the County Council over concerns that the incinerator could result in over-capacity. An Urbaser and Balfour Beatty consortium was announced as preferred bidder in December 2012. However, at least six council members have now raised concerns that certain aspects of the group’s planned energy from waste plant to deal with municipal waste may have been overlooked during the decision-making process.

XI. Water

In January, Veolia appointed advisors on the sale of its Central, East and South East water businesses. China Investment Corporation increased its stake in Thames Water by acquiring a further 8.68% stake. International investors are also looking at interest at the Thames Tideway project when it comes to the market. In April, the UK’s Competition Commission provisionally cleared Alinda Capital-backed South Staffordshire Plc’s acquisition of Cambridge Water, with full clearance given at the end of May 2012.

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Current Developments in Switzerland
June 2011 – June 2012

Despite their success in Europe, PPP infrastructure projects are still quite rare in Switzerland. A possible explanation for this lack of enthusiasm for PPP might be the favourable financial situation of most public entities in Switzerland.1 One large infrastructure project is reported to have successfully concluded its first milestones, another PPP infrastructure project (the Gotthard road tunnel) might not be feasible for political reasons (strategic asset). In Energy and telecommunications, there are several changes in legislation to report with regard to grants of concessions and certain subsidy schemes.

I. Public Procurement

In April 2012, one of the largest PPP projects so far in Switzerland has successfully reached its first major milestone. In Burgdorf (canton Bern), the cantonal government is starting to use a large administrative complex, which was newly built and is operated by a consortium of private parties. The PPP contract was concluded in 2009, with a term from 2012 to 2037 (25 years). The investment volume is CHF 150 million. The cantonal government pays a yearly fee of CHF 16.7 million to use the complex and after conclusion of the project, they will acquire ownership of the complex at no additional cost.2

II. Energy

Swiss constitutional law (article 27 const.) and “statutory law” (article 2(7) law on common market, Binnenmarktgesez) require authorities to assign monopoly rights in public, transparent and non-discriminatory proceedings. The Swiss competition commission issued a legal opinion on 22 February 2010, declaring that the term “monopoly rights” also covers public space, therefore including strategic assets like hydro power plants and the real estate used for the power grid. To avoid public bidding processes for these assets, the Swiss parliament changed the law on the use of water for power generation (Wasserrechtsgesetz) and the Electricity Supply Act (Stromversorgungsgesetz). As of 1 July 2012, concessions for hydro power plants and power grids may be assigned without invitation of tenders.3 Nevertheless, such concessions must be granted on a transparent and non-discriminatory basis. Most probably, it will rest upon the administrative courts to decide how to honour the requirements of transparency and non-discrimination without invitations of tenders being published.

New Public Private Partnership Programs will be initiated as part of the “Energy Strategy 2050”. The private sector’s involvement consists, e.g., in competitive bidding schemes for public funding of private energy saving projects and pilot projects.4

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1 Dubler/Keusen, PPP in Grossbritannien – kein Königsweg, BR 2012, p. 4.
2 The Project is described in detail in Meer/Schulte Strathaus/Schärmann, Public Private Partnership bei Bau- und Infrastrukturprojekten, ST 10/11, p. 851 et seq.
In October 2011, the feed-in tariff scheme to subsidize renewable energy was modified. A new article 3(e) of the Ordinance on Energy makes it possible to adjust the subsidy granted to producers of renewable energy. The new provision also affects existing plants, making it possible to "prevent excessive earnings, losses, and to adjust incentives". The change can be regarded as substantial since initially these subsidies initially have been granted to private investors for 20–25 years on a fixed basis.

III. Environment

Based on article 10 of the CO₂ Act (CO₂-Gesetz), the Confederation grants subsidies to increase the energy efficiency of buildings. These subsidies currently are capped at CHF 200 million. The revised CO₂ Act of 23 December 2011 will increase the cap to CHF 300 million. Measures to further increase the cap and to modify the subsidy scheme are intended to come into effect in 2015, as part of general efforts to increase energy efficiency. Minor modifications to the subsidy scheme have been implemented as of 26 April 26 2012.

IV. Health

A new scheme to fund health services requires most public and private hospitals to conclude agreements with health insurers on the costs of their services. The negotiation of these agreements is supposed to have been concluded by 31 December 2011. Playing a purely distributive game as required by legislators, most negotiations have stalled, requiring cantonal governments (state level) to decide on the tariffication.

Since the cantonal governments act not only as owners of many hospitals, but also as a supervisory authority in health services, the results of these proceedings are unforeseeable.

V. Telecommunication and Media

In January 2012, roundtables about how to build the "Fibre to the Home" (FTTH) were concluded. The roundtables had been initiated by the Swiss Communication Commission (ComCom) to facilitate coordination between the incumbent telecommunication provider Swisscom, an SOE with a minority of private shareholders, and numerous local electricity suppliers, mostly SOEs as well, during the build-up. One could talk about "Public-Public-Partnerships" in this regard. The roundtables have been hailed as a success by the involved parties, resulting in common technical specifications and common platforms to facilitate switching of suppliers. The roundtables also resulted in an agreement to build 4 fibres in every home, enabling some competition on infrastructure but increasing the costs of the new network. However, the Swiss Competition Commission, while not interfering with the roundtables themselves, has investigated some parts of the agreements between Swisscom and the Electricity Suppliers. It has raised concerns about certain provisions in the agreements, which it thinks will harm long-term competition.

In February 2012, the Communication Commission granted concessions for spectrum suitable for mobile telecommunications. The bidding process included the spectrum now used for mobile telecommunication and some spectrum formerly used for broadcasting (digital dividend). The term of the concessions will be from 2014–2017 to 2028. The long term is supposed to create incentives to invest in new networks, in particular LTE networks ("Long Term Evolution"). The spectrum has been granted to the incumbent mobile providers (Orange, Sunrise and Swisscom) generating income of CHF 996.268.000 for the treasury.

In May 2012, the Government (Bundesrat) started public consultation proceedings regarding revision of the Federal Act of 24 March 2006 on Radio and Television (RTVA, Radio- und Fernsehggesetz). Core element of the revision is a change in the reception fee used to fund public broadcasting. Today, the fee is raised from owners of television sets and radios. Due to convergence of end user devices, nearly all devices capable of accessing the internet are also able to receive television and radio broadcasts. As a consequence, the Government intends to raise the fee from all households and firms, regardless of whether they possess a television or a radio. The change might render obsolete the "fee collection
agency” (article 69 RTVA), a private company with a public mandate to collect the reception fee from consumers.\(^\text{10}\)

VI. Transport

Private Parties have brought forward proposals to fund a second road tunnel through the alps (Gott­hard), amounting to an investment volume of CHF 2 billion. This additional capacity for transport is required because of major maintenance work on the existing tunnel. The existing tunnel will need to be, at least, partially closed for 900 days, affecting one of the most important transit routes in Europe. Feasibility studies carried out by economiesuisse, one of the large business associations in Switzerland, have been positive. It remains to be seen if the project will be pursued by the government.\(^\text{11}\)

VII. Education

A referendum on the Constitution of the canton Zurich will be put to vote on 17 June 2012. The referendum will determine whether the canton should be required to guarantee free school choice among public and (licensed) private schools after the 4th grade. It will also determine whether private schools should have access to public funds, provided that the private school is open to all citizens (proposal for a new article 14 para. 3 const. of Zurich).\(^\text{12}\)

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