

Infrastructure Projects in Ukraine: Current Situation and Prospects

By Oleg ALYOSHIN
Vasil Kisel & Partners

The worn-out and self-destructing infrastructure networks and facilities in Ukraine, coupled with the economic crisis, have drawn the considerable attention of the Government to infrastructure projects as a potentially effective vehicle to minimize the consequences of the crisis on the economy. The issue of improving the infrastructure was also brought to life by the growing demand for qualified services from the market. Another important driver is that Ukraine desperately needs infrastructure improvement in the light of the coming European Football Championship to be held in Ukraine in 2012. In November 2008 the Government adopted a special program aimed at supporting large-scale infrastructure projects. What has happened since?

The Ukrainian government has taken a number of practical actions in this direction at the legislative level. First of all, the primary Ukrainian laws regarding concessions and especially road concessions, housing supply and construction of utilities were amended and supplemented with up-to-date provisions. Secondly, a number of laws aimed at overcoming financial instability were adopted. A specific law on general principles of public-private partnership was drafted though it has not yet been enacted. The Ukrainian budget reserved special funds aimed at providing government guarantees to private investors, especially in road concessions and EURO-2012 related projects. Recently adopted regulations also open up additional opportunities in terms of financing infrastructure projects. For example, the recently adopted *On Concession for Construction and Exploitation of Automobile Roads Acts of Ukraine* provide for such a new financing instrument as infrastructure bonds. In the conditions of the global financial crisis, there is undoubtedly a need to finance infrastructure products with "long-term" money.

The worn-out and self-destructing infrastructure networks and facilities in Ukraine, coupled with the economic crisis, have drawn the considerable attention of the Government to infrastructure projects as a potentially effective vehicle to minimize the consequences of the crisis on the economy.

Along with legislative changes a number of new infrastructure tenders were announced by central government and local municipalities. However, there continued to be limited activity in the infrastructure sector. Although a number of projects have been announced, just a few real projects have been noted, and no large new contracts have been awarded. At the moment, Ukraine's infrastructure sector continues to be subdued, with little sign of actual activity on the ground.



Oleg ALYOSHIN

is a Partner with Vasil Kisel & Partners. Mr. Alyoshin focuses on: Infrastructure Projects, Energy & Natural Resources, Real Estate & Construction, he is the Head of Vasil Kisel & Partners Energy & Natural Resources/Infrastructure Projects practice group and Real Estate & Construction Group

As an example, in July the government announced plans to launch an auction for the construction of Lvov airport. However, it has been postponed a few times due to a lack of investors. According to the Infrastructure Project Finance Ratings, developed by the "Business Monitor International", which provide a globally-comparative, numerically-based assessment of the risks facing major infrastructure projects, which will in turn affect the source, availability and cost of finance, Ukraine came last out of 20 countries assessed in Europe. The key factors negatively affecting Ukraine in terms of infrastructure projects are lack of political stability, a poor competitive environment together with a lack of public or private financing.

Despite all the problems, Ukraine is still being considered as a promising market for infrastructure projects and the Ukrainian Government is trying to make efforts to attract the attention of private business to infrastructure projects. The Ukrainian prime minister and other key political figures held a series of official meetings with foreign governments and investors, where infrastructure projects supported by the state of Ukraine were suggested for their participation. European, Chinese, Korean, Iraqi, Libyan, Russian and European businesses are among potential partners.

The energy sector is also of great interest to investors, including biofuel and implementation of Kyoto instruments. It should be noted that OECD countries will have to purchase around 2 billion tonnes of surplus emission allowances to meet their commitments under the Kyoto Protocol. There is likely to be significant competition in this market since transition economies together have about 6 billion tonnes of surplus allowances; and about 29% are available in Ukraine alone. Ukraine alone also has the potential to achieve emission reductions of the order of 2.7 billion tonnes through energy saving investments in the power, industry, water and district heating sectors (20%); methane capture from gas transmission and distribution systems, coal mines and landfills (21%); energy efficiency improvements across all sectors including the residential sector (40%); as well as investments in renewable energy, agriculture and forestry.

A number of investment pledges for upgrading infrastructure have been announced, including USD 1.66 billion

for road works and USD 473 million for railways. This makes the Ukrainian market interesting for infrastructure projects. Potential infrastructure activities will be definitely fueled by preparations for the UEFA 2012 European Football Championship.

As stated in the Ukraine Infrastructure Report Q4 2009 in the transport sector, a number of ports in Ukraine have announced large investment plans. However, with trade activity down, revenues down, and limited public or private money available, the plans seem fairly ambitious. A lack of funds is also hampering extending the Kiev underground, with new subway stations now not likely to be open until 2010. The biggest news in the transport sector was the granting of a USD 400 million loan from the World Bank for the Roads and Safety Improvement Project for Ukraine. The lion's share of the funds, USD 298.50 million, will go towards renewing a 120 km section (between Borispol and Lubny) of the Kiev-Kharkov-Dovzhansky highway (the M-03). It is hoped the project will improve the safety and efficiency of Ukraine's roads.

Experts say that the combined amount of money invested in the organization of EURO-2012 in Ukraine and Poland will be close to EUR 38 billion, and projects implemented in Ukraine will account for approximately 40% of this sum. One third of the total cost of the preparatory work for EURO-2012 in this country will be spoken for by road construction projects.

In the meantime, experts of Vasil Kisil & Partners are involved in advancing the domestic legislative frameworks through the implementation of Public-Private Partnerships (PPP), which will provide the necessary legal basis for implementation of large investment projects, i.e. airports, ports, roads, bridges, mines, upgrading of communal services, etc. We continuously advise various Government institutions as well as private clients in public tenders, property finance and leasing, concession of public assets and services, helping them draft and negotiate public private partnerships (PPP) & concession agreements, feasibility studies, regulatory issues, royalties and tariffs.

The promotion of the PPP concept today ranks highly not only on the political agenda of many countries, but it has also become a declared policy target of leading international finance institutions such as the World Bank, EIB and EBRD. In a similar way, for more than a decade the European Commission has tried to encourage increased private participation in infrastructure finance. This is clearly set out in the European Commission's White Paper on European transport policy.

In reality PPPs represent a balance between, on the one hand, complexity and transaction costs, and on the other, advantages from optimal risk allocation, cost/time discipline created by having private sector interests in efficiency, the advantages of competition and innovation, the optimization of lifecycle costs and an output-based service-oriented payment system.

Vasil Kisil & Partners

Address:

Leonardo Business Centre,
17/52-A Bogdana Khmel'nitskogo Street,
Kiev, 01030, Ukraine

Tel.: **+380 44 581 7777**

Fax: **+380 44 581 7770**

E-mail: **vkp@vkp.kiev.ua**

Web-site: **www.kisilandpartners.com**

Through our relentless focus on client success, our team delivers integrated legal solutions to complex business issues. We do this by actively listening to our clients and understanding their needs, their business and their industry.

In Ukraine, the Vasil Kisil & Partners brand is synonymous with great depth and breadth of legal expertise and experience, which has created superior value for our clients since 1992.

We have a history of taking bold steps — from building one of Ukraine's first independent law firm models to incorporating an integrated structure — to better serve our clients. Our approach creates a single, client-focused team that takes advantage of our size and scale, and frees our lawyers to do what they do best: delivering customized legal services that help you achieve your goals.

Vasil Kisil & Partners is a Ukrainian law firm that delivers integrated business law, dispute resolution services, tax law, energy and natural resources law, intellectual property law, international trade law, labor and employment law, real estate and construction law, as well as public private partnership, concessions & infrastructure law.

We serve international and domestic companies, as well as private individuals, dealing in agriculture, banking, chemical, construction, financial, energy, hi-tech, general commodities, insurance, IT, media, metallurgy, pharmaceutical, real estate, shipbuilding, telecommunication, trading, transport, and other industries and economy sectors.

Our clients include such world-known companies as Alcatel, Astellas Pharma, ATB, BASF, Bayer Consumer, BNP Paribas, Central European Media Enterprises, Continium, Dell, Du Pont, Energy Standard Group, Eurosport, Fitch, Google, Gucci, Hewlett-Packard, LG Electronics, Marks & Spencer, Merrill Lynch, Moody's, Nissan, Opel, OTP Bank, Pioneer, Philips, Red Bull, Saab, SEB Group, Shell, Siemens, Tchibo, Volkswagen.

Experience the VKP difference and sense first-hand how integrated competencies, depth of knowledge, expertise and experience can be your competitive advantage.