

## Toll Road Update — April 2006

Recent developments in the toll road industry are summarized below. These developments are based on our April 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](mailto: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](mailto:jfalk@chadbourne.com)

### *In the United States:*

1. Texas PPPs: The use of tolls on State Highway 121 in Denton and Collin Counties was approved by the Dallas area's official road planning body, the Regional Transportation Council (RTC). The vote approved an average toll rate of 14.5 cents per mile for SH 121 and a maximum toll rate of 17 cents per mile during rush hour despite the Dallas area's currently flat toll rate of 10 cents per mile. Tolls were also approved despite the objections of officials from Frisco, a city along the proposed toll road's route, which marks the first time that RTC ignored the objections of elected local officials. The vote allows the state to move forward with the private consortia that submitted bids for the development and financing of the SH 121 project (Skanska BOT, Macquarie Infrastructure Group, Texas Toll & Power, LP, Cintra and Pioneer Heritage Partners) and the North Texas Tollway Authority, a public authority that also submitted a bid for the project. The due date for detailed proposals has been tentatively set for November 2006.

Also in Texas, a preferred corridor has been chosen for the development of the \$6 billion TTC-35 by Cintra-Zachry. The corridor, as specified in a draft environmental impact statement prepared for the Federal Highway Administration, will run east of I-35 for the northern portion of its 600-mile route and along the existing I-35 corridor along its southern portion. For a detailed map of the proposed corridor see: [http://www.keeptexasmoving.com/pdfs/deis\\_05/document/chapter\\_7\\_figure\\_7-1.pdf](http://www.keeptexasmoving.com/pdfs/deis_05/document/chapter_7_figure_7-1.pdf). Federal approval of the draft environmental impact statement would permit the Texas Department of Transportation to proceed with a public comment period and further federal approval of the corridor would be required following the public comment period. In addition, individual segments will be required to undergo further environmental reviews before any final alignments can be chosen. Cintra-Zachry has also proposed that a new freight rail line be developed along the same route. The rail line would cost an additional \$5 to \$6 billion and Cintra-Zachry's proposal is to build it with private sector financing, backed by user fees. Texas is reviewing the plans and would be required by law to invite competitive bids if it chose to proceed.

2. New Jersey Privatization: New Jersey has seen a flurry of debate regarding privatization since Governor Jon Corzine decided to keep privatization of the New Jersey Turnpike and Garden State Parkway on the backburner. Almost immediately thereafter, State Senator Raymond Lesniak proposed legislation to sell a

49% stake in the New Jersey Turnpike Authority to private investors, a deal he figures could generate more than \$6 billion, which could help pay for the state's pension shortfall liabilities. Corzine reportedly would have difficulty supporting Lesniak's proposal and has stated his belief that proceeds of privatizations should be used for paying down debt or investing in capital construction. Soon after Lesniak's plan was introduced State Senator William Gormley sent a letter to the Governor proposing a long term lease of the Atlantic City Expressway to the private sector, in part to help pay for transportation construction in South Jersey. Gormley noted that the gross revenue of the Expressway is similar to the gross revenue of the Indiana Toll Road and that his proposed lease could probably generate about the same amount of cash.

3. Indiana Concession Agreement: The concession agreement for the 75-year lease of the Indiana Toll Road to a Cintra-Macquarie consortium was signed on Wednesday, April 12, 2006, paving the way for the financial closing of the \$3.8 billion investment to go forward and encouraging the state to continue with its planning of a PPP for the proposed \$1.8 billion I-69 extension. Almost as soon as the agreement was signed, however, two lawsuits were filed in Indiana courts challenging the agreement's constitutionality. The lawsuits assert that the privatization was illegal under the Indiana Constitution which requires that revenue from the sale of any public works be used to pay down state debt. The Governor's office view is that the privatization is a lease not a sale and not subject to that provision of the constitution. Financial closing is expected by June 30, 2006, and State Budget Director Charles Schalliol noted that while it would raise serious questions if the lawsuits were not settled by then he believes that they will be.

4. Ohio Turnpike Lease: One of the major economic proposals of Republican J. Kenneth Blackwell's campaign for governor of Ohio is a lease of the publicly-owned Ohio Turnpike to a private entity. The 241-mile Turnpike runs from the Indiana Toll Road in the west to the Pennsylvania Turnpike in the East. Blackwell asserts that a lease, which could generate up to \$6 billion for state development projects, would provide significant benefits to Ohio, which ranks 47th out of the 50 states in job creation. The proposed lease would follow the precedent set by the Chicago Skyway lease in 2005 and the Indiana Toll Road lease expected to close by June 30, 2006. Local jurisdictions are concerned that the revenues generated by the Turnpike are to be used for projects throughout the state, not just for projects on and around the Turnpike. There is also a general concern that profits will be used up quickly for non-transportation projects. Truckers and commuters fear that a private entity has incentive to keep raising tolls and to undertake only minimum maintenance. According to the local Columbus Dispatch Blackwell attributes some of the criticism of the lease to people interested in preserving the status quo, which Blackwell says, quoting Ronald Reagan, is "Latin for the mess that we're in."

5. Illinois Tollway Privatization/RFP for Financial Advisor: An RFP for financial advisory services in connection with the Illinois Tollway was recently released by the Illinois General Assembly's Commission on Governmental Forecasting and Accountability, a bipartisan state legislative committee interested in understanding how much revenue a partial or full lease of the Tollway, a 247-mile system, could generate for the state. While a financial advisor is expected to be chosen in May and to complete its report this summer Illinois lawmakers are gearing up for November elections and are not expected to consider a lease until after the elections. State Senator Jeff Schoenberg noted the coincidence that the study is moving forward at the same time that the Illinois State Toll Highways Authority is preparing to issue up to \$1 billion of new debt this spring. This debt issuance is the second part of a massive \$5.3 billion upgrade of the system, which includes \$2.9 billion of debt. Any lease of the Tollway system would require the defeasance of nearly \$1.4 billion of current toll-backed bonds in addition to any new bonds being issued.

6. Oregon and New York Seek Advisors: In addition to Illinois, **P3Americas.com** reported that the Oregon Department of Transportation also plans to request proposals from financial advisors as it gets ready to begin negotiating with Macquarie on the term sheet for the Newburg Dundee project, and that the New York State Department of Transportation is currently evaluating bids for financial advisory services to be provided over the next two years, during which time New York may make a decision regarding future development of the Tappan Zee Bridge.

7. Virginia Cancels Procurement: Bids from four private consortia to operate and maintain the Dulles Toll Road were recently set aside in favor of a proposal from the Metropolitan Washington Airports Authority

(MWAA) to do the same. In addition to operating and maintaining the 14-mile toll road, which connects the Washington, DC area with the Dulles Airport, MWAA agreed to use the revenue generated by tolls for the federal and state portions of the costs of the Dulles Metrorail extension project, a \$4 billion extension of Washington, DC's Metrotrail system from Washington, DC to the Dulles Airport. MWAA, which was created by the federal government in 1987 to manage two of the three Washington, DC area airports, already owns the land on which the Toll Road was built (Virginia leases the land, which was acquired by the federal government in the 1950's when it decided to build the Dulles Airport). MWAA has a keen interest not only in the operation of the Toll Road, but also in the development of the Metrorail extension, a project which has struggled with significant funding questions and a protracted construction schedule. Because operating toll roads is not one of MWAA's core strengths, certain of the private sector bidders are optimistic about the possibility of a partnership directly with MWAA for the operation of the Toll Road. Critics of the decision note that commuters on the Toll Road will be paying disproportionately for the Metrorail extension and will face significant toll increases. Certain lawmakers from other parts of the state have also been critical of the governor for turning away from the private sector offers which would have provided money not just for the Metrorail extension, but possibly for projects all around the state.

8. Missouri PPP Bridge: The Missouri House of Representatives gave initial approval at the end of March to legislation authorizing a new-build PPP toll bridge between St. Louis, Missouri and Illinois. The legislation, which was introduced on January 23, 2006, would allow a private entity to finance, develop and/or operate a toll bridge over the Mississippi River. In addition to concerns noted in our February 2006 Toll Road Update as to whether Illinois will support a financing structure that relies on tolls, ominous indications from the Missouri legislature suggest that foreign ownership issues may effect passage of the legislation. Before providing its initial approval to the legislation, the House approved an amendment to the legislation excluding companies with direct ties to terrorism or to countries with direct ties to terrorism from involvement with the bridge, and the corresponding legislation in the Missouri Senate has apparently run into opposition from senators unwilling to accept private funding from foreign investors.

9. Miami Port Tunnel: Three consortia submitted statements of qualification for the development and financing of the Miami Port Tunnel project and on April 28, 2006, each of the three consortia were shortlisted (See: <http://www.portofmiamitunnel.com/>). The Florida Department of Transportation will notify the shortlisted firms when the RFP and related documents become available.

10. Hillary Clinton Endorses "National Investment Authority": In a speech in Chicago in early April, Democratic Senator Hillary Rodham Clinton, a possible candidate for President of the U.S. in 2008, stressed that the U.S. needs significant investments to update its infrastructure. After noting several investments which were undertaken by government because they were too big to be undertaken by the private sector, including Eisenhower's interstate highway system, Clinton endorsed an idea proposed by investment banker Felix Rohatyn and former U.S. Senator Warren Rudman "to create a national investment authority to help finance accelerated commitment to rebuilding our national infrastructure," including roads and highways. While the goal of such an authority would presumably be to coordinate and focus federal infrastructure spending, Clinton continued: "The Mayor [of Chicago] and I were talking at dinner about how other countries are now incentivizing the private sector to build and modernize airports and toll roads and so much else. If we had this kind of national investment authority, it would give the private sector a competent strategic partner for infrastructure development. It would help us do a better job looking at our future competitive and homeland security needs." The full text of Clinton's speech appears at: <http://www.senate.gov/~clinton/news/statements/details.cfm?id=253790>.

Outside the United States :

11. Canada PPPs: Several of Canada's provinces are moving forward with their PPP programs. Alberta is evaluating bids for the 21-kilometer Calgary ring road project from four consortia (led by Bilfinger Berger, ABN Amro, Macquarie and SNC Lavalin). Only three consortia will be invited to submit responses to a RFP, which will be due later this year. Alberta hopes the Calgary ring road will be as successful as the Edmonton ring road and give the region's PPP program a boost. Quebec recently shortlisted three consortia for the A25 Motorway concession (led by Acciona S.A./Bouygues Travaux Publics S.A., Macquarie Bank

Ltd., and SNC-Lavalin Inc.) and final proposals are due by the end of May 2006. British Columbia benefited on March 6, 2006 from the closing of the largest debt financed facility of any greenfield development in Canada, the Golden Ears Bridge PPP, and hopes to launch several more PPPs soon. Bilfinger Berger BOT sponsored the Golden Ears Bridge and Dexia Credit Local and DEPFA were the lead arrangers of the debt. Finally, at the end of March, Ontario settled its longstanding lawsuit with the Cintra-Macquarie group operating the 407 toll road. The lawsuit was based on the government's promise to roll back toll increases despite the private group's insistence that it was entitled to regulate toll rates under the concession agreement. The settlement clears the way for Ontario to introduce PPP schemes which the private sector would likely have avoided while the lawsuit dragged on.

12. Mexico Shadow Toll Roads: Another two concessions are being tendered as part of Mexico's current (2005-2006) shadow toll road program. The first is the Tapachula-Talisman-Ciudad Hidalgo concession, which involves adding four lanes to approximately 45 kilometers of road in Chiapas. The second is the Nueva Italia-Apatzignán concession, which involves adding four lanes to approximately 30 kilometers of road in Michoacán. The first concession awarded under Mexico's current shadow toll road program was the 74-kilometer Irapuato-La Piedad road, which was awarded to Concesionaria Irapuato La Piedad, S.A. de C.V., a subsidiary of ICA in August 2005. Banco Santander Serfin is syndicating the loan for the \$53.45 million Irapuato-La Piedad project. Another shadow toll road concession, the Querataro-Irapuato concession, was launched, but was declared void in February 2006 because of financial and technical deficiencies in the offers.

13. Norway's Final Pilot PPP: The last, and largest, of Norway's pilot road PPPs was awarded to the Agder OPS Vegselskap consortium of Bilfinger Berger BOT and local partner E.Pihl & Søn. The consortium will construct a 40-kilometer, four lane road in the southwestern portion of Norway, which will be part of the Oslo-Kristiansand connection and the broader corridor connecting southern Norway with the Continent. Bilfinger Berger BOT's website indicates that the concession will be for 25 years and the project will include seven tunnels totaling almost 6 kilometers in length. Bilfinger Berger BOT expects financial close to occur later this summer. Norway's first two pilot PPP road projects for portions of the E39 coastal highway have generally been considered successes.

14. Spain PPPs: Spain recently announced that the Ministry of Public Works is going to tender 16 separate shadow toll projects to upgrade portions of the A1, A2, A3 and A4 motorways. In total, the concessions cover approximately 1,500-kilometers of road and are valued at \$2.4 to \$4.8 billion. Approximately 3,000 to 4,000-kilometers of roads are currently being developed in Spain as PPPs. These projects are indicative of a shift in the Spanish market away from the central government's greenfield real toll projects towards shadow toll projects controlled by regional administrations.

15. Bosnia PPP: Construction of Bosnia's portion of the Pan-European Corridor Vc Motorway will be procured as a PPP. The corridor will run south from Budapest, Hungary, through Croatia and Bosnia and will terminate at the Croatian port of Ploče. Development of 45 of the 337 kilometers of Bosnia's portion of the Corridor has already been funded by the BiH Federation budget and is under construction. The remaining 292 kilometers include 30 kilometers of bridges and 74 kilometers of tunnels. Bosnia and Herzegovina's Ministry of Communications and Transport published a notice of its determination to proceed with a BOT tender process (<http://www.mkt.gov.ba/eng/arhiva/saopstenje.php?id=85>) and requested letters of interest from private sector entities. An RFQ is expected before the end of 2006.