US STIMULUS PLAN REPORT 2010: BEYOND THE STIMULUS

Posted on 18/07/2010

Category: Uncategorized

The US Stimulus Plan (American Recovery and Reinvestment Act of 2009) undoubtedly opened the eyes of many Iberian companies to current and future investment and development opportunities in the country

The $787bn (€579bn) package has played to the strengths of many of Spain and Portugal's leading businesses, with its emphasis on rebuilding, or refurbishing the country's existing road and highway infrastructure, on developing new transport schemes – including high-speed rail networks – and placing a significant focus on the development of the renewable energy sector.

The result has been to encourage a dramatic inflow of Spanish, and Portuguese investment, and to provide the know-how, technical expertise and financing packages to make the Plan a reality. But despite such success, lawyers in the US, note however that the Stimulus Plan has now moved on. It is, say some, only a first step in a radical new direction for energy, infrastructure and transport policy across the US.

"Many people are uncomfortable with the amount of money that has already been spent 'bailing out' companies and banks, and instead want to see the development of new projects – to move beyond the Stimulus and see positive things actually emerging," says Diane Blagman, Senior Director of Governmental Affairs at Greenberg Traurig in Washington DC.

Transport

One example of this more positive approach is characterised by the US High Speed Rail Association (US HSR), a non-profit industry and lobbying group, that has recently published a map of a projected new high speed rail network across the US. Its plan encompasses 17,000 miles of 220mph track, which it believes can be built over the next 30 years.

“What we are proposing goes far beyond the government’s current thinking but it is, we believe, entirely feasible. The existing US rail network is largely a product of the late 1800s, while the interstate freeways were almost entirely built in the 1950s. The US has a history of making bold visions a reality,” says Andy Kunz, President and CEO of US HSR.

The creation of ten high-speed rail corridors was announced as part of the Stimulus, with $8bn of development funds set aside. Nonetheless, there is currently no common standard for high speed rail infrastructure across the US, the rolling stock, track gauge or electrification, says Kunz. “We are trying to open the debate and build momentum so that ultimately we are able to seamlessly join up and dramatically expand on what is already happening.”

Already under development is the high speed line connecting Los Angeles to San Francisco and the California state capital, Sacramento.

The project has been awarded $2.2bn in federal funds, and received authorisation to raise almost $10m in bonds, but it still requires significant levels of additional private finance and technical know-how, says José Luis Moscovich, Executive Director of the San Francisco City Transportation Authority.

“We are interested in gaining a better technical understanding of schemes elsewhere as well as finance models, and looking to countries such as Spain to offer this,” he says. The high-speed rail line is however only one element of a transportation strategy within the city that will see a new central rail and bus terminal, extended metro network and modernised highway connections.

“The funds already set aside by the Stimulus Plan are dwarfed by the scale of projected improvements required across the total US transport infrastructure, with an estimated $2.2 trillion of improvement necessary over the next five years,” says Fernando Alonso, a finance partner with Hunton & Williams in Miami.

Spanish companies are still having significant success in the US despite the absence of a national framework. Recent years have seen the award of concession contracts on projects connected to Midway Airport, Chicago Parking Meters, Illinois Skyway and Florida’s Alligator Alley, with companies such as Abertis, Cintra, FCC, ACS Dragados, OHL, Brisa and Acciona, all now active or entering the market.

Energy gaps

The same scale of emerging needs is also evident in the energy sector, say lawyers. Significantly, the Stimulus was not an energy “plan” although various energy bills were under consideration when it was passed, says Sarah Fitts, Co-Chair of the Energy and Natural Resources group at Debevoise & Plimpton in New York.

“The Stimulus was intended to restart the US economy and the focus was on ‘shovel-ready’ projects that could be begun quickly, rather than projects requiring long-term planning.”

A year on, several energy bills are still pending in Congress with varying degrees of confidence about which if any will become law. But the Stimulus has nonetheless resulted in considerable funding of renewable energy projects, including large-scale demonstration projects and research into new technologies.

“These efforts could help renewable energy technologies to become more competitive even in the absence of a national energy policy that might, for example, put a price on carbon or which mandates that a certain percentage of electricity be generated from renewable resources,” says Fitts.

Despite the lack of a comprehensive energy bill at the federal level, many states have however adopted state renewable energy standards. In addition, ten states in the northeast US have established a carbon market, the Regional Greenhouse Gas Initiative, which is a trading platform for carbon emissions by electric utilities.

“Other regions of the country are also developing carbon trading platforms. If federal energy legislation is passed, it is likely that some state programs will be preempted by the federal legislation, but other programs will remain in force and be additional to policies implemented nationally,” she says.

Certain elements of US energy policy nonetheless remain open, notably there is currently no feed-in tariff system in the US, although it is under study in several states including New York. Nonetheless, a majority of states have likewise adopted a variety of incentives to encourage renewable power and energy efficiency, which would be preempted or superseded by any federal legislation.

“Accordingly, there is a fair amount of legal uncertainty right now. Developers often seek power purchase agreements with off-takers for at least a portion of their developed capacity, which creates some certainty by contract, and is also an important element in financing projects,” says Fitts.

Buy American

A recurring area of concern for foreign investors remains however the “buy American” provisions, and the fear that international investors and companies may be at a disadvantage in bidding for projects. Lawyers emphasise that there are however two sides to the issue, legal and public relations. The “buy American” provisions apply to onl

y certain types of projects and components and waivers are available, says Fitts. Some projects that were not subject to “buy American” provisions were nonetheless criticised because of a foreign ownership component or the planned use of imported equipment, notably the case of a proposed wind farm in Texas that planned to use Chinese turbines – the project developers ultimately agreeing to build manufacturing facilities in the US.

In any event, what is clearly now being seen is a trend for foreign acquirers of established US businesses to help leverage themselves into a new market, and now encompassing manufacturing, logistics, distribution, and generation in both renewable and traditional power resources.

“We often see these deals structured as joint ventures, which enables the foreign investor, who is often quite experienced in the industry in its home market, to learn the US market with an experienced partner,” says Fitts.