sector management of major projects, including the Underground in the 1990s, has also been unsuccessful.

It is clear that there is no single procurement model or formula for success in delivering major and complex projects, and the appropriate structure must be adopted in each case. In particular circumstances it is more appropriate that private companies manage projects and provide services, rather than the public sector. As noted by the PPP Arbiter's evidence, the private sector can successfully deliver projects when there are clear outcomes specified in the contract and the company is free to decide the approach that it should take to deliver those outcomes. As the Committee notes, Tube Lines to date has had reasonable success working to the same contract that was applied to Metronet, though with different materiality thresholds.

6. It is clear that in negotiating future agreements the Government should seek as high a Materiality Threshold as possible in order that public liability is minimised in the event of an overspend by the private sector. The level of the Materiality Threshold is crucial in encouraging efficiency and innovation. If it is set so low as to be, in effect, a cost-plus contract, this encourages the contractor to hold out for ever-larger payments over and above what was originally bid. (Paragraph 34)

The materiality threshold was an area that was subject to serious consideration and negotiation within the PPP, and at that time was a unique feature of these contracts.

Within the PPP contracts, the PPP companies were only eligible for efficient and economic costs above the materiality threshold. Costs, such as those down to its own inefficiency will

always be borne by the PPP companies. The level of the materiality threshold will be closely linked to the issues of price and risk transfer. The higher the materiality threshold, the greater risk that costs will be transferred to the private sector. This is likely to lead to a higher price being asked for their services. Any increase in the Tube Lines materiality threshold for the second period would therefore be priced as part of their payments.

However the Government does not agree that the materiality threshold is crucial in all contracts to encourage efficiency and innovation. Many other factors will also play a role in enabling a supplier to deliver efficiently and with innovation. These include specified and agreed outcomes and the freedom to operate without unnecessary constraints or interference.

As the Arbiter discussed with the Committee during his evidence, a higher materiality threshold will potentially focus a company's attention on cost overruns as they can reach a very high level before they can claim. But this raises the risk that without a suitable mechanism to notify all parties that the increased costs are occurring, they will then reach an unacceptably high level before becoming an issue. Increasing the materiality threshold would therefore only be appropriate if accompanied by adequate monitoring and safeguards.

In the case of Tube Lines, there is a contractual mechanism to seek a direction from the Arbiter when it considers that it has exhausted each £50 million of its £200 million materiality threshold. To date it has not done so. This mechanism should draw attention to the fact that cost overruns are being experienced, and that there is a need for mitigation before the threshold is breached. But it is dependent on the PPP company deciding to exercise it, or their lenders requiring them to implement it. In the second contract period Tube Lines' materiality threshold will reduce to £50 million, the same as applied to Metronet.

INEFFICIENT COSTS AND THE PRINCIPLE OF THE PPP

7. Now that TfL is in control of the Metronet contract, there is a danger that private contractors brought in to upgrade the network will not be alive to its future maintenance needs, which will be met by TfL. This is not an insurmountable problem but it means that careful attention must be paid to the future maintenance of the underground network at a very early stage in the process of commissioning upgrade work. It might be that, for part or all of the network, letting combined contracts for upgrading and maintenance offers the best value for money. (Paragraph 39)

The Government is fully aware that future maintenance costs are central to the planning and commissioning of upgrade work.

A weakness in traditional procurement methods, often a result of funding constraints, is that public bodies would acquire assets on a short-term 'cost-only' basis. Any shortcomings in their construction or design, and longer term issues such as higher running or maintenance costs, frequently fell to the public sector.

Good industry practice now requires an approach which considers performance and cost for the whole asset life, including design, construction, maintenance and its eventual replacement. This will be a key consideration in any future arrangement. Whether privately or publicly managed and financed the future structure will need to ensure that it delivers assets that have the best whole life cost, i.e. balancing the cost of design and delivery with the on-going maintenance and operating costs to minimise the total cost of the asset over its entire working life. This enables the delivery of innovative, efficient and economic solutions that meet the operational needs of the Underground. The PPP was built on the basis of whole life decision making, and this approach is one that must be taken forward whichever structure is adopted in the future.

VALUE FOR MONEY

8. The Government should not enter into any further PPP agreements without a comprehensive and accurate assessment of the level of risk transfer to the private sector and a firm idea of what would constitute an appropriate price for taking on such a level of risk. If it is not possible in reality to transfer a significant proportion of the risk away from the public purse, a simpler—and potentially cheaper—public sector management model should seriously be considered. (Paragraph 45)

The Government does not enter any major contract without first fully assessing the level of risk transfer and the appropriate price level for the services being provided. This will be balanced with value for money considerations. Mechanisms such as the public sector comparator are used to ensure that the Government chooses the best value for money deal available. However, it is recognised that this is not an exact science and once the contract is working there will always be other factors and variables that alter the way that the contract performs.

It is inevitable that there will be continued private sector involvement in the improvement and maintenance of the Underground at some level. There are no circumstances in which London Underground would not need to call on appropriate, contracted specialist skills and experience. The key question will be how these are best harnessed within an effective contractual framework. There are a wide range of options being considered within the Steering Group, and these include London Underground having a greater management control than under the PPP arrangements. As noted above it is also essential that any structure allows the enhancement and maintenance of the Underground to be delivered in an innovative, efficient and economic way that provides value for money to both the fare and tax payer, and that the principle of whole life asset management is maintained.

REPORTING ON THE PERFORMANCE OF THE INFRACOS

9. We consider that the gathering and publication of information by the PPP Arbiter will generally tend to benefit all interested parties: London Underground as client, the Infracos as suppliers and the public as users. The Government should also find such information useful for assessing the benefits and costs of similar proposals in the future. There is some evidence to indicate that an earlier review could have miti-

gated the impact of Metronet's collapse, if not averted it entirely. However, it is important that any reporting process is seen as neutral and is designed to provide the information that both the Infracos and London Underground require to address performance issues and to prepare for Periodic Review. It would have been wiser to make the annual review an automatic process rather than one which had to be initiated by a party to the contract. (Paragraph 55)

The issue of independent reporting on the performance of the PPP companies and the PPP as a whole will form part of the detailed considerations in identifying and taking forward a preferred structure, including the role and function of an arbiter under new arrangements.

The Government considers that the statutory appointment of an independent arbiter for the PPP contracts has had benefits to all stakeholders in the Underground. The Government also recognises that there are lessons to be learnt from the reporting of Metronet under the PPP contracts, and in particular from the lack of a Metronet Annual Report for 2005 which could have indicated problems earlier. But, as recognised by the Committee, it may not have avoided Metronet's eventual collapse.

Under a long-term business model, with a 30 year view, we must also consider whether an automatic annual review is the most appropriate mechanism. The materiality threshold, if properly monitored and enforced, can be subject to a regular review to determine whether it is likely to be breached. This breaching could, therefore, be the test of whether the business is performing.

The cost of any independent reporting structure must also be weighed up against the benefits in delivering improvements; an alternative option is that of clarifying and confirming London Underground's rights for information under the existing contract structure.

10. Though we have not sought to evaluate Tube Lines' performance in the course of this inquiry, we believe that, in principle, annual reports on Tube Lines would be just as valuable as it could have been in the case of Metronet. An independent report from the Arbiter in 2008 on the performance of Tube Lines to date would be timely, particularly in the absence of a 2006-07 London Underground report on the performance of the Infracos. (Paragraph 56)

See answer to Recommendation 11.

11. We recommend that a mechanism be put in place to allow the PPP Arbiter to report annually on the performance of the Infracos, including Tube Lines, whether or not he is called on to do so; this might require the granting of additional powers to the Arbiter under the Greater London Authority Act 1999. (Paragraph 57)

The Government will ask the relevant parties, in particular London Underground and Tube Lines, to consider the matter of an annual report for Tube Lines, both in 2008 and in future years. Such a report is not currently part of the PPP, so a mandatory requirement could

only be created through amendment of the contract. This would require Tube Lines' agreement to change established contractual provisions.

An alternative is a voluntary agreement by the parties asking for guidance in the form of an annual review on whether Tube Lines' performance was efficient and economic. If both London Underground and Tube Lines agreed to seek such a report from the Arbiter, he would be required (under the terms of the Greater London Authority Act 1999) to prepare it. If only one party requested it, he would have discretion as to whether or not to prepare it. Under any voluntary arrangement it would be possible for either party to withdraw from the reference if they so decided.

London Underground has reported annually on the performance of the PPP since it was implemented, and it is anticipated that this will continue.[9]

12. As long-term arrangements for upgrading the Tube are devised, the Government should ensure that there is a mechanism to guarantee independent reporting of progress and value for money, no matter what delivery vehicle takes the place of Metronet's PPP Agreements. (Paragraph 59)

The Government recognises the value that the independent reporting of the Arbiter has brought to the PPP contracts, and this will continue for Tube Lines. No decision has been taken on the long-term arrangements for the Metronet contracts. The Secretary of State's present intention, as set out in the Memorandum of Understanding[10] with Transport for London, is that the role of the PPP Arbiter should continue upon any transfer of the Metronet contracts to Transport for London nominee companies, and that it also remains for the permanent structure. Whatever the new structure of Metronet, the Government considers it should be subject to at least the same level of scrutiny, transparency and reporting as Tube Lines.

THE PERFORMANCE OF LONDON UNDERGROUND

13. A contractual arrangement which fails to incentivise efficiency in the private sector and at the same time fails to deter poor planning, lack of forethought and goldplating in the public sector is one which is pretty much useless. Metronet alleges that part of its overspend is a consequence of decisions by London Underground, such as changes to the specification of ongoing works. We recommend that in the future the Arbiter, alongside reporting the performance of the Infracos, reports the effectiveness of London Underground as client during the modernisation of the Tube network. (Paragraph 63)

Responsibility for London Underground rests with Transport for London and the Mayor of London under the Greater London Authority Act 1999. London Underground, through the Mayor, must be accountable to London voters in the first instance, and to their own audit and accountability processes to ensure that value for money is achieved on the money spent. Under the terms of the funding provided to Transport for London, they remain accountable to the Secretary of State for Transport and Parliament

It may be possible under the existing legislation and the PPP framework for the Arbiter to report on the performance of London Underground in relation to the PPP agreement, if that is what the parties sought and where the Arbiter concludes that such reporting is consistent with the duty placed on him by section 231 of the Greater London Authority Act 1999. For example, this could be valid if it could be demonstrated that it was beneficial in helping the PPP contracts to run more efficiently and economically.

The Government disagrees with the proposal that the Arbiter should report more generally on the effectiveness of London Underground within the modernisation of the network outside the PPP regime.

THE EXTRAORDINARY REVIEW

14. As with the annual report, there is evidence that had the Extraordinary Review been initiated at an earlier stage, it might have mitigated the worst effects of Metronet's failure. We recommend that, for future PPP Agreements, the Government extend the power to trigger an Extraordinary Review to both contract parties, rather than only the Infracos. Such a change could reduce the possibility that an overspend would be allowed to get as far out of control as it did in the case of Metronet. (Paragraph 66)

This is an issue that will be examined in the development of the long-term structure.

The Government recognises that in the case of Metronet the contractual mechanisms regarding the Extraordinary Review did not work as well as intended. For Metronet the materiality threshold had clearly been breached but this was not acted upon, and the Government agrees that an earlier commencement would have had benefits, but that it may not have been sufficient to avoid Metronet's eventual PPP administration.

There are certain advantages in the proposal to have reciprocal arrangements to call an Extraordinary Review in any future contractual arrangements. This includes the option of preventing one party having the right to waive an Extraordinary Review when the materiality threshold has been breached.

15. The uncontrolled spiral of cost overruns, without any assessment being made of its causes or of the respective liabilities of the parties to the contract, must never be allowed to happen again. A mechanism similar to that which is built into the Tube Lines contract to ensure an early examination of any cost increases should be included as a matter of course in any future contracts. (Paragraph 69)

The Tube Lines PPP contract includes provision that enables them to seek a direction from the Arbiter when they have exceeded each £50 million stage within their materiality threshold of £200 million, during the first period of the PPP contract up to 2010. This enables the Arbiter to asses whether their cost overruns within the PPP contract have been efficient and economic. This should provide a very clear signal of whether Tube Lines is exceeding its projected costs, and whether it is doing so in an efficient and economic way. After 2010 the Tube Lines materiality threshold drops to £50 million, the same as Metronet in Period 1,

therefore it will be important that London Underground and the PPP Arbiter are provided with sufficiently detailed information to understand any movement in Tube Lines' costs.

Clearly the materiality threshold mechanism has potential benefits, and where appropriate the Government will consider including suitable provisions in other contracts. But each contract needs to be assessed separately and will be subject to its own negotiations. As explained earlier, it would be inappropriate for this type of provision to be routinely included in every Government contract.

While it is sensible for the Government to monitor whether a private sector company is performing efficiently and economically within their public sector contracts, the primary responsibility for this duty must continue to remain with the Company's own board, shareholders and funders.

COSTS TO THE PUBLIC

16. We recommend that the Government, as a matter of urgency, make a full assessment of the additional costs that have been incurred as a result of the failure of Metronet— including the cost of work that has been inefficiently undertaken and the cost of administration. The Secretary of State should then come to the House to make a statement on what proportion of these costs are to be met by central Government and what proportion she expects residents of London and Tube passengers to pay.

The Government should also consider its contribution to efficient increases in costs as a result of the unknown condition of the infrastructure, in order that London Underground is not forced significantly to reduce the scope of the upgrade programme during the second Review Period from 2010. (Paragraph 79)

The Government announced to Parliament on 6 February the settlement for Transport for London under the Comprehensive Spending Review 2007. This recognised that Transport for London would need to manage the costs of Metronet in administration and the PPP contracts up to 2017/18, subject to certain conditions as outlined in the Settlement Letter[11] and Memorandum of Understanding. This settlement underlines the Government's commitment to deliver the transport investment central to our continued growth and prosperity.

The Comprehensive Spending Review 2007 settlement included provision regarding the 'Put Option' that was exercised by Metronet's lenders on 5 February 2008. This related to borrowing by the Metronet companies to finance work that had already been undertaken on the maintenance and renewal of the Underground network under the PPP contracts. The Government made £1.7 billion available to Transport for London for it to satisfy the terms of the Put Option. But this was not 'new' money, nor was it a new cost to the taxpayer and it was already reflected in planned public spending. A helpful analogy is to say that this scenario is not dissimilar to someone paying off their mortgage early.

The extent to which Metronet's delivery had slipped behind their spending, and therefore the scale of any long-term costs, will only become clear when London Underground and

Transport for London have been able to review the position that Metronet reached in its works programme, up to its PPP administration on 18 July 2007. As part of the Steering Group's assessment of future structures for the Metronet contracts it is important that we analyse what factors contributed to Metronet's failure. But as Tim O'Toole emphasised in his evidence, there is limited value in over-analysing Metronet's past performance. Our main concern is now learning the lessons from Metronet's failure and moving forward to deliver a structure that provides the necessary improvements for the London Underground in an efficient and economic manner.

It is worth noting that not all of the costs of Metronet's failure will fall on the public purse. Three of Metronet's shareholding companies (Atkins,[12] Bombardier[13] & Balfour Beatty[14]) have already written off £302 million due to the failure of Metronet. We understand that the two remaining shareholders, Thames Water and EDF Energy, have not made any announcements but they are also believed to have written off their equity stakes.

At the start of the PPP contracts, London Underground's asset knowledge was not complete, and future costs could not be properly predicted. The PPP contracts require that all assets whose condition is unknown are surveyed during the first period, however 25 per cent of civil assets are still to be surveyed. Thus the true cost of any required work will not be fully understood until the Periodic Review is completed.

The future structure for the Underground will be based on the most efficient and economic way of delivering the works required by London Underground within its funding constraints. Government has already indicated how much grant it intends to provide Transport for London to 2017/18, subject to certain provisions on further future costs. It is then for Transport for London to allocate this money between modes such as the Underground, Buses, Overground and to deliver Crossrail. Additional funding that is provided by fare revenue, its own prudential borrowing and local taxation is a matter for Transport for London and the Mayor, and not central Government. The Comprehensive Spending Review 2007 settlement gives Transport for London the financial framework needed to manage Metronet's administration, move toward a more stable long-term footing and continue the work to maintain, renew and upgrade the Underground.

17. We hope that, in its discussions with Transport for London as to the future of Metronet's PPP Agreements, the Government makes full use of the Arbiter's analysis for the partial Extraordinary Review of Metronet BCV and for a potential Extraordinary Review of Metronet SSL, and that his insights are utilised to minimise the chance that further unexpected and wasteful costs to the public purse might be incurred. (Paragraph 82)

The Arbiter has already contributed to the Steering Group's work regarding the future structure for the Underground, and in accordance with the Memorandum of Understanding his views will continue to be solicited as its work progresses. As an independent party, his analysis is a valuable contribution to the work of the Steering Group, and ensures that the scru-

tiny of Metronet within his Annual Report 2006 and Extraordinary Review of Metronet BCV[15] are fully utilised.

EMPLOYEE SAFETY

18. To maintain the highest standards of safety for employees in the longer-term, the Government must work with Transport for London and the unions to identify existing communication deficiencies and ensure that the future structure of the contracts does not contain inherent safety weaknesses. Where it is necessary for employees of different organisations to work together, the utmost effort must be made to ensure the clarity of procedures for reporting safety concerns. (Paragraph 87)

The implementation of this recommendation is a matter for London Underground and the PPP Companies, but employee safety is always a top priority for all stakeholders in the Underground.

The Office of Rail Regulation (ORR) is responsible for enforcing health and safety legislation on London Underground. ORR already undertakes work that looks at the safety of contractors on the Underground, including the arrangements for mutual co-operation, by carrying out inspections and investigations and providing advice and guidance on health and safety related matters.

The Government will continue to encourage those organisations with direct responsibility for employee safety to ensure that the highest standards are applied to the network, including the procedures for reporting safety issues. This will remain so in any future arrangements for the Underground. The Committee will have noted the supplementary evidence provided by Tube Lines that indicated that their employees were four times less likely to suffer an injury in their workplace than they were at the time of Transfer. This is backed up by Tube Lines' own surveys that state that in 2005 92 per cent of employees felt safe in their jobs (increased to 95 per cent in the 2007 survey) and 86 per cent felt that health and safety is a top priority within the company (increased to 90 per cent in the 2007 survey).[16]

PASSENGER SAFETY

19. During the transition of Metronet's ownership from its shareholders to Transport for London and for the duration of Transport for London's stewardship of the Infracos, as well as in the longer-term under whatever vehicle is chosen to deliver the upgrades, passenger safety must be the primary concern of everyone who is involved.

A key role for the Government in its discussions with the Mayor and Transport for London will be to ensure that future contracts incentivise the actions that are necessary to guarantee the highest standards of safety on the network. (Paragraph 92)

Passenger safety is of paramount importance to all stakeholders in the Underground. London Underground retains overall responsibility for passenger safety on the network and ORR regulates health and safety on the Underground. As part of its role, ORR is carrying

out additional monitoring of safety during the transition period for the Metronet PPP companies and will investigate and take appropriate action if there is any evidence to suggest deteriorating performance.

The current PPP contracts already incentivise the PPP companies to improve safety. It is a legal requirement that London Underground has appropriate safety management systems and procedures in place to ensure staff and customer safety, and that these have been accepted by ORR. Under the PPP arrangements London Underground monitors the PPP companies' safety performance, audits their compliance with their own contractual safety cases and London Underground's own standards, and agrees an annual Safety Improvement Programme.

The Underground is a very safe mode of transport and its safety record compares favourably with other Metro systems of a similar age, particularly in key areas such as derailments, collisions and platform-train interfaces.[17] Customer injuries average 1½ persons per 10 million journeys, and the majority of fatalities on the network are due to trespass or suspected suicides,[18] rather than equipment or systems failures. The future arrangements for the Underground will continue to build on this safety record.

CONCLUSION

20. The Government should bear the Metronet debacle in mind if and when its parent companies—Atkins, Balfour Beatty, Bombardier, EDF Energy, and Thames Water—next come to bid for publicly-funded work. (Paragraph 95)

The letting of government contracts is subject to procurement law requirements. Within these constraints one of the issues that the Department will continue to consider is the relevant experience of all potential bidders, appropriate to the particular requirement at the time.

21. The Government should remember the failure of Metronet before it considers entering into any similar arrangement again. It should remember that the private sector will never wittingly expose itself to substantial risk without ensuring that it is proportionally, if not generously rewarded. Ultimately, the taxpayer pays the price. (Paragraph 96)

There are clearly lessons to be learnt by all parties, including the Government, from the collapse of Metronet and its PPP administration. The Government is determined to learn these lessons and they will be considered by the Steering Group and, where appropriate, taken forward in the new structure for the Underground. But the primary cause of Metronet's demise was its failure to operate efficiently and economically. This was borne out by the independent PPP Arbiter's Annual Report into Metronet in the Autumn of 2006, and was noted in both the Arbiter's and others evidence to the Committee. The Metronet failure was primarily the responsibility of that company and its shareholders, rather than the structure of the PPP. Tube Lines' performance to date is evidence of private sector innovation and efficiency.

22. If the Government is again tempted by a seemingly good deal from the private sector, it should recall Metronet's pathetic under-delivery and the deficiencies in the contracts that allowed it to happen. We recommend that the Government publishes a candid analysis of the events preceding Metronet's collapse and its consequences, both in terms of increased costs to the public and delays to the work programme. (Paragraph 97)

The Government is not a party to the PPP contracts and does not have access to all the relevant and detailed information that such an analysis would require. A number of organisations have also announced their intention to produce reports or already published them into the failure of Metronet. This includes the Committee's report, the PPP Arbiter (with his Annual Report 2006 and other documents relating to the Metronet Extraordinary Review) and the National Audit Office. Together these will provide a full and wide ranging analysis of the collapse of Metronet. The Government does not believe that another report would add any value to this process.

23. Whether or not the Metronet failure was primarily the fault of the particular companies involved, we are inclined to the view that the model itself was flawed and probably inferior to traditional public-sector management. We can be more confident in this conclusion now that the potential for inefficiency and failure in the private sector has been so clearly demonstrated. In comparison, whatever the potential inefficiencies of the public sector, proper public scrutiny and the opportunity of meaningful control is likely to provide superior value for money. Crucially, it also offers protection from catastrophic failure. It is worth remembering that when private companies fail to deliver on large public projects they can walk away—the taxpayer is inevitably forced to pick up the pieces. (Paragraph 98)

The Government is fully aware that the involvement of the private sector cannot always guarantee success, nor that they will always deliver innovation, efficiency and economy. However there are also many examples when the public sector management of major projects has also been unsuccessful.

It is clear that there is no single procurement model or formula for success in delivering major and complex projects, and the appropriate structure must be adopted in each case. In particular circumstances it is more appropriate that private companies manage projects and provide services, rather than the public sector. As noted by the PPP Arbiter's evidence, the private sector can successfully deliver projects when there are clear outcomes specified in the contract and the company is given such flexibility to what approach it should take to deliver those outcomes. As the Committee notes, Tube Lines so far has had success working to the same contract that was applied to Metronet, though with different materiality thresholds.

24. Finally, now that the Government is considering the future of the Underground upgrade programme, it should prioritise transparency and clarity to taxpayers and ensure that any future contracts result in clear accountability to national or regional

Government, thereby providing the public with the opportunity of applying sanctions in the event of poor performance. (Paragraph 99)

The Government is working closely with the Mayor and Transport for London to establish the appropriate long-term structure to deliver the essential maintenance and enhancement of the Underground, and the Steering Group will be reporting in the Summer 2008.

The Central and Jubilee line projects taught us that previously London Underground in the 1990s did not have the in house capacity to deliver major enhancements efficiently or effectively. The Metronet experience is a reminder that effective corporate governance is not inherent in private sector companies.

Looking forward, the best value for the taxpayer is likely to continue to come from tasking organisations with what they are best at, within effective governance regimes and with appropriate incentives. It would be wrong to assume that the only option will be to adopt the old, wholly public sector approach and not consider all the relevant alternatives.

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7. Gabriela Moser[9]: PPP – eine Grüne „Kosten-Nutzen-Analyse“

7.1 PPP – Traum und Wirklichkeit

Gemessen am seit Jahren von tüchtigen Lobbyisten in Gang gehalten Rauschen im Blätterwald und an den vollmundigen Konzeptionen und Zielsetzungen etwa auf EU-Ebene wurden in Österreich bisher erstaunlich wenige PPP-Projekte im Bereich Infrastruktur realisiert. Das unterscheidet Österreich von Großbritannien mit seiner durch die „Public Finance Initiative“ stimulierten PPP-Tradition und von einzelnen anderen europäischen Staaten, überwiegend solchen mit nachholender Wirtschaftsentwicklung, im Westen wie im Osten.

Nun hat Österreich natürlich eine andere Tradition in der Wertschätzung von Obrigkeiten im Allgemeinheiten und im Vertrauen in die Fähigkeiten des Staates im Besonderen, als dies etwa in der angelsächsischen Welt und nach 1989 auch in Mittelosteuropa der Fall ist. Zugleich haben aber Auslagerungs- und Ausgliederungsstrategien im Sinne des New Public Management und generell zunehmender Marktorientierung in allen Lebensbereichen sehr wohl landauf landab in vielen Segmenten ehemals rein öffentlichen Wirtschaftens Konjunktur. Und unter der „Fuchtel“ von Maastricht haben viele öffentliche Hände sich auch unkonventionellen Geschäftsbeziehungen wie Cross Border Leasing und eben auch PPP-Projekten geöffnet. Nicht immer wurde dabei – wie von den Grünen anhand von CBL- ebenso wie von PPP-Projekten wiederholt aufgezeigt – der unbefangenen Analyse von Risken und der Absicherung gegen diese der nötige Raum gegeben, von demokratiepolitisch angemessenen Standards von Transparenz und Kontrolle ganz zu schweigen. Wenn ExpertInnen der Interessenvertretung der ArbeitnehmerInnen eine sorgfältige Bewertung aller wirtschaftlichen und politischen Folgen statt kritikloser Begeisterung einmahnen, so ist dies also auch aus Grüner Sicht höchst gerechtfertigt und zu unterstreichen.

Für eine seit vielen Jahren mit den nachteiligen Begleiterscheinungen und Folgen der großzügigen Ausstattung unseres Landes mit Verkehrsinfrastruktur konfrontierte Politikerin ist es dabei besonders lohnend, die euphorische Diskussion mit finanziellen Heilsversprechen und spärlich aufzufindenden realen Belegen dafür näher unter die Lupe zu nehmen. Schließlich wird ein aus Grüner Sicht sinnloses oder entbehrliches Infrastrukturprojekt durch kreative Finanzierung allein um kein Jota sinnvoller.

Das Resümee der Grünen: PPP wurde und wird vielfach als Zauberformel für die Lösung von Finanzierungsproblemen und teilweise auch anderen Problemen missverstanden. Der

[9] Gabriela Moser, Abgeordnete zum Nationalrat, Grüne Wien

Erste Hauptsatz der PPP-Lehre lautet jedoch: Private Investoren verlangen einen Preis für ihre Bereitschaft, Risiko zu übernehmen!

Und manchmal ist PPP&Co noch weniger als eine Zauberformel – nämlich ein beredter Mantel zeitgeistigen Vokabulars, der politische Überforderung oder Desinteresse verdecken soll - vielleicht auch bei der Nordautobahn und der Umfahrung Wiens, die ja Umweltminister Josef Pröll 2004 öffentlich als „spannende Projekte“ klassifizierte, flankiert von der Einschätzung, dass neue Autobahnen nicht mehr Verkehr erzeugen würden, was inzwischen nicht einmal mehr die hartgesottensten Mainstream-Planer ernsthaft zu behaupten wagen und auch in keinem UVP-Verfahren mehr als Grundlage durchginge.

7.2 Wem PPP wirklich nützt

Ein Blick auf die Genese des ASFINAG-PPP-Projekts im Großraum Wien bzw. Weinviertel verstärkt den Eindruck eines großen Missverständnisses. Unverdrossen wurde von den Projektbefürwortern suggeriert, man müsse die in einem britischen Beispiel erreichten 18% Kosteneinsparungen quasi nur „abholen“. Dabei wurden die zahlreichen internationalen und auch innerstaatlichen Fehlschläge - auf einen besonders krassen in meiner Heimatstadt Linz komme ich noch zurück - insbesondere im Bereich der Verkehrsinfrastruktur totgeschwiegen. Andererseits wurde von den „Erfindern“ dieses PPP-Projekts versucht, mittels dieser aufwendigen neuen Struktur eine neue Baulos-Dimension zu erzwingen und so sozusagen „nach oben“ aus der etablierten bis verfilzten Anbieter- und Preislandschaft im heimischen Hochleistungsstraßenbau zu flüchten, der nicht umsonst Stammgast bei Bundes- und Landesrechnungshöfen ist. Wie „blau“äugig dieser Zugang der 2003-2005 für Anstoß und Umsetzung des ASFINAG-PPP in der Ostregion politisch Verantwortlichen war, zeigte sich spätestens im Vergabeverfahren, bei dem in guter rotweißroter Straßenbautradition einiges nicht mit rechten Dingen und auch nicht ohne Unvereinbarkeiten abging. Mittlerweile hat die ASFINAG ihre Strategie wieder radikal geändert und setzt auf Einsparungen durch mehr Wettbewerb im Wege kleiner, auch für mittelständische Anbieter bewältigbarer Baulose.

Warum dennoch immer wieder weder Mühen noch Kosten gescheut werden, läßt sich wohl mit einem Blick auf die wahren PPP-Nutznießer erkennen: Es sind nicht die Auto- oder Bahnfahrer, denen bessere oder früher fertiggestellte Verkehrswege versprochen werden, und es ist auch nicht der Staat, dessen Unter-dem-Strich-Einsparungen über die Lebenszeit kaum seriös bezifferbar sind.

Auf der sicheren Seite der Kosten-Nutzen-Frage finden sich ganz andere Player:

Eine parlamentarische Anfrage der Grünen brachte bereits im Herbst 2006 zutage, dass bis dahin alleine die ASFINAG nicht weniger als 12 Mio Euro in Beratungsleistungen zum PPP-Projekt verpulvert hatte, wobei die, Zitat, „umfangreichen Voruntersuchungen durch das BMVIT“, die ebenfalls fürstliche Summen verschlangen, noch ebensowenig wie die aufwendige Begleitung der turbulenten Vergabe-Schlußphase berücksichtigt waren!

Darüber hinaus wiegt bei typischen hochrangigen Straßenbauprojekten mit langfristiger Schuldenfinanzierung über die Lebenszeit gerechnet generell der Anteil der Finanzierungskosten denjenigen der Bau-/Errichtungskosten auf. Eine offizielle Anfragebeantwortung im Vorarlberger Landtag nennt gar ein Verhältnis von 60:40. Anders gesagt kommen auf jede Million, die in Baumaßnahmen fließt, eine Million (oder mehr), die für die Finanzierung incl. Schuldenbedienung an die nationalen und internationalen Großbanken incl. Spezial-Konsulenten fließen.

Dazu kommen für Banken noch ganz andere Vorteile aus der mit PPP-Projekten verbundenen langfristigen, für die privaten Partner weitgehend risikofreien Geschäftsbeziehung mit der Öffentlichen Hand: Auf diesem Weg sind „ums Eck“ erstklassige Bonitätseinstufungen („Ratings") erzielbar, die den Banken wertvolle Zinsvorteile bei der Refinanzierung am internationalen Kapitalmarkt bringen. Es soll „bei uns in Bagdad“ schon vorgekommen sein, dass bestimmte PPP-Projekte überhaupt nur aus diesem Grund ventiliert wurden - wie zB beim geplanten Pyhrn- bzw. Summerauerbahn-PPP, an dem primär eine oberösterreichischen Bank aus dem ÖVP-Umkreis aufgrund dringend benötigter Bonitätsverbesserungen heftig interessiert war.

Erwähnt sei noch eine nicht untypische Konstellation aus einem anderen Infrastruktur-Bereich: Im Dunstkreis des als PPP klassifizierten Projekts „Digitalfunk BOS Austria“ kamen gleich mehrere im BMI zuvor mit der Projektentwicklung befasste Kabinetts- und sonstige Mitarbeiter zu gutdotierten Führungspositionen bei involvierten Betreiber- und Zulieferfirmen.

7.3 Pro und contra

Auf viele der Chancen, vor allem aber der Risken von PPP im Infrastrukturbereich wurde in Rechnungshofberichten, Studien (zB WIFO 2004, 17&4 2005) bereits wiederholt nachdrücklich hingewiesen.

Beworben werden PPP-Projekte im Infrastrukturbereich als strategische Partnerschaften gerne mit folgenden Vorteilen:

- Effizientere Erstellung bisher öffentlich erstellter Leistungen durch Einbeziehung Privater.
- Integration von Planung, Bau, Unterhalt und Betrieb (Lebenszykluskonzept) anstelle separater, desintegrierter Betrachtung einzelner Phasen eines Projektes.
- Risikoverlagerung / partnerschaftliche Risikotragung.
- Nutzung von Beschleunigungspotentialen.
- Möglichkeit der Anwendung unterschiedlicher Zahlungsmechanismen zum Erreichen unterschiedlicher politischer Ziele.

Dem stehen allerdings auch beträchtliche Risken gegenüber, die im übrigen vielfach nicht erst bei den PPP-Projekten der Gegenwart auftreten, sondern sich auch in der wechselvollen, unter anderem in der WIFO-Arbeit aus 2004 zusammengefassten Geschichte der mehrfach privatisierten und wiederverstaatlichten Bahnen in Österreich widerspiegeln:

- Öffentliche Hand konzentriert Aufmerksamkeit primär auf rechtliche Absicherung von PPP und nur sekundär auf Festlegung und Kontrolle quantifizierbarer Ziele.
- PPP als komplexe und intransparente Konstrukte in Form vielschichtiger und nur von (teuren) SpezialistInnen handhabbarer Vertragsverbünde.
- Langfristige vertragliche Bindung führt tendenziell zu Monopolstellung des Privaten.
- Private haben geringere Bonität und Gewinnabsicht, was Projekte ökonomisch aufwendiger macht: Da der Staat bzw. ein 100%-Staatsunternehmen sich jedenfalls unschlagbar günstig finanzieren kann, müssen andere Partner, die diese Vorteile nicht oder nur über kostenverursachende Umwege erzielen können, sozusagen „doppelte Effizienzgewinne“ bringen, um diesen Startnachteil wettzumachen und unter dem Strich Vorteile zu bieten. Unrentable Aufgaben bleiben von vornherein bei der öffentlichen Hand und werden dort akkumuliert.
- Privatisierung der Gewinnchance bei gleichzeitiger Sozialisierung eines Misserfolgs (Bsp. PPP-Ostregion – via Verkehrsmengenrisiko bleibt Mautrisiko letztlich beim Konzessionsgeber, d.h. wenn weniger Verkehr als prognostiziert, dann muss aus der Gesamtheit der bundesweiten ASFINAG-Einnahmen in Richtung Konzessionsnehmer „querfinanziert““ werden. Insgesamt werden selbst bei Eintreffen der Verkehrsprognosen laut BMVIT und BMF nur 30% der Vergütungszahlungen an den Konzessionär aus Mauteinnahmen im Konzessionsnetz selbst bedeckt werden).
- Teilweise dienen PPP dazu, politisch notwendige Entscheidungen darüber, auf welche Maßnahmen aufgrund knapper Mittel verzichtet werden müßte, zu umgehen.
- Vorsicht Lebenszykluskonzept 1: wahrer Lebenszyklus reicht meist über diskutierten Konzessionszeitraum hinaus.
- Vorsicht Lebenszykluskonzept 2: „Unvorhergesehenes“ – zB Straße: Öl- und Treibstoffpreisveränderungen mit Nachfrageveränderungen – findet kaum seriös Berücksichtigung.

In der konkreten Bewertung umgesetzter Projekte gehen die Perspektiven angesichts dieser Vielzahl an Unwägbarkeiten naturgemäß auseinander. Zusammenfassend kann man

aber festhalten, dass PPP-Projekte meist eine langwierige Anfangsphase mit hohen Transaktionskosten wie Vertragserrichtungs-, Controlling- und externen Beratungskosten aufweisen. Somit ist es nur bei sorgfältiger Vorbereitung und Abwägung aller Risiken über den gesamten Lebenszyklus des Projekts – und bei verlässlichem Ausschließen „sonstiger" Risken wie direkte oder indirekte Korruption - überhaupt möglich, dass Vorteile gegenüber rein öffentlichen Projekten erzielt werden. Überzogenen Erwartungen sind daher fehl am Platz. Internationale Erfahrungen belegen, dass Risiko und Kosten tendenziell überproportional beim öffentlichen und Gewinne beim privaten Teil des PPP bleiben.

7.4 Die Premiere: UF Ebelsberg und ihre langen Schatten

Abschließend sei nochmals ein kurzer Rückblick in die PPP-Frühzeit im heimischen Straßenbau unternommen: Die „Umfahrung Ebelsberg" in Linz, eine gut 5 km lange Straße, die von 1997 bis 2000 errichtet wurde, war das erste PPP-Projekt „nach reiner Lehre" in Österreich. Aus der Einladung der Stadt an vier Banken, maastricht-konforme Vorschläge für den Bau zu unterbreiten, ging ein intensiver Beratungsprozess durch eine in Linz ansässige Bank hervor, die ein Modell mit einer vorsteuerabzugsfähigen Errichtungs- und Finanzierungsgesellschaft vorschlug. Die nämliche Bank ging aus der daraufhin erfolgten Ausschreibung des Projekts, mit einer eigens maßgeschneidert gegründeten Tochter und selbst ausgearbeiteten Vertragsdetails als Sieger hervor. So weit, so unkonventionell – aber es wurde auch noch das Risiko völlig einseitig der Stadt Linz bzw. dem durch Förderzusagen mit eingebundenen Land Oberösterreich überwälzt, das Baukostenrisiko (Gesamt-Umsetzungsdauer: 3 Jahre) und Betriebskostenrisiko (nur 15 Jahre Laufzeit) der Bank bzw. ihrer Tochter existierten nur auf dem Papier. Noch dazu erfolgte die Darlehensaufnahme durch die Errichtungsgesellschaft bei ihrer Mutter-Bank zu marktüblichen Konditionen, also teurer als mit den Finanzierungskonditionen des öffentlichen Sektors. Nicht einmal der Vorsteuerabzug brachte gesamtwirtschaftlich gesehen Ersparnisse, da die Mehrwertsteuer ja nur von einer Gebietskörperschaft (Stadt) zu einer anderen (Bund) umverteilt wurde.

Dass das Projekt auch verkehrsfachlich fragwürdig war, vervollständigt nur das Bild – es handelte sich um kein irgendwie prioritäres, sondern um ein für die Absichten der Bank besonders geeignetes Projekt, das noch dazu schlecht mit dem Bestand an höherrangigen Straßen verknüpft wurde.

Der OÖ Landesrechnungshof und die politische Opposition kritisierte die skizzierten Schieflagen und die rechtswidrige Vergabe scharf – die Stadt Linz rechtfertigte sich hier damit, dass es sich nur um eine Grundstückstransaktion gehandelt hätte und man daher von der Nichtanwendbarkeit des Vergaberechts ausgegangen sei und andere Bieter sozusagen nur freiwillig einbezogen habe, um nicht von dieser im Wege des Kaufs der benötigten Grundstücke in einer echten Monopol-Situation dazu gezwungen zu werden. Also faktisch eine stolpernde Flucht nach vorne aus einem selbst geschaffenen Hinterhalt. Wenig überraschend führte dieses krause Projekt bzw. das Vergabe-Gemurkse zu einem EU-

Vertragsverletzungsverfahren gegen die Republik. Scheinbar waren aber alle Beteiligten bis nach Brüssel erpicht darauf, dieses eigentlich als Türöffner in die schöne neue PPP-Welt gedachte Projekt nicht in einem völligen Fiasko enden zu lassen. Anders ist nicht erklärlich, dass es keine Verurteilung setzte, sondern das Verfahren ruhend gestellt wurde, da Stadt Linz, Republik Österreich und EU- Kommission "davon ausgingen, dass es sich im gegenständlichen Fall um einen Bauauftrag handelt, der entsprechend den europäischen Vergaberichtlinien zu vergeben gewesen wäre".

Ein glasklarer Kuhhandel, der den bis Brüssel blamierten PPP-Projektpartnern die Gesichtswahrung ermöglichte, stand somit am Anfang der PPP-Geschichte in Österreichs Infrastrukturpolitik. Aus Grüner Sicht ein Zeichen, das allen unverbesserlichen PPP-EuphorikerInnen als Warnung dienen sollte.

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8. Werner Rügemer[10]: Public Private Partnership – eine profitable Mogelpackung

Der Begriff „Public Private Partnership“ (PPP) entstand während der „New Deal“-Reformphase in den USA. Damit waren staatlich finanzierte Investitionsprogramme gemeint. Das heutige PPP-Konzept hat damit im Wesen nichts zu tun, sondern ist geprägt von Merkmalen des antireformerischen, neoliberalen Wirtschaftstyps. Dieser ist aber bekanntlich sehr bemüht, für seine Praktiken progressiv klingende, harmlose Bezeichnungen zu verwenden – etwa die ausufernde und mißbräuchliche Verwendung des Begriffs „Reform“ selbst.

Entstehung und Merkmale des Konzepts

Das gegenwärtig vorherrschende PPP-Konzept entstand Ende der 90er Jahre des vergangenen Jahrhhunderts in Großbritannien. Nach den desaströsen Ergebnissen der Privatisierungen, die unter den Tory-Regierungen von Margaret Thatcher und John Mayor durchgeführt wurden (Bahn, Wasser u.ä.), entwickelte „New Labour“ unter Tony Blair mit Finanzakteuren der City of London (Wirtschaftsprüfer, Investmentbanken, Unternehmensberater) ein „Alternativkonzept“. Es entstand aus der Private Finance Initiative (PFI) und erhielt schließlich den Namen PPP. Im Unterschied zum rigorosen Ausverkauf à la Thatcher wurden nun öffentliche Güter nicht mehr verkauft. Vielmehr sollte zwischen öffentlicher Hand und privaten Investoren eine Partnerschaft aufgebaut werden.

Die wesentlichen Merkmale von PPP, soweit sie öffentlich dargestellt werden, sind folgende: Die öffentliche Hand schließt mit privaten Investoren bzw. Konsortien Miet- und Betreiberverträge, die in der Regel eine Laufzeit von 30 Jahren haben. Gegenstand sind der Bau, die Finanzierung und das Betreiben von Gebäuden und Anlagen mit öffentlicher Zweckbestimmung: Schulen, Rathäuser, Krankenhäuser, Gesundheitszentren, U-Bahnen, Straßen, Autobahnen, Brücken, Tunnels, Gefängnisse, Finanzämter, Ministerien, Freizeitanlagen usw. Es handelt sich um eine Art „Rundum-sorglos-Paket“, denn im Unterschied zur traditionellen Erledigung übernimmt der Investor auch die Finanzierung und das Betreiben (Instandhaltung, Reparaturen, Überwachung, Sicherheit...).

Als Begründung wird vorgebracht, dass erstens die verschuldete öffentliche Hand keine Kredite aufzunehmen braucht. Zweitens werde durch die Übernahme aller wichtigen Tätigkeiten durch den Investor über den gesamten „Lebenszyklus“ ein Synergieeffekt erreicht,

[10] Werner Rügemer, Publizist, Deutschland

sodaß die Leistung billiger erbracht werden kann als bei traditioneller Erledigung. Die Angaben zum wirtschaftlichen Vorteil bei PPP bewegen sich zwischen etwa 8 und 25 Prozent.

Nachdem in Großbritannien inzwischen etwa 700 PPP-Projekte angelaufen sind, hat auch die Europäische Union das Modell übernommen. In der Europäischen Investitionsbank (EIB) wurde eine „task force PPP“ eingerichtet, die EIB fördert durch günstige Kredite PPP-Projekte nicht nur in den EU-Mitgliedsstaaten, sondern auch weltweit, wenn dadurch europäische Investoren zum Zuge kommen. Die EU betrachtet PPP auch als ein Instrument zur Einhaltung der „Maastricht-Kriterien“, weil die Staaten dabei zumindest nominell und haushaltstechnisch nicht ihre Verschuldung erhöhen.

Transaktionskosten und Kollateralschäden

Was der Öffentlichkeit, auch den gewählten Abgeordneten in den Parlamenten nicht klar gemacht wird, ist die Tatsache, dass es sich bei PPP um eine „strukturierte Finanzierung“ handelt. Eine solche zeichnet sich durch hohe Komplexität aus. Deshalb sind die Vertragswerke kompliziert und umfangreich. Zum einen wird für jedes PPP-Projekt eine eigene Projektgesellschaft gegründet. In der Regel tut sich ein Bau- oder Dienstleistungsunternehmen mit einem Finanzakteur zusammen, oft wird ein Konsortium aus mehreren Unternehmen gebildet. Dieser Investor wiederum beauftragt zahlreiche Subunternehmer.

Zur strukturierten Finanzierung gehört zum andern etwa die Gründung eines offenen oder geschlossenen Fonds, in den Anleger einzahlen. Die Anleger zahlen aber, um einen möglichst großen „Hebeleffekt“ zu erzielen, nur ein geringes Eigenkapital ein. Sie nehmen Kredite auf. Ihr Gewinn besteht zum einen aus der Ausschüttung des Fonds, zum andern aus der Verlustzuweisung, die sie steuerlich geltend machen können. Um dies optimal zu gestalten, werden Steuerberater und Vermögensverwalter hinzugezogen. So kommen durch Provisionen an zahlreiche beteiligte Akteure hohe Transaktionskosten zustande, die zwischen 25 und 40 Prozent der Gesamtkosten betragen.

Zur strukturierten Finanzierung gehört weiter der Forderungsverkauf. Er nimmt meist die Form der „Forfaitierung mit Einredeverzicht“ an. Der Investor verkauft die Forderungen aus den langlaufenden Verträgen an eine Bank. Die Zahlungsverpflichtung der öffentlichen Hand gehen damit vom Investor an die Bank über. Diese macht in der Regel zur Bedingung, dass die öffentliche Hand auf wesentliche Rechte als Mieter verzichtet, etwa auf das Recht auf Mietminderung bei Schlecht- und Minderleistung des Investors. Die Bank wiederum hat das Recht – wie es auch bei den Hypotheken- und anderen Krediten seit einiger Zeit der Fall ist-, die Forderungen an andere Finanzinstitute weiter zu verkaufen. Da der Investor somit bereits zu Beginn über die gesamten Mieten verfügt, sinkt sein Anreiz, die vertraglich vereinbarten Leistungen pünktlich und vollständig und in hoher Qualität zu erbringen. Die öffentliche Hand muß erst einmal zahlen und kann nur nachträglich, nicht selten erst unter Einschaltung von Anwälten und des Rechtsweges, vom Investor die Erfüllung seiner vertraglichen Pflichten einfordern.

Da PPP-Projekte zugleich Steuersparprojekte sind, handelt sich der Gesamtstaat mit jedem Projekt einen jahrzehntelangen Steuerverlust ein. Er ist wesentlich höher als der wirtschaftliche Vorteil, der durch PPP erreicht werden soll.

Der PPP-Markt in Europa wird von wenigen großen Investoren beherrscht – Serco, Royal BAM Group, Hochtief, Bilfinger Berger, SKE/Vinci und die mit ihnen jeweils verbundenen Finanzakteure sind die wichtigsten. Da bei PPP die öffentliche Hand nur mit dem Investor als Generalunternehmer eine Vertragsbeziehung hat und die Aufträge an die Subunternehmer nicht ausgeschrieben werden, bringt der Investor seine eigenen Tochterfirmen und Subunternehmer mit, bei denen in der Regel mit Dumpinglöhnen gearbeitet wird. Dadurch wird der lokale und regionale Mittelstand ausgetrocknet, die volkswirtschaftliche Lohnsumme sinkt.

Da bei PPP der Investor alle wichtigen Tätigkeiten übernimmt, werden die öffentlichen Verwaltungen und Fachämter überflüssig. Die öffentliche Hand baut Arbeitsplätze ab, es gibt mehr Arbeitslose. Ebenso verliert die öffentliche Hand ihre fachliche Kompetenz und wird immer mehr abhängig von teuren privaten Beratern, die tendenziell auf der Seite der Investoren stehen und in deren Interesse beraten.

Verteuerung und zusätzliche Verschuldung

Entgegen dem Versprechen, PPP zeichne sich durch einen Festpreis aus und führe zu Planungssicherheit für die öffentliche Hand, wird der theoretische Festpreis in der Regel schon nach wenigen Jahren überschritten. Dies ist durchaus vertragskonform. Das bisher bekannteste und größte Beispiel dafür ist die Londoner U-Bahn. Bereits nach drei Jahren ging der Investor Metronet – ein Konsortium aus renommierten, international tätigen Unternehmen – in die Insolvenz. Die Nachforderungen an die öffentliche Hand überschreiten bereits kurz nach Beginn des bis zum Jahre 2035 laufenden Sanierungs- und Betreibervertrags die Milliardengrenze. Die Investoren mussten nicht haften und zogen sich sanktionslos zurück, die Stadt London und die Regierung mußten die Verbindlichkeiten übernehmen.

Der Grund für die vertragskonformen Überschreitungen des „an sich“ zugesagten Festpreises besteht in den Anpassungsklauseln. Sie gelten für alle Bereiche – Bauen, Sanieren, Betreiben, Instandhalten. Zudem bestehen zahlreiche Ausnahmetatbestände. Bei Schulgebäuden etwa sind „Vandalismusschäden“ von den vereinbarten Instandhaltungspflichten des Investors ausgeschlossen. Das ist im Prinzip sinnvoll, ist aber unter den Bedingungen der Investoren-Übermacht eine ständige und teure Quelle von Konflikten. Denn was ein „Vandalismusschaden“ ist, ist auch eine Definitionsfrage. Wenn etwa, wie geschehen, der Investor billige Plastik-Türstopper, die er in China für 5 Cent pro Stück gekauft hat, einbaut und diese nach kurzer Zeit zu Bruch gehen, behauptet der Investor bzw. dessen Subunternehmer, es handle sich um einen Vandalismusschaden, obwohl der Bruch zumindest zu einem hohen Anteil auch auf dem billigen Material beruht.

Ein Motor für vertraglich unterwertige Leistung liegt im Prämiensystem. Der Manager der Projektgesellschaft, die vom Investor bzw. dem Investorenkonsortium gegründet wird, er-

hält zu seinem regulären Gehalt Erfolgsprämien. Er erhält sie zum Beispiel dafür, dass er die monatlich gezahlte Instandhaltungs- und Betreiberpauschale nicht ausschöpft. Je weniger er im Interesse des Investors die Pauschale nicht ausschöpft, desto höher ist seine Prämie.

Die bisherigen Erfahrungen zeigen nicht nur, dass PPP-Projekte trotz (oder wegen!) teurer Beratung bereits nach kurzer Zeit dazu tendieren, teurer zu werden als versprochen, sondern dass sie eine verdeckte Kreditaufnahme darstellen. Es besteht zwar der Anfangsvorteil, dass die öffentliche Hand sich zunächst nicht verschuldet, aber die Zahlungsverpflichtung aus einem PPP-Vertrag trägt bei fortschreitender Vertragsdauer zur zusätzlichen Auszehrung des öffentlichen Haushalts bei. Die Interessen der Investoren kommen voll zum Zuge, während die Interessen der öffentlichen Hand untergebügelt werden. Es müsste nicht so sein, aber unter den gegenwärtigen Kräfteverhältnissen handelt es sich bei PPP nicht um eine Partnerschaft, sondern um eine einseitige Bevorteilung der privaten Seite.

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