

Press Notice 01/06

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PPP Arbiter publishes guidance on treatment of additional investment by Infracos

Chris Bolt, the Arbiter for the London Underground PPP Agreements, today published his guidance on the treatment of additional investment by the Infracos where the benefits straddle a Periodic Review.

The reference was made to the Arbiter by Tube Lines, which is the Infraco responsible for the Jubilee, Northern and Piccadilly lines. Tube Lines was concerned that, if it undertook investment to improve its performance over and above the obligations in its PPP Agreement, it would not be properly remunerated at the Periodic Review due to be completed in 2010.

The Arbiter's guidance covers three main issues:

- the scope of Infraco Obligations;
- proposals for a process for handling worthwhile investment opportunities which are not part of Infraco Obligations; and
- comments on the appropriateness of the current incentive structure in the PPP Agreements in respect of such investment.

The issues raised by the reference are complex, particularly given the broad definition of Infraco Obligations. The Arbiter's guidance stresses the need for the PPP Parties to work together in deciding how to take forward additional investments. The Arbiter has indicated that he is willing to give further scheme specific guidance in order to assist this process.

In the course of preparing his guidance the Arbiter has considered the current PPP incentive regime and has concluded that there are issues that the Parties should review.

Chris Bolt said:

"It is important that the PPP Agreements give the Infracos the right incentive to improve their performance and to adopt innovative approaches to maintaining and renewing London Underground assets. Although the Infracos must perform their activities in a way which achieves the best whole-life outcome, by reference to Good Industry Practice, I am concerned that the way the Periodic Review in 2010 is expected to operate may reduce incentives to innovate. My guidance encourages London Underground and the Infracos to address this issue."

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Notes to Editors:

1. London Underground Limited (LUL) has entered into three separate Public Private Partnership (PPP) Agreements, with Tube Lines in December 2002 and with Metronet (two separate agreements) in April 2003. Under these PPP Agreements, which are for 30 years, these private sector companies ('Infracos') maintain, renew and upgrade discrete parts of LUL's infrastructure. LUL remains responsible, in the public sector, for delivering services to customers. Tube Lines is responsible for the Jubilee, Northern and Piccadilly lines.
2. The role of the PPP Arbiter was established by the Greater London Authority Act 1999 (GLA Act). The Arbiter is appointed by the Secretary of State, but is independent of Government and of the PPP Parties. Chris Bolt was appointed as the first Arbiter on 31 December 2002, the date of commencement of the Tube Lines contract, and his appointment now runs until 30 December 2010. Chris Bolt is also Chairman of the Office of Rail Regulation, but these are separate appointments, and he is supported as Arbiter by a separate Office.
3. The remit of the PPP Arbiter is set out in the GLA Act and is supplemented by contractual provisions included within the PPP Agreements. Under the terms of the GLA Act, the Arbiter may give directions on matters specified in the PPP Agreements or guidance on any matter relating to a PPP Agreement, when requested to do so by a PPP Party. The PPP Arbiter's role is principally to ensure that any differences between the PPP Parties (i.e. London Underground, Metronet and Tube Lines) about the price to be paid to the Infracos or about efficiency and economy can be resolved independently, swiftly and with certainty.
4. The PPP Agreements contain provisions for a Periodic Review of the contractual obligations and remuneration every 7½ years. The current reference, made by Tube Lines, seeks guidance as to "the treatment at a Periodic Review of the consequences of certain decisions taken as part of Tube Lines' business planning". The reason for Tube Lines making the reference was that "in Tube Lines' view, there is no incentive (indeed, there is a positive disincentive) to make investment decisions that could improve performance or financial efficiency on the JNP Network, but which have an investment horizon beyond the next Periodic Review".
5. Guidance by the Arbiter is not binding on the PPP Parties.
6. The reference has been handled in accordance with the Arbiter's Procedural Framework, which incorporates a Procedural Approach to the receipt of an unanticipated request for guidance. These documents are published on the Arbiter's website, at <http://www.ppparbiter.org.uk/output/page33.asp>.