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## **COMBINING PUBLIC AND PRIVATE ENTERPRISE STRUCTURES AND MANAGEMENT METHODS WITHIN A MIXED ENTERPRISE TO IMPROVE SERVICES OF GENERAL ECONOMIC INTEREST**

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***Workshop 1 – Services of General Economic Interest***

# 1. THE CHANGING PARAMETERS OF THE PUBLIC ECONOMY

## 1.1 The trend towards localization of responsibility for the ordering of co-operative services and the globalization of their provision. An introduction.

*Tomorrow's world will be shaped by global enterprises, by the communes and by citizens' initiatives. Politicians at national level have nothing more to say.*

*Claude Fussler, Vice-President, Dow Chemical<sup>1</sup>*

During the past decade the regulatory principle "Market" gained increasing currency at global level and, thus, also in Germany in numerous sectors. The consequence was that, one by one, a succession of public enterprises was integrated into the market. The process involved these enterprises being either privatized or partially privatized, or their engaging, as public enterprises, in competition with the private enterprises.

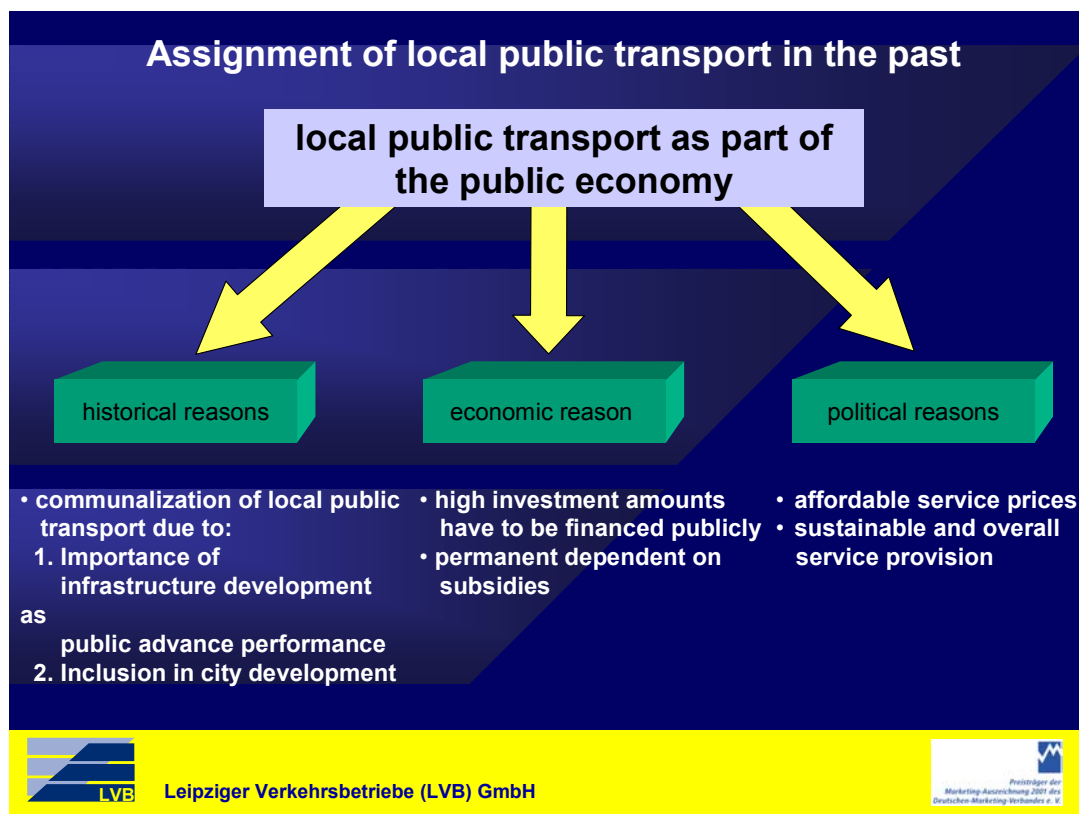
The local-authority, or municipal, enterprises operating local public passenger transport services in Germany at the dawn of the 21st Century are likewise faced with the prospect of decisive changes in the regulatory policy and financial parameters. Their structure of geographically-limited regional monopolies, once rooted in economic and in political rationale, has now - from the viewpoints of the existence of transnational, that is, cross-border, private local public passenger transport companies and the changed parameters resulting from the process of concentration and the political tendency towards deregulation and privatization - been called into question. The increasing globalization of the money markets has fundamentally changed the productive capacities of the private economy. Large private concerns are increasingly able to undertake even investments that, in the past, would only have been possible (within the meaning of the general interest) through the drawing-together of different national economic forces by the government.

In Germany local public passenger transport services are provided mainly by public executives. This has historical, financial and political reasons. Seen historically, most formerly-private local public passenger transport companies were (as was also the case in Leipzig) placed under local-authority control, in order to harmonize them with the town planning and to create the necessary infrastructure in a period of industrialization. In long-distance rail traffic, and also in local transport in major conurbations such as Leipzig, a critical mass of investment was required that private enterprises could not simply "pull out of their hats", and that could not be managed otherwise than by the concentration of public resources. Today we have to contend

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<sup>1</sup> in: Prof. Dr. Dr. Friedrich (Ed.): Öffentliche Unternehmen im Standortwettbewerb für den Aufbau Ost, Munich 2002.

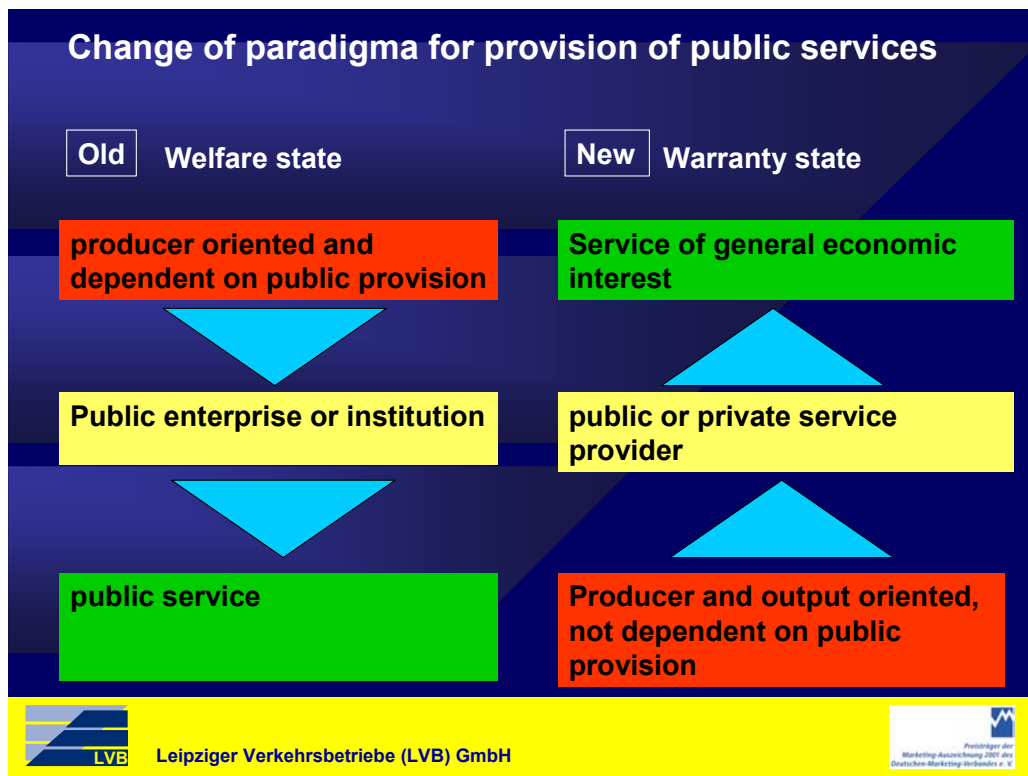
with international concern whose turnovers already stand comparison with the smaller national economies, and which sometimes have greater investment capacity than governments. What remains, however, is the need for the development of the infrastructure, especially for LPPT within the broader context of town planning. Similarly, the political reasons for which the government would seek a controlling influence over the provision of public utilities - which is, *per se*, obviously a given through municipal enterprises - continue to apply. Now as before, it is a mission of central government, or of the respective competent public institution, to guarantee the population a supply of public services and utilities. In Germany, the municipalities or rural administrative districts are therefore usually the carriers for LPPT services; they are mostly also owners of companies that provide public transport services. Affordable service charges, although politically desirable for the citizen, necessitate constant public subsidies for LPPT.



**Illustration 1: assignment of the LPT in the past**

However, there is a growing conviction that government, as provider of LPPT, is under no compulsion even to have the necessary services provided by a public enterprise, but, subject to respect of certain premises, may also contract the provision of LPPT services out to private enterprises. In the opinion of Warnfried Dettlings, it is not the job of politics to serve society, but rather to mobilize the social forces and resources. The Bundesverband der Deutschen Industrie adopts an even farther-advanced position. "In a market-economy, the state guarantees public welfare

principally through creating a suitable framework for competition without thereby intervening in the market" <sup>2</sup>. Over the past decade, we can also observe the political discussion gradually distance itself from the notion of the Welfare State to draw nearer to the Guarantor State. For many public sectors, this was also to result in a change of the parameters. With the changed parameters, public enterprises in various branches became increasingly integrated in the respective markets and, concomitantly, found themselves having to compete with the private enterprises.



**Illustration 2: change of paradigm for provision of public services**

The change from Welfare State to Guarantor State has also brought about a change of paradigm in connection with the provision and availability of public services. It is accompanied by a semantic shift in the concept "public service". A "public service" is no longer primarily geared towards compulsory provision of one or another general-interest service by public enterprises or institutions. The former insistence on entrusting production and provision of public services to public entities is now coming to give way to a new, results-driven, user-requirements mentality, whereby only the public interest in the results of production is taken into consideration, and it is then of secondary importance whether these public services are provided by public or by private enterprise. The government does not necessarily provide this or that public service itself; instead, it defines the nature, the extent and the quality, and sometimes

<sup>2</sup> Bundesverband der Deutschen Industrie (Ed.): Deckmantel Daseinsvorsorge, Vorfahrt für die Privatwirtschaft - Vorteile für die Verbraucher, Berlin 2000, pg. 14.

also the price, of services for its citizens and will in future, in the opinion of the EU Commission, come to concern itself more with the provision of public services on the basis of zero discrimination between public and private enterprises. The change of paradigm, plus the results-first approach to public services (independent of public or private delivery) will necessarily generate a new, holistic dimension. Experience shows that, where private enterprises are entrusted with the provision of general-interest services, those enterprises are more often than not international concerns. In LPPT, they increasingly present themselves in the form of the so-called European Player, with turnovers in the thousands-of-millions-of; that is to say, enterprises whose turnover can outbid the set budget of a local authority, many times over. The European Players, as providers of general-interest services act increasingly at cross-border, cross-frontier level; the specifications for these general-interest services are often set at local level, and are intermeshed with regional institutions and circumstances. In the particular case of the LPPT in Germany, this is basically a matter of the facts of local-authority life. In order that the public and private enterprises may honour their service obligations free from any form of discrimination, the discrimination inherent in the regional limitation of the economic activities of public passenger transport companies must be eliminated by local-authority economic activities law. In a globalized competition, regionally limited public enterprises can only find the going tough.

A mixed-economy enterprise with a correspondingly modern structure, such as might contain the risk of government as owner, may help to solve this dilemma..

In what follows we shall consider the reasons as to why the LVB, with its strategy of positioning itself as a mixed-economy enterprise, should wish to hammer out, in all openness, a synthesis between the thesis of driven neoliberalist advocacy of a market theory, and the antithesis of more recent empirical regulatory policy discoveries that not only prevent the failure of public enterprises in the market but, for the rest, actually warrant the participation of public enterprises in competition, and welcome the intensification of that very competition. The synthesis of these polar opposites ensures that - through the good-neighbourly shareholding of private enterprises in companies belonging to the LVB concern - the general interest is still in fact catered to, only now in the sense that the provision of these services leads to an extended and improved range of these services.

## 1.2 The necessity of a legal competition framework in the process of European integration

*The complaint about the ferocity of competition is, in reality, more often than not only a complaint about the lack of ideas*

*Walter Rathenau*

In connection with the globalization of the supply of general-interest services, it may first be useful to consider in more detail the concept as variously applied in the nation-states for the purpose of giving their citizens best possible access to public services, regardless of their socio-economic situation. The need for this is also obvious as the common European internal market has set up a shared framework for the provision of general-interest services on a cross-frontier basis, which was not formerly the case. The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) also lit upon this deficit when, in June 2001, together with the Europäischen Gewerkschaftsbund (EGB), it undertook the initiative for a framework directive for general economic interest services. In Germany, the provision of best-possible access to public services goes, for want of a better term, by the name of "*Daseinsvorsorge*"; the French have the expression "*Service Public*"; Great Britain has its "*general interest services*", while the preferred term in Spain is "*servicio público*". The problem is that these different national concepts float across different socio-political landscapes. Even the concept of "*Daseinsvorsorge*" in Germany is far from uniform as regards definition. The greatest degree of consensus would seem to be saying something to the effect that: the concept of general-interest services, of public utilities, are welfare-driven services provided by central government or by the local authority for ordinary citizens - services that may, however, equally well be provided by public or by private companies, or by public institutions - the provision of which, in a socially defensible form, cannot be guaranteed by the market alone<sup>3</sup>. The concept of "*Daseinsvorsorge*" is not used in France, where it is more a case of "*service public*". The meaning of the concept of "*service public*" partially matches the German "*Daseinsvorsorge*", and partially goes significantly farther. "*Service public*" covers the entire public utilities and welfare function of the French state, that is, not only the guarantees of the provision of the corresponding services, but also their provision by usually public (monopoly) enterprises, such as Gaz de France, Electricité de France, SNCF and la Poste<sup>4</sup>. The role of the state in France is therefore more comprehensive, since it intervenes to ensure the provision of particular services in the public interest and, beyond that, also allows the welfare services that it provides a particular freedom of structure. There is no final material definition for the concept of "*Service public*", "the emphasis is laid more on the uncertainty of the concept and its openness to changed economic relations"<sup>5</sup>. Seen thus, "*Service public*" contains a mission performed by a government department or enterprise, or even by private enterprises under state control, subject under at least partial application of public law to specific public welfare obligations<sup>6</sup>. The concept is therefore a concept that may be regarded as an alternative to the market and its apparatus of competition. "*Service public*" consequently guarantees the

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<sup>3</sup> cf. also: Bernhard Rapkay, MdEP: Typisch deutsch, Demokratische Gemeinde 2/2001.

<sup>4</sup> cf. also: Dr. Johann-Christian Pielow: Öffentliche Dienste zwischen Markt und Staat, Frankfurter Allgemeine Zeitung, 23.10.2001.

<sup>5</sup> Mestmäcker, in: Festschrift Zacher, pg. 635 et seq.

<sup>6</sup> cf. also: Schader-Kolloquium (Hrsg.): Die Zukunft der Daseinsvorsorge, pg. 83.

provision of services outside the market. The crucial difference with regard to "*Daseinsvorsorge*" should now be clear. "*Daseinsvorsorge*" by no means excludes competition for the provision of public services in the welfare sector of the economy. The state guarantees only that which the market, in certain cases, is unable to provide; that is to say, the provision of public services either where no market exists, exclusively through public enterprises or corporations, or in market-driven services provided by competing public or private enterprises. Which model better guarantees the provision of public services cannot be discussed at this point. What is clear, however, is that France, with its concept at European level, has little chance of survival, since the European Commission accords priority to the principle of competition in almost all areas of the economy. Such EU legislation that puts its money on deregulation and, therefore, on the intensification of competition in the European internal market, contradicts the view of public welfare still prevailing in most Member States, which has in fact already withdrawn the corresponding services from the market. This is clearly the case in Germany, and even more so in France. However, if the actions of the Member States of the European Union at national level run counter to the European view or clear obstacles from its path, the notion of a European integration on the basis of the European legislation on public services will remain a fiction. It is therefore necessary to impose a binding framework directive making due allowance for national and regional specificities, but also laying down binding rules for cross-frontier competition. The European Communities apparently take the view that only way for Europe, as a whole, to become and remain competitive, and thereby optimize the welfare of its citizens, is to adhere to the ideology of competition in the market. This basic premise has in the past resulted in the liberalization, at European level, of different general-interest service sectors, such as energy supply, the telecommunications market, mains gas supply or even long-distance rail transport.

The European Commission, in its declaration on welfare services, defines the concept of general interest services in the following terms<sup>7</sup>. A general economic interest service (GIS) embraces both market-oriented and non-market-oriented services that are provided in the interest of the general public and are therefore linked by the authorities to specific welfare missions. Leaving the non-market-oriented services outside the brackets, the Commission speaks of general economic interest services (GEIS). The cross-overs when these services can be provided by the market and when not are certainly fluid. This becomes particularly clear if we consider the carrier-specific state monopoly and infrastructure LPPT services which, in Germany, usually cannot be provided by the authorities or by the contractors, but by the transport companies themselves. As will be explained, these carrier-specific services will therefore also come to occupy a special position in the LVB in the future. The concept of the GEIS is defined in Article 16 of the EU Treaty, and describes market-related services that are provided in the interest of the general public and, therefore, are

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<sup>7</sup> DOC/00/25, 20 September 2000.

associated by the Member States with particular public welfare missions. A public mission represents an obligation imposed by an authority on one or more contractors in respect of a particular market-related service, with specific instructions and in accordance with conditions defined by that authority, to provide a general economic interest service in that market<sup>8</sup>.

### 1.3 The avoidance of wholesale liberalization concepts in LPPT

Bearing in mind the imminent liberalization of LPPT, the wholesale transposition of concepts of liberalization proper to other sectors of the economy to LPPT should be avoided, since LPPT displays a number of special characteristics. With the dismantling of the state monopoly and the creation of a competitive market did, in fact, cause service prices to fall in certain liberalized sectors. Whether this principle will stay the course, and whether it can be readily adapted to other existing areas of the public economy is - for socio-political, financial and security reasons - uncertain.

Unlike the LPPT market, the liberalized markets have hitherto been exclusively monopolies that, through careful management, obtained monopoly profit. Part of the price reduction for the consumer can be traced to the deconstruction of the monopoly profits, not to any increased efficiency through more competition. An unreflecting transposition of fully-formed liberalization concepts to LPPT may produce undesirable results since, in this sector - given the political principle of making local public passenger transport available to all citizens at affordable prices - profit cannot be generated through the market alone; LPPT is dependent on public compensation and subsidy. The greater efficiency of transport companies desired by the European Commission would therefore not find expression in lower consumer prices, as was the case for gas and electricity or telecommunications, but would rather lead, first of all, to a reduction of public subsidies.

The concept of general economic interest services for a future liberalized LPPT market should likewise be considered in more differentiated fashion. The Commission makes a simple distinction in its definition between the missions put out to tender by the state as principal for general economic interest services (definition, public welfare obligation) and the tasks in connection with their supply by one or more contractors. As explained, it no longer makes any difference for the concept of the GEIS whether the providers of these services operate at regional or at super-regional level, and whether the enterprises concerned happen to be public or private. In practice, a simple twofold division of LPPT into state contractors pursuing public missions and a transport company as provider of transport services is no longer possible in LPPT, since the German traffic companies today perform a variety of tasks such as the

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<sup>8</sup> cf. also: CEEP, CIRIEC, Services of General Economic Interest in Europe, November 2000.



development of the infrastructure and government contracts that are of a quasi mission-carrier nature, that is, partially subject to state authority.

## **2. THESIS: PUBLIC ECONOMY AND ITS RIGHT TO EXIST. ANTITHESIS: PRIVATE ECONOMY**

*Competition kills competition*

*John Stuart Mill*

### 2.1. Thesis: Public Economy

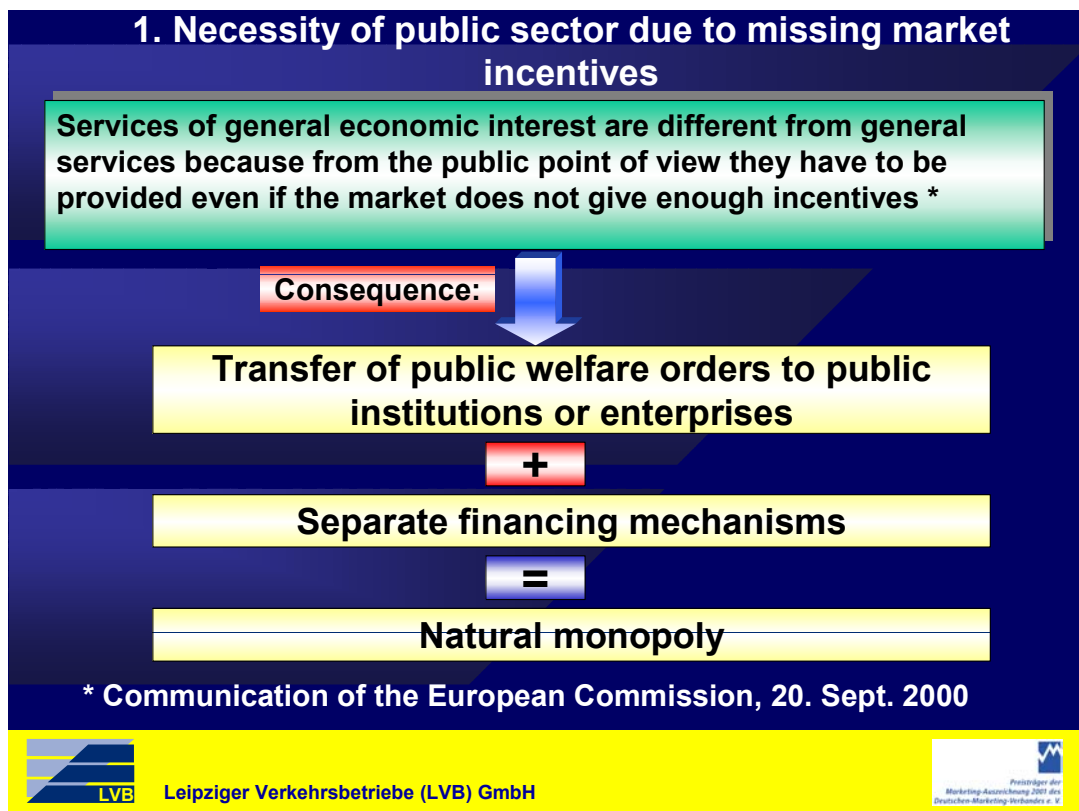
To clarify the thesis of the public economy and the necessity of its right to exist, it may be useful first to consider which enterprises, and institutions, are fundamentally active in the public economy. The focus of public, and especially local-authority, enterprises is on the provision of infrastructure services in the general economic interest. This is justified in that the provision of a sufficiently developed infrastructure is a *conditio sine qua non* for the activities of all players in the national economy. Infrastructure services should accordingly be provided for all regions, that is, in highly developed and densely populated conurbations and in more remote, sparsely populated regions. Because of the special role of the existence of infrastructure as a basis for the social existence of the citizen, as well as for all further economic activity, a corresponding reserve of infrastructure services in excess of requirements is necessary in this area, if only to guarantee the provision of basic infrastructure services in unusual circumstances or in the event of a natural catastrophe. It is therefore a matter of creating overcapacities that are not calculated in purely economic terms and, consequently, are not supplied by the private economy. Basically, the provision of infrastructure services includes the following areas:

- mains water, gas, electricity and district heating supply and waste management
- local public passenger transport, more particularly the provision of the infrastructure and local traffic planning required for that purpose
- waste management
- seaports and inland waterways
- public credit institutes and regional banks
- ways and means of economic promotion
- facilities for higher and further education, culture and health.

Reference to the special place value of these services is also made in Article 16 of the EC Treaty (Treaty of Amsterdam). Mindful of the status accorded to general economic interest services within the common values of the Union, the Community and the Member States are anxious to ensure *"that the principles and conditions for the*

*functioning of these services be structured in such a way as to facilitate the successful completion of their missions”<sup>9</sup>.*

The thesis of the public economy says that there are areas of the creation of value in which the service products serving the general interest enjoy a special status. This arises from their special objectives and from the social consensus regarding the necessity of the provision of these products for the general public. Given its pursuit of return on investment as a priority (shareholder principle) the private economy is unable to guarantee through its economic activities, the sustained provision of public requirements unreservedly, which - in certain cases - may lead to a collapse of the market. In those areas in which the market does not offer sufficient incentive for private contractors to wish to provide a particular range of general-interest services, the provision of which is necessary for the public good or welfare, such services are provided from the public side. In the case of a natural monopoly, the state engages public enterprises or institutions to provide the services and grants them certain exclusivity rights. This natural monopoly is generally public, as the engagement of private players does not appear to be justified owing to the absence of competition and of the resultant monopoly profits.



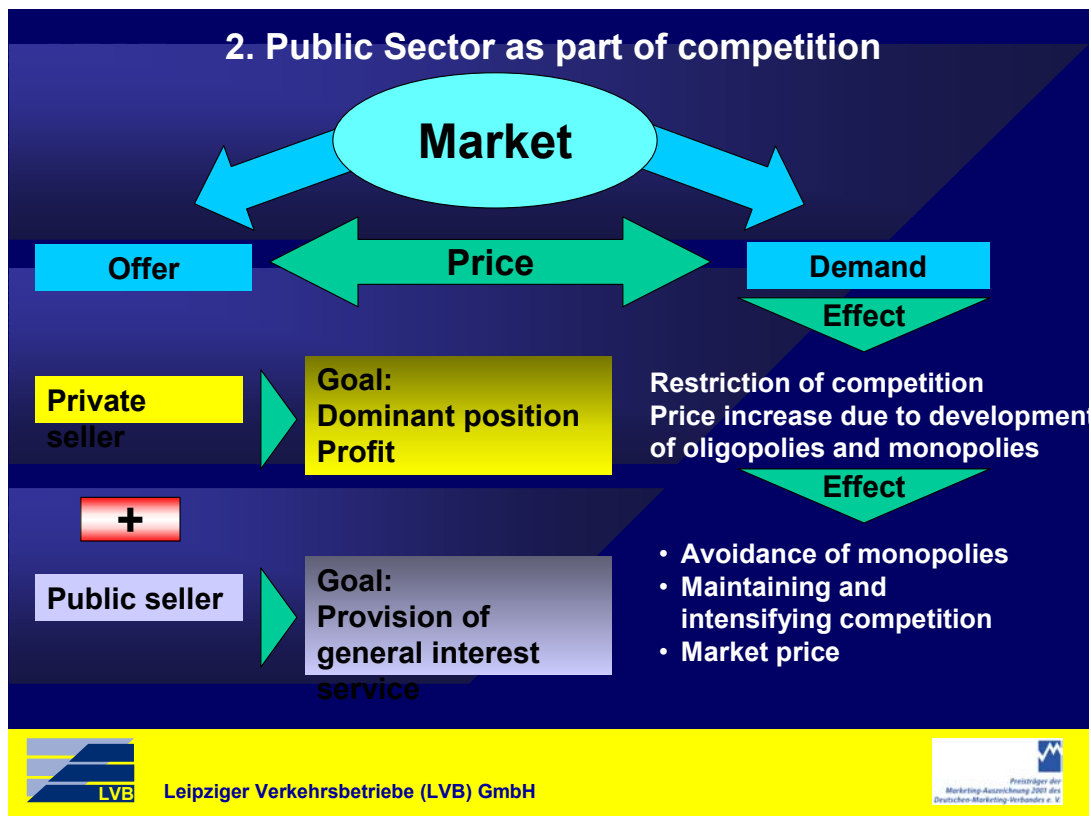
**Illustration 3: Necessity of public service due to missing market incentives**

<sup>9</sup>Article 16, EC Treaty.

The appointing of the public enterprise by central government or, as the case may be, by the local authority, involves the definition of certain compulsory tasks that the public enterprise is required to perform. Compulsory tasks are publicly set assignments and rules, the fulfilment of which is necessary for particular reasons, but for the fulfilment of which the market has no mechanisms of its own. This also includes the general availability and egalitarian access to the services, a sustained provision of service covering the whole catchment area, consumer-friendly, non-discriminatory prices, the keeping of reserves in case of catastrophe, the compulsory use of environmentally soft technology and a good degree of transparency in the provision of these services.

Since these conditions militate towards the partial or complete undermining of the principle of cost-effectiveness, the lack of incentives for the private economy in these areas in the past also meant a lack of involvement on the part of the private economy. A new approach in the discussion considers the possibility of having these services, with their special compulsory tasks, provided also by private entities, and the additional costs that these obligations have hitherto generated for the general public that would now be incurred by private suppliers would continue to be covered by transfer payments from the government.

Over and above this, however, the public enterprises also make an important contribution (as suppliers of market-related products) to competition happening at all or, where it already exists, to its remaining active and becoming more intense. The fact that public enterprises jockey for position on the market with private enterprises means that there is at least more than one supplier. The increasing number of suppliers also entails a greater intensification of competition. Public enterprises acting in competitive markets prevent, by their existence alone, the onset of processes of concentration that would otherwise bring competition to a standstill. Their sale or privatization would necessarily lead to a process of concentration, since the objective of private enterprise is to achieve market domination the better to gratify the interests of its shareholders from a position of oligopoly or monopoly.



**Illustration 4: public sector as part of competition**

If public enterprises create profits, this is not done in the interest of their shareholders, but in the interests of an improved supply for the population of general economic interest services (GEIS). Profits in public enterprises therefore have no morally reprehensible components, since they benefit the general public. Public enterprises prevent the monopoly position of private enterprises and thereby limit state regulation for the maintenance of competition. According to this thesis, the public economy sector not only has a right to exist, it is also in fact necessary beyond that point in the sense of the continued existence of competition.

## 2.2 Antithesis: Private economy

The question of the right to exist of public enterprises is answered in the negative by the neoliberal economists. The private economy thesis on the right of the public economy to exist claims that all value created by the public sector that can also be created by the private economy should (therefore) be privatized. This theory is mainly based on the belief that the private economy, with its existential involvement in competition, is better placed than the public economy to organize more flexible, more efficient structures. The objective of the private economy is to generate highest-possible returns through the investment of private capital. The necessary maximization

of profits can be achieved only with the best-possible utilization of all production factors, so that the pursuit of higher efficiency, the more rational use of resources and innovation is taken to be somehow inherent in the private economy from the outset, in contradistinction to the public economy. The thesis of the private economy is that the market process bears best fruit only in so far as the condition is met of the state not intervening and confining itself primarily to the guaranteeing of legal security<sup>10</sup>. The state thus plays only a subordinate role. Its tasks are limited to the creation and supervision of a legal order to protect in particular freedom of contract, national defence and services by certain public institutions that cannot be provided through the market. It is not the task of the state to become economically active on the markets. Public enterprises should therefore be privatized. The Bundesverband der Deutschen Industrie made a statement in December 2000 to the effect that "... *the economic activity of government was inadmissible in principle alone*"<sup>11</sup>. Regarding the public credit institutions competing with the private credit institutions, the Kronberger Kreis<sup>12</sup> demanded not only a formal, but also a material privatization of the savings banks and regional banks. An identical view can also be found in the volume published by the OECD in 2001: "*Economic Survey of Germany*"<sup>13</sup>.

The view of neoliberal economists in particular has led, in the past, to certain traditional areas of the public economy being opened up to the market, frequently accompanied by a tendency towards the privatization of public enterprises.

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<sup>10</sup> cf.: Jürgen Löwe, Öffentliche Unternehmen in der Marktwirtschaft, Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, Vol. 24, No. 4 2001 pg. 418.

<sup>11</sup> Bundesverband der Deutschen Industrie (Ed.), Deckmantel Daseinsvorsorge, Vorfahrt für die Privatwirtschaft - Vorteile für die Verbraucher, Berlin 2000. pg. 15 et seq.

<sup>12</sup> Members of the Kronberger Kreises currently serving as scientific advisers to the Frankfurter Institut, are Jürgen B. Donges, Johann Eekhoff, Wernhard Möschel, Manfred J. M. Neumann and Olaf Sievert.

<sup>13</sup> cf. also: Jürgen Löwe, Öffentliche Unternehmen in der Marktwirtschaft, Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, Vol. 24, No. 4 2001 pg. 414.

### 2.3. Antithesis. Within limits

It is not disputed that privatization of public enterprises, for example, in the gas and electricity sector and in telecommunications is accompanied by intensification of competition in the respective market and may lead to innovatory products, closer proximity to the customer and lower sales prices, which are all in the interests of the consumer. However, the opposite may also be the case, as the LPPT market in Great Britain has demonstrated. The deregulation of bus services in Great Britain in 1986 had some unwelcome secondary effects. In that country, any operator with a licence can decide to run bus services on any route of his choosing for whatever fares he decides to charge<sup>14</sup>. This has made LPPT suddenly less attractive to the consumer, not least because of the increased fares. Useless reduplication of routes and lack of complementarity among companies, autonomous in their decision-making, has brought about instability and a low degree of integration.

Complete privatization is also the object of passionate debate on other markets too. The privatization of mains water supply in Great Britain in 1998, for instance, did not yield the expected results. A study conducted by the *Public Services International Research Unit* of Greenwich University, London, found that not only had standards for drinking water and effluent treatment quality had fallen, but also that prices during the periods 1998/90 and 1997/98 had more than doubled<sup>15</sup>. Similar developments can be found in France. The water rates of the big private companies Vivendi, SAUR and Suez Lyonnaise, which have a market share of about 80 percent, are approximately 30 percent higher than those charged by the public suppliers<sup>16</sup>.

The misgivings voiced about a tunnel-vision trend toward privatization are also many and various in another respect. Experience has shown that mergers on the liberalized markets can result in job losses of up to 30%. This in itself would not be cause for concern if an equal and opposite number of new jobs were created in other and newer branches of the economy. However, it is clear that the number of unemployed has stagnated at a high level over the past ten years and has, consequently, led to a drain on the national economy, increasingly jeopardizing the social security system. Pessimistic forecasts even expect that price advantages that liberalization brought the consumer, for instance, on the gas and electricity supply or telecommunications market, will prove to be short-lived and be undone by the increasing pull of market forces and concomitant oligopolization. Critical appraisals also tend towards the view that market mechanisms alone cannot ensure the creation of bridging capacity reserves for the eventuality of supply outage or to deal with natural catastrophe. A price

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<sup>14</sup> cf. also Services of General Economic Interest, op. cit., pg.122.

<sup>15</sup> cf.: Angelika Poth-Mögele, Britische Studie über Wasserprivatisierung im Vereinigten Königreich, in: Brüssel Aktuell, No. 45, 200, 24.11 to 1.12.2000, pg. 7 et seq.

<sup>16</sup> cf.: Jürgen Löwe, Öffentliche Unternehmen in der Marktwirtschaft, Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, Band 24, No. 4 2001 pg. 418.

increase for GEIS that are provided at lower levels as, for example, LPPT in Great Britain and the water prices in France have shown, leads to a situation whereby demand for these services begins to ebb away. This can mean that these services, which - for political reasons - are meant to be made available to all citizens at affordable prices, are no longer asked-for for the simple reason that citizens can no longer pay-for. The price then becomes a criterion of exclusion for particular groups of users. However, the aim and purpose of the GEIS is that these services, in contrast to normal services, should be made available to all comers, or that other interests - say, environmental considerations - should be linked to them. Since the liberalization of LPPT in Great Britain, the number of passengers in urban districts has fallen by more than 20 percent in just 5 years <sup>17</sup>.

The best example of how a market can also completely collapse because of privatization is the recent case of the Californian energy market, which can be traced to a misregulation of a liberalized market. Sustained, sufficient, statewide mains energy supply in California has been jeopardized because of an abortive attempt at deregulation. The underlying cause would seem to be a discrepancy between (i) an extreme liberalization in the field of energy producers and distributors and (ii) public regulation in the form of a prices directive for the sale of electricity to the end-users <sup>18</sup>.

These examples are not intended to deny that, given market conditions, private-economy enterprises are in principle capable of developing arsenals and management methods that can lead to continuous improvement of efficiency and adaptation to naturally mutable market conditions so as to secure not only their continued existence, but also the highest possible returns through competition on the market. Private enterprises that are not capable of adapting to continuously changing market conditions are sooner or later eliminated from the market; this is only seldom the case for public enterprises. In this connection, the advocates of neoliberalism point out with dogged regularity that the guarantorship of the government gives the public enterprise an advantage over the private enterprise. This advantage does in fact exist, but it is immediately cancelled out by the disadvantage that public enterprise, unlike private enterprise, is unable to draw on fresh capital from the capital markets. In sensitive public areas, however, standing guarantor presents itself as indispensable for other reasons again. As the above examples have shown, the sensitive areas of the public utilities and welfare services of the national economy contains elements that reach above and beyond the self-regulation of the market through supply and demand and the appropriate price. The public economy, with its partner-based structure and the expectations of those partners, is much better capable of responding to social need in the sense of welfare, even though the intentional subordination of expectation of profit in favour of the welfare mission may also bring disadvantages. It is, after all, quite possible in private enterprise for inefficient public enterprise to inhabit the market, but

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<sup>17</sup> cf. also: Bus deregulation - the metropolitan experience, Transport Study Unit, University of Oxford 1990.

<sup>18</sup> cf. also: Handelsblatt, Energiekrise in Kalifornien spitzt sich zu, 09.05.2001.

only when competition is stunted. The arguments of the public economy on the necessity of its existence as antithesis have shown that, given certain market conditions, and in the light of a special public interest, advantages and disadvantages can exist in public enterprise and in private enterprise. In equal measure. Synthesis of these positions should reveal not only that a coming-together in the form of a public-private partnership will cancel out the disadvantages of the public economy by the advantages of the private economy and *vice versa*, but also that the general public only stands to benefit in the process.



### **3. PUBLIC-PRIVATE PARTNERSHIP AS SYNTHESIS OF POSITIONS OF THE PUBLIC ECONOMY AND THE PRIVATE ECONOMY**

#### **3.1 The viewpoint of mixed-economy enterprises**

The pro and the contra of the public economy are both polarized Positions that fail to take crosses and hybrid forms into the equation. What follows aims to explain the advantages that a mixed-economy enterprise may bring for the provision of GEIS, the contribution they could make to the intensification of competition, and the extent to which a more resolute pursuit of profit in public-private partnerships may lead to increased efficiency. Which can only benefit the general public.

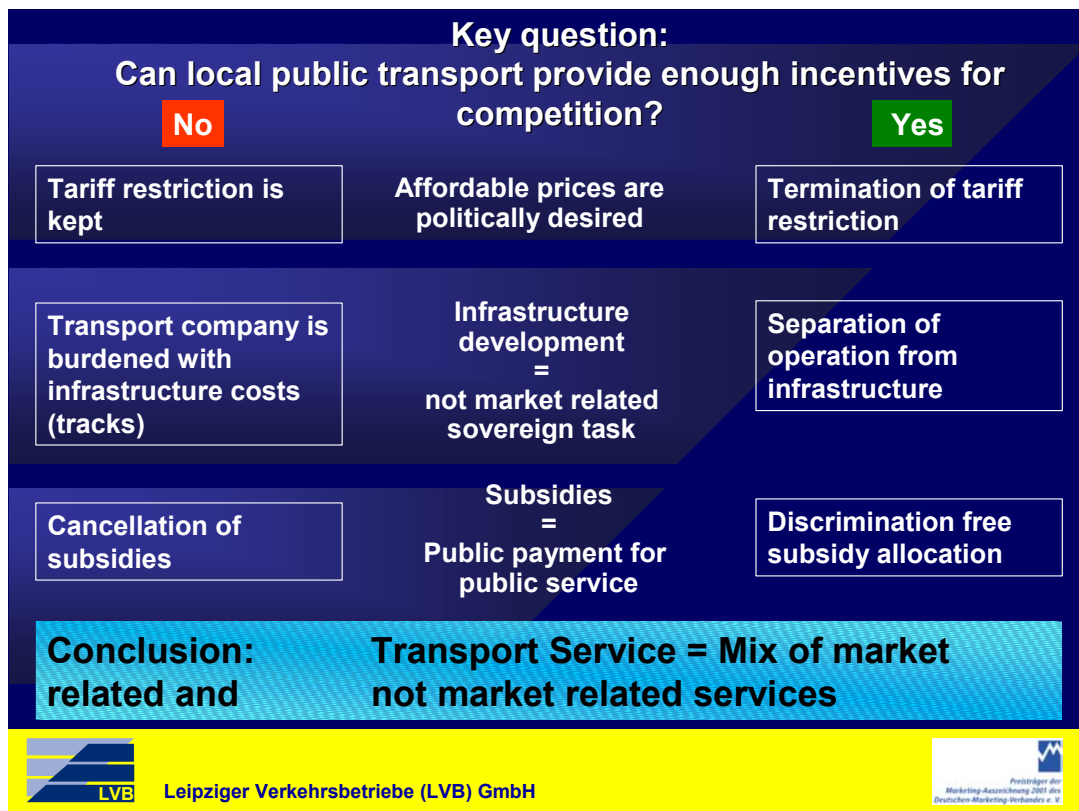
Public-Private Partnership leads in many respects to a synthesis of the advantages of the public and private economies and to a mutual cancellation of disadvantages. The example of the Leipziger Verkehrsbetriebe (LVB) should have shown that a mixed-economy LPPT enterprise is best placed to bring together the advantages of private-economy instruments and public-economy welfare orientation in the interests of the clients, the contracting authorities and the members. This means that the LVB have already come to the realization that a public-private partnership in the subsidiaries in their concern has resulted in quantitatively and qualitatively improved LPPT services, as rationalization potentials have been tapped, efficiency has increased and, despite cutbacks in public subsidies, profits have been created.

#### **3.2 The problem of lack of market incentives in the provision of transport services in LPPT**

The public subsidies, which are usually financed from taxation, play a special role for the provision of public passenger transport services. This means that the market alone is unable to offer sufficient incentives for the provision of public passenger transport services, and that government subsidies are indispensable at present and will continue to be so in future.

However, not even this is anywhere near enough to convince a devout neoliberal of the necessity of the existence of public enterprise. If the market does not put up sufficient incentives for the market to produce the corresponding goods and services, these goods could nonetheless be produced by private entities given the appropriate tax funding from the government, so that, even in this perspective, the activity of public enterprise is superfluous. In the opinion of numerous public enterprises, that view of things cannot simply be ignored. The fact of the matter is that the local public passenger transport sector in Germany, because of the politically expedient limitation

of fares, cannot offer sufficient incentives for the creation of a market driven by competition without public transfer payments or, in other words, tax financing.



**Illustration 5: key question**

Meanwhile, however, it has become current practice in LPPT, although the market cannot offer sufficient incentive for economic - and thereby profit-oriented - activity from within itself, for private companies to provide transport services. These companies provide public transport services only because the government has made tax-financed resources available to them. Lack of market incentives has thus been overcome by the financial incentives of the state. This fact raises four points:

1. The state interventionism otherwise fundamentally rejected by the neoliberals does not meet with any opposition when private enterprises are themselves the beneficiaries of state intervention.
2. On condition of public subsidies, it is possible that both private and public enterprises could provide transport services in the interest of the general public. The

operation of public transport services is consequently no exclusive privilege of public executives.

3. Conversely, however, it also follows that the fact of partial state financing of the provision of LPPT services by both private and public enterprises does not allow inference of the premise that private enterprises are being accorded precedence.

4. If private and public enterprises are equally able to provide LPPT services, then the same must also apply for mixed-economy enterprises.

The neutrality with regard to the form of the enterprise is also guaranteed by Article 295 of the EC Treaty. The Commission's official statement of position on "Welfare Services in Europe" has this to say: "*The Commission therefore gives no instructions to the effect that welfare services are to be provided by publicly or by privately managed enterprises, nor does it demand the privatization of public enterprises*"<sup>19</sup>.

### 3.3 The solution of the conflict of pursuit of profit and tax-financed subsidies through Public-Private Partnership

*And thrift is blessing, if men steal it not*

*William Shakespeare*

Without the prospect of making profit, there would be no private economy. Profits are the essential purpose of any private-economy enterprise. Even in the LPPT market, a supply of services from the private-economy side comes into existence only when there is a chance of profit. At present, however, good quality regional LPPT in Germany is inconceivable without public subsidies from tax financing, and ditto the future. This raises the question as to how the profits of private transport service suppliers are to be regarded, since, after all, they could not have materialized without partial tax financing. The profits of private transport companies generally flow towards the private shareholders, and can thus be withdrawn from any further public application in the sense of the general interest, which is not the case with public enterprises. One possible answer to the question could be that, given the necessity of the partial financing of public transport services from taxes, only public transport enterprises should be allowed to provide such services in order to exclude private-economy profits that would not have been achieved without public financing. A moral debate on possible profits in public transport enterprises is unnecessary, since their

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<sup>19</sup> Commission statement: Welfare Services in Europe, Brussels, 20.09.2000, pg. 11.

profits are always used for the financing of public projects and are, therefore, not “siphoned off” from public circulation.

Regarded from the angle of the profit motive, the engagement of private transport enterprises would be justified only if those enterprises are, in fact, managed more efficiently than the public enterprises and endow the general public with a value-added, despite their drawing-off of private profit. Profits may then be regarded as being the just reward for the involvement of the private-economy enterprise. However, there is also a danger that private enterprises, in the pursuit of accelerated profit, might seek to reduce costs at the expense of the quantity, quality and safety of the transport services that they provide. This process would, however, be precluded in the public-private partnership by virtue of the influence of the public partners.

If an involvement of private transport enterprises in the high-quality German market really is wanted, it must also be accepted that private-economy profit will have to be partially tax-financed. Whether private suppliers would manage their affairs any more efficiently cannot be inferred from a theoretical discussion of value but, ultimately, will only become apparent in practice, that is to say, through the competition for the most cost-effective offer within the limits and in compliance with the relevant safety and quality criteria.

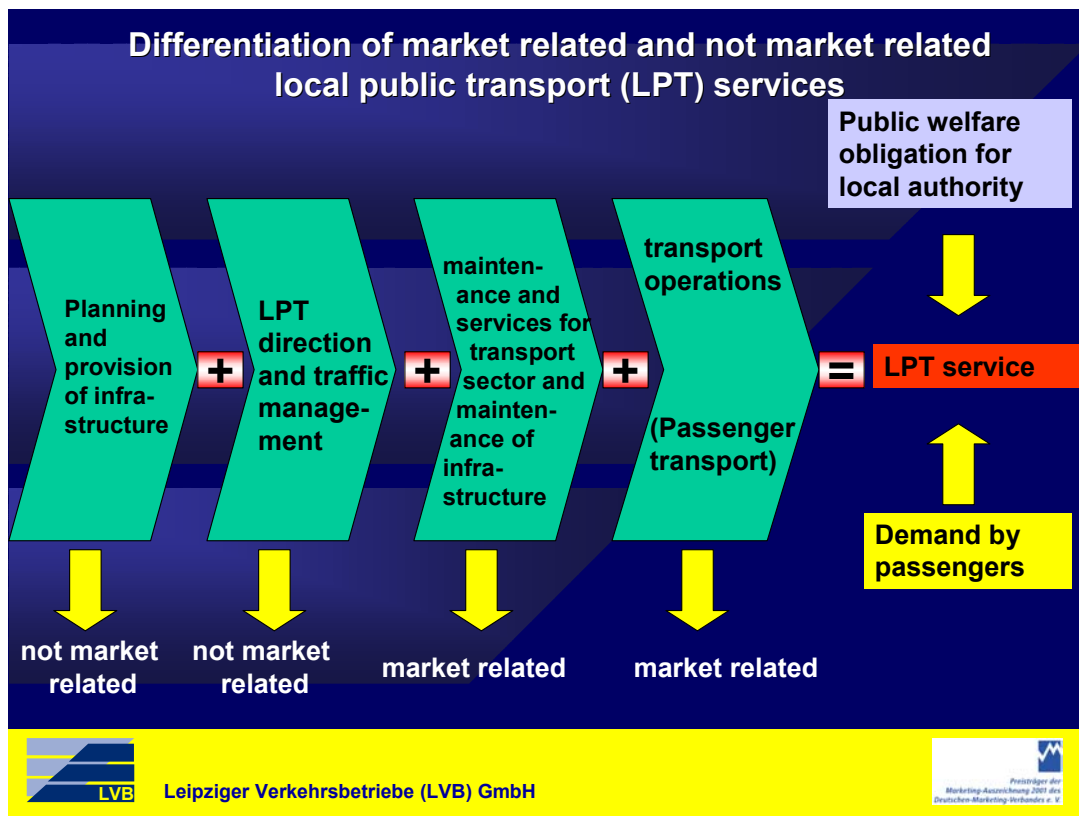
### 3.4 Future differentiation of LPPT in three levels

The problem already mentioned in the first chapter of the concept of general economic services, is that the approach (based on the definition of GEIS) of a strict twofold division between state contracts - that is, missions carried out by the state itself, or by the local authority itself, and missions carried out by an LPPT enterprise through engagement by the local authority - is not tenable in the practice of LPPT in unaltered form. Looking precisely to future competition in the provision of transport services, a two-stage model cannot do justice to future practice. Analysis of the various service components in LPPT, which culminate in the supply of local public passenger transport services, tends to confirm as much. First analyses might attempt to determine which LPPT service components are market-related and which are not market-related and therefore more carrier-specific, or occasionally even under central government control - i.e., services that cannot be provided through a competition-driven market - and which services are market-related and can be provided via the market. The first group of services are either at home with the client authority or one or another company that it controls or engages for the task. Those in the second group are market-related, and can be provided through competition between private, public or mixed-economy enterprises. However, this differentiation is the origin of the future-oriented organizational structure of the LPPT market, in which there are three distinct levels.

This three-stage division is comparable with the reform of the energy market in Great Britain in the process of liberalization in 1989. Again, not only was a strict distinction made between the provision of electricity by the state and the provision of electricity by competing enterprises, but there was a further differentiation between provision by the government, the infrastructure in the form of the transport system not engaged in competition and, finally, the providers and distributor levels in which competition would gradually be introduced<sup>20</sup>. A strict separation of the LPPT organizational model into only two levels, i.e., the local authority as principal for the transport services, and transport enterprises as providers of those services on the market, would also suppose that all segments follow a value-creation chain leading to the transport service product demanded by the consumer, and that the product could also be supplied through the market. Such, however, is not the case, since the public transport enterprises today partially carry out missions that are not market-related and are more contractor-specific. The operation of LPPT may by all mean be offered on a market-related basis, even the necessary LPPT repair, maintenance and other service operations, such as the repair of vehicles and rails, or the cleaning of vehicles. However, the highly cost-intensive provision and development of the infrastructure, which has to take its bearings from the premises of town planning and the creation of the infrastructural bases for the consolidation of the respective economic location, cannot be provided in any satisfactory manner, if indeed at all, through the market. The development of the traffic infrastructure is in the general interest, and is generally financed out of public resources. This means that there is a government demand for the service, and it engages the transport enterprise to supply the service. The premises of the competition-driven market do not apply here, since this is a case of a government or local authority monopoly infrastructure demand. Any services provided under direct state control, and any traffic management services that have as content long-term planning and steering, concrete award of contracts and control of compliance with contract criteria, the integration of different suppliers, uniform sales, standardized information for customers and, also, the long-term future development of the range of LPPT services are not market-related services. The mission at state-controlled LPPT level is, moreover, to guarantee that LPPT services are provided by the carrier - in accordance with the public welfare obligation - in such a way as to ensure sufficient geographical cover, that is, even in regions where scheduled services cannot be run profitably, regions that tend to be neglected in the pursuit of profit of private operators.

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<sup>20</sup> cf. also: R. Sturm, M. Müller: Öffentliche Daseinsvorsorge im deutsch-britischem Vergleich: Konvergenz oder Divergenz, in: Schader-Kolloquium, Die Zukunft der Daseinsvorsorge, loc. cit., pg. 113.



**Illustration 6: differentiation of market-related and non-market-related LPT services**

The long-term projects carried out under direct state control do not correspond with the medium-term economic objectives of the individual operator, who is in any case appointed for only a limited period of time and therefore has no interest in providing planning services or to make investments extending beyond that period of time.

The non-market-related services can be provided commercially, but the free play of market forces alone would not lead to any satisfactory offer, if any offer at all, with the final result that the proximity to the principal, and also the financing by the principal by reason of the general interest in the provision of these services is a given. The product LPPT therefore cannot be produced by the market spontaneously and without government intervention, although this is possible for certain segments that make up the whole product. That is, if certain “state” or “public” services - or services that are in the general interest - are provided, LPPT services such as LPPT operation or maintenance and repair services for vehicles and infrastructure can be provided on the market by competing public and private enterprises. This, in turn, leads to a threefold division of the organizational structure of LPPT, drawing a distinction between state-controlled projects, carrier-specific and non-market-related services and the market-related services that can be provided through competition.