

# European Transport Technology Deal of the Year 2004

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## **Europpass: Complicated concession**

While not a bank-friendly deal, financing for the Eu230 million Autostrade-sponsored Europpass LKW-Mautsystem (the world's first automated non-stop national HGV tolling system) signed on 27 May 2004 oversubscribed and with the lead arrangers significantly reducing their final takes.

The project was already in place and had been operational since January 2004. Nevertheless, the deal was complicated by the demand for far-reaching step-in rights by concession awardee ASFINAG ? a hybrid entity between public and private sector. Under the concession agreement, Autostrade and Europpass also had to create complex call options in favour of ASFINAG over all, or any part of, the assets of and shares in Europpass.

Those complications are now playing out, with ASFINAG in the process of negotiating a takeover of the Europpass vehicle from Autostrade. Consequently the project loan may be retired within the next few months.

The ASFINAG options were onerous for lenders and severely complicated what should have been a straightforward DBFO.

Under the original terms of the project ASFINAG can choose to include the debt financing when it exercises the call option. Thus the lending syndicate to Europpass may not be in a position to request early repayment of the loan if another company steps into the operating agreement under substantially similar terms, even if the original equity investors have been paid.

Alternatively, if ASFINAG elects to buy the shares in Europpass but not the financing, Autostrade is required to extract the debt from Europpass prior to its sale to ASFINAG in order to trigger the compensation payment in the form of payment for the shares, which is then made to Autostrade, but not to the borrower or its lenders.

Further challenges were created by the fact that the compensation package following voluntary termination does not necessarily guarantee full repayment of senior debt, particularly given ASFINAG can select a method of termination or exercise its call option in a way that minimises the level of compensation payable.

The documentation had to ensure that upon ASFINAG exercising its rights, the financing remained limited recourse. The debt would be transferred simultaneously to a new borrower (ASFINAG or a third party nominated by ASFINAG) and the debt from Europpass would be eliminated in order to trigger payment of compensation under the operating agreement without the lenders having to go to Autostrade.

Although bankers at the time complained bitterly about the number of lawyers involved in the deal ? Linklaters (legal counsel to the borrower), Graf Maxl Pitkowitz (Austrian counsel to the borrower); Bonelli Erde Pappalardo (Italian counsel to the borrower); Allen & Overy (legal advisers to the arrangers); Wolf Theiss (Austrian counsel to the arrangers); and Freshfields (legal counsel to ASFINAG) ? for once those legal bills may have paid off.

So why does this project win a deal of the year? Three reasons. It was done despite the concession awarder. It was an inexpensive price despite the complications. And, although it may yet prove not to be the first significant Austrian PPP, it is the first electronic toll collection PPP to get off the ground in Europe.

Unlike Germany's proposed GSM-based electronic tolling project which was cancelled, the Austrian system ? expected to generate up to Eu600 million annually, 75% of which will come from foreign trucks ? is based on proven microwave radio technology, already used on some roads by Autostrade in Italy.

Predictions that the system would become obsolete too quickly appear unfounded. According to an EC Directive in 2003 (COM/2003/0132 final), all tolling systems taking up service after 1 January 2008 should be based on satellite positioning technology or mobile communications using the GSM-GPRS standard despite the fact that no tolling system has ever been successfully implemented with those technologies. The Commission has since done a partial U-turn and now plans to draw up a report by 31 December 2009 with a proposal for a migration strategy from microwave.

Aside from the ASFINAG call options, the concession structure was fairly straightforward. If the concession does not revert to ASFINAG it is worth around Eu750 million over its lifespan until 2013 (there is also an annual option to extend for up to five years) and comes with no traffic volume risk. Lenders can rely on limited top-up payments from Autostrade, but payments to the sponsor are linked to the system's recognition performance and the project company's ability to enforce fines.

Lead arranged by Bank Austria and Banca OPI, the financing was surprisingly cheap given the stress ASFINAG added to the deal. The debt comprises two 10-year tranches ? the first a Eu175 million term loan and the second a Eu20 million revolver. Pricing is 115bp over Euribor ratcheting up and down in line with a margin grid based on net debt and equity ratio to a floor of 100bp. Payments are semi-annual.

The mandated arrangers took Eu33 million each; senior arrangers Erste Bank and KfW both took Eu20 million; senior lead manager Kommunalkredit Austria took Eu15 million; SCH, BBVA, HSH-Nordbank, ING, Nord/LB and Oesterreichische Volksbanken came in at Eu11.5 million each; and Investkredit Bank took on Eu5 million.

If the banks do not come out well from Europpass ? and given the legal work on the deal there is no reason why they should not ? the whole concept of an Austrian PPP market is going to be a very hard sell in the future. ASFINAG published the tender for the first part (out of 4) for 52 km of the project PPP East Region on September 15, 2004. Project costs are estimated to be in the range of Eu725 million, and for the entire PPP East Region around Eu2 billion.

## **Europpass**

Status: Closed 27 May 2004

Description: First electronic tolling PPP

Total project cost: Eu230 million

Debt: Eu195 million

Sponsor: Autostrade

Concession awarder: ASFINAG

Lead arrangers: Bank Austria, Banca OPI

Arrangers: Erste Bank; KfW; Kommunalkredit Austria; SCH; BBVA; HSH-Nordbank, ING; Nord/LB; Oesterreichische Volksbanken; Investkredit Bank

Legal counsel: Linklaters; Graf Maxl Pitkowitz; Bonelli Erde Pappalardo; Allen & Overy; Wolf Theiss; Freshfields

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