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Texas' SH 130

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Texas was a state that looked positive in the early days; it had a pipeline of road deals and turned to the private sector to design, build, finance and operate them. Fast-forward a few months and the Lone Star State has fallen from grace in the eyes of the private sector following the controversy of the toll road moratorium and the SH 121 deal.

Governor Rick Perry, albeit reluctantly, signed a compromise bill last summer that put a two-year ban on private toll road deals principally in rural areas - kick-starting a chain of events that has seen the state lose its something of its pole position in the project finance community.

As the first US states began moving towards PPP-style financing of greenfield roads, Texas set itself up at the forefront, forming a strategic partnership with Spanish construction giant Cintra.

However, the first rush of enthusiasm was tainted by the North Texas Tollway Authority's (NTTA) bid that ousted Cintra from its provisional preferred bidder role on the SH121.

NTTA submitted its proposal to the Regional Transportation Council (RTC) in May 2007 to construct the road within the next five years and operate it for the next 50 years. The bid proposed splitting construction of the road into four segments and completing it by 2012.

The tollway authority proposed financing the project as part of the Dallas North Tollway system which included an upfront payment of US$2.5 billion at financial close and US$833 million in guaranteed payments - valuing it at a round US$3.3 billion. The construction cost was estimated at US$700 million.

This trumped Cintra's accepted bid of US$2.1 billion upfront payment with annual payments of US$700 million over 49 years. Its construction cost was set at US$560 million and O&M was US$1.7 billion.

Council members appeared to have been convinced that endorsing a publicly-owned entity - with a history of building and operating toll roads in North Texas - was preferable to awarding the contract to a Spanish private company that has built toll roads across the world, but had limited experienced in Texas.

While the NTTA bid looked like a better deal to the RTC, it failed to take into account many of the risks that Cintra was taking on board and - most importantly - as NTTA is a public body, it did not involve the same degree of outsourcing risk from the public sector.

Had the RTC accepted Cintra's bid - it would have been US$2.4 billion the richer and construction would have started a lot sooner.

Texas two-step around toll road moratorium

The Texas legislature was put under pressure in March/April 2007 when a two-year moratorium was proposed on toll road privatisation deals.

Republican governor Rick Perry made it clear at the time that the measure could cripple the state's multi-billion dollar privatisation programme.

When Cintra was selected as preferred bidder for the US$5 billion SH121 toll road project in February, state legislators raised questions of the half century length of the deal, alleged incomplete clauses and other provisions.

Other concerns voiced were that private toll road contracts could hurt the state with penalties for building or improving publicly-owned roads and leave drivers at risk of a private company's ability to raise tolls.

It also highlighted how much it would cost the state to end the deals early and 'buy back' toll roads.

In the end, the Texas senate approved a bill in late April placing a two-year ban on private toll road contracts and creating a panel to review the terms of those agreements.

Governor Perry urged the senate not to act on the bill saying that that the state's current transport system - which involved PPPs to build toll roads - needed to continue if Texas was to attract big companies.

As luck would have it, Dallas-Fort Worth, San Antonio and El Paso were exempt from the moratorium.

The Texas Senate transport committee also voted to shorten the contracts for private toll road companies to 40 years instead of 50-70 years as was currently structured.

It would also allow the state to buy back toll roads for a price determined by a company's return on investment instead of future revenue considerations that would be more costly.

Governor Perry vetoed the toll road moratorium bill in May 2007 saying it would shut down road construction, kill jobs and prevent access to federal highway money.

He threatened to call a special session if the Legislature couldn't send him a compromise bill.

Eventually, Perry signed a compromise - Senate Bill 792 - which imposed limits on comprehensive development agreements (CDA), used in contracts for private-public road building but made several key exceptions around the state.

Additionally, it set up a process to determine a road's market value, making it easier for local authorities to take on projects in their areas.

Despite the controversy, Perry has said that he stands firm in his support for toll roads and PPPs and some projects have slipped through the net, continuing the procurement process.

These include:

- SH 130
- DFW Connector
- North Tarrant Express
- TTC-69
- I-635 (LBJ Freeway) Managed Lane

The US 281 project was cancelled earlier this year because the local regional mobility authority made the decision to develop it itself.

The SH130 project

Segments 5 & 6 of State Highway 130 will form a 40-mile link through Travis, Caldwell and Guadalupe counties to I-10 near Seguin.

The US$1.35 billion project will be built and operated by the SH 130 Concession Company in partnership with the TxDOT.

The SH 130 Concession Company comprises:

- Cintra - 65 per cent
- Hastings Fund Management - 35 per cent

Segments 5 & 6 are a continuation of the northern segments of SH 130 - from Georgetown in Williamson County to Mustang Ridge in south east Travis County - that started opening to traffic in segments in late 2006.

When segments 5 & 6 are complete, SH 130 will be a new 91-mile tollway, intended to provide needed relief to congested I-35 through Central Texas.

The concession will be for 50 years from the end of construction (expected to take 5 years).

The new highway will also absorb growth in long-distance truck traffic expected as a result of trade agreements between the US, Mexico and the Central American countries.

The Cintra-led team was awarded the contract in March 2007.

Financing

The total investment for the construction phase is US$1.358 billion.

The capital financing structure comprises:

- **Senior bank debt**: US$686 million
- **TIFIA loan** - US$430 million plus capitalised interests during the construction phase
- **Funds** (equity) contributed by the sponsors - US$197 million

The financial close proves the market's interest in high-quality assets despite financial turbulence:

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The MLAs are:

- Banco Santander
- Caja Madrid
- Caixa Geral
- Fortis Bank
- Banco Espirito Santo

Senior debt provided by the banks has two components to it:

- a construction loan (**Tranche A**) of US$685.8 million with an availability period that ends one year after the service commencement date. It has a 30-year maturity term and is priced at Libor + 130-170 bp
- the second component is an additional liquidity facility (**Tranche B**) of US$35 million with a 10 year availability period and 30-year maturity term. It is priced at Libor + 130-170 bp

Both tranches are rated Baa3 by Moody's.

The TIFIA loan of US$430 million has a 35-year tenor after the service commencement date and a 10-year capitalisation period (construction + first 5 years of operation). It is priced at a 4.46 per cent based on long-term US Treasury Rates.

The equity contribution from the sponsors of US$197 million has a contingent equity for right of way limited to US$35 million (available until the right of way period is fully completed - expected to be 2 years) and a contingent equity as a liquidity facility limited to US$30 million - which is only if necessary in the first five years of operation to cover any deficit in the project.

The sponsors will also pay an up-front fee of US$25.8 million.

Phil Russell, assistant executive director of Innovative Project Development at TxDOT, said: 'Cintra's financial close on SH 130 was an important element, which will take this critically needed project from plans to concrete. It has lifted the financial burden and risk off taxpayers and will bring Texas motorists much needed congestion relief.

'This is our first public-private partnership and it will accelerate the development of SH 130 by decades. These remaining 40 miles of SH 130 are definitely going to be built. The next major milestone will be groundbreaking, which is expected in 2009.'

Nossaman acted as legal adviser with KPMG acting as financial adviser to TxDOT. Bracewell & Giuliani provided legal advice to the sponsors. Orrick acted as legal adviser to the banks.

Traffic and revenue adviser to the Cintra team was Capita Symonds and technical adviser was Atkins Global.

Legal advisor for the TIFIA loan was Nixon Peabody.

Conclusion

The two-year moratorium has had a number of impacts on the Lone Star State. To begin with, a moratorium until September 2009 - enacted in May 2007 - would actually last nearly two and a half years, not just two as had been intimated.

It would be foolish to imagine that today's bout of private sector activity in Texas would freeze-frame and resume business 28 months later.

A moratorium on PPP projects was seen by the private sector as negative for future investments in Texas.

Uncertainty over what kind of PPP agreements will be permitted when the moratorium ends will motivate companies to turn their attention to other fast-growing states with feasible PPP toll road concession laws already on their books - like Florida, Georgia, Utah, California, Virginia and Washington or those that seem close to enacting such laws i.e. Arizona, Nevada and Tennessee.

The project finance community is likely (and has been) moving to where the action is rather then waiting for an outcome in Texas.

Looking at the fundamentals, however, there is a significant need for investment and a shortfall in traditional funding sources in the state.

Although there is an increased level of political risk at federal, state and local government levels in developing highway infrastructure, it is also present in other sectors and deals still continue to be done.

The project at a glance

Project Name	State Highway 130
Location	Texas
Description	SH 130 will be a 91-mile (145 km) toll road extending from north of Georgetown to the intersection with I-10 near Seguin. It will be an alternative to IH-35, enabling traffic to bypass the highly congested central Austin area.
Sponsors	Cintra - 65 per cent Hastings Fund Management - 35 per cent
Project Duration (Including construction)	50 years
Construction Stage	5 years
Total Project Value	US$1,358.3 billion
Total equity	US$197 million
Total senior debt (Tranche A)	US$685.8 million **-Availability period**: Ends one year after the service commencement date **-Pricing**: Libor + 130-170 bps **-Term**: 30 years
Liquidity facility (Tranche B)	US$35 million **-Availability period**: 10 years **-Term**: 30 years **-Pricing**: Libor + 130-170 bps
TIFIA loan	US$430 million
Term of TIFIA loan	35 years maturity after the service commencement date
Capitalisation period	10 years (construction + first 5 years of operation)
TIFIA capitalised interest	US$45.5 million (4.46 per cent interest rate based on long-term US Treasury Rates)
Up-front payment to State	US$25.8 million
Mandated lead arrangers	Banco Santander Caja Madrid Caixa Geral Fortis Bank Banco Espirito Santo
Legal Adviser to sponsor	Bracewell & Giuliani
Financial Adviser to sponsor	In-house
Legal adviser to banks	Orrick, Herrington & Sutcliffe

Legal adviser to government	Nossaman
Financial adviser to government	KPMG
Traffic and revenue adviser	Capita Symonds
Technical adviser	Atkins Global
Legal advisor for TIFIA loan	Nixon Peabody
Date of financial close	6 March 2008