A Re-examination of the Public-Private-Partnership Discourse: Was PPP the way to Upgrade London Underground's Infrastructure?

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1. INTRODUCTION

Public-Private-Partnerships (PPPs), known as 3Ps in the United States (US) and Canada, were introduced into the United Kingdom (UK) by the Conservative government in their 1992. Since then, PPPs in the UK accounted for over £57bn worth of capital expenditure. The Transport sector, whilst not having signed the most PPP deals, accounted for the largest capital expenditure of all sectors; approximately £12.1bn of which urban transit PPPs has accounted for approximately £7bn. When compared with Europe, US and Canada, the UK has led the way with PPP financing however this model is becoming increasingly more popular in these regions.

The application of an innovative PPP funding policy to upgrade London Underground's was shrouded in controversy since its announcement in the House of Commons by the then Labour government in March 1998. After an extended transaction period that resulted in significant transaction costs, three infrastructure contracts were signed in 2002/3. During the operational period of the PPP significant problems began to emerge between London Underground (LU) and its contractors. Four years into the first review period one consortium that was awarded two infrastructure contracts went into administration; and two years later the other consortium reverted back to the public sector operation. In sum the PPP model expected to deliver £15bn of investment into London Underground's ailing system was abandoned.

The aim of this paper is to examine the lessons that can be learnt from the public sectors contracting authority perspective when applying an innovative PPP model to upgrade LU's infrastructure. This will be achieved by investigating the factors that led to the PPP model being chosen in the first instance; and the series of events that led to its demise with a view to concluding whether it was a failure in the PPP policy or the implementation of the policy.

2. INVESTMENT AND POLITICAL TENSIONS WITH LONDON UNDERGROUND

2.1 Investment Backlog and Budget Uncertainty

Business groups and society acknowledge that for London to be a world-class city it must have an efficient and effective transport system. However, with London Underground (LU) a critical component of London's transport system, this was an unattainable aspiration due to its continual inadequate, erratic and declining government capital grant levels it experienced since the nineties ((NAO, 2004a), (Gannon, 2006, 2010). Under-investment in LU over the years has resulted in a deterioration of the systems assets, degradation of service and rising costs (HCC, 1998). The investment backlog in LU's system was estimated by London Transport (LT), now Transport for London

(TfL), to be £1.2 billion in 1997 (Gannon, 2006). Coupled with the legal inability to borrow funds LU was trapped in an inefficient planning and investment cycle due to annual budget uncertainty by successive Governments since the Second World War (HCC, 1998).

2.2 Politics and Investment

For decades the Conservative and Labour Governments have had politically polarised views on how to solve LU's long-term investment problems. The Conservatives were advocates of privatisation and early 1997 February (pre-election) were considering three models to achieve this end. Whereas Labour, in their 1997 manifesto, rejected the Conservatives proposals and proposed a Public-Private-Partnership (PPP) model. The Labour government won the May 1997 election and consequently LU was destined for a PPP funding model.

3. LABOUR'S PPP FUNDING POLICY DEVELOPMENT

3.1 PPP Policy Objectives and Emergence of the PPP

During mid 1997, a central government working group[1] identified four business structures to meet Government policy objectives. LU were excluded from the study as the working group felt, 'their presence could inhibit a frank exchange' (NAO, 2004a). The four PPP business models evaluated were: public ownership with debt funding; partnership structures (trust or joint venture concession or partial sale of the business or full concession); and operational structures (single business, vertically integrated line business or separation of infrastructure from operations).

The working group's PPP options were governed by three policy objectives: obtaining private sector investment and expertise to modernise the tube; Guaranteeing value for money for the taxpayer and passenger; and Safeguarding the public interest, which include safe operation of the tube (NAO, 2004a). It was concluded that 'a unified horizontal structure with one operator' was the way ahead. Consequently the analysis led to restructuring LU into three infrastructure and one operational entity to provide the best incentives to manage cost and increase revenue, investor interest, limited competition between units, attract investment capital and management (HCC, 1998). Although a single private sector concession was financially more favourable it was rejected on the basis of greater monopoly risks (NAO, 2004a). Other options were ruled out on the basis that allowing LU to borrow on the capital markets was more expensive than to borrow through the National Loan Funds (NLF) and this would subsequently be counted against the Public Sector Borrowing Requirement (PSBR) leaving less funds for funding other public service priorities (Gannon, 2010).

3.2 London Transport's Preferred Option

In parallel with the Labour governments working group, LT conducted their own funding options analysis and submitted their report to Government at the end of September 1997. Their preferred option was to keep LU in the public sector but with higher consistent levels of funding through grant, direct borrowing or revenue hypothecated from other transport sources; the next best option was to privatise LU as a whole but maintain close regulation and supervision (NAO, 2004a). Surprisingly, LT were not given the opportunity to discuss their analysis with Government (HCC, 1998); Peter Ford believed the Government's choice for PPP was for, 'HMT's desire to relinquish almost at any price its responsibilities for the Underground, which it viewed, a huge liability' (HCC, 1998). Consequently some came to an early conclusion that the PPP funding policy was more-or-less 'done-deal' politically.

4. PPP DESIGN, IMPLEMENTATION AND THE TRANSACTION

4.1 Organisational Changes

From April 1998 onwards under the watch of central government plans were developed by LU to further design and implement the PPP. The Secretary of State instructed a major re-organisation, removed LT's Chairman, restructured LT's Board and setup a PPP implementation team (HCC, 1998). Multiple senior managers who had significant commercial and procurement experience gained from the six Private Finance Initiative (PFI) deals departed the organisation. In September 1999 LU was re-organised into four distinct organisations: an Operating company (Opsco) and three Infrastructure companies (BCV Infraco, JNP Infraco and SSL Infraco), see Gannon (2006).

4.2 Procurement, Costs and Timescales

A formal market soundings exercise was conducted by LU, between September and October 1998. Twenty potential suppliers were asked a range on questions in an interview setting all documented on their views of the intended structure of LU's PPP. This information was analysed and used to report to Government, February 1999, on the possible achievement of the PPP; as a result the timetable was revised from April to December 2000 due to market place concerns (NAO, 2004b) and government gave the go-ahead for the procurement to commence. A Periodic Indicative Notice (PIN) was published in March 1999 to inform the private sector of its intentions to deliver LU's PPP. One hundred and fourteen companies expressed an interest in being consulted on proposals for the PPP and were invited to respond.

4.3 Deep Tube Infracos

A negotiated notice was published in the Official Journal of European Community (OJEC) on the 15th July 1999 to inform potential candidates of the project and invite them to register an interest. However this notice advertised a call for competition for two of the three Infracos, as at the end of May 1999 SSL Infraco was removed from the competition. A supplier conference was convened at the start of Pre-qualification, 23rd July 1999, for candidates that expressed an interest to the published OJEC. Six consortiums submitted detailed pre-qualification submissions that underwent evaluation. Five consortiums pre-qualified, for each of the two deep Infracos 4 consortiums for each contract were invited to tender; three consortiums were invited to bid for both Infracos contracts and two consortiums were invited to bid for one infraco each. Consortiums had six months to prepare a priced bid for the project. Submitted bids were assessed by LU's PPP Implementation Team for compliance and evaluated against the bid evaluation criteria contained in the Invitation to Tender (ITT). Two consortiums were shortlisted for each of the deep tube Infracos and they were invited to submit a Best and

Final Offer (BAFO). Three BAFOs for each Infraco were required to be submitted by consortiums. The project was required to be de-scoped as the first two bids were unaffordable and as a consequence resulted in the procurement process being delayed by 5 months (NAO, 2004a).

4.4 Delayed Sub-Surface Infraco

Late May 1999 discussions with Railtrack (now Network Rail) commenced on the basis of a single bidder privileged status for the exclusive rights to negotiate for the SSL infraco in a three part package: to enhance and maintain infrastructure and rolling stock, to integrate the Circle Line with the Great Western main line at Paddington and to integrate the East London line with main lines. The Ladbroke Grove train crash in October 1999 and the issues surrounding privatised railways had an adverse impact on exclusive negotiations as did the likely cost of works and extensive timescales to implement; this meant that it was not possible to proceed and discussions consequently collapsed in November 1999. As a result SSL was returned to the PPP transaction in December 1999, five months behind the deep tube procurement. Four consortiums pre-qualified for SSL and were invited to tender. TubeRail withdrew from the SSL bidding in 2000; three consortiums submitted bids in September 2000; and Metronet and LINC was shortlisted to submit BAFO's. After two BAFO revisions due necessary de-scoping to make the contract affordable the contract was awarded to Metronet who submitted the most economically advantage price (NAO, 2004b).

4.5 Contract Award

The contract term was 30 years with three review periods every seven and half years. An arbiter oversaw, along with LU, the tender process for the Periodic Reviews. The PPP contract between LU and Infracos was based on a performance and payment regime to incentive the contractor to perform. After an extended transaction period principally due to political debate, legal challenges and an underestimation of the bidders costs contracts were awarded to finance, maintain and upgrade London's tube. Two contracts (Bakerloo, Central, Victoria and Sub-surface lines) were awarded to the Metronet consortium in April 2003 and one contract (Jubilee, Northern and Piccadilly) was awarded to the Tube Lines consortium in December 2002. The three Infracos were acquired by: Metronet: who won two of the Infracos (BCV and SSL Infracos); and Tube Lines who one Infraco (JNP Infraco).

4.6 Elected Mayor of London and Political Challenges

When Labour was re-elected in May 1997 one of its main manifesto pledges was to hold a referendum on the restoration of a democratically elected strategic authority for London with a directly elected mayor and Assembly. The Greater London Authority (GLA) Act received royal assent in October 1999. Ken Livingstone stood as an independent, as Labour did not want him to stand as a mayoral candidate. The Mayor of London was elected on 4th May 2000, for a five-year term together with the London Assembly members, is accountable for the strategic government of Greater London. He and his Transport commissioner publically objected to Labour's PPP funding policy for LU. It was originally anticipated by the Labour Government that the PPP would be complete and in place before the Mayor was in office by 2000;

however due to an over optimistic ‘political’ programme this was not the case (NAO, 2004b).

On the 3rd April 2001 the Mayor applied for the first judicial review that was heard July 2001 and the second judicial review from June to July 2002 (NAO, 2004b). In the first judicial review, TfL were claiming that it was impossible whilst being bound under a 30 year PPP agreement to implement the Mayor’s transport strategy under the GLA Act 1999; the first review was unsuccessful. In the second judicial review TfL were claiming that PPP procurement was unlawful as it breached EC rules, the contracts could not satisfy the Government’s own VfM test; and the PPP was not unaffordable for London; this challenge was withdrawn. The cost of both reviews was estimated to cost the tax payer £4m (Evening Standard, 2002).

4.7 Procurement Costs

The total cost of procurement was £450m with LU incurring £180m with bidders being reimbursed £270m. In April 2000 when the ITT was issued to SSL bidders and the bids had been submitted for BCV and JNP bid reimbursement costs were raised to £45m to cover the preferred bidders for £15m per infraco raised from its original £4m in October 1999. The reimbursement costs raised once again in September 2002 to £270m in December 2002. The basis of these increases was to maintain competition and cover the opportunity costs of bidders working on other projects.

4.8 Stakeholders Concerns

Stakeholders raised concerns about LU’s PPP during the transaction; most notable at the time was the former Mayor of London and his Transport Commissioner, The House of Commons Transport Select Committee along with leading academics and industry think tanks. Their concerns primarily focused on achieving Value for Money (VfM), Separation of Infrastructure from Operations, Contractual Complexity, Bond finance versus PPP and critically Safety.

Mid 2000, the Transport select committee instructed the National Audit Office (NAO) to review the financial analysis for the PPP. The NAO (2000) concluded: LUL had undertaken a thorough process in estimating costs of PPP options; the financial analysis provides ‘useful but incomplete insight into the value for money alternatives’; it is essentially that the decision makers understand what lies behind the figures before reaching a conclusion. Additionally it reported that LU recognised that ‘financial modelling is an inherently uncertain technique’ and suggests for future Public Sector Comparators (PSC) fewer variables and less complexity. Deloitte and Touche, instructed by TfL and in July 2001, published their emerging findings on the PPP and stated the PSC adjustments were ‘judgmental, volatile or simplistic’ (NAO, 2000). In October 2001 the Government appointed Ernst and Young to conduct an independent review of the Public Sector Comparator, used to assess the PPP’s value for money; published in February 2002. They concluded the methodology was robust however the recommendations that the PPP proposal would deliver value for money was a subjective one considering the analysis undertaken (NAO, 2000).

In 2004, a year into the agreements, the NAO published two. The first report noted that the PPP deal 'broadly satisfied the Government's policy objectives' and concluded that: there was limited assurance that the price paid to the private sector was reasonable, the 7.5 year review leaves some uncertainty to what the price would eventually be; the transaction partially due to two re-bidding rounds was costly estimated to be £455 million (£180m public sector costs and £275 million bidders' costs); PPP offered an improved prospect compared with pre-1997 investment position but not certainty that infrastructure upgrade will be delivered (NAO, 2004a). The second report concluded the PPP have potential to deliver improvements however performance against benchmarks was mixed; good partnerships were being built however many tests were ahead; and there are limits to what the PPP can achieve – with price and scope changes over the 30 years, services outside the scope of the contract that impact on the PPP (4 PFI deals, LU Property estates, security and national network interfaces managed by TfL) and those for which LU has retained risk (NAO, 2004b).

In 2005 the House of Commons Committee of Public Accounts published their report on LU's PPP having heard evidence from DfT, LU, PwC. They were critical of the PPP's scope of works, the use of VfM as conclusive evidence, use of PPP rather than a bond issue, lenders political risk perception leading to costs increasing by £450m; and bidders' significant success fees being reimbursed. In this report the committee showed how well PPP had delivered on its policy objectives set in 1997/8, see Table 1 (Columns (a) and (b)) [6].

5. PPP OPERATIONAL PERFORMANCE

5.1 Performance Against Benchmarks

The London Assembly Transport Committee conducted an investigation into the performance of Metronet and Tube Lines. They reported performance as mixed (London Assembly Transport Committee, 2007). After 3.5 years into the contract the PPP has developed an interesting paradox – 'Tube Lines has shown the PPP works and Metronet has shown the PPP can fail'. Despite successes with the PPP there were concerns over performance with more praise on Tube Lines than Metronet. It stated the, 'PPP was designed to bring market discipline to a major public infrastructure project and Metronet's preferred supplier contracting arrangements failed to impose this discipline'. Metronet's tied supply chain was it's failing whereby it tendered the majority of its work to its own consortium members that had 'apparently failed to deliver the market discipline expected from PPP'. This flaw was particularly focused on track renewal and station refurbishment whereas Tube Lines had been successful in these areas. Additionally the report questioned the wisdom of awarding two of the three Infracos to Metronet; and noted that LU has not always been a helpful client.

5.2 The Collapse of Metronet

In May 2007 Metronet anticipated overspending on works that it partly blamed on LU's poor specification of scope. In June Metronet was refused access to loan facilities by the banks; they approached the Arbiter for an increase in its ISC payment to recover cost increases of £992 million on BCV Infraco over the first contract period of 7.5 years; and an interim adjustment of the ISC to cover the next 12 months of up to £400 million revised to £551million, 12 July 2007 (Office of the PPP Arbiter, 2007). The arbiter increased the ISC over the next 12 months by £121 million but reported Metronet had not acted in an efficient and economic way and therefore rejected their cost claim ((Office of the PPP Arbiter, 2007), NAO, 2009)). As a result Metronet was forced into administration, 18 July 2007, leaving TfL with a debt of £1.7bn to repay the consortium's banks, which was later refunded by HMT.

In June 2009 the NAO identified the main cause of Metronet's failure was due to its poor corporate governance and leadership; Executive management changed frequently and it was unable to manage the work of their tied supply chain (a shareholder dominated supply chain) effectively. Governance and management structures were adopted that gave power to the suppliers rather than the management of the business; additionally the management were unable to extract information or incentivise suppliers in line with the business interests (NAO, 2009). Two other key points were highlighted: the DfT was exposed to major financial and policy risk; and the tax-payer was not effectively protected. As a result the DfT was forced to make a £1.7 billion upfront payment to repay Metronet's debt obligations that were 95% guaranteed by the DfT. The NAO calculated that the overall direct loss to the taxpayer due to Metronet going into Administration was between £170-410 million (NAO, 2009).

5.3 The First Periodic Review and Tube Lines Transfer

During the early part of 2010, Tube Lines was in negotiations with LU for the second 7.5 year contractual period (2010-17). As of 2008/9 Tube Lines' failings, rather than successes became the focus of LU/TfL's attention, with late delivery of the Jubilee Line upgrade anticipated nearly a year late. Tube Lines' estimated the Jubilee Line overruns had cost Tube Lines' £50m; whilst admitting the company has made errors on the upgrade and contested that TfL have not sanctioned sufficient weekend closures (Milmo, 2010). There was a substantial funding gap between Tube Lines, the Arbiter and LU; LU forecast £4.0bn, Tube Lines' revised bid £5.75 bn (originally £7.2 bn) and the PPP arbiter £4.4bn (Office of PPP Arbiter, 2009).

The inevitable political dimension entered the negotiations with Tube Lines' Chairman claimed LU's management was openly trying to close down the PPP; with LUL's interim Managing Director denying this claim; and he current Mayor of London claiming that the PPP 'was a completely incompetent way of delivering a great public works project because it gave us in London Underground absolutely no ability to bear down in the costs and to really know what was happening' (Milmo, 2009). Despite these political differences aired in public, TfL bought the Tube Lines shares for £310m in May 2010 and the PPP was now returned to the public sector ((Wright, 2010), (TfL, 2010)).

PPP Policy Objectives		PPP Policy May 1997 (a)	Contract Close (2002-03) (b)	First Review Period (2003-10) (c)
Obtaining Private Sector Investment and Expertise to Modernise the Tube	Efficiency and Innovation	Significant savings to be achieved.	Project efficiency savings of 20% - not achieved; some evidence of innovation however limited.	
	Price Competition with Infracos	Separate consortiums for each Infraco	Metronet awarded two Infracos, Tube Lines one infraco.	From 2007 Metronet in Administration. Tube Lines returns to public sector in May 2010 .
	Risk Transfer to private sector	Cost & Time overruns and performance to be largely transferred to private sector.	Limitations on risk for known assets and exclusion of risk transfer to private sector for unknown assets. Risk remains with Taxpayer – as 95% debt guaranteed.	
Guaranteeing Value for Money for Taxpayers and Passengers	Stable Long Term Funding	Remove inadequate and uncertain annual funding.	For a 7.5 years at a time. In 2004 five year funding settlement for £10bn investment programme from DfT to TfL; allowing TfL to use Prudential Borrowing.	
	Minimal or no Capital Grant Subsidy	Reduction of subsidy over time.	£1.1 bn capital grant subsidy Infracos	Upfront £1.7bn to pay Metronet debts and purchase cost of Tube lines shares £310m to public sector
	Better value than public investment programme	Financial analysis showed better than PSC.	Not possible to determine due to Review periods	
Safeguarding the public interest, which included the Safe Operations of the Tube	Passenger operation, safety, marketing and ticketing remain in public sector.	LUL manages operations – stations and trains; also most PFI deals (Prestige, Power and Connect).		

Table 1: Ouctome of LU's PPP Policy Objectives (adapted PAC(2005))

5.4 Outcome of LU's PPP Policy Objectives

Table 1, summarises the outcome of the PPP policy objectives with the Contract closure (2002-03) and the First Periodic Review (2010). Clearly demonstrating that the PPP did not survive its first review and did not succeeded in meeting its policy objectives outlined in May 1997 despite the NAO claiming, 'the deal broadly satisfies the Departments main objectives' (NAO, 2004a).

6. DISCUSSION

The most critical stakeholder LU was not trusted sufficiently by the former Labour government for its opinions to be taken into consideration at the policy formation stage. Clearly the Policy to fund LU was driven by HMT's aspirations wishing to relinquish at all costs their responsibilities for LU as stated by the former LT Chairman (see section 3.2). In the ex-ante procurement setting, the PPP was expected to be complete by April 2000 with a procurement cost of £150m; however the ex-post procurement setting lasted 5 years and costs increased to £450m. The PPP had significant central government financial support and required a substantial seven year capital grant totally nearly £9bn over 7.5 years to support the private sector with its investment plans not forecast in the original scheme. The cost and time increases were primarily as a result of the political interference and associated uncertainties with the project to the market that consequently had an adverse impact on the project achieving its key policy objectives, see Table 1.

Political uncertainty was unique with LU's PPP compared with other PPPs undertaken in the UK. As a consequence contracts were not signed by the time the mayor was elected in May 2000 as hoped by government; and the government's unwanted candidate was elected. This resulted in two major uncertainties for bidders with the procurement process. Firstly, political support was polarised between central and the London Mayor on how to provide funding for LUL. The Mayor was strongly opposed to the project and sought to halt the PPP in the High Court through two judicial reviews. In support of the PPP central government undertook a major offensive campaign through LU in defence of the partial privatization. Secondly, prior to the call for competition for the contracts the government reduced the intended number of contracts in May 1999. The government were possibly motivated to offer Railtrack exclusive single bidder status on the basis that national rail could be integrated with sub-surface lines and provide a pseudo version of Crossrail and East London Line.

Delaying the procurement for SSL by 5 months, offered bidding consortiums a limited opportunity to win one infraco each. This position prevented consortiums from achieving economies of scale bidding for three contracts but did improve competition for the government restricting four consortiums to compete for two infracos. The opportunity of another contract for bidders 5 months later would increase the costs for consortiums as resources would need to assembled from other projects; there was an opportunity cost and suppliers had to consider whether it was worth bidding for a third contract. The government was forced into making the position attractive to bidders by increasing reimbursement costs to maintain competition. This political action demonstrated to suppliers the central government dominance and interference and project's proneness to political uncertainties. This political action reduced the opportunity and likelihood of consortiums to spread their risk and being able to win a contract. Even with the possibility that Railtrack might re-enter the competition for SSL made suppliers uneasy as they feared they might be excluded from Railtrack's tender list if they bid against the monopoly rail operator.

Political uncertainties from government interference and disagreement between central and local government led to prolonged timescales and an adverse impact on the competitive process and eventual outcome consortiums awarded infracos. Political uncertainty had a significant impact on suppliers that led to reduced competition and suppliers seeking further financial guarantees from government. The uncertainty surrounding the affordability of the private sectors bid price and how well this compared with the PSC delayed the procurement process by 5 months with revised BAFO's and de-scoping of the required services. However, with Metronet being preferred bidder for BCV infraco and awarded SSL led to a smaller supply market that was in direct conflict with the Government's justification for the PPP structure in 1997 (NAO, 2004a). The government always stressed at the outset that no consortium would win more than one of the three infracos.

7. CONCLUSION

This paper has investigated the former Labour government's PPP policy formation and implementation for London Underground. LU's PPP provides a tactical exemplar of where a political compromise was needed on original policy objectives to make the scheme workable. Once the project had deviated from the original policy objectives it should have been halted pre-contract signature. However politically this was an unacceptable outcome and as a result has wasted significant public sector resources.

At the policy stage the central government: failed to involve key stakeholders LT/LU in the decision-making process; utilised optimistic assumptions in modeling possible business models regarding private sector efficiency savings and risk transfer; was too dominant in proceedings; undertook a major investment project that had significant uncertainties attached due to its complexity and political game playing with local government.

During the Implementation central government interference and conflict with local government (GLA) were detrimental to a successful procurement process; unbalancing the competition and leading suppliers to seek fur guarantees. Furthermore awarding two infracos to Metronet was a significant deviation from policy; and the bid evaluation failed to identify the potential issues with Metronet's Governance and tied supply chain that proved to be fatal. In sum at the Operations stage many of the policy and design issues surfaced to haunt the success of LU's PPP.

LU's PPP was the Government's solution to an outdated central funding regime of a vital public service. In 2004 the Government made a significant

‘U’ turn in its funding policy with TfL perhaps realising PPP was not a sustainable funding model. This unprecedented shift in Government funding policy has allowed TfL and LU to fund long-term investment and remove LU from its annual funding uncertainties.

Was LU’s PPP Policy or Implementation faulty? In sum the policy and its objectives were formulated around idealistic assumptions and a political agenda that were unachievable during an implementation. On reflection it was not the most suitable way in which to fund LU’s investment programme.

NOTES

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