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Croatia's Zagreb-Macelj toll road project

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The Croatian government formed a joint venture with German construction firm Walter Bau and Austrian roads company Strabag to construct a real toll motorway in Croatia – running from Zagreb to Macelj on the Slovenian border. While not a very long stretch of motorway, it is a pivotal link on the Pyhrn Corridor – part of the Trans-European Network (TENs) linking west and south east Europe.

This 60km toll motorway weighs in at €360 million (US$437 million) and it is being built by Walter Bau and Strabag, then maintained by an SPV – Autocesta Zagreb-Macelj – that is owned two-thirds by Walter Bau and one third by Strabag.

The Croatian government elected to realise the project as a PPP, using a full project finance scheme. From its very inception, the government intended to take a stake in the road, with the smallest share it would take being 26 per cent and the largest 49 per cent. As it turned out, the government ended up taking the top end of the scale and Walter Bau and Strabag hold the remaining 51 per cent. Of this sum, Walter Bau again took two-thirds ownership, and Strabag took the remaining third of the 51 per cent share.

On 27 March 2003, the government took the decision to establish the concession company and to award it the right to run the project. The concession agreement and the JV agreement were signed on 11 July 2003 in Zagreb, and the construction period was set for 33 months.

The project – which is intended to solve congestion problems – includes the upgrade and widening of an existing 40km stretch of road, and the construction of 20km of new road through the mountains to the border, including 7km of tunnels. The concession period, during which the JV will operate and maintain the road, will be 28 years.

Juergen Schoenwasser at Walter Bau says: 'This is part of the TENs corridor and the part of the so-called Pyhrn Corridor that connects Croatia with Western Europe and connects Western Europe in turn with south east Europe and goes down to Athens and Istanbul. This is the closing of an important link in the European transport system.'

The project

The project has been driven by the need to enhance the existing motorway as fast as possible to facilitate the flow of traffic from the capital city to Western Europe. Croatia also wins kudos for getting this project off the ground so quickly. As one of the countries in the next wave planning to join the European Union, Croatia has done a lot better than the likes of Poland, which was one of the 10 to join Europe in May – but has been noticeable by its inability to kick off major transport projects.

Schoenwasser says: 'There is a traffic shortfall agreement where the Croatian government supports the minimum traffic volume guarantee and there is a German government investment guarantee which supports German investments in countries like Croatia. These are two important guarantee structures which facilitated this financing scheme.'

On the deal itself, Schoenwasser comments: 'About 15-18km is work on the old motorway that requires upgrading and widening from two lanes to four lanes, and the rest is new construction. It is more of an engineering project than a road project because 80 per cent of the construction volume is on tunnels and bridges and relatively little money is for road building itself. That is why it is relatively expensive on a per km pricing.'

The local operating company is owned by French operating company Transport International. The EPC contractor is a JV between Walter Bau and Strabag, again with ownership divided two-thirds to one third respectively. The project will run for 15-17 years. The employees of Croatian road authority Hrvatske Ceste who are currently working on the roads will be transferred to the JV company.

The deal closed and achieved first draw-down on 28 July 2004.

Finances

The financial advisers to Walter Bau/Walter Concession and the Republic of Croatia were Bank Gesellschaft Berlin and Fortis Savjetovanje respectively. The mandated lead arrangers were KfW, HVB/BACA and HSH Nordbank.

The total financing volume is €312 million (US$379 million) made up of three tranches of €100 million (US$121 million) and one tranche of €12 million (US$14.6 million). That works out €100 million mezzanine, €100 million Hermes guarantee, and €100 million commercial loan. All four tranches are equally split among the mandated lead arrangers.

KfW senior project manager of rail and road, Maik Heringhaus says: 'The loan amount is basically split into four facilities, one is a €100 million Hermes-covered senior facility, there is a senior commercial facility of €100 million, and there is a GKA facility of €100 million that benefits from a political risk cover from the German government. In addition there is a €12 million working capital facility. Those are shared equally among the mandated lead arranger groups.

'The remarkable thing is that this transaction does not benefit from a state guarantee as previous transactions did. It is the second motorway that was financed without a sovereign guarantee from the Republic of Croatia.'

As to the future Heringhaus adds: 'There are no new deals at this moment. The Croatian government is thinking about extending the PPP structure to other projects but so far, we are waiting for new projects to be tendered to see what we can do. Croatia is a very interesting market for us.'

Legal

Freshfields Bruckhaus Deringer advised Walter Bau and its special-purpose affiliate Walter Concession Holding on the project. The Croatian government was advised by Allen & Overy on legal issues. Clifford Chance advised the syndicate of banks.

Kent Rowey, who led the Freshfields team out of London, tells IJ: 'There are a lot of interesting things about this deal. It was not put out to public tender. It was a deal that originated through bilateral contracts through the Bavarian government and the Croatian government.

'Because of those contacts and the initial investment proposal and a decision brought within a treaty between the two governments that the public procurement laws did not apply. In addition the government is a shareholder in the project vehicle and so it was in the nature of a privatisation at the end of the day rather than a full-blown tendering of a concession.'

Freshfields' Rowey says there were three steps necessary to go through that allowed the project to be run without it going through a tender process:

The government owns the project company 100 per cent Concession agreement signed The private shareholders then subscribe to purchase shares up to 51 per cent in the project vehicle

Rowey adds: 'We signed the amended and restated concession agreement and signed all the financing agreements. This is the culmination of three years of work for our firm and six-and-a-half years for Walter Bau.'

Conclusion

This is Croatia’s second roads project that involved private investment after the Bina-Istra road. It has cut a swathe through the problems that have been faced in the sector and created a tailor-made system for Croatia. While it may not follow the route taken by most other countries, it has proved itself to be successful.

As Allen & Overy projects partner Tony Humphrey, who led the team to advise the Croatian government, says: ‘This road is a key transport link which will strengthen Croatian ties into the rest of Europe and bring important benefits for tourism and the Croatian economy.

‘It is a genuine PPP which, by using a complex traffic shortfall guarantee structure, provides an important element of support to the financiers to make the project bankable but does so in a way which still involves a significant transfer of risks to the private sector.’

He goes on to observe that: ‘The project structure differs from those found in Western Europe but, equally, does not slavishly follow those used in other parts of Central or Eastern Europe. It represents a Croatian solution to the particular challenges faced in Croatia.’

It’s a Croatian structure for Croatian roads and those companies that have been involved in the first few look set to benefit from the experience as experienced players in a unique market.