

# Should the private sector be involved in providing public services?

There was a bad reason for the Private Finance Initiative, and several good reasons.

The bad reason was much used under the Blair/Brown Labour government. They wanted to pay for a number of new schools and hospitals without the capital cost appearing on the public accounts. They therefore asked the private sector to borrow the money to keep it off the government balance sheet. The government can usually borrow more cheaply than private sector businesses. Bad PFI contracts sometimes resulted, with the state simply paying more to borrow through the intermediation of a PFI contract. In practice much of the risk of the projects rested still with the taxpayer who could end up with a bad deal.

The good reasons for PFI are that the private sector can do some things better and more cheaply than the public sector by specialising and managing them well, and the private sector can take on risks that would otherwise fall to the taxpayer. When the Thatcher government first got interested in the idea of more private sector help in delivering public sector projects and services it developed a set of rules.

Where the private sector wanted to provide a regular service by employing the staff and managing the tasks, the public sector had to organise fair competitions for the work and had to demonstrate there would be savings over the contract period compared to doing the work in house. When Councils and the central government contracted out items of service like refuse collection, cleaning and catering, there were usually substantial savings and a tough better policed standard of service required. The private contractor was on risk for managing the task and the staff, and faced penalties for failure to deliver the required quality and quantity of service. The public sector still had important roles in deciding how much service it needed, what the standard should be, and in policing the contract.

Where the government wanted the private sector to undertake the financing and delivery of a major capital asset there had to be sufficient transfer of risk to make it worthwhile for the public sector. The UK public sector has in the past had a poor record of controlling the costs of major projects and delivering them on time, though the current government believes it has sorted out many of these difficulties. A design, build, and finance contract for the private sector clearly got over any risk of expensive overruns and delays for the taxpayers. The extra cost of capital that the private sector would incur could be more than offset by better discipline in how long it took to build and how much it cost to build. If the private sector was unable to cut costs as it thought then it was on risk to absorb the overruns. One of the most successful examples of a design, build, finance and operate contract was the Dartford crossing. The private venture was allowed to charge a toll and to collect it for as long as it took to recoup their outlay and an agreed

profit. The bridge then passed to the state without debt as a free asset. The private sector still had plenty of incentive to build to budget and to get on with generating the cashflows, as investors wanted an early pay back.

It would be wrong to drop the involvement of the private sector in the provision of public services as well as impractical, just because one large company involved in public provision has gone bankrupt. It is important that shareholders, bondholders and lending banks are not bailed out by taxpayer money, which the government has been clear it will not allow. For the system to work there have to be penalties for the private sector for error and failures. The story when told will probably show us that the private sector became too keen to take on public sector business at very low margins, which turned out to be loss making when they came to manage the risks they had willingly accepted. Private shareholders have ended up subsidising the state as a result by supplying services and facilities below cost.

As a Minister I did turn down a proposal for a PFI project on the grounds that it was primarily a way of paying more for borrowing and substituted a public sector project. I took the rules seriously, and wanted to see there was either or both a significant transfer of risk or clear evidence that good quality provision would be cheaper through PFI. That should continue to be the guidelines for the UK government and Councils. Labour's attack on all of this is absurd, given the big role the last Labour government played in extending PFI and contracting out, and given the extensive use Labour Councils rightly make of these techniques today. One of the curious features of Labour in office in recent years locally and centrally is the way they have come to rely very heavily on private sector contactors and sub contractors to deliver public services. Much local policy making relies heavily on private sector consultants rather than on officers of Councils, and it was Labour who also introduced the idea of private sector healthcare performing operations for the NHS.

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## [Mergers: Commission approves Qualcomm's acquisition of NXP, subject to conditions](#)

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"We use our smartphones for many different things and now also more and more as mobile wallets, to pay for public transport or make other secure payments. With this decision, we ensure that Qualcomm's takeover of NXP will not prevent consumers from continuing to enjoy the benefits of these innovative technologies at competitive prices."*

Today's decision follows an [in-depth review](#) of the proposed acquisition of

NXP by Qualcomm. Qualcomm and NXP have dominant or strong market positions with highly complementary products and own a significant amount of intellectual property relevant to smartphone manufacturers:

- **Qualcomm** mainly develops and supplies **baseband chipsets for smartphones**. These are chips that allow smartphones to connect to cellular networks.
- **NXP** supplies several types of semiconductors, including **near-field communication (NFC) and secure element (SE) chips** for smartphones. These are chips enabling short-range connectivity, which are used in particular for secure payment transactions on smartphones.
- **NXP** also developed and owns **MIFARE**, a leading technology used as a ticketing/fare collection platform by several transport authorities in the European Economic Area (EEA).
- **Both Qualcomm and NXP** hold a significant amount of **intellectual property**, including standard and non-standard essential patents related to NFC chips.

### **The Commission's competition concerns**

Following its in-depth market investigation, the Commission had the following competition concerns with the transaction as notified:

- The merged entity would have had **the ability and incentive to make it more difficult for other suppliers to access NXP's MIFARE technology**, by raising the licensing royalties or by ceasing to license MIFARE altogether. The merged entity would also have had the ability and incentive to degrade the **interoperability of Qualcomm's baseband chipsets and NXP's NFC and SE chips with rivals' products**. As a result, smartphone manufacturers would have preferred the merged entity's products over those of rival suppliers, who risked being marginalised.
- The merged entity would have combined the two companies' significant **intellectual property portfolios related to NFC technology**. This would have increased the merged entity's bargaining power, allowing it to charge significantly higher royalties for its NFC patents than absent the transaction.

The Commission initially also had concerns relating to competition in the markets for semiconductors used in the automotive sector. However, the in-depth investigation did not confirm these.

### **The proposed remedies**

To address the competition concerns identified by the Commission, Qualcomm offered the following commitments:

- To address the concerns related to **MIFARE**, Qualcomm committed to offer licenses to NXP's MIFARE technology and trademarks, for an eight-year period, on terms that are at least as advantageous as those available today. This would enable competitors of the merged entity to have access to MIFARE technology and trademarks and compete effectively with the merged entity.
- To address the competition concerns related to **interoperability**,

Qualcomm committed to ensure that, for an eight-year period, it would provide the same level of interoperability between its own baseband chipset and the NFC and SE products it acquires from NXP with the corresponding products of other companies.

- Finally, to address the Commission's competition concerns in relation to the licensing of NXP's NFC patents,

o Qualcomm offered **to not acquire NXP's standard essential NFC patents**. It also offered to not acquire certain of **NXP's non-standard essential NFC patents**. NXP will transfer these patents to a third party, which would be bound to grant worldwide royalty-free licenses to these patents for three years.

o Qualcomm would still acquire certain **other NXP's non-standard essential NFC patents**. However, Qualcomm committed, for as long as it owns these patents, i) not to enforce its rights against other companies; and ii) to grant worldwide royalty-free licenses to these patents.

The Commission concluded that the proposed transaction, as modified by the commitments, would no longer raise competition concerns. The Commission's decision is conditional upon full compliance with the commitments.

### **Companies and products**

**Qualcomm** is a leading semiconductors company, which develops and supplies integrated circuits for mobile devices, notably cellular baseband chips. Qualcomm also licenses the rights to its intellectual property portfolio, including rights to patents which are essential to the implementation within wireless production of cellular communication standards.

**NXP Semiconductors** manufactures and sells different categories of semiconductors, including semiconductors for the automotive sector and semiconductors for the mobile device sector, notably, NFC solutions.

### **Merger control rules and procedures**

The transaction was notified to the Commission on 28 April 2017 and the Commission opened an [in-depth investigation](#) on 9 June 2017.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

There are five on-going phase II merger investigations: the [proposed acquisition of Cristal by Tronox](#), the proposed acquisition of [Ilva by ArcelorMittal](#), the [proposed merger of Essilor and Luxottica](#), the [proposed](#)

[acquisition of Monsanto by Bayer](#), and the [proposed creation of a joint venture by Celanese and Blackstone](#).

More information will be available on the Commission's [competition](#) website, in the [public case register](#) under the case number [M.8306](#).

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## [Another huge Brexit bill](#)

If Brexit wasn't happening, taxpayers wouldn't be paying yet another huge bill.

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## [Justice Secretary needs to take urgent action to sort out this crisis at HMP Nottingham](#)

**Imran Hussain MP, Labour's Shadow Justice Minister**, responding to the urgent notification issued at HMP Nottingham, said:

"This is yet more evidence of the deep crisis across our prison system.

"Tory cuts to staff and budgets have fuelled an epidemic of violence that has seen assaults and self-harm at record levels.

"The Justice Secretary needs to take urgent action to sort out this crisis at HMP Nottingham and ensure that the whole of our prisons system is safe for prisoners and staff alike."

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## [No excuse for ambulance waiting times](#)

More than 100,000 patients this winter had to wait in the back of an ambulance for at least 30 minutes due to overcrowding.

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Author: