Part II
Markets and States: Forms of Joint Regulation
External, top-down regulation by public authorities is increasingly being combined with endogenous bottom-up regulation by private actors to produce various forms of ‘joint’ regulation (Lazega, 2003). The financial sector – banking in particular – plays a central role in this joint regulation. This chapter looks at a case in point, describing the central but discreet role of the banking sector in the construction of a new institutional system combining public procurement and private markets through the promotion of PPPs (public-private partnerships) in France.

Businesses usually try to participate as much as possible in the governance of their own markets. They try to shape their opportunity structures, design their environment and uphold the social mechanisms allowing them to cooperate. At the inter-organizational level, at least two different sociological traditions deal with the issue of market governance, one stressing the formal and often exogenous aspects of this governance, the other the informal and often endogenous character of self-governance. In the first tradition, with its socio-legal outlook, exogenous governance or ‘regulation’ (Ayres and Braithwaite, 1992; Hawkins, 1984; Hawkins and Thomas, 1984; Shapiro, 1984; Weaver, 1977) is provided by government agencies backed up by courts. The relevant studies focus on questions such as the decision by government agencies whether to prosecute deviant companies. Such decisions are not clear-cut and often result from trade-offs between official inspectors and company managers. This is especially the case when companies are
facing risks such as large-scale losses or layoffs, and sometimes bankruptcy, should the law be strictly enforced. The second tradition focuses on inter-firm arrangements promoting self-governance benefits for firms in their inter-organizational transactions and more informal conflict resolution mechanisms. Precisely because litigation is costly, firms prefer informal dispute resolution whenever possible, especially when they have long-term continuing relationships (Macaulay, 1963; Raub and Weesie, 2000). In this second tradition the focus is on pressures to conform, exerted by one organization on another. Pressures are based on resource dependencies and reputation (Raub and Weesie, 1993). Each tradition thus focuses on a different kind of actor intervening in governance and incurring the largest share of costs of control: mainly the State and/or companies themselves – the latter sometimes through industry representatives or through selection of contracting partners (Blumberg, 1997). In reality, the two governance systems combine in variable ways. One example is provided by Ayres and Braithwaite in their analysis of ‘responsive self-regulation’, which shows the existence of ‘enforcement pyramids’ that exist between state regulatory agencies and corporate actors. Such pyramids express the possibility, for industry representatives and law enforcers, to escalate from persuasion to warning letters to civil penalties to criminal penalties to licence suspension and revocation. Actors know that such enforcement pyramids exist. They know that each way of enforcing contracts is only one of several, and that an escalation can be deliberately triggered. This is why firms continue to use formal institutional litigation, both as plaintiff and as defendant, despite the costs involved (Cheit and Gersen, 2000; Dunworth and Rogers, 1996; Galanter and Epp, 1992) and why conflicts follow the pyramid transforming informal complaints into court filings and formal judiciary decisions (Felstiner, Abel and Sarat, 1980). Following the idea that the two forms of governance are connected, we explore this connection further. We think it is possible to identify a form of ‘joint’ governance, a combined regime of endogenous and exogenous regulation. We use the label ‘joint’ because we argue that the governance mechanism is a combination of self-regulation and exogenous regulation, and in this combination the costs of control are shared. Over the last generation, such joint regulation has emerged in various forms with the increasing financialization of neoliberal capitalism. This chapter presents one example: the emergence of PPP contracts and the system that makes them enforceable.

France’s Partnership Contract (Contrat de Partenariat) is a recent legal instrument introduced in 2004 to promote new links between
public authorities and private partners. It has created a structure for
economic relationships between private and public sectors that has yet
to be closely observed. These relationships are embedded in a system of
heterogeneous actors: public authorities, private industrial companies,
banks, lawyers, lobbyists and consulting firms. Studying this system
of actors, which supports the emergence and development of the PPP
contract, boils down to exploring a new discreet regulation process. The
PPP is a legal innovation that fills a technical vacuum but also paves
the way for a new type of regulation – a joint regulation bringing pub-
lic preoccupations and private management together in a New Public
Management-type approach.

PPPs in France

At the beginning of the millennium, the French government was
inspired by the UK’s Private Finance Initiative (PFI) experiment to
imitate its neighbour and create its own contract for public-private
partnership (PPP). Promoters such as Osborne (2000) stress that the
growth in the numbers and importance of PPPs is an international
phenomenon – in the US they are ‘central to national and state-govern-
ment initiatives to regenerate local urban communities’, while within
the European Union they are ‘an essential mechanism both to combat
social exclusion and to enhance local-community development’.

Different arrangements such as the délégation de service public already
existed in France. But the new Partnership Contract created by the
French public authorities was intended to be a flagship initiative to
develop a new market with new types of relationships between the pub-
lic and private sector. What is the spirit of this new kind of Partnership
Contract? How are actors seizing this opportunity? And how do they
self-organize? These three questions are explored further.

The legislative framework

The legislative framework for the French Partnership Contract derives
from the Order of 17 June 2004 and the Law of July 2008, and has been
reinforced by the 2009 Recovery Plan. This new contractual instrument
can be used for financing, construction, maintenance and operation of
public buildings for a minimum of five years and a maximum of 30.
Payment of private partners is spread over the term of the contract and
linked to achievement of performance objectives. Despite this legal defi-
nition, the scope of such partnerships remains difficult to define. It differs
from public contracts in its long-term perspective. For example, payment
of the investment is spread over time, taking the form of rental payments to the private entity. The establishment of a PPP involves all the phases of a project from financing to construction to maintenance. The main difference between a public contract and a PPP therefore rests on a link with time: overall management of a project is possible, from beginning to end. This involves funding and brings private investors to the forefront.

PPPs can only be used in France when the urgency and/or complexity of the project can be demonstrated (Bergère et al., 2006). The 2008 law introduced a third criterion: the Partnership Contract may be adopted if it is economically more advantageous. This third, economic criterion – otherwise known as ‘best value for money’ – is becoming the dominant reason for using a PPP. French practices are inspired by the UK’s PFIs and the British emphasis on the advantages of PPPs, seen primarily in economic terms (Ball, Heafy and King, 2007; Weil and Blau, 2006). Today, the relevance of France’s own new legal instrument – the Partnership Contract – is founded on an economic evaluation criterion, namely the question of project funding, cost and profitability (Campagnac, 1997; Kirat, Marty and Vidal, 2005). In this sense, it represents a learning process for public authorities as regards economic and financial management of a long-term project (Campagnac, 2001).

To date (November 2011), the French PPP market consists of 100 signed contracts, including around 20 with the national government. These contracts are primarily for public buildings in national projects, and for urban equipment (particularly street lighting) in local authority projects. Many more projects are currently being set up. There is clearly a strong desire to develop this type of contract, but the market is seeing a slow start due to the current financial crisis. The State therefore implemented a guarantee fund in 2009 to support such projects and reassure investors.

The PPP negotiation process

The description of the system of actors in PPPs shows that the contracts are complex, but so are the interdependencies between the stakeholders. Various forms of expertise (legal, technical and financial) compete over definition of the terms of the exchange, and PPPs comprise a sequence of temporal phases (legitimation, signing the contract, adjustment, construction and operation).

Negotiation of French PPPs takes place in a sequence of steps, each possessing a certain complexity. Figure 5.1 describes this sequence.

The first phase initially demonstrates the validity of the contract through documents such as the ‘functional programme’ or the ‘prior
appraisal’. The public sector is very active, especially through its ‘Support Mission’ for PPPs (Mission d’Appui aux PPP – MAPPP), which gives an opinion on the projects. However, it does not completely take on the role of the client because other actors, such as legal and other advisors, are very actively involved during definition of its needs. The public sector thus switches from the status of contracting authority to that of ‘buyer’ (Campagnac, 2009). Other studies (Gilbert, 2002) show how the public authorities can find themselves excluded from the negotiation process in highly complex and risky situations. The following excerpt illustrates how the magnitude and complexity of a PPP project may appear to deprive the authorities of their expertise:

On the public agents’ side, there’s a big problem; they don’t understand what a consultant is. […] They don’t know what to do or what to expect from consultants. The main added value of consultants is partly to be project manager and partly to support the public authorities; not because they are stupid, quite the reverse, but they have no experience, it’s always their first project. The main task of a consultant is to hold the public agent’s hand. They do everything, the civil servants do very little. We have to force them to make decisions and tell them that in this instance, we can’t make such and such a decision for them.

Interview with a legal advisor

The project then goes into the procurement phase of the contract.

The competition between candidates from the private sector is known.
as the ‘competitive dialogue’, and can last up to 18 months. This procedure is longer than the more standard tender procedure, and more unwieldy for the private sector candidates. The role of legal consultants and financial and technical advisors becomes crucial at this point. They speak on behalf of the public partner and – in the case of highly specialized problems – may even become omnipresent and lead the negotiation:

In fact it isn’t the public agent who actually speaks at these meetings, it’s his three advisors. This is an interesting point. I personally find it interesting to see the public interest from the perspective of the public agent. And unlike what happens in traditional public procurement contracts, we the advisors really are the negotiators. And this negotiation process [competitive dialogue] is not at all carried out the old-fashioned way, in a black box. Candidates have to open the bonnet of their car, dismantle the engine, etc. Everything gets examined. We know the candidate’s entire set of margins, the way they structure their prices. It’s extremely interesting for the advisors.

Interview with legal advisor

A two-to-three-month period of adjustment and development follows, to allow the successful applicant to finalize the draft project with investors. This phase only involves private actors; the financiers are dominant and impose their conception of risk sharing. Failure of the final adjustment phase can be a significant let-down for public agents: for instance, when a deal agreed with industrialists is not approved by the banks and they have to start all over again. The interviews reveal tensions at this phase, as illustrated by the following comment:

There’s a phase known as the adjustment phase. As soon as the winner is declared and the contract is signed between the public agent and the industrialist, the real lender comes in […] This funding contract [the interviewee’s current project] will be the most complicated contract that I’ve ever seen in my life! Once we win the project, we have to arrange the financing and that’s a negotiation phase that is carried out entirely by the private sector; it’s all amongst ourselves. The public agent’s no longer there. When it gets very complicated, we sometimes have to go back to the client, and argue that we can’t do it because of such and such a clause in the contract that is deemed too big a risk by the banker.

Interview with an industrialist
Much remains to be learned about the public/private sector relationships that develop during the execution, construction and continuation of projects in the long run, particularly when banks start withdrawing from the projects by selling them or their debt on secondary markets. However, the projects in this emerging market have not yet progressed far enough to allow us to study these phases at the present time.

**The system of actors in PPPs**

Once the sequence of PPPs is identified, it is possible to specify the role played by the many actors involved.

It is interesting to note that SMEs – too small to carry the procurement phase and the long competitive dialogue – are de facto ruled out of this type of contract. The same goes for independent architects.

[PPPs] will marginalize SMEs, because they have neither the technical capacities nor the financial and legal capacities to implement PPPs; this will bring them back to a subcontractor role.

Interview with a banker

When an ad hoc company is created to run the PPP, the economic strength of the architects isn’t big enough for them to take their share of the financial risk.

Interview with a public service agent

The public partner is present during the first stages of the PPP and states the legitimate grounds for the PPP project (with the MAPPP); in that sense, it legitimates it, before selecting a candidate during the lengthy competitive dialogue phase. During these two phases, the public partner must acquire the know-how required for long-term contract management. It must also understand financial reasoning based on risk and return factors. The challenge for a public entity is to successfully transfer these skills from the private sector to the public sector:

One of the issues would be for […] the administration to be reformed and become efficient. This would require a transfer of skills which I believe will not occur. It should be a criterion!

Interview with a financial advisor

The private partner joins the cast of players during the competitive dialogue; it then participates in the financial arrangements during the adjustment and development phase, and manages the construction,
Figure 5.2  The system of PPP actors in France
operation and maintenance of the project through a Project Company formed as a Special Purpose Vehicle (SPV). This SPV is responsible for integrating, coordinating and organizing – over a long period of time – the design, construction, operation and maintenance functions, and fund-raising for the PPP. Usually, a construction firm is the commercial agent and leader of the Project Company. Facility managers (maintenance professionals) are generally related to the construction firm.

On the private partner side, the candidates are groups, consortia and so on. In practice, this company will be created when the contract is signed by the main private agents: the builder, the maintenance agent, possibly an investment fund, a bank. Banks may intervene directly as financier, with an equity contribution through an investment fund. Or they may be involved in the complete assessment of the loan that will be made, and borrowings by the private partners. So it’s all very variable; it depends on the projects. There’s still the idea of a single private partner, and unified private partner responsibility.

Interview with a ministry attaché

The most striking fact in this system of actors is undoubtedly the role played by agents from the finance world, in particular banking. The public partner, like the private industrial partners, deals with private financial advisors throughout the negotiation. Beyond this advisory role, the bank plays a key lender role. Investment funds are also involved in the loan, but for a much more modest portion of the financial package.

Today there is a category of actors who are involved in equity funds, which are the investment funds, and these investment funds couldn’t care less whether they carry the debt, because in any case, they don’t have a balance sheet to consolidate! So the debt ends up with them, but it isn’t registered anywhere.

Interview with a financial advisor

The financial and legal advisors who work with the public entity during the prior appraisal phases and the competitive dialogue play an essential role. They provide assistance to the government or local authorities in the partnership contract negotiation and drafting process with the private partner, usually a large company in the construction and public works sector, that is, an entity well versed in the techniques
required for such a negotiation, namely risk calculation and evaluation of project profitability. These advisors often come from major international audit firms, but can also be from the banks’ advisory services departments. The role of financial advisors is crucial: they act as ‘interpreters’ between the private and public actors during the screening, prior appraisal and competitive dialogue phases.

We have an educational mission to explain how each and every actor works ... But above all to explain their behaviour, in other words, everyone’s sociological habits. This is important for us as advisors: explaining how the person across the table behaves. It’s a strategic choice on both sides.

Interview with a financial advisor

Then the negotiation begins and the advisor’s role is to assist the public agent during the negotiation. More than that, it’s not the public agent who speaks; in practice the three advisors are the ones who speak.

Interview with legal advisor

Compared to conventional public contracts, a PPP comes across as a particularly complex deal, understood by the private partners as an investment project. Yet financial theory and practice define any asset or investment project in terms of two criteria: the expected return and associated risk. As the PPP price is constructed, the contract is progressively defined by these two financial criteria (profitability and risk). This typifies the regulatory process in this case: the actors are trying to establish new practices for public services based on another norm related to private financial values, and this explains the centrality of financial techniques in negotiation and evaluation of these complex contracts. It also explains why the French government had to create a new type of contract, rather than using regulation based on the previous délégation de service public arrangements. The existing framework could not encompass or drive the intended normative and institutional change.

A qualitative and quantitative study

The aim of this study is to understand the social construction of the French PPP market, especially the promotion of the new ‘partnership contract’ created in 2004. Qualitative and quantitative empirical work was carried out based on two main kinds of data: firstly, an
The interviews were based on an extensive review of the literature: for example, reports, presentation brochures, manuals, websites, newsletters, etc. This preliminary work was necessary to define the boundaries and identify the key players in this new market. It also enabled us to reconstruct the main events in the market since the creation of the partnership contract in 2004. This led us to specify PPP stakeholders in France and identify 94 organizations considered important and influential. Those organizations belong to the categories involved in contract negotiation and performance as presented previously: industrial actors, builders, maintenance agents, consultants, investors and bankers, as well as certain public bodies which play a decisive role in the continuation of PPPs, namely training bodies and lobbyists. Although some of these actors do not sign the Partnership Contract, they make its negotiation possible for public and private partners. The PPP also generates subcontracts for areas such as consulting or training, which must be taken into account in order to understand the joint regulatory process.

Once this exploratory analysis was complete, we conducted 22 semi-directive ethnographic interviews with well-known key players from the inner circles of the PPP world in France (five from the public sector, five from the banking sector, four industrialists, three corporate lawyers, three business consultants and two lobbyists). These interviewees enabled us to size and understand the system of actors behind the PPP market in France, especially the negotiation process leading up to a contract, during which actors meet and try to reach an agreement. Thirty-two additional interviews were also conducted to fine-tune our investigation questionnaire. Lastly, and simultaneously, we attended some professional symposia on PPPs in order to capture something of the informal atmosphere of this small world.

This ethnographic step led to construction of our second quantitative device: a questionnaire aimed at reconstituting the social networks of this milieu. The interviews showed that the PPP milieu is complex and heterogeneous, and we wanted to understand how these actors interacted. Social network analysis is an appropriate method to report on and model such interactions. We decided to identify the discussion, business and advice networks between the actors, as these relationships were necessary resources for promoting and signing PPPs. These social networks could also be the place where new normative practices of contracting between public and private actors are defined (Lazega, 2003).
Proceeding with network analyses required clearly defined system boundaries: in other words a list of members was necessary. We identified them under a two-mode approach, starting with organizations, then finding individuals who represent them (Breiger, 1974; Eloire, Penalva-Icher and Lazega, 2011; Lazega et al., 2007). This provided a list of 100 people (belonging to the 94 organizations previously identified), all members of the French PPP milieu performing the diverse roles cited earlier. The survey and the list were tested during the 32 interviews, when the interviewees were asked for their opinion on some of our quantitative questions about what they thought a PPP should be. They checked, modified, completed and altogether enhanced our nominative list through their personal knowledge of the system. Anyone not previously included in the list but named by two of the 32 interviewees was added to the list. Between September 2009 and April 2010, 88 members of the PPP milieu answered our questionnaire during face-to-face interviews.

The questionnaire began by identifying the sociological profile of members of the list: their role in the actors’ system, the organization they worked for, their background before PPPs, how and when they joined the milieu, their career and qualifications, etc. Next, in order to define their possible normative practice, we examined the actors’ representations of a PPP contract and what they considered PPP best practices, which form the substance of the regulatory process studied. Lastly, we traced the different relationships and asked the actors to name their contacts using several name generators, accompanied by the nominative list. We chose three kinds of interactions: discussion, business and advice. The discussion network was reconstituted with the question: ‘With whom do you have the opportunity to discuss PPPs seriously on a one-to-one basis?’ The business network was identified with the question: ‘With whom are you currently doing business?’ And finally the advice network was established with the question: ‘Have you ever sought advice about legal, financial, or technical issues related to PPPs, informally or formally, but free of charge, from a person in this list? If so, could you please tick their name?’

The discussion relationship corresponds to the huge amount of activity generated by the novelty and complexity of the PPP. As a PPP contract requires several forms of expertise, a general form of collaboration is woven based on exchanges through discussion. This relationship is an indicator of the social life in which PPPs are embedded. The business relationship is economic in nature, with a narrower choice of partners. Because the PPP milieu is very competitive and secretive, it refuses to
give researchers access to signed contracts or projects in progress. We believe that business network analysis helps trace the reality of the French 'Partnership Contracts' system, and also the cascade of contracts signed downstream. Sometimes the SPV project company is like a shell that hosts the main contract but also hides other relationships within its private circle. The business relationship question was in fact the most sensitive question we asked: a few interviewees refused to answer it. The third relationship is the advice relationship. We chose to exclude 'billed' advice and instead show social advice interactions in which actors trust an epistemic authority with a socially constructed and legitimated reputation, rather than relying on the consulting market that is emerging in the business network. We consider advice relationships highly significant.

Finally, to understand the role of each type of actor in the regulatory process, we cluster the heterogeneous actors into six categories according to the organizations they represent: private companies (n = 16), public authorities (n = 21), lobbyists (n = 8), consultants (n = 15), corporate lawyers (n = 15) and bank representatives (n = 13). The structural position of these categories will help us understand their importance and their influence in the process.

The visible but discreet action of the banks

Our results show how the PPP system of action is relationally structured, and how the banks play a predominant role. Acting as a discreet regulator, banks influence and may even determine the partnership contract’s financing rules (i.e. the extent of private debt in the public investment) and measurement rules (i.e. costing of a partnership contract).

The relational structure of the PPP system

This network analysis makes it possible to examine the banks’ role in the new system created by the partnership contract, at an individual level. More precisely, we study the impact of bankers, that is, the individuals belonging to a banking company, who at aggregate level represent the banking sector. The position of these individuals can be summarized by centrality measurements, especially ‘indegree’ centrality scores, that is, the number of choices received in the network (Wasserman and Faust, 1994). Indegree centrality measurement can be interpreted as a measure of prestige. An actor benefiting from a high indegree score often has enviable resources or a good reputation. ‘Outdegree’ centrality counts the number of relational choices made by an actor, that is, the number
of people the actor considers as his or her contacts. This figure could be interpreted as a measure of local knowledge and action in the milieu. A high outdegree score reflects high activity and a good grasp of the environment. It could also show that the individual seeks information through many ties, especially in the case of an advice network. A low outdegree score could indicate that the individual does not know where to seek resources, or does not have access to those resources. Together, indegree and outdegree shape an actor’s degree of centrality, which reveals the actor’s general level of activity within a network. In addition to these three main centrality measurements, ‘betweenness’ centrality is an indicator of the capacity to act as an intermediary (a ‘broker’) between all the other actors in the network.

We begin our network analysis in Table 5.1 by examining individual action in each category of actors, with individual degree measurements at micro-level.

Firstly, the fact that lawyers and consultants are behind banks and lobbyists is surprising. Business lawyers and consultants, with their legal and/or financial expertise, might have been expected to be central in this milieu, but instead have low scores in the business and advice networks. This indicates that they are being sidelined by the new system of action created by the Partnership Contract: legal expertise is apparently not the key competency for a PPP contract. In comparison, bankers play an important role, strongly legitimizing financial expertise as the ‘PPP-maker’. Closer examination shows they are not very central in the discussion network (only two bankers in the ten highest indegree scores), but they have established themselves as the leading players on the PPP market in terms of business. For instance, in the business network outdegrees (choices sent), there are two bankers in the ten highest scores and seven in the 20 highest scores. In the advice network, one banker is very prestigious, appearing as the most sought-after advisor of all actors; at the same time, three bankers are in the top ten outdegree scores in the advice network. Last but not least, lobbyists are very visible in this extensive, dense network, registering four of the ten highest indegree scores. The betweenness degree on this line highlights the fact that lobbyists mask bankers’ centralities, especially in neutral, widespread relationships such as discussions. The centrality of lobbyists in the PPP system may be explained by their raison d’être itself: their work is to promote PPPs, and discuss with and advise others (cf. their high indegree scores for discussion and advice). Also, extensive advice-seeking is necessary to do their job. Their high centrality scores can thus easily be explained by their organizational role in the PPP system.
Table 5.1  Network activity of key players in the PPP system in France

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<td>Bankers</td>
<td>25.5</td>
<td>28.9</td>
<td>12.2</td>
<td>16.8</td>
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<td>21.9</td>
<td>8.2</td>
<td>10.3</td>
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<td>0.01</td>
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<td>Consultants</td>
<td>17.9</td>
<td>14.9</td>
<td>8.4</td>
<td>6.3</td>
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<td>Lobbyists</td>
<td>29.9</td>
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<td>11.4</td>
<td>11.9</td>
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<td>12.0</td>
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<td>Public Authority</td>
<td>20.7</td>
<td>20.4</td>
<td>9.0</td>
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<td>Private Company</td>
<td>20.4</td>
<td>22.0</td>
<td>8.4</td>
<td>6.1</td>
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Some bankers are in a more unusual position; their structural central-
ity in the business network tells us that they play a key role in the PPP
system, as if they were conductors orchestrating this emerging sector.
Their outdegree scores in the discussion and business networks show
good knowledge of their environment; they are very active and have
many contacts. Furthermore, their betweenness centrality in the advice
network shows that they are unavoidable ‘brokers’ of thinking on best
practices. In other words, bankers are not only there to finance con-
tracts, they form the relational and normative core of the business struc-
ture, able to spread opinions on how to practice PPP in France. To sum
up, this structural representation of the different relationships between
PPP actors suggests that bankers are the discreet regulators of this milieu
alongside the strong, visible influence of lobbyists, who are mostly act-
ing on the bankers’ behalf. Although it was created for political ends by
the government with activist support from lobbyists, the PPP market can
thus be considered economically and normatively dominated by banks.

For a better understanding of the actors’ role in these networks,
Table 5.2 shows the normalized average indegree score by category,
aggregating the links between individuals belonging to the same types
of organization. The networks are partitioned and reduced to aggregate
links: the resulting inter- and intra-categories are normalized according
to the number of individuals in each category. We then compute the
choices received to obtain an average indegree score per category rather
than per individual. This makes it possible to cross-check the reputa-
tion of certain individuals, and understand the role of banks in the
PPP milieu. At the meso-level, this measure gives an idea of the level of
activity of the different categories of actors in this milieu. This comple-
ments the previous individual analyses and shows that as a category,
banks are even more central.

Table 5.2 confirms our first analysis: it shows the surprisingly weak
position of law firms and, to a lesser extent, consulting agencies, but also
the strong action of lobbying agencies (scores of 13.43, 34.83 and 9 for
each network respectively). Finally, the role of banks in the PPP process is
confirmed: the highest scores in Table 5.2 show that the most cited part-
ner in the business, discussions and advice networks is the bank (scores
of 17.23, 39.62 and 9.74). For all three networks, the organizations
represented by the most central actors come from the financial sector.
This means that at the aggregate level, the banks’ interests are over-
represented and dominate the making, but also the regulation, of the
PPP process. It appears that although bankers use their relational capital
discreetly, without taking centre stage, they are able to self-organize at
the meso-level in order to dominate the discussion, business and advice networks. In other words, the organizations are very visible; the involvement of the individuals representing them is more discreet.

Analysing the structure of the PPP networks reveals the centrality of the banking actor’s role in the PPP process, but this important role is played out in the background and is not immediately obvious. Discreetly but surely, in practice the banks dominate the PPP process. Their structural position helps them define and set the rules. Banks have thus been able to change both the financing rules – that is, the proportion of private debt in the public investment – and the measurement rules, that is, for long-term costing of a partnership contract. This understanding of the banks’ regulatory power brings us to grasp not only their consequences for the public investment market, but also the banks’ ability to ensure their own interests prevail.

The regulatory power of banks

This first analysis of the PPP network deconstructs a complex, ideological regulatory process in which the banks impose a ‘consensus’ based on their own definition of risk, cost and the way they are shared. They play a crucial role throughout the contract negotiation, particularly during the adjustment phase.

I have a maintenance contract that’s finalized and all of a sudden there’s another team [from the same bank] that tells us, no, the financial advisor is only the financial advisor. They tell us that they are the lenders, they have all the lenders’ rights and they remind us that without them, we wouldn’t have our funding! And it starts all over again. If you forget any detail, it can be very hard.

Interview with a builder
Thus, banks and other agents from the financial domain (credit institutions, investment funds and financial consultants) economically regulate the partnership contract, a new public management tool that was created for political ends. PPPs raise new questions in a new way concerning the interactions between government and business, the emergence of a ‘regulatory’ State (Campagnac, 2001) and a new ‘joint regulation’ (Lazega and Mounier, 2003) of the economy.

Through its dominant position in structural terms, the financial world apparently holds a decisive role: it is able to impose its interests, and therefore its own idea of the PPP contract, notably during the development phase and financial package negotiation. The financial structure of these contracts – generally 10 per cent equity funds and 90 per cent debt instruments – illustrates the predominance of a financial sector that is dictating its own view of risk. The emergence of the economic ‘best value for money’ criterion also introduces financial investment decision concepts (e.g. NPV – Net Present Value – and IRR – Internal Rate of Return) that are not yet familiar to the public actor. The method for calculating the overall price of a PPP for the community – in other words seeing whether it is a ‘good’ or ‘bad’ PPP – depends on the risk-sharing defined by each contract. The underlying risk allocation principle appears to be ‘he who knows how to do it shall take the risk’. The first interview extract next highlights the discreetness of regulation; the second shows how this discreetness is controlled through the ‘know-how’ rule.

Q: Are there rules for risk allocation?
A: There are market standards. That is to say that after a while, having negotiated all these contracts, we know from what can be observed on the market that such risks are transferable, but there are no written standards, there are practices that are accepted.

Interview with an advisor

Our rule is that each risk should be taken by the person most able to meet those needs.

Interview with an industrialist

This rule raises the question of which authority legitimates expertise. Some actors, such as banks, may refuse to take risks or succeed in influencing the definition of the other actors’ field of expertise. The bank (as a lender), by its intermediate position between the investor and
the builder, manages to impose its plans. By mediating risk sharing, the banking sector discreetly silences the debate over the legitimacy of PPPs. Structurally, this sector ‘owns’ the means of estimating what constitutes the cost of a PPP, for itself as well as the community. The public sector, with its long-term view, has projects requiring expertise in building, maintenance, but also financing: that expertise involves a significant economic and financial component, presently held by the banking sector. The regulatory process, which leads to definition of best practices for a PPP, seems to be based on the questions of project costing and the definition, valuation and allocation of risks attached to these long-term projects.

Conclusion

Our initial results show that a new type of public contract is emerging in France, in which public investments financed by PPP contracts are structured by a complex system of actors dominated by banking and finance. These two sectors have come to control PPP contract negotiations, long-term risk allocation and costing intrinsic to these long-term investments. With this financialization of the contract, quality-oriented regulation is being superseded due to domination by the banks’ action as a discreet regulator at the core of the contracting process. Financial returns and risk criteria are essential during the prior appraisal, competitive dialogue and adjustment and development stages of a PPP. At each step of the process, banks can intervene as consultants for the public or private partner, as well as lenders or investors. This gives them an influential position in the regulatory process and helps them to promote their own regulatory interests.

Finally, private-public partnerships are long-term contracts and should be studied over the long term accordingly. The banks are undeniably masters of debt, cost calculators and risk-sharing mediators holding a position that currently enables them discreetly to regulate the French Public Contracts milieu, but even they may be unable to shape long-term, global coherent public policies providing a lasting public asset. As Coulson (2005) noted for the British experience: ‘That is likely to prove a serious underlying problem for many PFI/PPP partnerships – we do not know what will happen over 25–30 years, but we may surmise that in many cases partners will fall out, either among themselves or with their clients, and it will be very difficult then to deliver the promises that have been made.’ The current lack of strong political will at both French and European level regarding the acknowledgement
and clear registration of debt makes stakeholders ‘sorcerer’s apprentices’.
The PPP market is built and growing on a foundation of hidden debt,
unfortunately heralding a future public finance crisis equivalent to the

Notes

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