

A familiar road bump

What does the bankruptcy of SH130's concession company mean for the US P3 market?



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WHEN THE INDIANA Toll Road Concession Company (ITRCC) filed for bankruptcy in September 2014, it kicked up a flurry of conversation and speculation in terms of the implications such a development would have on the US P3 market.

Less than two years later, the bankruptcy filing of SH130 Concession Company, a consortium majority-owned by Ferrovial subsidiary Cintra and minority shareholder Zachry American Infrastructure, which financed, developed and built Sections 5 and 6 of the Texas highway, has raised the same question and doubt.

The outcome in both cases was due to lower-than-expected revenues. But the P3 model cannot be discarded because of flawed traffic and revenue projections.

"Better education about why the performance estimates were faulty and how that risk could have been mitigated would be a good way to calm the nerves of those considering P3s that don't understand exactly what happened in Texas," Lee Weintraub, public-private partnerships practice group chair at Becker & Poliakoff, advises.

Perhaps one of the reasons the performance estimates were flawed is because "SH130's traffic and revenue projections, like those of Indiana Toll Road, were done prior to the great recession," Bob Poole, Searle

Freedom Trust Transportation fellow and director of transportation policy at the Reason Foundation explains. "Second, pre-recession projects were financed pretty aggressively."

Furthermore, while the SH130 bankruptcy is certainly unwelcome for the concessionaires, it does not affect Texas' taxpayers. In fact, "Texas took the project back at a fraction of the overall cost, which was a good financial result for the state that was mischaracterised in the media," Weintraub remarks.

Given these facts, it seems that North Carolina's decision to re-evaluate the contract its department of transportation (NCDOT) has signed with another Cintra-led consortium for the I-77 Express Lanes project is more of a public relations exercise than a substantive reassessment. "With a valid contract, financing completed and construction under way, I see no possibility of NCDOT cancelling the contract," Poole comments. The \$665 million project began construction last November.

What's more, even if the project underperforms in terms of traffic volumes and revenues, North Carolina taxpayers are protected from financial losses, a fact North Carolina Secretary of Transportation Nick Tennyson emphasised in a statement announcing the state's decision to reassess the I-77 contract.

"While Cintra is an equity sponsor of both projects, each project maintains a separate financial structure," the I-77 Mobility Partners consortium said in response to NCDOT's announcement. Something else that is important to

note is that unlike ITR and SH130, traffic and revenue projections for I-77 were made post-recession and therefore reflect more recent traffic trends, according to Poole.

However, regardless of these sound arguments, perhaps the most compelling is this:

"Breaking the contract that NCDOT has signed with Cintra and Zachry for the I-77 project could be detrimental to the P3 market, because one of the things that is essential in these types of transactions is to have confidence that once a deal is struck, government will stick to its side of the bargain," Paul Williams, counsel at Arent Fox, says. "Changing the agreement at this stage could have more serious consequences on investors' confidence in the US P3 market than a bankruptcy."

As for Cintra, they may have a perception problem as they bid on new projects, given that the company was part of the ITRCC consortium. However, an indication that the Spanish company will be able to overcome this hurdle comes from Douglas Koelemay, head of Virginia's P3 agency, which is in the process of procuring I-66.

"The Commonwealth has complete confidence in the strength and experience of the Cintra team competing for our I-66 project," he told *Infrastructure Investor*, reiterating comments he made in March during the Charlotte Chamber of Commerce transportation workshop in North Carolina.

For now, at least, it appears P3 road projects in the US will continue to be given the benefit of the doubt. ■