

Toll Road Update — March 2006

Recent developments in the toll road industry are summarized below. These developments are based on our March 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,

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In the United States:

1. Challenges to Foreign Investment in U.S. Transportation Infrastructure: The issue of foreign ownership and control of U.S. transportation infrastructure recently surfaced as a major political issue with the controversy surrounding the proposed transfer of operation and control of six U.S. ports from British-owned P&O Ports to DP World, a Dubai-based port terminal operator. In reaction to the recent political uproar, foreign investment in transportation infrastructure, which has been increasing across all modes including highways and roadways, is being subjected to increased scrutiny with respect to national security. A bill titled the "National Defense Critical Infrastructure Protection Act of 2006" (HR4881) was recently introduced in the U.S. House of Representatives "to promote the national defense by establishing requirements for the ownership, management, and operation of critical infrastructure in the United States ". The bill was referred to the House Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity on March 14, 2006 . Subcommittees usually conduct public hearings and markup sessions before considering whether to report the bill to the full House. A bill must pass the House and the Senate in the same form and be approved and signed by the President before it becomes law.

HR4881 would establish controls for assets included on a new national defense critical infrastructure list to be developed by the Secretary of Defense with input from the Secretary of Homeland Security. "Critical infrastructure" would include any system or asset, whether physical or virtual, that is so vital to the United States that the incapacity or destruction of such system or asset would have a debilitating effect on national security, on national economic security, on national public health or safety, or on any combination of those matters.

The bill does not specify assets that would be included on the critical infrastructure list, but it is possible that certain U.S. toll roads would be included, in which case the owners would be subject to "critical infrastructure national security management requirements," which would require that: (i) the owner is organized under U.S. law, (ii) a majority of the board of directors, the CEO and the chairman of the board are U.S. citizens, (iii) a majority of the voting and a majority of the non-voting shares are held by U.S. citizens, (iv) a majority of the board of directors of the owner, and each of the independent directors, have been approved by the

Secretary of Defense, in consultation with the Secretary of Homeland Security, (v) not less than 20 percent of the members of the board of directors are independent directors, (vi) the board of directors has a government security committee, all of whose members are approved by the Secretary of Defense, in consultation with the Secretary of Homeland Security, (vii) the board of directors has a compensation committee that is comprised of U.S. citizens, and (viii) the corporation has agreed and instituted procedures to authorize the Secretary of Defense, in consultation with the Secretary of Homeland Security, to annually inspect the procedures of the corporation for handling classified information and, based on such an annual inspection, the procedures of the corporation for handling classified information have been approved by the Secretary of Defense. For purposes of the proposed bill U.S. citizenship is determined under Section 2 of the Shipping Act of 1916.

2. **P3Americas.com/Chadbourne Host Toll Road Panel**: On February 14, 2006 , **P3Americas.com** and Chadbourne & Parke LLP hosted a panel discussion at Chadbourne's New York offices regarding the U.S. toll road market. More than 125 key industry participants attended. The panel, which included Greg Carey (Goldman Sachs), Frank Sacre (Soci_t_ G_n_rale), Trent Vichie (Macquarie), Michael Kulper (Transurban), Cherian George (Fitch) and Jack Bennett (USDOT), provided interesting perspectives on the potential market and some of the fundamental questions facing the industry, such as: How large is the potential U.S. toll road market? What is the expected deal flow over the next few years? Will the market focus on privatization of existing assets or greenfield opportunities? Which states and regions are likely to embrace PPPs? What criteria are the rating agencies focusing on? How competitive is bidding going to be on future projects? How is traffic risk being evaluated? How important are private activity bonds and TIFIA going to be for financing projects? Doug Fried , a partner in Chadbourne's Project Finance Group who closely follows and works in the transportation sector, moderated the panel. Doug noted that the well attended panel was a testament to the rising profile of the industry and the immediate relevance of the issues to industry decision makers. An edited transcript of the panel discussion is expected to be published by **P3Americas.com** and in the Chadbourne *Project Finance NewsWire*.

3. **Indiana Toll Road Lease Approved by Legislature**: On March 14, 2006 , Indiana 's Senate and House of Representatives approved Cintra-Macquarie's proposed \$3.8 billion lease of the Indiana Toll Road . The votes were cast with only 15 minutes remaining in a short legislative session that ended at midnight . The Republican-dominated Senate approved the lease 31-19, but the margin of victory in the House was a much narrower 51-48. Among the compromises reportedly reached to secure passage of the legislation, which Senate Appropriations Chairman Bob Meeks compared to "herding a bunch of cats", were (i) a freeze on toll increases until electronic tolling equipment is in place, which is expected in 2008, and reduced toll rates for residents thereafter, (ii) compromises on the routing of the proposed I-69 extension from Indianapolis to Evansville, which has already obtained certain key federal approvals and which the governor proposes to develop as a PPP, and (iii) an assurance that the first 40 miles of the proposed I-69 extension running south from Indianapolis will not be tolled. Governor Mitch Daniels , who could have called a special legislative session had the bill not beat the midnight deadline for the regular session, stated that "with thousands of jobs on the line, there are few compromises that I wouldn't agree to". Cintra and Macquarie expect to close the transaction this June .

4. **Utah Passes PPP Legislation**: On March 10, 2006 , Utah Governor Jon Huntsman Jr. signed legislation allowing the state to enter into PPP road projects (SB80: "Public-Private Partnerships for Tollway Facilities"). Under the new law Utah will own any roadway developed as a PPP, the land and the right of way. Private partners will be awarded concessions pursuant to "tollway development agreements" to design, build, finance, maintain and/or operate roads and to impose and collect tolls. The new law permits the state to solicit proposals and to accept unsolicited proposals. The use of general obligation bonds to pay for highway and road projects was also considered in the recent legislative session, but approval for such bonds was not obtained prior to the session's adjournment on March 1, 2006 . Both the new PPP law and the proposed bond issuance were introduced to address Utah 's long-term highway needs, which are estimated at \$16 billion. State Senator Sheldon L. Killpack, the PPP bill's chief sponsor, noted that while the bill does not specify any projects that are to be developed or financed as PPPs the Mountain View Corridor is a likely first candidate. The Mountain View Corridor is a proposed 35 mile road stretching south along the Wasatch Front from Salt Lake City International Airport to Pleasant Grove. The road will run west of I-15 and a con-

necter between the two may be included. A final environmental impact statement and record of decision for the Mountain View Corridor is expected in 2007.

5. Pennsylvania Considers PPPs: On February 28, 2005, the Pennsylvania House Select Committee on Toll Roads formed in June 2004 released its final report to the Pennsylvania General Assembly suggesting that the state enter into PPPs for construction of new roads, bridges and other transportation facilities. Specific projects were not identified and the study did not recommend the tolling of existing free interstates. Like other states, Pennsylvania is looking to expand capacity and reduce congestion, but existing sources of funds are insufficient and raising gas taxes would be especially prohibitive as Pennsylvania already has one of the highest state gas taxes in the country at 31.5 cents/gallon. If Pennsylvania does decide to pursue PPPs the first step would be to pass enabling legislation in the state legislature. Officials from the Pennsylvania Turnpike Commission recently met with Macquarie to discuss a PPP for the \$4.3 billion Mon-Fayette Expressway and the Southern Beltway. The turnpike commission's CEO cautioned that it was only one meeting and that talk about a deal is premature and speculative.

6. Draft RFQ for TTC/I-69: On March 10, 2006 the Texas Department of Transportation (TxDOT) published a draft RFQ for the TTC/I-69 project, a planned multi-modal transportation corridor running from the Texarkana/Shreveport area in Northeast Texas to Laredo or the Rio Grande Valley on the border with Mexico. The draft notes that minimal or no public funding is available for this project and that the state hopes to maximize private financing. The draft also notes that preliminary environmental clearance is not expected until early 2008 and that additional environmental clearance will be required thereafter. TxDOT requested that industry comments be submitted by March 17, 2005. TxDOT expects to issue a final RFQ on April 7, 2006, and to shortlist proposers this August. (For a copy of the draft RFQ see: <http://www.dot.state.tx.us/tta/profserv/documents/i69/I-69RFPQ.pdf>)

7. New Jersey Passing on PPPs, At Least For Now: Governor Jon Corzine of New Jersey recently floated the idea of refinancing the approximately \$6 billion of debt owed by New Jersey's nearly bankrupt highway trust fund. While such a refinancing would probably be expensive it buys time for New Jersey to find a new source of transportation revenue. Privatization of the New Jersey Turnpike or the Garden State Parkway has been discussed as a potential solution to New Jersey's transportation funding shortfall and remains a possibility for the future. New Jersey also has one of the lowest state gas taxes in the country (14.5 cents a gallon) and raising state gas taxes, which has not been done in 17 years, also remains a possibility for the future. In his March 21, 2006 state budget proposal Corzine called for tax increases and spending cuts and shied away from innovative budget solutions: "To those who thought my financial background would mean I had some magic bullet in my holster to balance the budget, I am sorry to disappoint you." For the time being New Jersey is taking a wait-and-see approach to privatizations. In an interview with a local New Jersey newspaper, Assembly Speaker Joseph Roberts pointed to several other states experimenting with privatization of toll road assets and said that New Jersey should "wait and watch while those states hammer out the process."

8. Sale of Privately-Owned Bridge in Minnesota: Boise Cascade and Abitibi Consolidated, owners of the 949-foot International Falls-Fort Frances toll bridge between Minnesota and Northwest Ontario, Canada, have announced their plans to sell the bridge, the operation of which is not part of their core wood products business. The international bridge is the main channel between Northwest Ontario and the United States with more than 900,000 crossings a year. The bridge has two spans and the older span, which was built in 1908 and has been owned by paper-making companies since it was built, only has 15 to 20 years of life left. The second span was built in 1979. A Minneapolis paper stated that the owners of the Ambassador Bridge connecting Detroit, Michigan to Windsor, Canada may be interested purchasers. Some local politicians and citizens in the affected areas are opposed to a private sale and would like to see the bridge become publicly owned.

9. Carlyle Group's New U.S. Infrastructure Fund: The Carlyle Group, a U.S. private-equity firm, has created a \$1 billion infrastructure fund that will invest in U.S. infrastructure transactions ranging from \$100 million to more than \$1 billion, including toll road projects. The fund will be led by Robert Dove, former Senior Vice President of Bechtel Group Inc., and Barry Gold, former managing director and co-head of the structured

finance group at Citigroup/Salomon Smith Barney. The *Wall Street Journal* notes that “ Carlyle ‘s entry into the infrastructure-fund market highlights the strong demand for such assets from institutional investors, particularly pension funds, who are searching for low-risk assets capable of generating long-term, stable returns to match their liabilities.”

Outside the United States :

10. Dominican Republic PPP: Autopistas de Nordeste C. por A. (AdN) recently reached financial close on the long-term financing of the greenfield Santo Domingo-Samana toll road project. The 106-kilometer toll road will connect the capitol, Santo Domingo , to the Rincon de Molinillos junction in Samana, a popular tourist destination. AdN is controlled by Grupo Odinsa, the lead toll road operator in Colombia. The \$162 million project is being financed by Morgan Stanley with senior secured notes issued pursuant to Rule 144A and Regulation S of the U.S. Securities Act. The government will provide a revenue guarantee to cover project costs and excess revenues will be shared between AdN and the government. The project will also benefit from a guarantee provided by MIGA, the Multilateral Investment Guarantee Agency, for 51% of the face value of any loss attributable to transfer and convertibility, civil disturbance and breach of contract events. The concession period is 33 years.

11. Mexico PPPs: On March 17, 2006 , *P3Americas.com* reported that the Mexican Department of Communications and Transport was preparing to tender five road concessions worth US\$2.6 billion. The concession period will be 20 years for each of the five concessions: (i) Tapachula-Ciudad Hidalgo, (ii) Nueva Italia-Apatzinigan, (iii) Rio Verde-Ciudad Valles, (iv) Zacatecas-Saltillo, and (v) Nuevo Necaxa-Avila Camacho. The first project tendered to the private sector under Mexico ‘s current public private partnerships program (the PPS program, which has been developed over the last three years), is the Irapuato-La Piedad concession. Concesionaria Irapuato La Piedad, S.A. de C.V., a subsidiary of ICA, the largest construction company in Mexico, signed a concession for the 74-kilometer road in Central Mexico on September 12, 2005 and the International Finance Corporation is considering a US\$18 million loan towards the project’s US\$72 million total cost.

12. Indonesia PPPs: After failing last year to procure private investment for its ambitious 1,600-kilometer/US\$10 billion toll road development program, Indonesia has redrafted its enabling legislation and is preparing to issue new RFQs for six toll road projects. Last year the toll road projects attracted significant attention in the early stages of procurement, but were ultimately found to be unbankable. In addition to re-drafting the legislation the government plans to make the projects more attractive by establishing a fund for land acquisition to support the proposed toll roads. The government hopes its initiatives will attract private investors to a second infrastructure summit scheduled for this June . The first infrastructure summit in Jakarta last January showcased for private investment more than 90 projects worth US\$22.5 billion.

13. Czech Republic : The Czech Republic is expected to pass legislation by this June setting out rules for future PPPs. If the legislation passes, the Czech Republic may bring a series of pilot projects to market by the end of the year. Recently, a Skanska-led consortium was selected by the Czech Road and Motorway Directorate to construct an 8.3-kilometer expressway south of Prague . The project will include a 236-meter bridge, a two-kilometer tunnel section and three flyovers for animals to cross. The road will be financed by the government and the European Investment Bank.

14. Romania : Romania is in the early stages of procuring a design/build contract for a new 23-kilometer bypass to the town of Constanta on Romania ‘s Black Sea coast, which will be supported by the European Bank for Reconstruction and Development. The project entails construction of a new two-lane, north-south highway. The Romanian ministry of transport is currently looking for consultants for the project.