



Turkish experience with public private partnerships in infrastructure: Opportunities and challenges[☆]



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ABSTRACT

Turkey has been the most active user of PPP contracts for the delivery of infrastructure services in Eurasia in recent years. Also, it has an ambitious PPP portfolio which would be realized in coming years. This study attempts to explore whether PPPs would genuinely bring efficiency gains in the delivery of public services or pose new challenges for the performance of public administration from a broader economic perspective. The government has considered them as a panacea to deliver much needed infrastructure services, due to the large fiscal deficits and high public debt. This study argues that although PPPs can play a role in facilitating infrastructure investments, they can still impose unduly costs on the society, if enabling institutions, rules and procedures surrounding PPPs remain immature.

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1. Introduction

Infrastructure services can positively contribute to growth and productivity (Aschauer, 1989). Therefore, governments facing budget constraints across the world have turned to leverage private participation in infrastructure through public–private partnerships (PPPs) over the last three decades (Grimsey and Lewis, 2004). PPPs can come in various forms such as concessions, build-own-operate (BOO) build-operate-transfer (BOT), build-lease-transfer (BLT) and transfer of operation rights (TOOR). In parallel with the European Union (EU) terminology (Eurostat, 2010: p. 229), the main distinction between concessions and PPPs is that the majority (or all) of usage fees (e.g. real tolls) are paid by users in the former, and

by the public procurer in the latter in the form of shadow tolls and availability payments. PPPs/concessions may bring into market-place new -greenfield- investments (e.g. roads, airports, bridges, seaports, border gates, mobile telecom services, electricity plants, and hospitals), or transfer of operation rights of existing -brown-field- facilities (e.g. electricity distribution and generation, seaports, and fixed-line telecom services) to the private sector.

PPPs may demonstrate superior performance over publicly financed services under certain conditions by expanding infrastructure base, improving efficiency, and transferring crucial project risks to the private partner in the service delivery. If the quality of the service can be well specified in the initial contract through performance measures rewarding or penalizing the private operator, a PPP contract results in better outcome, whereas if quality standards of upfront investment can be specified well, conventional procurement performs better (Hart, 2003). However, critics still raise concerns about whether private delivery of public services may have adverse effects on the expectations from infrastructure investments such as access by the poor to public services because of higher prices, environmental impacts from infrastructure, and building integrity (Harris, 2003). Indeed, both arguments may prevail in practice depending on the governance structure of PPP project cycle. A well-designed PPP contract, according to the United Nations (2008), must conform with general standards of good governance which require putting into place the enabling institutions, rules and procedures surrounding PPPs.

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PPPs have been used by both the developed world and developing economies including Eurasia countries. According to the World Bank interactive database,¹ 263 PPP contracts with a total investment commitment of over \$95 billion were delivered in Europe and Central Asia (ECA)² from the emergence of the global financial crisis of 2008 towards the end of 2013. Turkey accounted for 47 percent in the number of contracts and for 46 percent in the value of contracts, of total private involvement in infrastructure in the region during the 2008–13 period.³ It entered 124 PPP contracts with a projected investment value of over \$43 billion. These figures demonstrate that Turkey is the most active user of PPP contracts in the delivery of infrastructure services among the ECA countries, and it ranked third behind India and Brazil among 98 developing countries included in the World Bank PPI database during the same period of time. On the other hand, 23 percent of respondents of a PPP Bulletin Survey conducted by *Deloitte* (2012) with the participation of representatives of sixty-seven global PPP companies ranked Turkey second behind the United States as the most promising PPP market in the medium to long-term. The growing global interest in Turkish PPP markets stems from the country's large infrastructure need and its increasing appetite to enable private finance in infrastructure in coming years. Given Turkey's frequent use of PPP contracts in large-scale infrastructure investments, and its great attractiveness in the eyes of global PPP companies, the assessment of Turkish experience with PPPs genuinely deserves a particular attention.

A growing body of research has reviewed and evaluated private participation in infrastructure in Turkey from the privatization perspective.⁴ Yet, it seems that the scholarly research has largely neglected to what degree the country has succeeded in designing negotiating and executing PPP contracts. PPPs significantly differ from privatization contracts that transfer the ownership of public assets and/or facilities and corresponding risks to the private sector (Hart, 2003; Guash, 2004). By contrast, governments have considerable interest in the standards of service delivery in PPPs, and in the residual value of PPP assets concerned, hence, they still carry certain project risks such as currency, inflation, demand and legal change (Yescombe, 2007). Furthermore, while privatized enterprises are regulated by statutory acts (e.g. sectoral regulations and competition law), PPP projects are also executed by long-term contracts co-signed by public and private parties within the framework of PPP enabling legislations in addition to the related statutory legislations. Last but not the least, much of the privatization research follows a complete contracting perspective in which imperfections arise solely because of moral hazard or asymmetric information (Hart, 2003). However, imperfections in long-lasting PPP contracts with huge capital requirements may also emerge due to uncertainty about future developments.

To contribute to the literature on private participation in

infrastructure, this paper is intended to evaluate institutional and legal structure of PPPs in Turkey. To the best of the author's knowledge there is not yet a scholarly study comprehensively analyzing whether PPP contracts have been successfully delivered. The paper aims to evaluate PPP regulations, their implementations, and the degree to which they fulfilled the promised benefits based on a review of the relevant primary and secondary literature, anecdotal evidence, and the author's own knowledge on the subject coming from his involvement with the issue.

The examination of Turkey's experience can shed light on opportunities provided and challenges posed by PPP contracts in an emerging country circumstances. While the delivery through PPPs of -more- infrastructure services is key to growth and productivity, the quality of service delivery is heavily dependent upon financing and governance issues. When public funding is lacking, considerations of the efficiency gains from the use of PPPs tend to be pushed aside, and the prompt realization of needed investments come to the forefront of political agenda. In this context, uncoordinated efforts made in the framework of different regulations and institutions to expedite the process can undermine the success of PPP contracts leading to coordination failures and higher transaction costs.

The second section of the study is devoted to the examination of the legal structure and market developments in Turkey. The third section offers an evaluation of institutions and instruments needed to improve value for money in service delivery, and a discussion of where and how imperfections and irregularities may emerge during the designing, writing and tendering of a PPP contract. Finally, the study concludes with a recapitulation of major points which would suggest opportunities and challenges arising from the delivery of PPPs/concessions.

2. Legal framework and implementation

The award process of PPP contracts in Turkey is currently based on a patchwork of legal and institutional structures, comprising a number of laws and several institutions. There are two reasons for this fragmented structure: the struggle between judiciary and politicians on the one hand, and among key stakeholders of PPPs on the other. To begin with, the 1980–90s witnessed a serious legal struggle between pro and anti-privatization coalitions on the matter of how the private sector should participate in the delivery of public services.⁵ Turkey's legal order is based on a dual structure -i.e. the administrative law and the private law-. The latter may provide the contracting agencies with more flexible solutions than the former in the design and implementation of a PPP contract. The ruling political parties in the early 1990s initially attempted to treat PPPs/concessions in the domain of private law. However, legal initiatives to treat PPP contracts in the scope of private law were overturned by the Constitutional Court (CC).⁶ Successive governments tried to take roundabout routes to circumvent the rulings of CC rather than making fundamental changes in the legal system. The issue was eventually resolved by a constitutional amendment in 1999 which stated that public investments and services may be performed by the private sector through private law contracts so long as this is determined by the law.

Another struggle emerged between public agencies with respect to the allocation of power and authority. Line ministries were concerned about losing their influence on PPPs falling in their

¹ <http://ppi.worldbank.org>.

² The ECA countries included in the World Bank database are Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Georgia, Kosovo, Lithuania, Macedonia, Montenegro, Romania, Russian Federation, Serbia, Tajikistan, Turkey, Ukraine and Uzbekistan.

³ Russian Federation, as the second country engaged in the highest value of PPPs after Turkey in the region, entered 21 PPP contracts amounting \$34.6 billion. Fourteen contracts worth \$22 billion were in the energy sector, while \$12.5 billion were invested in the transport and \$100 million in the water and sewerage sector.

⁴ See Güran (2011) and Onis (2011) among others and references cited therein. In this context, in its peer review report of Turkey regarding public procurement and concessions/PPPs, *SIGMA* (2008) asserted that the term privatization was mostly used in Turkey when, in reality, the activity concerned qualified as the award of a PPP or a concession contract. Also, the term privatization was sometimes used even when no real transfer of ownership took place (e.g. transfer of operation rights of existing public facilities for a certain period of time).

⁵ To better figure out why massive private participation in public services was just experienced during 2000s in Turkey despite early attempts in the 1980s, see Onis (2011).

⁶ To understand power struggle between the politicians and the judiciary on the matter in the context of electricity services, see Ulusoy and Oğuz (2007).

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