



House of Commons
Transport Committee

**Update on the London
Underground and the
public–private
partnership (PPP)
agreements:
Government Response
to the Committee's
Seventh Report of
Session 2009–10**

**Second Special Report of Session
2010–11**

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The Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Transport and its associated public bodies.

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The current staff of the Committee are Mark Egan (Clerk), David Davies (Committee Specialist), Marek Kubala (Inquiry Manager), Alison Mara (Senior Committee Assistant), Jacqueline Cooksey (Committee Assistant), Stewart McIlvenna (Committee Support Assistant) and Hannah Pearce (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Transport Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6263; the Committee's email address is transcom@parliament.uk

Second Special Report

On 4 August we received a response from the Government to the Transport Committee's Seventh Report of 2009–10, on the Update on the London Underground and the public-private partnership (PPP) Agreements,¹ which we publish with this Special Report.

Government response

The Committee published its Seventh Report of Session 2009-10 on 26 March 2010. The Government welcomes the interest that the Committee has continued to show in the Underground.

Introduction

This paper sets out the Government's response to the Transport Select Committee's report on the Update on the London Underground and the Public Private Partnership Agreements (HC100 published on 26 March 2010).

Despite a slight reduction in passenger numbers during 2009-10 on the previous year due to the economic downturn, the Underground continued to carry over a billion passengers last year and remains a key element in the future success of London's economy.

The PPP agreements were put in place by the previous administration as part of the London devolution settlement. The Government believes that there were flaws in the PPP agreements, designed by the previous administration, as they failed to fully transfer risk to the private sector, resulting in significant additional liabilities having to be borne by the taxpayer.

As the Committee will be aware, Transport for London (TfL) purchased the Bechtel and Amey shareholdings in Tube Lines on 27 June 2010, bringing Tube Lines under public ownership as a subsidiary of TfL, which effectively ends the PPP. TfL have informed the Government that they believe this will enable them to manage the tube investment programme with greater flexibility, and provide an opportunity to reduce interface costs and further improve efficiencies. The Government looks to the Mayor to pursue these efficiencies and to secure value for money in the upgrade and maintenance of the London Underground network, for which he is responsible. The Government will be working with the Mayor and TfL to ensure the new arrangements can demonstrate improving value for money for taxpayers and farepayers in a way which is transparent and independently assured.

It is clear that many of the issues identified by the Committee such as transparency and future efficiencies will need to be considered by the Government and the Mayor in establishing future arrangements over the coming months. The Mayor will also need to consider the impact that future closures will have on the travelling public while the line

1 HC 100, published on 26 March 2010.

upgrades are carried out. The Committee's report is therefore a welcome and useful contribution to that work.

1. As we stated two years ago, the failure of Metronet demonstrates the flawed nature of the PPP agreements which placed an unacceptable burden of risk on the taxpayer. Metronet's demise, which cost the taxpayer at least £170 million, has cast a long shadow of doubt over the remaining PPP agreement with Tube Lines.

The Government agrees with the Committee's conclusion that flaws in the PPP agreements designed by the previous administration contributed to the loss to the taxpayer of between £170 and £410 million through the collapse of Metronet. With the benefit of hindsight, the PPP contracts could have been structured to create better information rights and to enable the PPP Arbiter to give London Underground the right to reduce their payments to Metronet in the event that he considered the potential cost of uneconomic and inefficient action might not adequately be contained within the debt and equity provided by their shareholders.

With the purchase of Tube Lines by TfL, there is a need for new arrangements to ensure efficiency and value for money. TfL have said that following the purchase of Tube Lines they intend to build on good practice within the company, and Amey will continue to provide project management of the maintenance of the Jubilee, Northern and Piccadilly lines. The Government expects TfL to retain and build on the efficiencies that the private sector brought.

The Performance of Tube Lines and the London Underground

2. We are concerned that, despite over 100 weekend closures of the Jubilee line, including complete closures of the line during seasonal holidays, Tube Lines has failed to complete the upgrade on time. The ongoing disruption caused to people who rely on the Jubilee line to go about their daily lives, and the cost to business, is unacceptable.

Following the purchase of Tube Lines, it will be for TfL and London Underground to determine the remaining closure programme to complete the upgrade. London Underground has recently reported to the TfL Board that much work remains to be done before they are fully confident in the reliability of the new signalling system. It is therefore not yet clear that the upgrade is going to be completed by 11 October 2010, which was the new contractual date agreed earlier in the year with Tube Lines following their failure to complete it by 31 December 2009. The Government, therefore, looks to TfL to complete the line upgrade whilst balancing the impacts of disruption to the travelling public, and the need for efficient use of public funds.

3. We welcome Tube Lines' apology and recognise that, in accordance with its PPP agreement, the company has been fined for its poor performance. However, that alone is not enough. Tube Lines must learn the lessons from its poor performance on the Jubilee line upgrade, so that, in any future upgrades it undertakes, missed deadlines and disruptions for passengers are minimised. We call on Tube Lines to publish its plans for avoiding similar overruns to its projects in the future.

The Mayor has said that, by bringing Tube Lines back within TfL, he intends to be able to deliver planned upgrades more efficiently and flexibly across the London Underground network, with less disruption. TfL are now conducting an urgent review of the Tube Lines upgrade programme.

The original date for the completion of the Northern line upgrade was January 2012 but London Underground has since reported that Tube Lines' most recent forecast is April 2012. TfL issued a press notice on 29 June 2010 announcing that they are examining the status of the Northern line upgrade programme following the acquisition of Tube Lines, and will carry out a further assessment of the planned work and the closures that are needed to complete it. Their objective is to finish the upgrade with less disruption and fewer closures, but at the time of writing it is not clear when the upgrade is likely to be finally completed.

4. The terms of the PPP agreement give TfL power to allow or to refuse requests for line closures over and above those stated in the agreement. There is clearly an inherent conflict between Tube Lines' need to gain adequate access to the track and signalling system so that it can finish its work on time and TfL's wish to minimise disruption to passengers. While there is insufficient evidence to conclude that TfL has behaved unreasonably in this instance, there is some evidence that it could have responded to Tube Lines' requests for whole closures of the line more readily. We recommend that to avoid such squabbles in the future, the neutral PPP Arbiter should be responsible for making decisions on requests for additional line closures. The Department should make the necessary amendments to the PPP agreement to put this change into effect.

The Mayor has made clear that one of the principal motivations behind TfL's purchase of Tube Lines has been to end the contractual disputes that had characterised the signalling upgrades programme in the Tube Lines PPP. It is now for TfL and London Underground to determine the future closure programme that is needed to complete the works.

5. We remain convinced that Metronet's tied supply chain was a major cause of its demise. Although we note similarities between Tube Lines' practice of seconding work to its parent companies, we also note that, unlike Metronet, Tube Lines awards contracts only after a process of competitive tendering. We are concerned, however, that there may be a temptation for Tube Lines to award projects to its parent companies for which they do not possess the required expertise. Such practices may have contributed to delays on the upgrade.

Tube Lines had awarded the majority of its contracts on a competitive tendering basis to ensure the best price was achieved. The company had separate secondment agreements, established at the beginning of the PPP agreement, under which specialists from the shareholder companies (Bechtel and Amey) were seconded to Tube Lines to project manage the line upgrades and maintenance programmes respectively. As part of the buyout of the Tube Lines shareholders, TfL have made clear that the Bechtel secondment agreement for the line upgrades will be terminated, following a transition period, while the secondment agreement with Amey for the maintenance programme will be retained as it is considered to be working effectively.

In respect of the secondment agreements, the Arbiter's Periodic Review process set an economic and efficient price following good industry practice and acknowledged in his final directions that a notional infraco² would also adopt a similar strategy to the secondment arrangements. It was for Tube Lines to consider whether these arrangements and the price they were to pay for that expertise would allow them to deliver on their overall obligations economically and efficiently. The incentive on Tube Lines was therefore to keep overall costs down.

Following the purchase of Tube Lines, which will be run as a subsidiary of TfL, the Government is working with TfL and London Underground to ensure that future arrangements can provide confidence to the farepayer and taxpayer that money continues to be invested efficiently in the London Underground network in a way which is transparent and independently assured.

6. It is clear that London Underground inherited from Metronet a number of lines that were under performing. Early indications are that London Underground has succeeded in cutting costs and improving performance on the lines it inherited. That is welcome.

The Government agrees that London Underground took on under performing lines from Metronet and that performance has since improved. There is still, though, room for further improvement. We note that the PPP Arbiter published International Benchmarking data on 16 March 2010, which suggest that there is a gap to close between both London Underground and Tube Lines' costs and those of their international comparators in some areas, such as track maintenance.

The future performance of London Underground and its interaction with Tube Lines as a TfL subsidiary is all the more important, now that it is back in public ownership. The Government will be working with the Mayor and his team to make sure the new arrangements for Tube Lines demonstrate improving value for money for taxpayers and farepayers.

7. We are, however, concerned by indications that London Underground's work is up to one third more expensive than similar work undertaken by Tube Lines. It is important that reliable data about costs and the quality of work undertaken on all Underground lines is collated. We therefore welcome the Arbiter's work with London Underground on developing information that will enable him to set performance benchmarks for the former Metronet lines. We look forward to these benchmarks being made public as soon as practicable.

The Government agrees that reliable data about the costs and quality of work undertaken on all Underground lines is of great importance, especially now that Tube Lines is in TfL ownership. The Arbiter's independent Reporters' evidence, published on 16 March 2010 suggests that London Underground's own work appears to be up to one third more expensive than similar work undertaken by Tube Lines. This is clearly of concern and it will be for the Mayor and TfL to ensure that the new arrangements secure more efficient ways of working. The Mayor's new Investment Programme Advisory Group (IPAG) was established to advise the Mayor and the TfL Board on such matters and it is open to them

² A notional infraco is based upon a company working economically and efficiently within good industry practice and a mechanism used by the Arbiter to determine a price for specified outputs.

to investigate why London Underground's costs in most areas appear to be significantly higher than Tube Lines.

The acquisition of Tube Lines by TfL will mean that the Arbiter's role in issuing directions to the parties on issues of contention will no longer be necessary. The Arbiter's powers, which allow him to collect benchmarking information and scrutinise Tube Lines' plans, depend upon references being made to him, or being in prospect. In the absence of such references, as is intended by TfL, the Arbiter's powers fall away.

In light of this, the Government is working with the Mayor and TfL to establish an alternative way of providing the transparent and independent assurance that the Arbiter has hitherto given to the taxpayer and farepayer, that money is being invested economically and efficiently.

8. We are deeply concerned at the increasingly antagonistic relationship, stoked by the Mayor, between TfL and London Underground on one side, and Tube Lines on the other. Relations between the parties have deteriorated further over the past year. They are the poorest that the PPP Arbiter has ever witnessed and both TfL and Tube Lines must bear responsibility for this sorry state of affairs. The PPP Agreement between Tube Lines and TfL will only succeed if all parties work in co-operation and in a spirit of goodwill on all sides.

Now that Tube Lines is back under public ownership as a subsidiary of TfL the Government looks forward to TfL now being able to direct a singular focus on the efficient maintenance and upgrading of the London Underground network.

The role of the PPP Arbiter

9. As we said two years ago, the Arbiter should be able to carry out an annual review of all PPP contracts including those transferred to London Underground. This would help companies address performance problems and prepare for periodic reviews. We are disappointed that the Government has not implemented our recommendation to bring greater transparency and accountability to all of the work being carried out on the Underground network. We call on the Government to reconsider its stance.

The Mayor's decision to purchase Tube Lines brings it back into public sector ownership. With the ending of the Arbiter's role there is an opportunity to develop new arrangements to ensure that in future there is transparency and independent advice on the investment programmes on the London Underground network for which the Mayor is responsible. The Government will be working with the Mayor and TfL to make sure the new arrangements are transparent and can demonstrate improving value for money for taxpayers and farepayers in a way which is transparent and independently assured.

Conclusion

10. We reiterate once again our judgement that the PPP scheme is flawed. Some 20 months following the demise of Metronet, the Government is no nearer to being able to demonstrate that the PPP provides value for money for the taxpayer. The performance of Tube Lines has, in some cases, been exemplary. However, the sorry tale of the

upgrade to the Jubilee line has marred its overall record badly. In the light of this project which, on current estimates, will be delivered 10 months late, the PPP has so far failed to prove that it is capable of delivering consistent value for money.

While the Government does not support the previous administration's policy towards the PPP, the acquisition of Tube Lines by TfL has moved the issue on. The Government's primary focus will now be on working with the Mayor and his team to make sure the new arrangements for Tube Lines demonstrate transparency and continuing value for money for taxpayers and farepayers.

The Government agrees that whilst Tube Lines' performance in most other areas has been strong their delay in delivering the Jubilee Line upgrade has been a matter of real concern. By bringing Tube Lines in house the Mayor expects to deliver the upgrades more efficiently and with less disruption for passengers, and the Government now looks to the Mayor to make that a reality.

11. On the other hand, there is not sufficient evidence available to demonstrate whether London Underground is providing value for money in its work on the former Metronet lines. We reiterate our previous recommendations that the Government should prioritise transparency and accountability to taxpayers and passengers by extending the PPP Arbiter's powers for the collection of data across the entire underground network—LU managed lines as well as those managed by Tube Lines.

As stated in the Government's response to 7 the acquisition of Tube Lines by TfL will mean that the Arbiter's role in issuing directions to the parties on issues of contention will no longer be utilised by the counterparties to the PPP. In light of this, the Government is working with the Mayor and TfL to establish an alternative way of providing the transparent and independent assurance, that the Arbiter has hitherto given to the taxpayer and farepayer, that money is being invested economically and efficiently.