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ОПОРТУНИСТИЧЕСКОЕ ПОВЕДЕНИЕ В ГОСУДАРСТВЕННО-ЧАСТНОМ ПАРТНЕРСТВЕ: РАСХОДЯЩИЕСЯ ИНТЕРЕСЫ ПАРТНЕРОВ В СФЕРЕ УСТАНОВЛЕНИЯ ТАРИФОВ В КАЗАХСТАНЕ



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Введение. Статья исследует различные формы оппортунистического поведения партнеров в государственно-частном партнерстве (ГЧП). В статье обсуждаются детали проекта, в рамках которого осуществляется строительство и эксплуатация железной дороги в Восточном Казахстане. **Методология исследования.** Анализ опирается на глубинные интервью как основной метод сбора данных. **Теоретические основы.** Концептуальную основу статьи составляет теория оппортунизма в целом и определение, данное оппортунистическому поведению партнеров в ГЧП в частности. **Результаты.** В статье раскрываются типичные причины оппортунистического поведения, такие как намерение оплатить незапланированные издержки по проекту и необходимость превратить убытки по проекту в прибыль. Делается вывод, что государство путем отклонения заявок на повышение тарифов стремится получить большую ценность ГЧП за потраченные средства и, следовательно, служит интересам налогоплательщиков и потребителей. **Выводы.** Оппортунистическое поведение частного партнера, преследующего собственные интересы, а не интересы партнерства, понижает ценность ГЧП за потраченные на него средства. Вместо повышения тарифов частный оператор должен искать пути сокращения издержек и повышения эффективности проекта.

Ключевые слова: государственно-частное партнерство (ГЧП), оппортунистическое поведение, установление тарифов, государственные услуги.

Introduction

In Kazakhstan, a transitional nation in Central Asia, the government is interested in the development of public-private partnerships (PPPs), which present a new form of the public service financing and delivery through the employment of organizations from both the public sector and the private sector. A PPP exists where the partners engage in a long-term contractual relationship that includes construction or renovation of a facility with the use of private funds, with subsequent maintenance and operation by the private sector partner [1]. In return, the latter receives user fees from customers (i.e., citizens) and/or the government during the project term, such as 15, 20 or 30 years or longer.

This research focuses on a specific problem that often arises in partner interaction in a PPP, namely, opportunistic behavior. Broadly defined as a pursuit

of self-interest, opportunistic behavior is a common problem for many partnerships in industrialized countries and transitional nations. The study aims to investigate the nature of opportunism in a PPP, give and justify operational definition to opportunistic behavior, and investigate partners' opportunistic behavior in the field of tariff setting using the case study of a PPP project that includes construction and operation of a railroad in Eastern Kazakhstan.

The article is structured as follows. It begins with a description of the project's context, then moves on to highlighting research methodology, and then connects the study's approach with the author's ontological position. The article moves on to discuss the meaning of opportunism and then gives the operational definition to opportunistic behavior in a PPP. The article then investigates tariff setting as a field that illuminates partner opportunism. It highlights the reasons behind opportunistic behavior and its forms. The article concludes by delineating implications of opportunistic behavior in tariff setting.

The project – construction and operation of a railroad between the station of Shar and the city of Ust-Kamenogorsk in Eastern Kazakhstan – is the first public-private partnership in Kazakhstan. The PPP contract was signed 6 July 2005, a year before Kazakhstan has adopted the law on concessions on 7 July 2006 [2], as a pilot project. The Ministry of Transport and Communication that represented the Kazakhstan's government was the original public sector partner with which a private operator – a company called *Doszhan Temir Zholy* – signed a concession for 23 years from 2005 to 31 December 2028.

The project's aim was to construct a segment of the railroad (about 151 km) in Eastern Kazakhstan in order to shorten and speed up the cargo and passenger transportation in this part of the country. In 2008, *Doszhan Temir Zholy* has completed the main construction phase according to the original plan, and from January 2009 the railroad operates in the testing mode. However, the company has not completed all the construction, and it still has to build about 30 km of the railroad.



A unique project feature is that it utilizes the build–own–operate–transfer (BOOT) model according to which the constructed assets (i.e., railroad and related facilities) will be transferred to the public sector no later 31 December 2028. This is specified in the 2005 PPP contract, although the 2006 law on concessions has adopted a different (and the only) concession model for Kazakhstan, which is the build–transfer–operate (BTO) model. Hence, the partnership uniquely features private asset ownership for the project’s length as opposed to other Kazakhstani projects, in which an operator

must transfer a newly built asset to the government immediately upon the completion of construction. As the national government approved the railroad project prior to the adoption of the 2006 law on concessions, the project’s model remains legally valid.

The company plans to cover operating expenses and receive profit from cargo and passenger transportation, for both of which *Doszhan Temir Zholy* will enjoy a government-granted monopoly for the project term.

Table highlights project features.

Concession in railroad construction and operation: Summary of key project details

| Descriptor | Detail information |
|--|--|
| Country and city | Kazakhstan, the <i>Vostochno-Kazakhstanskaya oblast</i> (Eastern Kazakhstan) |
| PPP objective | Put together investment to build about 151 km of a railroad and provide the long-term passenger and cargo transportation |
| Capacity | 15 trains each way per day |
| Type of contract agreement between parties | A concession |
| Implementation model | Build–own–operate–transfer (BOOT) |
| Concession term | 23 years, from 2005 |
| Construction cost | Initial investment was 31.3 billion Kazakhstani tenge (USD \$232.67 million) |
| Construction phase | Three to four years from 2005 to 2008 (completed in part) |
| PPP actors | National Ministry of Transportation; Investment Fund of Kazakhstan; national railroad company <i>Kazakhstan Temir Zholy</i> ; private investors; an operator <i>Doszhan Temir Zholy</i> with shared ownership by four public and private organizations |
| Financial structure | Investors’ contributions in exchange for the corporate shares of stock (\$9.67 million), plus financing by selling corporate bonds (\$223 million), plus subsequent payments to a concessionaire by railroad users |
| Government contribution to a PPP | Land for the railroad, plus government guarantees for the corporate bonds worth \$223 million, plus an exemption from corporate income tax, land tax and property tax for 10 years after the service launch |
| Tariff setting | Tariff setting requires an approval by the government agency responsible for regulation of natural monopolies |

Research methodology

The data collection method in this qualitative study is in-depth semi-structured interviews. The study participants include four interviewees from the PPP project and two interviewees from Kazakhstan’s National PPP Center. Two respondents from the PPP that involves construction and operation of a railroad segment in Eastern Kazakhstan were at the level of a senior manager, while two other interviewees were senior experts. Additionally, two interviewees from the National PPP Centre in Astana were senior experts. The study employed a purposeful sampling with the goal of selecting those interviewees who are in the position to discuss the project, its issues and possible solutions [3, 4].

Interviewees perceive the behaviour of an opposing party as opportunistic in a variety of ways. However, this study focuses exclusively on the private sector partner’s push for higher tariffs for its services. The following two quotes highlight the findings:

“I don’t think that the government behaves like our [a PPP operator’s] true partner. It behaves like a boss. It behaves like a boss who has decided something and believes that this is going to be best for a PPP. And then the boss pushes for his own decision no matter what, without listening much to its so called private sector ‘partner’. Is this really a partnership? To me, it’s more like a traditional the ‘boss-subordinate’ relationship”.

Interviewee D



“The operator’s emphasis on getting new tariffs approved as soon as possible is clearly excessive. They [the operator’s staff] talk about new tariffs all the time as if there are no other ways to improve financial performance. They need to think about an overall project efficiency and keeping their costs low. And a new tariff is just an easy way to get more revenue, without much effort”.

Interviewee F

Although interviewees who represent two different sectors stayed away from directly blaming each other for certain actions or non-actions, the spirit of their views was clearly indicative of opportunism that an interviewee attached to the behavior of an opposing party. This raises an issue regarding how to categorise the partner behavior in a PPP. The question at the root of the issue is what kind of party’s behavior should be deemed opportunistic. The discussion of the nature and specifics of opportunistic behavior has multiple dimensions, and the beginning point is revisiting ontological position adopted for this research.

Theoretical framework

As the author takes on the phenomenological stance in this study as opposed to the positivist’s views, the author believes that the world is socially constructed and subjective [5, 6]. The author’s stance is in contrast to the positivist view that reality is objective and singular [7]. In the phenomenological view, reality has multiple dimensions [8]. It is based on ideas and perceptions, rather than on objective facts and factual reality [4]. The study’s phenomenological perspective has clear implications: it captures interviewees’ experiences and perceptions, whatever these experiences and perceptions are, and there is no ‘correct’ or ‘incorrect’ experience or perception. Hence, capturing interviewees’ experiences and perceptions implies their equal treatment: even if one interviewee’s perception is very different from others and is far from other experiences and empirical data, the researcher should give it equal treatment, much like the treatment of any other perception.

Connecting the study’s phenomenological perspective with the perceptions of opportunism, it is worth noting that the methodological approach permits paying much attention to individual interviewees’ experiences and views, as well as to contextual details of PPP management in Kazakhstan. This is in line with exploratory nature of qualitative study, as opposed to quantitative research [9, 6]. The richness of contextual details and the multi-dimensional perceptions, in the interviewees’ own words, ensure the qualitative research’ depth, which is a great advantage of the phenomenological stance. However, the latter is not free from drawbacks, namely, that generalisations are hardly possible in this research approach. While the uniqueness of the context and

individual perceptions ensures the richness of detail, the same research design’ features make the findings truly unique, especially as far as the country-specific results are concerned. Conclusions must be made with care to make sure that contextual details are preserved, rather than neglected.

To conclude the discussion of ontological position adopted in this study in relation to opinions and perceptions about opportunism, the author does not pursue a goal of judging whether one form or instance of partner’s behavior in a PPP is opportunistic as opposed to another. The author’s goal is to capture all kinds of partners’ opportunistic behavior by adopting a proper operational definition, which the following section delineates.

In reference to defining a firm’s opportunistic behavior in general and a partner’s opportunistic behavior in a PPP in particular, the literature lacks the elaborate discussion, which results in conceptual ambiguity. There is no agreed upon definition of opportunistic behavior. The simple conceptualisation of opportunism is that it refers to self-interestedness of actors [10]. In his article (1993) devoted to economic opportunism, Williamson has made a significant contribution to understanding opportunism and offered a number of definitions and essential details, such as:

- Opportunism is where ‘economic actors will break promises when it suits their purposes’,
- Opportunism means ‘self-interest seeking with guile’, and
- ‘Opportunism corresponds to the frailty of motive which requires a certain degree of circumspection and distrust in the transaction cost economics scheme’.

Conceptualizing opportunism, Williamson argues that:

“The possibilities that economic agents will lie, cheat and steal are admitted. The possibility that an economic agent will conform to the letter but violate the spirit of an agreement is admitted. The possibilities that economic agents will deliberately induce breach of contract and will engage in other forms of strategic behavior are admitted” [10, p. 101].

The above shows that opportunistic behavior may manifest itself in an unlimited variety of ways and forms. Due to the multiplicity of potential forms of opportunism, a researcher, defining the latter, has to determine the significance of a key feature, namely, whether opportunism involves guile. The author’s stance is that guile is unimportant as opportunism’s key feature: the complex nature of a PPP as a set of long-term arrangements makes the relationships in a partnership multifaceted and multidimensional, and it is not an easy task to determine what exactly guile is and where it takes place.

In order to overcome conceptual ambiguity for the PPP research, the author adopts the following operational definition of opportunism:



In a PPP, opportunism is a partner's method of pursuing self-interest with or without guile while a partner directly or indirectly gives up, forgets or neglects the common partnership's interests, goals or values.

The above definition rests on the nature of a PPP as a complex set of arrangements and relationship, which is in the core of understanding of what a partnership is. The following section provides insights into the PPP's nature and then establishes the links between the PPP nature and partner behavior.

This section aims to discuss why guile is unimportant as a potential defining feature of opportunistic behavior in a partnership. In order to prove this, a closer investigation into the nature of a PPP is required. A PPP refers to the set of multiple organizations, stakeholders and relationships between them [14]. However, a PPP contract is between a government agency (or a number of agencies) and a private company (or a number of companies). Although customers, naturally, form an important group of stakeholders, they are not involved in any contractual obligations related to a PPP. A private company often forms a new company, to which researchers commonly refer as a special purpose vehicle (SPV) for asset construction, its maintenance and service delivery [12]. An SPV, which often becomes a PPP project operator, shields the private partner assets from potential losses, i.e. protects the parent company in those cases where an SPV has to bear unplanned expenses stemming from unforeseen risks. Although in exceptional cases a private partner (i.e., a contractual party) assumes the operator's role, as a norm an operator is an SPV.

Typically neither the government nor banks have contractual relations with a PPP operator. This is because an operator does not have any assets other than those which a parent company provides. Therefore, lenders and other parties are unlikely to succeed in holding an SPV responsible for loans and any other contractual obligations as SPVs have limited or no assets as opposed to their parent companies. In some cases, financial organizations may be a part of the general PPP agreement that includes the government and the consortium of private companies and lenders. However, banks will have their loan agreements with the private sector partner. An operator is not involved in any borrowing or other contractual relations as the SPV is a daughter organization formed specifically for implementing the parent companies' obligations.

When one considers a PPP, most often the discussion does not focus on the SPV, although it conducts all the project work. The focus is usually on *PPP arrangements and relationships* that include multiple organisations and stakeholder groups [13]. The SPV management issues and its performance as a stand-alone firm may also require the researcher's

attention. For example, researchers have not sufficiently explored the question of whether an operator effectively meets the construction deadlines and achieves other performance benchmarks. However, the SPV's performance heavily depends on a parent company as the latter borrows money for the PPP project, channels funds, technology and human resources to its SPV, and ultimately carries the responsibility for the PPP's contractual obligations [12]. To summarise, a PPP typically means a set of relationships and arrangements, not a PPP operator.

Stemming from and reflecting a more complex partnership environment as opposed to that of a single business firm, the author adopts a view on the nature of PPP arrangements as a cooperative effort to jointly create value for its stakeholders [14], although created value may benefit stakeholders unequally due to inevitable trade-offs. A principal merit of this view is that it provides a framework for analysing whether value creation happens within the PPP arrangement because what PPP creates must align with common stakeholder values. In contrast to value creation, a partner's action, non-action or neglect may undermine the common partnership's interests, goals or values in the pursuit of self-interest, which exactly constitutes opportunistic behavior. Whether a partner's action, non-action or neglect happen with or without guile is, firstly, extremely difficult to determine due to long-term cooperative arrangements, rather than in merely contractual bilateral obligations, and, secondly, unimportant for categorising partner's behaviour: if partner's self-interest supersedes the common value creation for a partnership (whether with guile or without it), the behavior is opportunistic.

The following excerpt illuminates an interviewee's perception of the government behavior to which an interviewee does not attach any guile:

"The government kind of routinely rejects our applications for new tariffs. It has been going on like that for more than four years. It does not look like every time we submit a new application, someone is thinking hard whether to approve it or not. Rejection just became a routine..."

Interviewee A

To conclude, guile as a possible defining feature of opportunism appears unimportant, owing to the complexity of long-term relationships between partners in a PPP. The implication of this conclusion is that the current study has successfully resolved opportunism's conceptual ambiguity by incorporating in the analysis interviewees' perceptions that describe how a partner pursues self-interest at the expense of common partnership interests, goals or values.

Results

In a specific area of partner interaction – tariff setting – a private sector partner often behaves in



an opportunistic way: a PPP operator persistently pushes for higher tariffs in order to earn larger revenue. The following comments highlight the operators' aims:

"We [an operator] want to raise tariffs in order to get more money as the project is not yet breaking even. This is the only way to make the project profitable. But the regulator rejects our applications..."

Interviewee C

In the above excerpt, an interviewee associates a tariff raise with the project's higher revenue and, ultimately, an opportunity to turn the current operating loss into profit. Categorising an operator's behavior as opportunistic depends on whether a private party acts in the interests of a PPP by applying for a tariff raise and whether the latter is the only available method for breaking even. For an operator, an increase in tariffs means no additional effort involved in increasing the volume of service provision, making quality improvements or enhancing the customer base. As it is an attempt to receive more revenue for the same service, it is unlikely that each tariff raise is in the common partnership interest.

From the government perspective, a higher tariff means that a public service is becoming more expensive and its affordability to wider segments of customers is decreasing. If tariff raises occur repeatedly, the erosion of the public service affordability becomes evident. The government that is concerned with the price stability for the public services should perceive a tariff raise as a tool that undermines this stability. Hence, the government perspective, which implies unfavorable treatment of applications for tariff adjustments, permits to receive the greater PPP value for money and, hence, serves the PPP interest as well as the interests of taxpayers and the public. On the contrary, the opportunistic private sector partner behavior that pursues its own interest, rather than that of a partnership, diminishes the PPP value for money. Instead of raising a tariff, an operator may look for ways of cutting costs and increasing the project's efficiency.

The common reasons for a private partner's opportunistic behavior such as intent to raise a tariff include the need to pay for cost overruns and/or to finance the newly transpired business needs. The following example illuminates an interviewee's perception:

"This is not an easy project. In the past, project plans have changed a few times and the management has changed. We have a lot of expenses that nobody thought of five or six years ago. Also, energy costs went up quite a bit. Additionally, we need more money in order to deal with inflation, which is officially around 7% a year. In order to get compensated for all this, why can't we raise tariffs by 10 or 15 percent? Five years ago we didn't anticipate by

how much we would need to raise tariffs because our costs were different, they were much lower".

Interviewee B

The excerpt highlights the operator's interest in using additional revenue from the higher tariff for paying expenses that earlier the company management did not anticipate. In addition, an interviewee has attributed some elevated costs to those changes in the project and its management that were not part of an original project plan. Although the operator's need to pay for additional costs is apparent, the partners in a project perceive each other's behaviour differently. An operator views its own actions as legitimate, whilst it views the anti-monopoly's agency's behavior as opportunistic because the latter strictly follows its own (i.e., the government-set) rules and declines most applications for a tariff raise. To reiterate, from the operator's perspective, the regulator's behavior is opportunistic because it does not take the project's context (i.e., the business need) into account.

The government takes the opposing view as an interviewee from the National PPP Center confirms:

"They [PPP operators] use all kinds of reasons and excuses in order to justify a tariff raise. The regulator often cannot figure out with confidence whether the reasons for an application [for a tariff raise] are valid but it still declines many applications. The bottom line is that I don't think it is wise to use the actual project costs as the main justification for tariff increases. As costs go up, the service prices will be skyrocketing..."

Interviewee E

An interviewee's excerpt illuminates the opportunistic nature of the operator's behavior while the government pursues the goal of price stability for public services and, in essence, pushes a private party to look for ways of increasing the PPP efficiency, which contributes to greater PPP value for money. The latter is clearly the common PPP goal. Hence, comparing the operator's and the government's perspectives, one can conclude that the former is opportunistic, while the latter serves the public interest.

Conclusion

The article has discussed the private sector partner's opportunistic behavior and showed a distinct pattern of this behavior. During four years the private sector partner has been demonstrating its clear interest in raising tariffs for its services. As all its applications to raise tariffs have been declined, a private party views the government's behavior as opportunistic, namely, as the one that neglects the operator's efforts to receive additional revenue for a project and to turn operating losses into profit. However, the government takes the



opposing view and points out that the operator has to focus on efforts that increase the project's efficiency. This implies that, instead of raising prices for its services, a private operator has to undertake cost-cutting measures, such as reduction of staff, and/or concentrate on increasing the service volume, which also may permit increasing profits from its operations. In this study, the author does

not intend to adopt one party's perspective and to reject another. The article's goal was to show the complexity of opportunistic behavior in a PPP, to illuminate its forms and the underpinning reasons. In-depth interviews with the project staff and government experts have permitted to achieve this objective and highlight the governance dilemma in a PPP project.

Opportunistic Behavior in a Public-Private Partnership: the Case of Diverging Partners' Interests in Tariff Setting in Kazakhstan

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Introduction. The article aims to investigate the forms of partners' opportunistic behavior in a public-private partnership (PPP). The article highlights key features of a PPP that involves construction and operation of a railroad in Eastern Kazakhstan. **Research methodology.** This qualitative study employs in-depth interviews as a principal data collection method. **Theoretical framework.** The article's theoretical underpinnings stem from highlighting the meaning of opportunism in general and from defining opportunistic behavior in a PPP in particular. **Results.** The article reveals the typical reasons behind opportunistic behavior such as intent to pay for unplanned project expenses and a need to turn project's losses into profits. The article concludes that the government, by rejecting applications for tariff raises, aims at receiving the greater PPP value for money and, hence, serves the PPP interest as well as the interests of taxpayers and consumers. **Conclusion.** The opportunistic private sector partner behavior that pursues its own interest, rather than that of a partnership, diminishes the PPP value for money. Instead of raising a tariff, a private operator should look for ways of cutting costs and increasing the project's efficiency. **Key words:** public-private partnership (PPP), opportunistic behavior, tariff setting, public services.

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