

## Governance through “public private partnerships”: Gaining efficiency at the cost of public accountability?

---

Alison Mohr

University of Westminster, Centre for the Study of Democracy

Address: 100 Park Village East, London, United Kingdom

phone: +44 20 74682264

fax: +44 20 7911 5164

e-mail: A.Mohr@wmin.ac.uk

### Abstract

*The aim of this paper is to consider “public private partnerships” (PPPs) as new forms of governance for the delivery of public sector infrastructures and services, with special focus on transport. Based on a detailed analysis of the Copenhagen Metro and London Underground PPP projects, this paper discusses the distinct characteristics of these new public-private relationships, and their effects on mechanisms and processes of accountability with respect to both decision-making procedures and outcomes. This includes a critical analysis of how actors within the representative decision-making system (representing the “public” in PPP), and actors from the private sector, relate to, and are drawn into, the complex “web” of accountability emerging from PPP schemes. Furthermore, it includes a discussion of how “public” actors outside the formal representative system perceive, and engage in, the PPP processes and outcomes; and thus what particular challenges PPP schemes pose for achieving (and being seen to achieve) public accountability.*

### Mapping the emergence of public private partnerships (PPPs)

The emergence of public private partnerships (public-private partnerships) heralds a new era of collaboration between public-private actors across different levels of government (local, national, international) and across different policy fields including transport, housing, and healthcare to name a few. PPPs first emerged in the United States (US) in the late 1970s and early 1980s in response to what was seen (mainly by neo-liberal politics) as the poor performance of the public sector, and the view that the State had reached its financial limits as far as the provision of public services were concerned (Carrol and Steanne 2000; Linder and Rosenau-Vaillancourt 2000). PPPs were initially introduced as a more publicly acceptable alternative to privatisation and hence as a tentative first step towards full privatisation agreements.<sup>1</sup>

### European context

Likewise, the implementation of PPPs is commonplace throughout the European Union (EU). The provision of transport infrastructure through PPPs in particular has been widely embraced as it is said to be less costly, to deliver a better quality of service and moreover, it meets demands for providing a greater choice of services (Gidman et al. 1995). The European Commission (EC) has played a vital role as it

places considerable emphasis on the use of PPPs to implement Trans European Networks (TENs) across the transport, energy and telecommunications sectors<sup>2</sup> (Kinnock 1998). It is the view of the EC that PPPs can address the problem of a shortage of public funds while encouraging projects that are vital to European competitiveness and growth.

### London Underground Public private partnership (LU-PPP)

However, unlike the US the United Kingdom (UK) was not so tentative in its belief of the primacy of the private sector with the Conservative government of the 1980s eagerly embracing the economic benefits of privatisation (Feigenbaum, Henig & Hamnett 1999; Spackman 2002) through Private Finance Initiatives (PFIs). PFI contracts were “encouraged” by a “universal testing rule” that required the consideration of private financing for all public sector projects. The Conservative government proceeded to draft two important changes in the law that prevented UK governments from being restricted by constitutional and other general law from contracting any activity to the private sector. The new Labour government subsequently adopted this law after its election in 1997. Aside from obvious ideological differences the Labour government adopted a more pragmatic approach to privatisation. Following on from the very public failure of the Conservative government’s privatisation schemes, most notably that of the national rail network, and after abolishing the universal testing rule, the Labour government opted to embrace the concept of Public Private Partnerships (PPPs) (Spackman 2002). PPPs, as defined by HM Treasury (2000) policy, involve: (i) complete or partial privatisation; (ii) contracting out with “private finance at risk”, still defined as PFI projects; and (iii) selling government services in partnership with private sector companies. PPPs continue to be a clearly stated goal for future infrastructure development of the Labour government, however a Treasury (HM Treasury, 2000) document acknowledges that public private partnerships may not be the preferred financial model for every infrastructure circumstance.

That the Labour Party first revealed its intention to implement “a new public/private partnership to improve the London Underground, safeguard its commitment to the public interest and guarantee value for money” in its 1997 general election manifesto, albeit minus any detail of how this was to be achieved, should therefore have come as no surprise given the reorientation of “New” Labour towards the political centre throughout the 1990s (Labour Party 1997). Once in government, the Deputy Prime Minister and (then) Secretary of State for the Environment, Transport and the Regions, John Prescott, formally announced on 20 March 1998 that the Government would be introducing public private partnerships to bring stable, increased investment into the London Underground (London Underground Limited 2002). This announcement followed discussions between Prescott and the Chancellor of the Exchequer, Gordon Brown, who was adamant that the burden of maintaining and upgrading the Underground would not fall entirely to the public sector (The Economist 2002).

The plans for a London tube system that is publicly operated and privately maintained involved dividing London Underground Limited (LUL) into a publicly owned operating company and three privately owned infrastructure companies (Infracos). Accordingly, under the proposed PPP, train stations and services would continue to be planned and operated by the publicly owned, publicly accountable LUL, which would also retain responsible for safety on the whole of the Underground. Private companies were invited to bid for the responsibility to maintain and upgrade the track, tunnels, signals, stations, lifts, escalators and trains under 30-year contracts to LUL. At the end of the contracts, the assets would return to the public sector. Thus, under the PPP, the Infracos would not have any operational responsibilities; they

would essentially be responsible for maintenance work to the network while operations – including drivers, stations staff and responsibility for safety – would remain in the public sector.

The government’s (initial) objective was to deliver £13 billion (later revised to £16 billion) worth of public-private investment in London Underground over the next 15 years, with £8.7 billion spent on enhancements and £4.3 billion on maintenance (Department of the Environment Transport and the Regions 2002). To this end, in 1998 the Labour government announced an additional £365 million for London Transport over and above existing funding. A further £517 million was allocated to London Transport in July 1999 to help deliver initial improvements in the lead up to the PPP. In 2000-01, an extra £65 million was allocated to London Underground. While the extra funding was sorely needed, it did not provide a long-term solution to the Underground’s ongoing funding dilemma. Consequently the government’s proposed PPP was intended to alleviate an impaired financing regime (operated on a year-to-year basis) that led to inefficient and outdated maintenance practices and prevented infrastructure development brought about by decades of funding indeterminacy.

A vital mechanism which paved the way for the reorganisation of the London Underground was in the form of the Greater London Authority Act 1999 (The United Kingdom Parliament 2000). The Act established and made provision for the Greater London Authority, the Mayor of London and the London Assembly, as well as provision for transport in and around Greater London through the creation of a body corporate known as Transport for London (TfL). Pursuant to the Act, most of the property rights and liabilities of London Transport and its subsidiaries were conveyed to TfL on 3 July 2000, except for the London Underground. The devolution of the Underground to TfL was delayed (due to the Mayor of London’s ongoing opposition to the proposed LU-PPP) to allow for full implementation of the PPP scheme by the UK Government. In the meantime, the Mayor of London and his Commissioner for TfL, Robert Kiley, published numerous reports that were highly critical of the proposed PPP and raised concerns about issues such as safety, efficiency, value for money and lines of accountability. As a result of their dogged opposition, several amendments were eventually made to the PPP contracts, including an allowance for the Commissioner for TfL to intervene in and direct maintenance work.

After years of protracted delays, the first PPP contract was signed with Tube Lines on 31 December 2002. Tube Lines, a consortium of private sector firms including Amey, Jarvis and Bechtel, has agreed to spend £16 billion upgrading the ageing Underground’s Jubilee, Northern and Piccadilly (JNP) lines over the next 15 years. The public-private partnership of the London Underground was completed on 4 April 2003 when private sector consortium Metronet (made up of shareholders Bombardier, SEEBOARD, Balfour Beatty, Thames Water and Atkins), promising investment of £17 billion, assumed contractual responsibility for the maintenance and upgrade of two major sections of the Tube; the Bakerloo, Central and Victoria (BCV) lines; and the sub surface lines (SSL) Metropolitan, District, Circle, Hammersmith & City and East London.

Less than a week after the completion of the public-private partnership, lines of accountability were sorely tested when Metronet and Tube Lines blamed each other for a fire alert which temporarily closed a section of the Central line during the morning rush. According to The Guardian transport correspondent, Andrew Clark (2003), the incident highlighted “critics” fears that safety could be at risk due to squabbles over the division of responsibilities”. An overnight deep clean of the Central line platform in the Tottenham Court Road station dislodged dust which became stuck to glue on the track left by contractors sticking up posters. The dust heated up when trains began running the next morning, giving off smoke

that set off the fire detectors. Just who is responsible for the delay, for which contractual penalties of up to £9 per passenger hour may apply, is not clear. While Tube Lines owns the Tottenham Court Road station as part of its lease over the Jubilee, Northern and Piccadilly (JNP) lines and is responsible for the maintenance of its Central line platform, the Central line tracks running through the station are the responsibility of Metronet as part of its lease over the Bakerloo, Central and Victoria (BCV) lines. Furthermore, the contractors who deposited the glue on the tracks were working on behalf of the third PPP partner, the public LUL. Attribution of responsibility for this incident has not been made public.

## Copenhagen Metro

The “corporatisation” of public policy-making in Denmark also began gathering influence in policy circles during the course of the 1980s, particularly within a political “growth coalition” consisting of leading representatives from the Social Democratic, Conservative and Liberal Parties, which combined represented 70-75 percent of the Danish electorate. Plans for the strategic growth of the Copenhagen area were formulated by means of a negotiation process among these representatives and included: the bridge across the Øresund between Sweden and Denmark; a new urban area to be located near the Copenhagen airport – the so-called Ørestad on the island of Amager; and a light rail connection (later a Metro), linking Ørestad to the city centre.

The Copenhagen Metro is an example of a new approach to urban planning that has become popular throughout Europe over the past two decades, where cities are seen as sites of “strategic growth” – centres for economic growth and commercial competitiveness. Public policy in urban planning becomes primarily a matter of managing this growth potential by using techniques and procedures borrowed from the business world. So-called Urban Development Programmes (UDP), such as the one comprising the Copenhagen Metro, involve public private partnerships (PPPs) rather than traditional forms of decision-making processes and fiscal support.

Urban planning in Denmark had previously (in the 1950s - 1960s) been characterized by functionalism and “goal rationality”: cities were administered and projects planned in such a way as to contribute to the welfare of the general public. The Danish planning system was politically hierarchical; municipal planning fell under the jurisdiction of regional planning authorities and, importantly, was subject to decisions taken in the national parliament. With the ascendancy to power of the Conservative/Liberal Government in 1982, and the emergence of new doctrines relating to strategic growth, the urban planning system in Denmark dramatically changed character. What had previously been characterised by bureaucratic forms of administration with formalised procedures of accountability became an increasingly fluid form of administration involving more informal procedures of accountability.

This shift can be characterized in terms of a general weakening of the exercise of “government”, involving a relatively centralised political decision-making structure and legally separate sphere of public administration. The more fluid system of planning can be viewed as part of a general shift toward the strengthening of a multifarious realm of “governance” through which public authorities are accountable to different networks and stakeholders, and through which public officials often conduct their activities in close relation to business without clearly delineated hierarchies. Thus the boundaries between public and private, between politics and administration, have tended to diminish and become increasingly blurred in relation to major infrastructure projects such as the Copenhagen Metro.<sup>3</sup> Instead, multilevel governance and public private partnerships have gained significance in this new approach to planning.

Thus, following the loss of its industrial base during the 1970-1980s, the Danish government began to define strategies to revitalise the economy of Copenhagen. The Stallknecht Report, published in November 1989, prioritised the development of major infrastructure projects including the bridge that now links Sweden with Denmark. The report also highlighted the need to implement a new administrative structure to manage this development following the dismantling of the Greater Copenhagen Council (Hovedstadsrådet, HR) by the parliament during this period. To oversee regional policy and development the Danish Prime Minister established the Capital Development Council (Hovedstadens Udviklingsråd, HUR) as a quasi development company run by national politicians.

The subsequent failure of the HUR, however, was welcomed by the Würtzen Committee, a similarly oriented committee whose ambit it was to develop measures to alleviate traffic problems in and around Copenhagen. Three former members of the Würtzen Committee (Anne-Grethe Foss, Head, Planning Department, Danish State Railways; Dan Christensen, Architect, Municipality of Copenhagen; and Erik Jacobsen, Head of Department, Ministry of Finance) formed a partnership to integrate issues of growth, development and innovation with transport issues when developing the Ørestad/Metro project. They proposed the sale of land in the area near where the Bridge to Sweden would be built to fund local traffic investment. Saleability of this land however was dependent not only on its proximity to the bridge and to the city but also on the development of a high-quality transport infrastructure. Two potential obstacles; first, that the land (Amager Commons) was (provisionally) listed as a nature reserve and, second, that the development of a transport infrastructure was in violation of the regional development plan which had not approved a new urban district in the area, were easily swept aside. The Copenhagen Municipality and the Würtzen Committee jointly became the responsible authority following the dismantling of the HUR.

The Ørestad/Metro project was officially launched by the Würtzen committee in its report published in March 1991. The proposal was popularly received by the Mayor of Copenhagen, the Danish Prime Minister and Parliamentary Opposition Leader for its tax-neutral status and potential contribution to strategic growth. However broader political and public knowledge of the proposal was lacking until its disclosure by the newspaper Politiken one month prior to its official release but after its technical details had been agreed by political allies. Less than two months later, in May 1991, a Bill pertaining to the Ørestad (including a light-rail system) was introduced to the Danish Parliament without first being subject to a public hearing and minus any consideration of viable alternatives, as stipulated by the Planning Act. Non-governmental organisations led by Danish Society for the Conservation of Nature submitted complaints to the Danish Parliament in relation to the nature conservation of the Amager Commons, where the Ørestad was to be built. The Parliament however voted to reject all pending conservation cases including that of Amager Commons. In June 1992, the Ørestad Law was passed paving the way for the establishment in March 1993 of the Ørestad Development Company (ØDC) comprising members of the Copenhagen City Government and the Danish State. The ØDC announced in 1994 that it had chosen a driverless Metro as its preferred “light-rail” option. The basis for this choice was not explained. Stage one of the Copenhagen Metro was officially opened in October 2002, two years behind schedule.

## Theoretical/academic perspectives of PPPs

One conceptualisation of public private partnerships is as a network of independent public and private actors who come together to form a cooperative interdependent working relationship to provide improved project management and financing solutions. This increasingly popular approach to

partnerships presupposes the sharing of responsibilities and risks. This “governance perspective” of public private partnerships challenges the traditional conception of the state and state autonomy (centrality of state, government/political hierarchies etc.) by advocating the emergence of a new governance model where state actors collaborate with civil society actors (corporate, stakeholders, NGOs). Thus the emphasis is on the creation of heterogeneous networks and the forging of links between interdependent actors within these networks (Pierre and Peters 2000; Kooiman 1993). The governance perspective takes a broader view of the role of non-state actors than other theoretical perspectives on public private partnerships in that it refers not only to new modes of governing but also to heterogeneous networks of interdependent actors involved not only in policy implementation but in decision-making as well. In other words, “government is not just changing its tools, it is changing its meaning” (Stoker, 1998: 38).

Thus it is important to focus on governance processes rather than its institutions and their organisation by exploring how partnership arrangements function and the implications for all partners (and their stakeholders). Governance perspective challenges the traditional notion of state sovereignty. State-centrality is not granted rather the state is “a *primus inter pares* actor whose capabilities are contingent on its ability to mobilise other societal actors for its purposes” (Pierre and Peters 2000: 82). State powers are being displaced by supranational entities such as the EU, by sub-national authorities such as local governments and most interestingly by institutions and organisations operating at arms-length to the political elite. Thus the governance perspective refers to a complex set of actors (local, regional, national, international, private, NGO), which coexists with the state and participates in service delivery and strategic decision-making (Stoker, 1998).

In the governance perspective, the sharing of decision-making responsibilities also means the sharing of responsibilities in confronting social or economic problems between actors who are power dependent. Thus, public private partnerships supposedly constitute a sharing of responsibilities as well as risks. In recognising this blurring of responsibilities between public and private actors, problems associated with achieving public accountability must also be taken into account. The very nature of interdependency among public and private actors raises questions of the nature of decision-making complexity and ensuing uncertainty in outcomes in public private partnerships.

## Public private partnerships as a challenge to public accountability

On the one hand it may be argued that public private partnerships do not strengthen public accountability because the “private” sector, by definition, is not publicly accountable. The transition from government to governance diffuses responsibility and consequently any recourse to public accountability. A view held by Unions who support the belief that public services should be driven by motives of social concern rather than commercial profit (Prentice 2001; Spackman 2002). On the other hand it may be argued that privatisation may enhance some aspects of public accountability. For example, the privatisation of important public functions may induce development of improved formal regulations in some sectors, such as transport. Moreover, the tendency towards privatisation in large infrastructure projects has lent increasing legitimacy to claims for more accountability from the private sector.

Yet concern exists as to whether PPPs have negative consequences for accountability particularly in terms of the service provided; on the premise that public control over service provision is reduced. A further concern is that the extended period of some PPP contracts (approximately 30 years for both the LU-PPP

and the Copenhagen Metro) weakens the capacity of the electorate and their representatives to influence policy direction; thereby weakening the political linkage. Private sector delivery using public funds to secure delivery of public services also raises concerns with regard to a lack of transparency compared to public sector delivery.

Thus it is pertinent to consider whether a disjuncture exists between economic development (PPPs) and political rule (governance)? If so, what are the implications of multi-level governance for legitimacy and efficiency (public accountability)? Although the state and its institutions remain a focal point for thinking about governance, government at the national level is only one set of agencies that provide the steering mechanisms that make governance possible. The exclusive focus on the state as the site of governance has been challenged by the growth of both subnational and supranational forms of governance, to take account of the global, regional and local organisation of economic space. Significant powers have been transferred from the state downwards to subnational levels and upwards to supranational levels. This shift from a singularly situated mode of government to multi-level governance raises an interesting question in terms of accountability, and to whom. Can governance arrangements in a multi-governance world ensure efficiency and retain legitimacy at the same time?

Some scholars argue that public private partnerships actually benefit the opening up of new channels for public participation and mobilisation. It is claimed that public private partnerships, by expanding their agendas through the integration of civil society actors, are an innovation in local democracy. As a new form of governance, public private partnerships have required a redefinition of the role and domain of public services and their delivery. This has rendered a shift from a hierarchical approach to public service delivery by the state to the pursuit of a policy of negotiation and cooperation (Pierre and Peters 2000). However, the blurring of the boundary between political jurisdiction and market forces is a cause for real concern. According to Pierre (1998: 189), this governance structure easily “displaces political accountability” and “allows for market-based actors to penetrate the domain of the political”. Thus the process of devolution from the state to “independent” institutions results in a weakening of political, hierarchical steering through the transference of authority. Indeed, the question of power and power relations, when considering PPPs as a form of governance, is an important one. Thus policies of negotiation and cooperation are pursued in preference to formal authoritarian and hierarchical approaches. The effectiveness of public private partnerships is greatly reliant upon the cooperation of civil society actors and the combination of state capacity with civil society resources (Stone 1993). Thus power is primarily generative and pertains to the actors’ capacity to build coalitions and thereby mobilise the resources that are required to handle collective problems in an efficient and appropriate way (Pierre and Peters 2000). The question of accountability, however, is still unclear in such structures. As in other organisational hybrids, those holding positions in the governance structure of the partnerships are not elected, but selected for their personal skills or qualities. Being formally devolved, such arrangements do not comply with traditional forms of accountability relating to political democratic procedures. More research however is needed on how actors holding formal positions of the partnerships’ governance structure conceive their role, their motivations and the prevailing notion of accountability.

Principles such as transparency and fairness, often associated with the state, have been brought into question by the creation of institutional linkages with private sector organisations within which the delivery of public services is now being managed. Indeed, there is growing evidence that the contractual relations of public private partnerships have led to a clear weakening of traditional notions of accountability “reflecting both a shift to new lines of accountability (private sector shareholders) and a

vicious circle of monitoring and distrust between partner organisations” (Hebson et al. 2003: 1). A variety of performance-based, legal contracts have replaced long-term service agreements, often running into hundreds of pages, specifying all the relevant contingencies and minutiae of work activities.

While achieving good governance in PPPs is important for economic success and social development it requires obeying certain rules, processes and behaviour that affect the way in which powers are exercised, particularly with regard to: (1) transparency and openness in the PPP process; (2) public accountability and scrutiny; (3) achieving effective dispute resolution systems; and (4) safety and security.

## Transparency and openness

A key question to consider is “do PPPs offer more opportunities for weak transparency?”. Decentralisation, a key characteristic of PPPs, has given power to local authorities and this has improved decision-making and democracy but it has not sometimes been accompanied by the necessary rules and regulations. Given these new vulnerabilities and opportunities, there is an important role to be played by new external actors such as the media and civil society. The media has an important role to play in helping to mobilise public debate. The challenge in many EU countries is to identify and appropriate vehicles by which citizens can be mobilised. It is therefore important that governments and the private sector develop a benchmarking to demonstrate their progress in improving the transparency of public private partnerships.

Both the UK and Danish PPPs are characterised by relatively low levels of transparency and openness. The LU-PPP, in particular, involves a “complex web of accountability” characterised by a relative lack of publicly visible, accessible or comprehensible accountability mechanisms. The highly technical and legalistic nature of the LU-PPP contracts and related partnership documentation limited opportunities for publicly engagement and scrutiny of the PPP relationship, its terms and financial viability. It was mainly through the very public intervention of the Mayor of London (and his strategic use of the media) during the PPP negotiation process that brought elements of that process into the public arena for wider public scrutiny and debate. Arguments regarding the safeguarding of the “public interest”, the conditions for public safety, the use of public monies and the future of public transport in London (and elsewhere in Britain) featured in the (protracted) public debate led by the Mayor of London and the media, which acted not only as a vehicle for public debate but as campaigners as well. Furthermore, a lack of direct and clear lines of accountability in the implementation of the LU-PPP was high on the list of public criticism.

Indeed, in relation to public accountability, the media play a key (dual) role. First it serves as a vehicle for information dissemination thus contributing to transparency of the issues under discussion. Second, it contributes to the framing of the issue at hand by reporting on facts, decision-making processes and their outcomes. The media tend to either act as the public voice or side with the PPP implementers, while usually remaining steadfast in its point of view. Unusually in the Danish case, there is evidence that in some sectors of the media, its perspective on the Copenhagen Metro became more/less critical toward certain aspects of the PPP project or its actors. Another defining feature of the Danish media’s reaction is that its newspapers, due to strong ties with the major political parties that supported the PPP, is a distinct lack of critical reporting.

Another feature of the Copenhagen Metro case is the complete absence of the public from the decision-making process. Only after decisions had been taken and in the implementation phase did critical public debate and protest activities emerge. But due to the widely perceived political and economic importance

attached to the project, opportunities for public mobilisation were severely hampered by a lack of available arenas for public debate and critique. The “private” component of the PPP was, however, criticised for its ability to hide behind the “commercial-in-confidence” clause on aspects that should have been open to public scrutiny.

## Public accountability and scrutiny

Further means to avoid the lack of transparency is to establish more effective mechanisms of public scrutiny. An important mechanism is the conduct of proper cost and benefit analyses whereby facts and figures are made publicly available. While certain cases demonstrate the value of open parliamentary enquiries, at the same time powers should be extended to National Audit bodies to examine specific cases of value for money. Much of the financing of public private partnerships is of a highly technical nature and one argument is that ordinary citizens are not interested in having such information. However, open debate could encourage participation and a better understanding. It is important for all parties, public and private, to make a commitment to disclosure, as without disclosure there is room for manipulation.

In December 2000 the UK National Audit Office (NAO) delivered an independent financial analysis for the LU-PPP on the extent to which LUL’s financial analysis resolved the “value for money” test. According to the Assistant Auditor General of the NAO, Jeremy Colman, the report without a doubt changed the basis on which the decision on how to proceed with the PPP was put to the London Transport Board.<sup>4</sup> The NAO report criticised the narrow focus of the public sector comparator<sup>5</sup>, that it did not consider the wider costs and benefits, and risks of the agreement. Subsequent to the NAO report, papers sent by LUL to the London Transport Board for its consideration contained a fuller discussion of the wider cost and benefits of the agreement. In contrast, the information initially provided by the Board to the NAO to assist their investigation contained a lengthy analysis of the comparative costs in the absence of any mention of differences in risk or differences in benefits. A year after the NAO report was published, some of the more elaborate contractual calculations had given way to simpler calculations. While the emphasis was still firmly placed on cost, at least the importance of other factors were recognised. The NAO report forced the advisers to the London Transport Board to think more clearly than they might have otherwise done with regard to the contracts.

Likewise, in 2000, the Danish National Audit Office published a report criticising the ØDC for not providing adequate control nor proper management information on the project’s progress; impacting on the project’s delay and cost calculations. It is estimated that the Copenhagen Metro’s budget increased substantially by 5.6 billion DKK following a delay of two years to the project.

Other political actors were also instrumental in the framing of public accountability in the political debate and discourse surrounding the LU-PPP. In July 2000, the UK Parliament’s Environment, Transport and Regional Affairs (ETRA) Select Committee, chaired by Gwyneth Dunwoody MP, published a report on the funding of the London Underground (The United Kingdom Parliament 2000). The report considered the level of funding required by London Underground, the development of PPPs for the Underground and what alternative proposals there were to meet the Underground’s financial needs. A key concern of the ETRA Select Committee, as expressed in its report, was to ensure that the restructuring of the London Underground does not blur the lines of responsibility and reduce safety standards. In response, the government reported that the Health and Safety Executive would demand the provision of a complete and robust set of safety regulations to the Infracos, which detailed clear lines of responsibility for every

aspect of running and maintaining the Tube to ensure the safety standards on the London Underground are maintained and, more importantly, improved (The United Kingdom Government 2000).

Parliamentary Committee intervention in the Copenhagen Metro case is not discernable.

## Dispute resolution

The consequences of a litigation process between partners could involve high legal costs, interruption of progress and development, impairment of important commercial relations and the deterioration of governments’ and companies’ public image. Thus the use of arbitration should be considered.

Judicial reviews are a key mechanism for prompting debate regarding PPPs in the wider public sphere. While judicial reviews of the Copenhagen Metro were absent, in July 2001, a judicial review, prompted by the Mayor and his Commissioner, challenging the legality of the LU-PPP took place. Outside the High Court, a last-minute ad hoc citizens’ demonstration organised by TubeSense was staged, attended by Transport 2000, the Capital Transport Campaign, Friends of the Earth, Greenpeace and other citizen campaign bodies. However, in spite of opposition from the Mayor and Londoners, the High Court ruled that the Government has the power to impose its proposed PPP contracts on London. Mr Justice Sullivan’s judgement also made clear that the Court was not ruling on whether the Government’s PPP scheme is safe or provides value for money. Later that month a second court case was held, this time an injunction hearing to determine whether to publish the redacted version of the Deloitte & Touche report. Mr Justice Sullivan cleared the report for publication, overruling an appeal put forward by London Underground. Mr Justice Sullivan ruled that public interest demands that this information be published, as the issue of whether the Government’s PPP meets the value for money test is a matter of vital concern to Londoners. He added the report had been prepared by a highly reputable organisation and was therefore a serious critique by a serious player. The Mayor and the Commissioner of TfL threatened a further court appeal to prevent the government imposing on London a £1.5 billion funding gap arising from the transfer of the Underground to TfL initiated a further judicial review in June 2002. In February 2003, the government reached a negotiated agreement with Robert Kiley and Ken Livingstone to bridge the funding gap.

Indeed the multiplicity of parties in public private partnerships creates special problems for an efficient resolution mechanism. Thus the LU-PPP has initiated a major new form of arbitration that has implications for other projects around the world. The special role of the PPP Arbiter was created by the Greater London Authority Act 1999, which establishes its functions and duties. The Arbiter determines disputes on the key commercial aspects of the PPP agreements, in particular at the 7 year Periodic Reviews, and gives guidance on any aspect of the Agreement when requested by one or both of the parties. The Arbiter is able to require parties to provide information and to carry out inspections, consult appropriate parties and do what he considers appropriate to prepare for giving directions or guidance. The Arbiter has an office comprising a Director, supported by technical, commercial and legal advisers and administrative staff. The essential new aspect is that the Arbiter is “on call” continuously in order to deal with disputes and to solve them as quickly as possible.

## Security and safety

Procedures must be put in place that guarantee the safety and security concerns are met in public private partnerships. It is not sufficient to issue new procedures, there must also be a commitment to their

implementation. According to the United Nations Economic Commission for Europe, governments need to establish bodies that can scrutinise the safety aspects of PPPs. They need to be independent and include experts. The companies as well must demonstrate their awareness of the increased importance of safety in PPPs and must show that they are implementing new standards in their current commercial practices. Another key concern is that the private sector while improving efficiency by cutting costs, may in addition seek to cut costs available for maintenance, control etc of important services. Above all else, citizens value the improvement of security and safety of the service over efficiency and better services.

The LU-PPP, the world’s largest PPP, is unusually complex in that its structure is a desegregation of integrated networks and bid processes involving multiple parties on three separate deals. Consequently, the London Mayor argued that it would be difficult to enforce maintenance and safety rules on the three Infracos, which operate the underground on a 30-year franchise.

The proposed mechanisms and lines of accountability with regard to safety are clearly discernable from the information provided by both LUL and TfL. That this is the case was borne out in the interviews where the vast majority of those interviewed identified London Underground Limited as responsible for the statutory safety case. Indeed, Martin Callaghan, Director of PPP in LUL confirms that LUL is the duty holder with respect to safety on the London Underground.<sup>6</sup> The Statutory Safety Case<sup>7</sup> for the London Underground employs a hierarchical structure. As a matter of law, only operators of infrastructure can hold a safety case. As well as their contractual obligations to LUL for safety, the Infracos also have a legal obligation in the case of accidents or incidents resulting from infrastructure maintenance. Thus LUL has the absolute right of direction with regard to safety issues on the London Underground and if instructions issued by LUL are not followed by the Infracos, then overall management will be assumed by LUL and contracts with the dissenting body may be terminated.

Widespread concern that the London Underground PPP would be a repeat of the failed national rail network is claimed to be alleviated by the fact that the PPP scheme is based on fixed-term contracts rather than a permanent transfer to the private sector. It has been argued that such a contractual arrangement “retains a clear public sector accountability from the outset” thus “statutory safety responsibility for the whole underground remains with public sector London Underground” (The United Kingdom Parliament 2000). This view was also supported by an Industrial Society report commissioned by the Mayor of London and TfL, which recognised “the special effort made by the Government in ensuring that safety is managed centrally and rests ultimately in public sector hands” (The Industrial Society 2000).

However, those critical of the proposed PPP, including the Director of Capital Transport Campaign, Cynthia Hay, share the belief that the division of responsibility between passenger service provision, on the one hand, and maintenance and upgrading of infrastructure, on the other, is detrimental to ensuring safety of passengers and of employees.<sup>8</sup> Her underlying belief is that the new multi-layered management structure surrounding the London Underground will result in delays to repairs and improvements if anything goes wrong.

Surprisingly, issues of safety and security have been completely absent from the debate surrounding the implementation of the Copenhagen Metro project.

## Conclusions

Both the UK and Danish PPPs are characterised by the prevalence of formal public accountability procedures in the administrative domain, whereby decision-making processes are conducted behind closed

doors in the absence of any salient public participation. Informal mechanisms involving public engagement through social mobilisation and related bottom-up procedures of accountability were of little or no effect to the outcome in either case. Rather public accountability was formally applied through the top-down approach of representative democracy. Yet the persistence of the Mayor of London and the efforts of the Danish Society for the Conservation of Nature were important triggers for public debate in their respective contexts. However, the unavoidable transfer of some risk/responsibility from the public to the private sector in PPP schemes continues to pose a serious challenge to transparency and the wider issue of public accountability whereby access to publicly-relevant information including processes of decision-making was constrained by “commercial-in-confidence” clauses and highly-technical language.

## Notes

- <sup>1</sup> This section will also include a discussion of the distinction between PPPs and private finance initiatives (PFIs).
- <sup>2</sup> The European Union, under the terms of Chapter XV of the Treaty (Articles 154, 155 and 156), must aim to promote the development of Trans-European Networks as a key element for the creation of the Internal Market and the reinforcement of Economic and Social Cohesion.
- <sup>3</sup> For a wide-ranging discussion of accountability issues in relation to megaprojects, see Bent Flyvbjerg, Nils Bruzelius and Werner Rothengatter, *Megaprojects and Risk*. Cambridge University Press, 2003
- <sup>4</sup> Interview with Jeremy Colman, Assistant Auditor General, National Audit Office, 27 February 2003.
- <sup>5</sup> In the case of the Government’s plans for modernising the Tube, the comparators are assessments of how much it would cost London Underground to deliver the planned improvements if it were to remain wholly within the public sector. The comparators can be used to compare against bids on the individual contract for each infrastructure company as well as on all three together.
- <sup>6</sup> Interview with Martin Callaghan, Director of PPP, London Underground Limited, 4 March 2003.
- <sup>7</sup> London Underground Limited (LUL) as the Infrastructure Controller is responsible for determining the framework and standards used for risk management by all stakeholders (including the Infracos), for the entire LUL network. The Infracos are responsible for controlling their contribution to LUL’s system risk in an acceptable manner, and expressing this in a contractual safety case. LUL’s statutory safety case is required by the RSC (Railways Safety Cases) Regulations 2000 and is accepted by the HSE (Tube Lines, 2003).
- <sup>8</sup> Interview with Cynthia Hay, Director, Capital Transport Campaign, 19 February 2003.

## References

- Clark, A. 2003. How Tube Partnership Came Unstuck. *The Guardian*, London.
- Carrol, P. & Steanne, P. 2000. Public-private partnerships: sectoral perspectives. In: Osborne, S. (Ed.), *Public-Private Partnerships. Theory and Practice in International Perspective*, London: Routledge.
- Department of the Environment Transport and the Regions 2002. *London Underground: Public Private Partnership – The Offer to Londoners*. London: DETR.
- Feigenbaum, H., Henig, J. & Hamnett, C. 1999. *Shrinking the State. The Political Underpinnings of Privatisation*, Cambridge: Cambridge University Press.

- Gidman, P., Blore, I., Lorentzen, I. & Schuttenbelt, P. 1995. Public-Private Partnerships in Urban Infrastructure Services. Kenya: UNDP/UNCHS/World Bank-UMP.
- Hebson, G., Grimshaw, D. & Marchington, M. 2003. PPPs and the changing public sector ethos: case-study evidence from the health and local authority sectors. *Work, Employment and Society* 17 (3): 481-501.
- HM Treasury 2000. Public Private Partnerships. The Government’s Approach. London: The Stationery Office.
- Kooiman, J. 1993. Modern Governance: New Government – Society Interactions. London Sage Publications.
- Labour Party 1997. Labour Party General Election Manifesto 1997. New Labour Because Britain Deserves Better. London: Labour Party.
- Linder, S. & Rosenau-Vaillancourt, P. 2000. Mapping the terrain of the public-private policy partnership. In: Rosenau-Vaillancourt, P. (Ed.), *Public-Private Policy Partnerships*, Massachusetts: MIT Press.
- London Underground Limited 2002. Putting the Record Straight. Available: <http://www.thetube.com/content/unblock/default.asp>, 2003.
- Kinnock, N. 1998. Transport policy needs at the turn of the century. *European Business Journal* 10 (3): 122-129.
- Pierre, J. 1998. Conclusions. In: Pierre, J. (Ed.), *Partnerships in Urban Governance. European and American Experiences*. Basingstoke and New York: Palgrave.
- Pierre, J. & Peters, G. 2000. *Governance, Politics and the State*. Political Analysis Series, New York: Macmillan Press.
- Prentice, D. 2001. Can public services afford PFI?. *Private Finance Initiative Journal* 6: 6-8.
- Spackman, M. 2002. Public-private partnerships: lessons from the British approach. *Economic Systems* 26 (2002): 283-301.
- Stoker, G. 1998. Public-Private Partnerships and Urban Governance. In: Pierre, J. (Ed.), *Partnerships in Urban Governance. European and American Experiences*. Basingstoke and New York: Palgrave.
- Stone, C.N. 1993. Urban regimes and the capacity to govern: a political economy approach. *Journal of Urban Affairs* 15 (1): 1-28.
- The Economist 2002. Editorial. London: The Economist.
- The Industrial Society 2000. *The London Underground Public Private Partnership: An Independent Review by the Industrial Society*. London: The Industrial Society.
- The United Kingdom Government 2000. *The Government’s Response to the Environment, Transport and Regional Affairs Committee’s Report, Funding of London Underground*, Department for Transport: <http://www.railways.dft.gov.uk/response/cm4877>, 2003.
- The United Kingdom Parliament 2000a. *Funding of London Underground*. London: Select Committee on Environment, Transport and Regional Affairs (Fourteenth Report) HC11. Available: <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmenvtra/411/41105.htm>, 2003.
- The United Kingdom Parliament 2000b. Hansard Volume (House of Commons Debate), Keith Hill (The Parliamentary Under-Secretary of State for the Environment, Transport and the Regions).

Tube Lines 2003. Contractual Safety Case. Version 3.14. London: Tube Lines.