Workshop 5 Report: The roles and responsibilities of government and operators

Chris Nash a, *, David Bray b

a Institute for Transport Studies, University of Leeds, Leeds LS2 9JT, United Kingdom
b University of Queensland, Australia

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ABSTRACT

The separation of purchaser and provider requires identification of the respective roles and responsibilities of the two parties. In the spirit of previous Thredbo conferences, we saw it as clear government should be responsible for strategy and operators for operations. That left, as always, the problem of how best to deal with tactical planning as the core issue, and as always there was no simple solution. Government authorities should set the context in the form of contracts, which would inevitably influence the tactical planning process. But it was felt that operators, and particularly smaller locally based operators, would have a better knowledge of the needs of their passengers and of the commercial possibilities of alternative ways of serving them. Thus tactical planning would inevitably involve both government and operator, as well as other stakeholder groups. The workshop also considered issues related to the nature of the government authority that should have responsibility for public transport, the nature of the contract itself and how governments could best create the right environment for contract management, before reaching its conclusions on policy and on research needs.

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1. Introduction

As is invariably the case at Thredbo conferences, the workshop had the benefit of a very wide range of experience. We had 14 papers providing information on experience with both road and rail transport and covering ten countries in Europe, South America and Australasia. The same ten countries were represented by a mix of researchers, policy makers and operators.

The subject of the workshop was the roles and responsibilities of government and operators. In the spirit of previous Thredbo conferences, we saw it as clear that government should be responsible for strategy and operators for operations. That left, as always, the problem of how best to deal with tactical planning as the core issue, and as always there was no simple solution. Government authorities should set the context in the form of contracts, which would inevitably influence the tactical planning process (for instance, governments would want to see at least minimum levels of service to all communities above some minimum size). But it was felt that operators, and particularly smaller locally based operators, would have a better knowledge of the needs of their passengers and of the commercial possibilities of alternative ways of serving them. Thus tactical planning would inevitably involve both government and operator, as well as other stakeholder groups. The workshop also considered issues related to the nature of the government authority that should have responsibility for public transport, the nature of the contract itself and how governments could best create the right environment for contract management, before reaching its conclusions on policy and on research needs.

* Corresponding author. Tel.: +44 1756 700096.
E-mail address: C.A.Nash@its.leeds.ac.uk (C. Nash).

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2. The nature of the government authority

Having concluded that public authorities have an important role in public transport, not just at the strategic level but also in at least setting the context for tactical planning, the first big question that arose essentially from Scandinavian experience, but is an issue everywhere, was the question of what government bodies should be involved. There was a variety of experience within the workshop, but in general national governments dealt with national rail networks, whilst regional rail and bus services were the responsibility of regions or municipalities. It was thought to be important that public transport planning was adequately coordinated with road and land use planning, education and health services. However, these functions were often carried out at different levels of government. Moreover, rail planning as well as regional buses tended to require a regional outlook, because of the longer distance nature of the services; whereas purely local buses were best planned at a very local level.

Thus it was not possible to come up with a single prescription to suit all circumstances. What did seem clear was that very often a partnership between different levels of government would be needed. This might be a formal partnership in the form of a joint partnership between different levels of government would be suitable all circumstances. What did seem clear was that very often a partnership in the form of a joint approach, in which lower tiers of government essentially worked within timetable and tariff plans set out by national government seemed to work well, but was obviously influenced by the geography and political system of the country and might not be a recipe for all.

It was agreed within the workshop that the abilities of the government body dealing with public transport were key factors in achieving a successful outcome. If it is accepted that public transport should be devolved to lower tiers of government, then an issue arises of how to ensure adequate knowledge and experience, particularly in dealing with rail contracts, where each authority might only hold one or two contracts which only come up for renewal every few years. Moreover, it was noted that in small authorities, staff turnover could be a great problem in sustaining these skills. It seemed essential for the bodies involved to have a means of sharing data and experience as well as having a greater sense of obligation to have a sound understanding and oversight of the contracts that they manage (participants were surprised to hear that this did not seem to be happening in Sweden, one of the countries with most experience of devolved public transport planning and contracting). There might be advantages in a skilled, centralized body undertaking procurement of public transport, although there were doubts about the wisdom of separating procurement from contract management. Using such a body to gather experience, benchmark performance and prepare contract templates, which embodied best practice but could be adapted to individual circumstances, seemed a more promising approach.

A further important issue is the ability to work closely with operators, whilst not being ‘captured’. Given the emphasis on cooperation with both public and private sector bodies, the workshop felt that the successful local government public transport officer needed a lot more than purely technical skills. We felt we knew too little about the background and training of such people and how to foster such skills for the future.

3. The nature of the contracts

A number of key issues arose regarding the contracts themselves.

Firstly, if the benefit of the input of a local operator strongly embedded in the community were to be obtained, there would be advantages in a negotiated contract rather than opening the market to a possible entrant without that local knowledge. The workshop was not against such contracts where there was clear evidence that the operator was performing well (again benchmarking was crucial) but was nervous of the possibility of regulatory capture, and felt that the market should be tested by competitive tendering periodically. However, the rail market in Switzerland seemed to be a case where a public transport system largely in public hands (although split between federal government and cantons) had greatly improved its performance, carrying many more passengers with reduced subsidy, as a result of negotiated contracts based on ambitious targets with severe financial constraints, i.e., without the introduction of either competitive tendering or private ownership. In another case, experience in Poland indicated active management by the authority was important to securing quality services irrespective of whether the contractor was a public or private business.

Where competitive tendering was undertaken, there were various things the authority could do to promote competition. Firstly, the size of the lots was important. Very large lots tend to preclude many, sometimes substantial, operators, unless they work in consortia, and the degree to which that was permitted would be determined by competition law (we had an example from Brazil where formation of consortia had helped to ensure that incumbents retained their existing services). On the other hand, having many small operators in an area, especially if they have route-type contracts, makes involvement of operators in tactical planning more difficult, and requires a greater input from the public authority in terms of integration. As always, a balance has to be struck.

Secondly, bidders must receive adequate data, certainly on patronage and arguably also on costs. This is not usually a big issue when the incumbent is publicly owned as the authority should have access to the data and the right to share it with bidders (although when a publicly owned company has the structure of a private company, such as Deutsche Bahn, this can still be an issue). We had one example where bidders for rail contracts in a German city had to conduct their own patronage counts for the existing system to obtain data needed to prepare tenders. Obviously the incumbent will be reluctant to share data, and there may be difficult legal issues if the incumbent is a privately owned operator previously running services on a commercial basis or on a contract which did not adequately provide for the public authority to obtain and share data.

Thirdly, the public authority should take on risks that are outside the operators’ control. This could extend to overall revenue risk in the case of gross cost contracts for parts of a strongly planned and integrated regional network, although other quality-related incentives will then have to be included in the contract. Alternatively, it could include that part of revenue risk outside the operator’s control. For instance, rail franchises in Britain now include an adjustment for the estimated effects on revenue of different rates of GDP growth than that anticipated at the time of the tender. The same approach could be taken to, for instance, petrol prices or traffic speeds.

On the cost side, general changes in costs such as fuel prices and labour costs might be borne by the government (but not of course the actual changes experienced by the firm, so that they still have an incentive to minimise the impact on their business of the national trends). It may be objected that such measures are relieving the private sector of risks that in most spheres of business they would have to take on themselves. But in most spheres of business their ability to manage the risks would not be constrained by a contract limiting their freedom of action. Moreover, if the result is to attract more competition, reduce the introduction of risk premiums and reduce the risk of contract failure with its resulting costs, the action would seem justified by giving better value for money from the contract.

It may be objected that such measures are relieving the private sector of risks that in most spheres of business they would have to take on themselves. But in most spheres of business their ability to manage the risks would not be constrained by a contract limiting their freedom of action. Moreover, if the result is to attract more competition, reduce the introduction of risk premiums and reduce the risk of contract failure with its resulting costs, the action would seem justified by giving better value for money from the contract.
Competition may also be promoted by the authority owning the assets (depots, vehicles etc) and leasing them to the operator, thus overcoming one of the big barriers to entry: the cost of acquiring the assets and the shortage of locations for depots. This approach may have other advantages in terms of ensuring continued use of assets regardless of who wins the contract and promoting standardisation and attention to life cycle costs rather than simply looking at the duration of the contract. Both factors may reduce costs. But again these represent the public authority taking on roles where the private sector may be able to fulfil them more effectively; giving operators a choice of vehicle for instance may promote innovation. The arguments are differently balanced between bus and rail; the shorter lives and much more active second hand and leasing markets for buses means that there is a stronger case for a public authority owning the assets in rail than in buses. In the bus sector, perhaps there is a middle way; the public authority might own some depots to provide some certainty and availability to operators but with operators also needing to provide additional depot capacity themselves and thus encouraging innovation at the margin that could, over time, lead to changes in the extent and type of depot provided by the authority.

A particular issue arises regarding what happens to the labour of the incumbent operator. In some cases the new operator is obliged to take them on at the existing wages and conditions (this is the case with British rail franchises, and there are similar “transmission of business” rules in Australia to guide such matters). In other cases, as is now the case in Germany, there is an agreement that all the staff of a new entrant should be subject to the same wages and conditions as those of the incumbent. Even in this situation, there may be an issue of how to motivate workers who do not know what company they will be working for at the end of the franchise. Where the incoming operator is free to recruit their own staff and determine their own wages and conditions, as is typically the case with small and less formal bus contracts, the incentives for cost reduction (whether by improved productivity or by worsening wages and conditions) are greater. But so too are the risks of discontent of workers in the industry, and this may spill over into industrial action.

Finally, the question was raised as to whether contracts should be exclusive, or whether there should be the opportunity for other operators to enter the market on a purely commercial basis. Thus already happens to a degree in the rail market in Europe, and current European Commission proposals might include such right of entry throughout Europe, though with a degree of protection for holders of franchises. In Britain, a large part of bus services outside London are provided without contracts on a purely commercial basis, and scope for this has recently been introduced for buses in Sweden.

No clear conclusions were reached on this issue. On the one hand, such entry might encourage innovation and cost efficiency. There was evidence that in Britain, open access rail operators had lower fares and were highly rated by users for their quality of service. On the other hand, they were likely to increase the subsidies required by franchisees, and reduce the degree of integration of the public transport network.

4. How can governments create the right environment for contract management?

We have argued above that tactical planning should be undertaken by a partnership between public authorities and operators. If such a partnership is to work, then the procurement process, the contract itself and the relationships between the partners must set the right context. The procurement process must have clear and prioritized objectives, avoid the transfer of risk that contractors cannot manage, provide available data to assist tenderers and reduce uncertainty, market test and promote a competitive supplier market, implement sound tendering and tender assessment processes and assemble benchmarking and other market information needed to assist in the assessment of tenders. The contract will need to be very clear about objectives, targets and processes, but not too specific in terms of the exact services to be provided. It will therefore be necessary to include clear and simple variation procedures, based on unit costs (and anticipated changes in revenues in the case of a net cost contract). Appropriate incentives must be built into the contract. Whilst these will undoubtedly include penalties for poor performance, the workshop concluded that cooperative working was more likely to be achieved by allowing partners to share the gains from improvements than by a heavy reliance on penalties. Where penalties were needed, it might be better for working relationships for these to be imposed by an external regulatory body rather than by the public authority directly involved with operators in tactical planning.

Amongst the incentive regimes we heard of, there were interesting variations on the usual ones of revenue or passenger volume related payments. One option was payments based on measured customer satisfaction. This would have obvious advantages where there was largely a captive market, as a payment related to revenue or volume would fail to give much incentive. But there were worries as to whether measurement of customer satisfaction was sufficiently robust for such a scheme to work. Another more radical one was a bonus dependent on the authority’s satisfaction with the operator. If it could be made to work, this would be a very useful incentive in systems where the authority and operator need to work closely together, but there was even more doubt as to how to ensure objective measurement in this case.

Having briefly commented on the problem of incentivising the operator, we also thought about the companion problem of incentivising the public authority. Could there be a system of incentives administered by an independent regulator, to whom operators could appeal when the public authority fell short of the performance foreseen by the contract in terms of cooperative working?

5. Policy conclusions and research needs

We considered that the role of government in looking after strategy and of operators in looking after operations was obvious. Thus we devoted our time to discussing the tactical planning area of public transport.

One clear but unhelpful policy conclusion is that what works in practice depends on circumstance. However, we believe that a partnership of public authorities (often more than one layer of government) and operators is likely to best fulfil this role.

That means that flexible contracts are needed, which concentrate more on objectives and targets, and on processes, than on heavily specified services.

The obvious consequence of this is that contracts need to make provision for variation of services in a simple way, through appropriate variations in payments, and must build in appropriate incentives. Such incentives may include passenger (and possibly authority) satisfaction as well as more traditional volume based measures.

Negotiated contracts may be appropriate in some circumstances, and have advantages in harnessing the local knowledge of existing local operators, but the workshop tended to the view that the market should be tested by competitive tendering from time to time. When competitive tendering is used, governments need to promote competition by, inter alia:

- Specifying lots that are attractive to potential bidders
- Providing adequate data to all bidders
- Retaining risks that the operator cannot control
- Ensuring that bidders can acquire the assets they need, if necessary by leasing them to the operator themselves

The capacity of the government authority is as important as that of the operator itself, and consideration needs to be given to how to improve performance of authorities, including by benchmarking and by incentive regimes. Independent regulators have a role here.

Regarding research needs, we see a need for more studies of alternative arrangements regarding the public authorities responsible for public transport planning and procurement, to try to see what works best in a variety of circumstances.

A particular under researched issue is that of the background and training of successful local authority and public transport operator officers. This is important in understanding future recruitment and training needs.

More research is needed into how best to achieve the sort of flexible contract and cooperative working that we see as needed to best fulfill the role of tactical planning in public transport. In particular, how best to provide for variation in services and how to appropriately incentivise this, including measurement of passenger satisfaction.

Papers presented at the workshop


Arbuckle, T. (2013). Contestability in passenger transport bus contracts — What is the future of private negotiated contracts in Australia?


Melkersson, M. (2013). Public transport through procurement — Do competent local authorities manage to procure effectively?

Rolim, F., Santos, E., & Meira, L. (2013). Competitive aspects in the metropolitan region of Recife bidding terms for the delegation of its urban bus system.


Schaaffkamp, C. (2013). How can customer focus be strengthened in competitive tendering?

Seidel, T., & Vakkuri, J. (2013). Impacts of quasi-market reforms on local public bus transportation actors in Finland and Germany.

van de Velde, D., Eerdmans, D., & Veeneman, W. (2013). The emergence of hybrid service design regimes in Dutch public transport — Is co-operation between authority and operator the Holy Grail?