

US AIRPORTS ON THE RUNWAY

IN MUCH OF THE WORLD, PUBLIC-PRIVATE PARTNERSHIPS (P3S) HAVE BEEN SUCCESSFULLY USED TO DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN (DBFOM) AIRPORT INFRASTRUCTURE PROJECTS. IN CONTRAST, FOR A VARIETY OF REASONS THE P3 MODEL HAS TRADITIONALLY BEEN UNDER-UTILISED AT US AIRPORTS. HOWEVER, THIS IS STARTING TO CHANGE. THIS ARTICLE EXAMINES THE REASONS FOR THE SLOW ADOPTION IN THE US, BEFORE DISCUSSING NEW AIRPORT P3 PROJECTS THAT ARE UNDER WAY AND OTHERS THAT ARE COMING TO THE MARKET. BY **RODERICK DEVLIN, VIRGINIA WONG AND KENNETH LIND, NIXON PEABODY LLP.**

There are two primary reasons why the US has been slow to embrace the P3 model in the airport sector; availability of multiple sources of capital funding and restriction on use of airport-generated revenues.

Public owners of US airports have access to a ready source of cost-effective debt financing for capital projects, in the form of tax-exempt bond financing. In addition, the federal Airport Improvement Program (AIP) provides grants to airports for the planning and development of public-use airport assets.

Airport owners are also permitted to collect passenger facility charges (PFCs) for each boarding passenger and use the resulting revenue for capital projects, subject to approval by the US Department of Transportation's Federal Aviation Administration (FAA). State grants, capital contributions from airlines and airport-generated income can also be used for capital projects.

Further, while airport P3s can potentially produce significant revenue for the public owners, the FAA imposes tight restrictions on the use of airport-generated revenues for non-airport purposes, lessening the incentive for public owners to pursue a P3. Airlines in the US have also traditionally been, at best, ambivalent as to the benefit of P3s.

Growing infrastructure needs

The FAA has noted that airport infrastructure needs are driven by current and forecast traffic, the use and age of facilities and changing aircraft technology such as larger aircraft that require modified gates. There were 785.8m US passengers in 2015, a figure the FAA expects to grow to 1.2bn by 2036.

In a 2017 report, the Airports Council International-North America (ACI-NA) estimated the cost to meet infrastructure needs at US airports for 2017 through to 2021 at US\$99.9bn, or almost US\$20bn per annum. Sixty-three percent of this investment is required to accommodate growth in passenger and cargo activity, with thirty percent needed to rehabilitate existing infrastructure, maintain a state of good repair and keep airports up to tolerable standards.

This US\$20bn annual requirement is much greater than the funding traditionally available through additional tax-exempt funding, AIP grants, PFC revenue, state grants and airport-generated income. P3s offer a potential way to help fill this shortfall.

The Trump Infrastructure Plan

The Trump administration's long-awaited infrastructure plan was released in February 2018, entitled "A Legislative Outline for Rebuilding Infrastructure in America". The Trump Plan, which sets forth the White House's proposal for legislative action, is broadly supportive of P3s and includes various provisions that could specifically boost P3s in the airport sector, such as:

- Expanding the successful Transportation Infrastructure Finance and Innovation Act (TIFIA) programme to provide loans and other credit assistance to airport projects.
- Extending an existing streamlined PFC application process from non-hub airports to small hub airports.
- Limiting the FAA's approval and oversight of non-critical airfield infrastructure projects (including terminals, access and service roads, hangars and other types of facilities) to accelerate the delivery of such projects.
- Modifying the FAA's Airport Privatization Pilot Program (FAA Privatization Program). As discussed in more detail below, the FAA Privatization Program was introduced in 1996 to encourage more private sectors to invest in US airports. Participation in the programme has been limited, however. The Trump Plan aims to increase participation by expanding the number of airports that are eligible to participate and decreasing the veto power of airlines.
- Modifying the federal Airport Improvement Program to allow incentive payments for accelerated construction. P3s have a proven track-record of faster construction compared with traditional procurements.
- Privatisation of specific federal assets, including airports. The Trump Plan specifically called out Ronald Reagan Washington National

Airport and Dulles International Airport, although both airports are currently subject to long-term leases with the Metropolitan Washington Airports Authority.

The Trump Plan also includes an Infrastructure Incentives Program, under which 50% of federal funds requested in the plan, namely US\$100bn, would be used to encourage additional investment funds from states, local governments and the private sector. Eligible projects would require non-federal funding for at least 80% of the project's costs. P3s could provide all or a portion of such required local financing.

Notwithstanding these positive P3 proposals, the Trump Plan and the White House's budget included little increased revenue for US infrastructure, and indeed, in real terms, cuts funding to certain key aviation-relevant federal departments and agencies, including the FAA.

The Trump Plan offers a broad policy proposal, but no concrete road map for enacting the ideas into law, and Congress has shown little interest in progressing this proposal. It is unlikely that there will be any significant movement of infrastructure legislation until after the federal mid-term elections in November.

However, as a statement of the administration's policy, the Trump Plan clearly telegraphs support for P3s and increased private investment in US infrastructure in general, and airports in particular.

Airport Privatization Pilot Program

The FAA Privatization Pilot Program, administered by the US Department of Transportation through the FAA, is intended to allow airport owners greater access to private sector capital and operational expertise. It exempts airport owners from certain federal requirements that historically made such private sector involvement unattractive or impractical, including:

- A waiver of the federal prohibition on using proceeds from the airport's lease exclusively for airport purposes.
- Exemptions from repaying past federal grants due to a P3.
- Exemptions from returning property previously acquired with federal funds or returning such funds.

Crucially, airports will continue to be eligible for federal Airport Improvement Program grants after the consummation of a P3 under the FAA Privatization Program – although such grants are capped at 70% of the cost of improvements, as opposed to the standard 75%–90%.

The FAA Privatization Program has not been widely embraced. Pre-2013, only one P3 had been consummated under the programme, at Stewart International in Newburgh, New York, which subsequently reverted to the public owner. In 2013, the Luis Muñoz Marín

International Airport in Puerto Rico became the second airport to participate.

Currently, three airports have been preliminarily approved by the FAA to participate in the programme. In 2017, Westchester County received three proposals to privatise its airport, in response to a request for proposals (RFP). However, with a change in the County's administration the project is now in a holding pattern.

In February 2018, Hendry County in Florida agreed to transfer the Airglades Airport to a private consortium under the FAA Privatization Program, which would create the first fully private cargo airport in the US. The application process under the FAA Privatization Program is ongoing. The County has targeted a ground-breaking in 2019, with operations starting in 2021.

In June 2018, the City of St Louis retained an advisory team to assist it in assessing the privatisation of the St Louis Lambert International Airport under the FAA Privatization Program.

• *New York region relaunches airport P3s* – In 2016, the Port Authority of New York/New Jersey (NY/NJ Port Authority) gave a significant boost to the airport P3 sector with the financing of the LaGuardia Airport's Central Terminal P3. The private developer, LaGuardia Gateway Partners – a consortium of Vantage Airport Group, Skanska ID and Meridiam – has commenced construction of a new state-of-the-art airport terminal, as well as other key airport improvements. The US\$4bn-plus project was partially funded by tax-exempt (AMT) and taxable bonds issued by the New York Transportation Development Corporation.

The NY/NJ Port Authority's US\$10bn planned redevelopment of John F Kennedy International Airport could involve significant P3 components. In March 2018, JetBlue Airways selected a private team headed by Vantage Airport Group to undertake the redevelopment of JetBlue's facility, creating an integrated complex linking multiple terminals. The project has a price tag in excess of US\$2bn. The final project is subject to review and approval by the NY/NJ Port Authority.

The NY/NJ Port Authority has also retained advisers for the proposed LaGuardia AirTrain project, which is being jointly undertaken with the Metropolitan Transportation Authority. The project would provide a rail link between LaGuardia airport and midtown Manhattan, with a target travel time of 30 minutes. A P3 procurement is under consideration.

• *Los Angeles International Airport improvements on track* – Los Angeles World Airports, the operator of the Los Angeles International Airport, is undertaking a number of significant P3s.

In June 2018 the California Municipal Finance Authority issued approximately US\$1.2bn of tax-exempt bonds to partially finance the Automated People Mover P3

project at Los Angeles International Airport (LAX). The DBFOM P3 concession was awarded to a private consortium that includes ACS, Hochtief, Balfour Beatty, Fluor and Bombardier. The project includes a 2.25-mile-long elevated passenger train, with six stations, pedestrian bridges to the airport's terminals and other related infrastructure.

A related DBFOM P3 procurement is under way for the related Consolidated Rent-A-Car (CONRAC) facility at LAX, which will consolidate the current car rental and parking facilities into a central location adjacent to Interstate Route 405, with connections to LAX terminals via the APM. The project has an estimated price tag of over US\$850m.

● *Phoenix Sky Harbor International Airport projects* – The City of Phoenix, acting through its Aviation Department (Phoenix Aviation Department), is currently undertaking stage two of the PHX Sky Train automated people mover project (PHX Sky Train) at Phoenix Sky Harbor International Airport (PHX Sky Harbor).

The PHX Sky Train began initial service in 2013. When complete, stage two will link the airport terminals to a new rental car centre and local transit options. It will include a new multi-modal station, the West Ground Transportation Center, which is expected to attract significant passenger activity and create new development opportunities. In April 2018, the Phoenix Aviation Department issued an RFQ seeking to identify qualified private sector partners to:

i) Operate, maintain and expand the parking facilities at PHX Sky Harbor under a long-term parking concession agreement, covering approximately 25,000 parking spaces. The selected team will also be required to design, build, finance, operate and maintain a new parking structure with at least 3,000 spaces adjacent to the new West Ground Transportation Center; and

ii) Develop, finance, operate and maintain an upscale rated hotel adjacent to the new West Ground Transportation Center, with at least 200 guest rooms, meeting room space and a street-level restaurant or retail facilities. Respondents may also propose additional commercial developments at the proposed site.

The Phoenix Aviation Department is expected to announce the list of respondents qualified to proceed with the procurement in autumn 2018.

● *Kansas City International Airport* – In February, the Kansas City Council approved a memorandum of understanding with Edgemoor Infrastructure & Real Estate for the US\$1bn P3 redevelopment at Kansas City International Airport. The Edgemoor team will design, build and finance a new 750,000ft² terminal at the site of the current Terminal A, with at least 35 gates.

The project also entails a multi-level parking facility with approximately 6,500 parking

spaces and additional covered public surface parking with 2,000 spaces. The Kansas City Aviation Department is expected to operate and maintain the new facilities.

● *Denver International Airport Great Hall project*

– The financing for the Denver International Airport Great Hall Project reached financial close in December 2017. A joint venture of Ferrovial Airports, Loop Capital Markets and Saunders Construction was selected to undertake a significant renovation of the central portion of the main terminal building at the airport.

The project entails creating new shopping and food-service areas, relocating and expanding the TSA screening areas, improving building access and passenger flow, creating a new check-in area and optimising space and efficiency in the terminal. The estimated costs of the project are US\$650m.

● *O'Hare International Airport Rail Link – Far from Boring!* – In June 2018 Elon Musk's The Boring Company was awarded the DBFOM concession for an express transportation system connecting downtown Chicago to O'Hare International Airport.

The proposed Loop is an innovative high-speed underground transportation system, where passengers would be transported on autonomous electric skate vehicles travelling at 125–150 miles per hour. The Wi-Fi equipped skates will carry between 8 and 16 passengers, and will depart as frequently as every 30 seconds.

The project will be 100% privately funded, with no taxpayer support. The costs have been estimated at below US\$1bn, a surprisingly low amount for a project of this nature.

By employing stabilised electric skates, the developer plans on a tunnel diameter of less than 14 feet – in contrast to a regular one lane tunnel of approximately 28 feet – resulting in tunnelling costs that it predicts will be 3–4 times less than a traditional underground train. The developer also proposes to significantly improve on the speed of traditional tunnel boring machines. Construction is expected to begin within a year and will likely be at least a two-to-three-year process.

Conclusion

Airports are the gateways through which travellers first experience a city. Globally, P3s have been widely employed to help make such experience as efficient and painless as possible.

While the US has lagged behind in embracing airport P3s, as demonstrated above a number of significant airport P3 projects are currently under way, with more in the pipeline. While only part of the solution, the P3 model can, when properly applied, harness the private sector's expertise, know-how, efficiency and financing to help meet the growing infrastructure needs of US airports. ■

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