FRONT STORY USA - ROADS

ITR expected to ignite interest

- The Indiana Toll Road bankruptcy contains a series of elements that surprised the market
- It set the stage for a comeback of the asset, possibly with the involvement of a key player

BY ALISON HEALEY

Many in the infrastructure market have been following the bankruptcy in the hopes of identifying and aligning with potential bidders and have noted the highly unusual structure of the proposed reorganisation, particularly the contemplated sale of the asset outside the bankruptcy court and the creation of the Special Committee.

"The bankruptcy contemplates a fairly unique structure for an asset sale," says Stephen Lerner, chair of Squire Patton Boggs Restructuring & Insolvency Group. "Generally, a Chapter 11 case affords a debtor the opportunity to sell assets free and clear of liens and interests, which provides a great benefit to buyers.

"The transaction, while requiring competitive bidding, reduces risk to the buyer and eliminates most concerns regarding assumption of liabilities and other claims against the seller. In addition, there is substantial flexibility in assigning contacts to the buyer without necessarily complying with consent requirements that exist outside of bankruptcy. And, notably, the sale is completed before the seller completes the bankruptcy."

"In contrast, the Indiana Toll Road [ITR] bankruptcy seeks to take advantage of a relatively quick pre-packaged plan and an early exit from Chapter 11 while maintaining the jurisdiction of the bankruptcy court to approve the asset sale post-bankruptcy which may be completed as late as August 2015," Lerner continued.

"Potential buyers will need to assess the impact of the fact that, if the court approves the plan, a substantial period of business operations will be conducted outside of bankruptcy. Moreover, the sale process, while seeking to provide the typical benefits to buyers, will not be conducted with the same level of court supervision as sales that take place within the bankruptcy case proper."

If the plan is approved, the sale process for the ITR will be launched, with the goal of completing a sale by August 2015.

"While the proposed process is rather unique, there is no reason to believe at this point in the case that the court will not be receptive," says Lerner. "The pre-packaged plan has received strong support from the Toll Road's bondholders and unsecured creditors are to be paid in full. Prospective buyers, though, will need to ensure that the post-plan confirmation sale process works to afford them the protections and flexibility that they ordinarily expect."

If the sale process fails, the concession company will enter into a US$2.75bn loan facility comprising US$2bn in first-lien loans and US$750m that will be distributed pro rata to senior secured creditors or obtain new third-party financing. If no sale transaction is consummated, the required consenting secured parties will determine whether the debtors issue new loans or obtain new third-party financing. The debtors' prepetition senior secured creditors will receive 95.75% of the equity interests in reorganised ITR Concession Company Holdings.

Statewide Mobility Partners will receive the remaining 4.25% of the equity interests in Reorganized Holdings, and the equity sponsors will retain their equity interests in reorganised Statewide. The equity sponsors may elect to receive some or all of US$80m in cash in lieu of the distribution of reorganised Holdings interests to reorganised Statewide, however. The amount of equity interests distributed is subject to adjustment if the principal amount of new debt or the new third-party financing is less than or greater than US$2.75bn.

The new loans for the ITR concessionaire, to be put in place only if a sale of the asset does not go through, will include a US$2bn five-year first lien loan priced at Libor plus 250bp with a 1% Libor floor. The deal has an aspirational rating of BB– and would be led by RBS as administrative agent.

Cintra has emerged as a likely bidder for the ITR despite its role in the consortium that currently owns the project. The Committee isolates the project company from conflict of interest claims should Cintra bid. In addition, since the proposal would pay unsecured creditors in full it could serve as a means to prevent any objections to a sale.

A statement from ITR CEO Fernando Redondo in support of the Chapter 11 filing shed some light on the secretive and extremely lengthy and involved talks that resulted in the pre-packaged filing. Redondo reports that, as of June 26 2006, the concessionaire, Wilmington Trust, as successor administrative agent entered into a loan agreement with respect to three tranches of debt: a US$3.25bn acquisition facility, due June 29 2015, a US$150m liquidity facility, due June 15 2015, to fund certain early period interest payments, and a US$665m liquidity facility to fund capital improvements required under the concession agreement.

As of the petition date there was US$3.85bn in the principal on the loans and the interest rate per annum was equal to Libor plus 125bp.

On July 25 2014, the administrative agent terminated the debtors' then-remaining US$67m in borrowing capacity under the Series C facility, in accordance with the loan agreement.

In his explanation of the accreting swaps in the deal Redondo says that at their inception, the financing's interest rate swaps were "at the money", meaning that the total value of the fixed interest payments to be paid by the concessionaire to the swap counterparty was essentially equal to the expected total value of the floating interest payments to be paid by the swap counterparty to the concessionaire.

But as interest rates, "precipitously declined to historic lows following the Debtors' entry into the loan agreement, however, the swaps turned into a net liability of the debtors of approximately US$2.15bn as of the petition date. This liability became due and payable following the early termination of the swaps due to the project company's failure to make an interest payment of approximately US$102m on June 30, 2014."

Redondo's comment on the restructuring negotiations states that throughout 2013, the debtors engaged in discussions with the Steering Committee regarding a potential consensual resolution. The discussions culminated in an agreement in principle among the debtors, the equity sponsors, and the steering committee in December 2013 regarding the terms of a balance sheet restructuring, says Redondo, and the parties agreed to negotiate and document the final terms of the proposed restructuring in early 2014.

The agreement in principle cleared the way for the debtors to make approximately US$104.5m in debt service payments on December 30 2013, that, if not made, would have enabled the debtors' creditors to exercise remedies against the debtors' assets, to the detriment of the debtors' stakeholders.

In early 2014, the debtors, the parties finalised the terms of their restructuring proposal and began to seek support for a comprehensive restructuring proposal to be implemented through a prepackaged Chapter 11 process from other lenders and swap counterparties, a group Redondo characterised as, "primarily comprised of financial institutions based in Spain, Italy, the United Kingdom, Germany, Greece, and Portugal that regularly invest in long-term infrastructure assets such as toll road concessions".

The parties' efforts to solicit support for the proposal included "convening back-to-back in-person lender meetings in Madrid, Spain and New York, engaging in extensive telephonic and in person discussions with the debtors' lenders and their respective advisers, and providing additional diligence information to potentially interested parties".

And, in an effort to garner additional support for the proposal, the debtors, in consultation with their advisers and potentially interested parties, assessed potential modifications to the proposal.

"Unfortunately, the Steering Committee's proposal did not achieve sufficient creditor support," states Redondo. "In addition, numerous lenders and swap counterparties [including multiple Steering Committee members] entered into participation agreements with members of the Committee of Secured Parties that favoured alternative restructuring strategies, including a potential sale of substantially all of the debtors' assets."

After the parties went back to the negotiating table for several months a plan emerged for an 83-day forbearance after failure to make the US$102m June 2014 interest payment. The parties used the forbearance period to finalise the pre-packaged bankruptcy.

Three newly-appointed independent directors of Statewide, who were acceptable to the debtors and the Committee of Secured Parties, form the membership of a committee of the board of Statewide are charged with conducting a competitive sale process for the ITR that will be launched following confirmation of the plan and can extend through to August 1 2015 at the latest. If the plan is confirmed, the Special Committee will be authorised to solicit and evaluate proposals without notice to or approval by the bankruptcy court.

Interest in the asset is expected to be sizeable, particularly among some of the smaller international players that may have been edged out of bidding on other deals by their larger competitors and have not yet managed to get hold of an asset and get established in the growing US P3 market. Some speculate that the asset will not attract the full list of the usual bidders, however, due to the lack of a construction risk element.

"From an operational perspective, the Indiana Toll Road is a robust project," says Roddy Devlin, of counsel, Squire Patton Boggs. "Unlike a new greenfield toll road, where revenue projections are as much an art as a science, the Indiana Toll Road has a revenue track record for potential buyers to look at. Although the recession significantly impacted toll revenues, project revenues have increased by 36% since 2007 and Ebitda is up by 53%."

"The road plays a vital role in the region's interstate transportation network, and there is a lack of viable alternatives. The project company's projection of continued increasing revenues in future years seems reasonable," continued Devlin. "The toll road is a viable investment. For the right operator and investment team, the bankruptcy offers a rare opportunity to acquire a well maintained and operating toll road with a proven revenue generating history. Ultimately, pricing will be the key issue.

"From the public's perspective, this is hardly a 'failed project.' The road has remained open throughout the process and will continue to be open throughout the bankruptcy and any related sale. The limits placed on the ability of the current private operator to increase tolls will also apply to any new private operator. To protect the interests of the road users, the Indiana Finance Authority has certain consent rights with respect to any new private operator under the terms of the concession agreement."

A confirmation hearing on the pre-packaged ITR bankruptcy has been set for October 28.

ARGENTINA

ABENGOA WINS TRANSMISSION

The Argentine Federal Electricity Board has awarded Spanish company ABENGOA the US$147m contract to develop a 176km transmission line in the country.

The company will be responsible for design, engineering, construction and commissioning of the line, which will connect the cities of Mar del Plata, Villa Gesell and Balcarce in the Buenos Aires province.

The works include construction of the Vivorata transformer station and the extension of the Bahia Blanca station.

Abengoa is currently developing two other projects as part of this plan. One is a 130km line between the towns of Aristóbulo del Valle and San Vicente in the province of Misiones, while the other is a 65km line between the Río Coronda and Rosario Oeste substations in Santa Fe.

The works are slated for completion in 33 months.

BRAZIL

ENEVA RESTRUCTURES DEBT

Energy group ENEVA has landed a R$300m (US$123m) credit line as part of its debt restructuring plans.

The credit line comes from BNDES and other unnamed financial institutions. The funds will be in part used for outstanding payments relating to the 365MW Pecem II thermoelectric plant in São Gonçalo do Amarante, Ceará.

The US$600m Pecem II financing saw a 70-30 debt to equity ratio, or US$420m in debt with the sponsor supplying the balance. BNDES lent roughly US$260m and Eneva, formerly known as MPX Energia, arranged a R$323m (US$160m) credit line in long-term debt from Itau BBA, a local bank.

Eneva earlier this year announced a two-stage capital increase of R$1.5bn (US$600m) as part of its debt restructuring. Formerly part of Brazilian business magnate Eike Batista's EBX empire, the company is attempting to restore financial stability to allow it to take full advantage of the country's booming energy needs.

In May, Eneva's major shareholder E.ON inked a loan agreement for R$1.5bn (US$600m) with BTG Pactual, Citi, HSBC and Itau. Part of that agreement included stipulations regarding the restructuring of the debt backing Pecem II as well as a proposed sale of the project, of which E.ON is set to offer R$400m (US$160m) for a 50% stake .

The first stage of the capital increase saw each Eneva share subscribed for at R$1.27 (US$0.51) for a total R$316.5m (US$126m). Of this total, R$120m (US$48m) was contributed by E.ON. At the same time, the organisation's four banks, BTG Pactual, Citigroup, HSBC Holdings and Itau Unibanco, agreed to a short-term bridge loan of R$100m (US$40m) to provide the company with immediate