

Toll Road Update – June 2006

Recent developments in the toll road industry are summarized below. These developments are based on our June 2006 research. If you would like any additional information regarding this research or if we can be of any assistance to you, please let us know.

Regards,

Douglas M. Fried
Chadbourne & Parke LLP
30 Rockefeller Plaza, New York, NY 10112
Phone: +1 (212) 408-5124
Email: dfried@chadbourne.com

Jacob S. Falk
Chadbourne & Parke LLP
1200 New Hampshire Ave., NW, Washington, DC 20036
Phone: +1 (202) 974-5752
Email: jfalk@chadbourne.com

In the United States :

1. Federal Panel to Assess Viability of U.S. Highway Trust Fund: The congressionally mandated National Surface Transportation Policy and Revenue Study Commission met for the first time last month to discuss the critical state of the U.S. Highway Trust Fund, which has been the foundation of the federal highway program since the creation of the Interstate Highway System. The new panel's mission is to determine whether the federal government needs to change the way highways and transit are funded. The trust fund has traditionally been funded through gas taxes, but gas taxes are increasingly insufficient for necessary road work. The panel is expected to issue a report by July 1, 2007, a tight schedule mandated by the sober fact that the Highway Trust Fund is projected to run out of money by the end of 2009. According to Jack Schenendorf, a former staffer for the House Transportation Committee, the Highway Trust Fund "is essentially bankrupt." The Chairman of the new panel, U.S. Department of Transportation Secretary Norman Y. Mineta, indicated that the panel will focus on the practice of earmarking trust fund dollars, declining trust fund balances and increasing use of private sector investment at the state level. Mineta has been advocating private investment to alleviate the pressure on the gas tax, but Mineta noted that he expected each of the panelists, including himself, to "check their agendas at the door."

On June 23, a White House spokesman announced that Secretary Mineta will be resigning from President Bush's Cabinet on July 7. It is not clear what Mineta will be doing next. In addition to serving on the trust fund committee, Mineta recently traveled the country advocating PPPs to help ease growing congestion on US roads. During Mineta's five and a half years as Secretary of Transportation the federal government has expanded its programs for tolls and PPPs and has encouraged state initiatives to do the same. Two individuals who have been mentioned as possible replacements are Marion Blakey, head of the Federal Aviation Administration, and Bill Graves, a trucking lobbyist and former governor of Kansas.

2. TxDOT: Open for Business: At a June 5, 2006 workshop entitled "CDA Program: PPPs Texas Style," the Texas Department of Transportation (TxDOT) announced that it has two new PPP opportunities to tender in addition to the two PPPs currently out for bid. The two projects currently out for bid are the I-69 Trans-Texas Corridor and the SH-161 toll road. The I-69 corridor project will require a long-term strategic partner

to create and manage a phased development plan for an approximately 650-mile corridor from Texarkana/Shreveport in the north to Mexico in the south. The RFQ deadline for the TTC-69 project was June 7, 2006 and two consortia submitted statements of qualification (http://www.dot.state.tx.us/services/texas_turnpike_authority/ttc_69_proposals.htm). The SH-161 toll road project will require the concessionaire to develop an approximately 11.5-mile north-south toll road along an extension of SH-161 west of Dallas from SH-183 to I-20 through the cities of Irving and Grand Prairie. Statements of qualifications are due for the SH-161 project on August 3, 2006. The two upcoming projects are the SH-114/SH-121 project (The Funnel) and the I-820/SH-183/I-35W project. The Funnel will include tolled managed lanes along approximately 10-miles of SH-114 and SH-121 north of the Dallas Fort Worth International Airport and may be procured as a Design-Build-Maintain project. Environmental clearance for The Funnel is expected in Spring 2007. The I-820/SH-183/I-35W project was previously put out to bid, but the procurement was cancelled in January because of the timing of the environmental approvals process and the project's financial feasibility. Re-scoping efforts are on-going and an RFQ, probably for a toll-based concession, is expected in late 2006. TxDOT expects that this project "will be structured to facilitate maximum private sector innovation."

TxDOT also announced at the workshop that it was finalizing a deal for Cintra-Zachry to develop Segments 5 and 6 of SH-130 as a critical connecting facility of the TTC-35 corridor, for which the consortium won development rights in December 2004. The 50 year, \$1.3 billion concession will be the first of its kind in Texas according to *P3Americas.com*, which reported on June 29, 2006 that the project will be approved by the Texas Transportation Commission within days. *P3Americas.com* reported that Cintra-Zachry will finance the project, including construction and right of way costs, will make a \$25 million up front payment to Texas and will share toll revenues with Texas over the term of the concession. Cintra-Zachry will assume construction (cost overrun and delay), traffic, revenue and financing risks. TxDOT's approval and commitment is available at: http://www.txdot.state.tx.us/projects/sh130/sh130_commitment-ltr062906.pdf.

3. Harris County, Texas to Keep Toll Roads: The Commissioners Court in Harris County, Texas voted unanimously not to lease or sell their toll road system. The county had authorized several financial advisors to study whether the county should sell, lease or maintain its ownership of the Harris County Toll Road Authority, which operates 83 miles of toll roads in the Houston area. One of the commissioned reports indicated that a sale of the system could have earned the county as much as \$20 billion, but upon consideration the county decided that it could do better increasing its profits by imitating private sector practices. The Authority's fiscal year 2006 revenues were \$373 million and the area's population is expected to continue to grow at approximately 11% per year.

4. Final RFP for Tampa's East-West Toll Road: The Tampa Hillsborough County Expressway Authority has released the final RFP for the 3.1-mile, \$150 million East-West Toll Road PPP. The due date for submission of proposals is September 14, 2006. On June 1, 2006, the City of Tampa agreed to sell to the Authority the city's rights of way for the Project for \$4 million and bidders will be expected to assume the Authority's obligations under the purchase agreement, which is posted on the Authority's website. The RFP also notes that the winning bidder may be expected to enter into further negotiations with the Authority for construction of the "New Tampa Boulevard Bridge Over I-75," an approximately \$12 million project connecting the proposed East-West Toll Road with I-275. The city currently plans to procure the bridge project separately, but if the city does not get satisfactory proposals the Authority may add the bridge to the East-West Toll Road PPP. Bidders are instructed not to take the bridge into account in preparing their responses. The Tampa City Council had earmarked \$11.6 million for the bridge years ago and construction was to begin this fall, but more than \$3 million for the bridge was shifted to the widening of Cross Creek Boulevard and the bridge project has not been able to move forward. The RFP is available at: <http://www.tampa-xway.com/bids/documents/FINALRFP.pdf>.

5. Virginia Extends Deadline for US-460 PPP: Earlier this month the Virginia Department of Transportation extended the deadline to submit proposals for the U.S. Route 460 Corridor Improvement Project from June 14, 2006 to September 14, 2006. The project entails the development of a new 55-mile highway connecting I-95, inland near Petersburg, with US 58 in Suffolk near the Atlantic Coast. The Department does not expect this to be a self-sufficient toll road and is encouraging bidders to explore locally supported economic

development opportunities to fund portions of the \$500-\$700 million cost of the road. Such opportunities may include mining coal in the road's right of way, truck only toll (TOT) lanes and/or indirect revenues from traffic caused by the Hampton Roads port, among other possibilities. Virginia believes this project will address expected growth of the Hampton Roads port, provide an effective hurricane evacuation route for the residents of the Hampton Roads communities, encourage economic growth along the proposed corridor and support the connectivity of the military establishments at Fort Lee and elsewhere in the area. The *Richmond Times Dispatch* reported that Virginia expects to receive two or three proposals, but that only one entity has committed to submitting a proposal at this point.

6. Georgia Opens Bidding for I-285: The Georgia Department of Transportation opened bidding on the I-285 Truck-Only Toll (TOT) lanes project on June 16, 2006. An unsolicited proposal was submitted for the project by a Goldman Sachs led consortium on May 18, 2006. Contractors are conspicuously absent from the consortium, which is not proposing to build, operate or maintain the project, but rather is proposing to plan, permit, finance, design, and implement the TOT lanes project. It appears that the consortium is looking to develop the project, but not to construct it. "Our team proposes a public-private partnership with Georgia DOT that essentially privatizes the delivery of constructed TOT lanes in the northwest quadrant of I-285 with minimal assistance from the Department." The proposal suggests that Georgia will determine in mid 2009 how to proceed with procurement of the TOT lanes. The unsolicited proposal is based on recent studies which have suggested that Georgia DOT move in the direction of TOT lanes on I-285. I-285 is a ring road around the city of Atlanta. The proposal aims to complement the TOT lanes which will be constructed pursuant to the Northwest Corridor (I-75/I-575) Project. Southbound traffic on the proposed Northwest Corridor TOT lanes will empty into I-285 at the northernmost point of the proposed I-285 TOT lanes. The deadline for submitting a letter of intent to submit a competing proposal is July 31, 2006 and the deadline for submitting competing proposals will be October 30, 2006.

7. Indiana Toll Road Lease Reaches Financial Close; I-69 Next on Agenda: Indiana's Supreme Court unanimously rejected claims that the lease of the Indiana Toll Road to a Cintra-Macquarie consortium is unconstitutional. The court also ordered petitioners to post a \$1.9 billion bond or give up their efforts to reverse the superior court ruling in favor of the ITR lease (Indiana law imposes bonding requirements on plaintiffs who seek to stall public projects). The supreme court ruling cleared the way for the lease's June 28, 2006 financial closing. Industry sources report that RBS, Santander, BBVA, Dexia, Depfa, BNP Paribas and Caja Madrid were the lead arrangers for the \$4.1 billion debt facility which included debt for the acquisition, a liquidity facility for debt service and a \$170 million facility for upgrades. Cintra-Macquarie's compliance with the terms of the lease will be monitored by a new seven-member board formed earlier this month by Governor Mitch Daniels. Daniels ordered the board to meet regularly and provide periodic reports about the lease, maintenance, planning and construction of the ITR. Next up for Indiana PPPs is the proposed \$2 billion extension of I-69 from Indianapolis to Evansville. Certain southern portions of the project will be funded with approximately \$700 million from the ITR lease, but a PPP structure is expected to finance the remaining portions of the project.

8. Illinois and Missouri at Impasse Over Mississippi River Bridge: Illinois and Missouri remain at loggerheads over the best way to build a new bridge over the Mississippi River. Missouri has been pushing for an approximately \$910 million new build, 8-lane toll bridge to be procured as a PPP. Illinois, which has been arguing against tolls for several months, is suggesting that for half the price the states could build half the bridge. Instead of 8 new lanes Illinois thinks the states should construct a new 4-lane westbound bridge (a coupler) next to the existing Martin Luther King Bridge, whose three lanes could become eastbound lanes. Missouri Department of Transportation chief, Peter Rahn, is convinced that Illinois' proposed coupler would be quickly outdated, would have trouble getting environmental approval and would threaten historical buildings in the Laclede's Landing area and a \$400 million waterfront casino currently under construction there. Illinois Governor Rod Blagojevich however, insists that tolling a new bridge would be unfair to Illinois commuters, who make up more than 80% of rush hour commuter traffic. According to Blagojevich "Tolls are off the table, out of the question. That won't happen." Under Missouri's plan the new Mississippi River Bridge would be the first two-state PPP project of its kind.

9. Illinois Governor Rejects Tollway Lease: In addition to opposing a PPP for the Mississippi River Bridge,

P3Americas.com recently reported that Illinois' Democratic Governor Rod Blagojevich, who is facing a re-election race this fall, has no intention of privatizing the Illinois Tollway. Blagojevich's Republican challenger, Judy Baar Topinka has also taken a strong stance against the privatization of the Tollway. These pronouncements are sure to have attracted the attention of the bipartisan Illinois Commission on Forecasting and Accountability, which recently hired Credit Suisse to analyze the potential benefits of a Tollway privatization. Earlier in the spring Blagojevich appeared to be supportive of the idea of a lease which State Senator Jeff Schoenberg was studying in legislative hearings. Blagojevich's statement effectively takes the issue off the table for the upcoming gubernatorial race.

10. Alabama Governor Advocates PPPs: Alabama Governor Bob Riley recently endorsed PPPs for road development at the Annual Convention of the Alabama Asphalt Pavement Association. After noting that Alabama is poised for significant economic growth the Governor warned that this opportunity could be squandered if proper roads aren't built to accommodate the expected industrial growth. The Governor noted by way of example that Baldwin County could attract as many as 15,000 new employees if it had proper roads. Instead of traditional road funding methods the Governor indicated that he expects toll roads, public-private partnerships and 100% private partnerships to fund the state's new approach to road construction projects. "If you [the Alabama Asphalt Pavement Association] don't build roads, we can't grow, and if I don't get you money to build roads then everything stops."

11. Arizona PPP: Private developers have expressed interest in developing, building or financing a toll road for the city of Casa Grande in Arizona. The toll road, which is likely to cost several hundred million dollars, would be Arizona's first, but the process is just getting started and the toll road must still be approved by the Gila River Indian Community before it can move forward. The road, which would run through Gila River Indian Community land, would link I-8 and I-10 south of Phoenix in Pinal County. The county's population could hit 2 million in the next 20 years. Arizona has PPP legislation enabling limited pilot road projects, but no PPP projects have been developed yet.

12. U.S. Interstate Highway System Celebrates 50 Years: On June 29, 2006 the U.S. celebrated the 50th anniversary of the interstate highway system (officially known as the "Dwight D. Eisenhower National System of Interstate and Defense Highways"). One of the greatest public works projects in U.S. history, the interstate system was a vehicle for major economic growth. In addition to the obvious benefits the road network provided to the construction, trucking, automotive and oil industries, the creation of the interstate system has been a boon for commerce in general along its 42,795-mile network with hotels, motels, fast food chains and other service industries taking root along highways all across the country. On the other hand, the interstate system has also contributed directly to problems of sprawl and congestion, and the U.S. is having increasing trouble keeping up with maintenance costs as the gas tax, which has funded the first 50 years of the program, continues to lose its buying power. High gas prices make gas tax increases difficult and increases in vehicle fuel efficiency over the last twenty-five years has reduced gas tax collections. Lack of funds, need for improved infrastructure, congestion relief and movement of goods are driving PPP programs in many states around the country and PPPs, including toll and truck-only-toll lanes, are expected to play an increasing role in funding the maintenance and development of the interstate system. Some estimates have private funding accounting for as much as 20% of interstate funding in the next five years. The U.S. population has grown by 81.5% since 1956 and is estimated to grow an additional 46.4% over the next 50 years. The number of licensed drivers on U.S. roads has increased 163.5% since 1956 and is estimated to possibly increase an additional 86.9% over the next 50 years. The interstate system was fortunate to benefit from robust gas tax funding for a large part of its first 50 years, but private sector involvement may play an increasing role in funding maintenance and development over the next 50 years.

Outside the United States:

13. Ukraine to Kick-Start PPP Program With Availability-Based Model: Ukraine expects to use PPPs to attract international investors to develop its road network. The country sits strategically between Europe and Asia and recognizes the necessity of road development to maximize the country's potential as an effective transport corridor. According to the head of Ukravtodor, the Ukrainian road administration, the country also recognizes that it doesn't have the money it needs to develop the roads without private sector help: "We can't build new roads with the state's money because there will never be enough money in the budget." Legislation has been in place for the creation of toll roads to fund road development since 1998, but last year the country adopted a new law allowing the government to enter into flexible risk sharing arrangements, including providing availability-based payments to private sector investors. The European Bank for Reconstruction and Development has already financed the first two phases of the M06 roadway linking major cities in Ukraine with Hungary and Western Europe and is waiting for board approval for the third phase (M06 links Trans-European Corridor III (Kiev-Lviv-Krakow-Berlin) and Corridor V (Lviv-Chop-Budapest). The EBRD notes that "the project will support the Government of Ukraine and Ukravtodor efforts to encourage greater private sector participation in the road sector in Ukraine by improving the legislative framework and initiating various road projects on a PPP basis."

14. Brazil PPP Program Advances: Brazil is in the early stages of a new PPP road program with the first of its new toll roads progressing through the procurement process. The MG-050 toll road will expand a portion of the 370-kilometer highway in Minas Gerais from two to four lanes at a cost of US\$296 million. Brazil is expected to increasingly rely on the private sector for infrastructure investment over the next few years because it cannot raise taxes or take on additional debt and it cannot cut spending in other sectors. Brazil passed a federal PPP law in December 2004 and Sao Paulo and Minas Gerais have passed state-level PPP laws. Brazil has also authorized a trust fund to guarantee government payment obligations. Private sector partners will have recourse to draw on this fund, which is a private entity with public shareholders, in the event the government entity they contracted with fails to make payments. There appears to be a certain amount of optimism that the components of the regulatory framework and the financial environment necessary to maintain deal flow in Brazil are being put in place.

15. Peru Set to Launch PPP Program: Peru is set to launch a US\$8 billion PPP road program for the development of 28 highways. The program is expected to be launched by incoming president Alan Garcia after he takes office this summer. Garcia's election over the Chavez-backed candidate, Ollanta Humala, was fortuitous for the Peruvian PPP program, which may have been scratched had the nationalist Humala been elected. One of the new PPP road projects is expected to be a road linking the Sierra region in central Peru to the Costa Sierra coastal region. Peru's new president will be fighting the pattern of Latin American citizens and politicians turning against private investment. In Bolivia, to the southeast of Peru, the government is launching a US\$1.5 billion road development program based in large part on funds recently raised from the nationalization of its oil and gas industry. Redevelopment, maintenance and construction of roads are priorities in Bolivia, but the work will be done by the government, not the private sector.

16. Panama Canal Expansion: The independent Panama Canal Authority, which operates the 50-mile Panama Canal connecting the Pacific and Atlantic Oceans in Panama, has proposed a US\$5.25 billion expansion of the canal, which would be partially financed by the private sector. The canal opened for business in 1914 and has become congested over the years. Post-Panamax and super post-Panamax ships, which are larger than four football fields and which are expected to comprise a full third of the world's container shipping capacity in five years, cannot fit through the Panama Canal and are forced to travel the long way from Asia to the U.S. through the Suez Canal in Egypt. The competitive viability of the Panama Canal is crucial to the economy of Panama; approximately 14% of Panama's budget comes from the canal, and the President of Panama approved the expansion plan on June 26, 2006. Critics suggest that the expansion could end up costing significantly more than forecast, but canal officials are comfortable with the price tag. The entire cost of the project would ultimately be paid back through tolls, but approximately US\$2.3 billion would probably be borrowed from the private sector to cover major construction costs in the early years of construction.

Of the ships that use the Panama Canal more than two thirds are on their way to or from U.S shores and this ship traffic has a significant impact on U.S. roads. In connection with the 50th anniversary of the creation of the U.S. interstate system, outgoing U.S. Secretary of Transportation Norman Y. Mineta concluded that while the interstate system has adequately addressed the needs of basic interconnectivity in the U.S. “[w]e need to focus on the intermodal nature of traffic growth. As you look at the next 20 years, the growth in traffic from imports and exports alone will put a tremendous load on the system. We’ve got to be able to take traffic that’s generated from the maritime trade and put it on highway and rail and move it to the interior.” Mineta may have had in mind domestic PPP projects like the Trans-Texas Corridor and the Port of Miami Tunnel, but Mineta’s words highlight that the interests of the U.S. interstate system cannot be separated from projects like the Panama Canal expansion, which have significant impacts on U.S. roads. The Port of Houston is lauding the canal expansion plan because it will increase vessel traffic in the Gulf of Mexico, adding jobs and stimulus to the Houston economy, but the ability of the interstate system to carry goods inland from the Port of Houston will be crucial to the success of the Port’s growth.