A Motorway network for Europe: market and conditions

Venice, 9th of March 2008

Fabrizio Palenzona
Asecap and Aiscat President

A Motorway network for Europe: market and conditions

1. "No competitive economies may exist without valid transport networks…"

The creation and smooth operating of the trans-European transportation network…are essential conditions for the success of the Internal Market and to guarantee sustainable mobility in a wider Union"."

These are the words written by the European Commission in 2003, in its Communication on the development of the trans-European transportation network; words which frame our meeting of today: "a European motorway network, market and conditions".

But the EU commission added: "***However, the network is still challenged by a strong but unbalanced growth of traffic…***
Transport infrastructure continues to be utilised poorly and funds are missing due to the non transparency of the costs paid by users, the financial resources available with the Union and the lack of a favourable investment climate ….."
The chances that public funds towards such projects may increase significantly in the short-term are scarce.
For certain projects the use of public-private partnership funding may be expected…but there are too many unknown factors concerning the projects to be built and decisions on transport policies ".

A few words containing: objectives, accurate analysis of structural problems, definition of the instruments required.
In other words, a plan, an operating plan, to be implemented through close coordination among Member States.

The plan for the creation of a single currency – outlined in the early 90s – led to the introduction of the euro in 1999.
But this is not the case for the trans-European transport network, which is proceeding at a far slower pace – this is always the case when the building of large infrastructure is involved.
Furthermore, we must note that progress is slower in certain States compared to others.

2. A European motorway network – guaranteeing free movement and preparing Europe for the challenge of globalisation

To understand what is needed in order to effectively achieve the free movement of people and goods we may compare market operating requirements with those of a living organism, which needs four essential elements: a blood circulation system (the transportation infrastructure), a central nervous system (telecommunication infrastructure), a muscular system (energy infrastructure), and a brain system (training infrastructure) together all known as "trans-European networks".

The aim is to “connect” all economic operators and all European citizens (including those residing on islands and the territory’s outskirts) to each other, so that all may benefit from the advantages of a space having no internal borders.
Therefore, it is through these large networks that the European Union’s (as well as individual countries’) possibilities for growth and competitiveness run.

Indeed, in a global economy characterised by the deregulation of exchanges, companies set up where they find the best conditions to become more competitive. In such a framework, the availability of infrastructure and in particular transportation infrastructure is unanimously considered by economists to be a parameter of a country’s economic and social development.

The European Union is one of the richest areas in the world, but there are great differences among its Member States as well as within Member States. It is clear that the ability of equipping Europe with a standard and shared infrastructure system, is a requirement to avoid that the gap between different regions of the European Union increases further.

<u>The trans-European networks, together with the single market, are therefore an essential element to strengthen the European economy and prepare individual Countries and Europe to meet the globalisation challenge.</u>

3. Trans-European transportation networks: top 30 priority projects

TERN network projects are nodal points of the EC plan to re-launch Europe’s economy. These were already included in a number of EC documents in the 1980s, and with the Treaty of Maastricht have officially become one of the Union’s first objectives.

Their operating phase however only started with the decisions of the European Council and Parliament of 23 July 1996 (96/1692) on the EC’s views on the development of the trans-European transportation network: necessary action lines to build the network and identify the projects of mutual interest were established.

The 2001 Transport White Paper highlighted the need to make a first adjustment to the strategy, in order to take into account increased congestion, due to ongoing bottlenecks, missing link-roads and poor interoperability, as well as the urgent need to encourage re-equilibrium between transport modes. Furthermore, plans for a wider Europe accentuated the need for a new approach.

A revised version of the plan only became available in 2003 by the High Level Group chaired by Karel Van Miert, which, in the Summer of 2003, identified the priority projects and the horizontal issues of fundamental importance to the trans-European network up to 2020; this list was definitively approved by the European Commission at the end of 2003 and the European Commission estimated the costs of the works to amount to no less than 280 billion euro.

4. The financing problem of trans-European networks – private capital

How to find the financial resources for such an important infrastructural plan?

How the actual building of the trans-European network clashes with the insufficient financial resources reserved for it by various Member States (always more and more pressured by budget constraints) is something well known, as is the limited EC contribution which covers only a very small part of the necessary funding.

According to the EU Commission: *"Experience shows that financing transport infrastructure entirely through private funds is not the best way to build large scale projects"*. But: "*….if budget constraints heavily reduce the possibilities for public financing, there are other means to increase the leverage of public spending to attract private capital, such as the* ***assignment under concession****, which has produced – and continues to produce – good results…*
And indeed, *" ….French, Italian and Spanish motorway networks have in large part been built in the 1950s through concessions, consenting rapid infrastructure development without hefty public dent."*

5. Partnership obstacles - the restrictions that need to be removed

Often, however, as the European Authorities have noted, partnership operations are blocked by "*economic, legal and at times political obstacles"* which must be eliminated.
Hence, the recipe for success: "***spread good practice and update the existing legal framework*** *so as to make PPP formulas more appealing, especially for private investors".*

A number of reputable studies have repeatedly highlighted how the uncertainty of public finances which weaken internal demand and increase interest rates, public administration inefficiency, the lack of synergies between public operators, the inefficiency of the legal system, the lack of certain market rules and the interference of politics with operators' attempts of reorganising, and, more generally, instability and poor administration, are all reasons which discourage investors.

Conversely, **investors are attracted** by plentiful natural resources, durable growth of internal demand which should mean that public finances are in order, the existence of new technologies and skilled labour, at low costs, efficient administration and **especially the certainty of decision making times**, a reasonable tax rate and suitable forms of fiscal incentive; in other words, expectations for profit – be such profits high or low, provided they be certain.

Historically, in the field of large infrastructure, profits have never been high or fast: it is necessary that they at least be certain.
In other words: in order to attract capital, the rules of correctness and behaviour which is comprehensible to the international community at large must be followed.

Capital raising is no longer only a financial function: it has become a marketing one too. To raise funds investors must be presented an attractive value proposition, one's company or investment needs to be presented in a similar way as any other consumer product, because there are alternative (competing) projects, in different sectors and in different countries, in which to invest. And no company would survive on the market if it presented itself in the same fashion as many large infrastructure projects are presented around different countries of the European Union.

Few things move more rapidly than capital: every day, every hour in which the markets are open, investors move towards better and larger areas of gain.

Over the last years, for example, Italy seems to have lost sight of this all important parameter and directed its internal debate towards different directions, which is quite absurd for a country that desperately needs to find resources to invest in infrastructure.

6. Operating lines identified by the EU to encourage joint participation of public and private financing.

Highly selective public investments and unclear partnership prospects with private parties are not enough: accurate instruments which may be activated quickly – this is what is required.

Within this scope the EU has prepared a number of documents, both regulatory and non, aimed at adjusting the economic-legal and financial framework. Considerable progress towards aiding the creation and development of partnership instruments, among which:

- the April 2000 Interpretative Communication on concessions,
- the 2004 unified Directives;
- the Directive on the tariffs of heavy vehicles;
- new rules on State Aids.

For the same reasons, the Green Paper on public-private partnerships was published in 2004, in order to assess whether or not the legal framework should be improved or completed to allow economic operators better access to the different PPP operations.

This undertaking produced the recent communication on the interpretation of institutionalised partnerships and initiated the impact assessment that could precede the **introduction of a new EC directive on concessions**, whilst a new stable and predictable EC legal framework has already been finalised on tariffs for infrastructure use.

Not only: in financial terms the Commission acknowledged that it would be necessary to provide for an increase in the specific funds and, in any case, the implementation of EC guarantees specifically reserved for trans-European network projects.

Lastly, in order to improve synergies, the EU has planned the setting-up of trans-national legal companies approved under the by-laws of the European Company.

7. Responsible collaboration of individual European governments in order to achieve concrete results

If the Union's role is that of acting as a catalyst, encouraging Member States to push projects forward, trying to find solutions to financial and legal problems, then the greatest responsibility for the building of the trans-European networks rests with individual European governments.

As noted in the communication *"Common actions for growth and employment. The Lisbon EC program"* of 20.07.2005; *"... it is only with the joint efforts of the European Commission and Parliament and Member States that Europe will be able to achieve its ambitious goals set by the Lisbon Strategy…"* and ends: *"The time has come to deliver concrete results"*.

Unfortunately, under this aspect, there still seems to be a long way to go, at least in many European countries.

European Member States enthusiastically signed this statement, but not all seem to be as enthusiastic when it comes to applying it.
And where a "responsible collaboration" of Member States would mean, first of all, the application of EU rules without alterations which affectively reduce their substance, we instead witness the introduction of distinctions and clauses at national levels, which although formally legitimate under the principle of subsidiarity, essentially defeat the purpose of the EU policies that should be applied.

Meanwhile, in the field of infrastructure in particular, the EU has deemed it useful to introduce transparent but flexible rules, well aware of the fact that the introduction of excessively rigid conditions would produce:

1. lower choice in the selection of operators,
2. increased rigidity - which is not always functional to the interests being pursued,
3. slowdown in investments,
4. turning away of private parties who will decide to invest in more reliable and "safe" countries in terms of rules,
5. negative repercussions on the Union's image and growth.

But this is not enough. Behaviour such as that described above, unfortunately not infrequent in Europe, essentially arises from cultural problems, of which an irrational fear of globalisation plays as much a part as does the inability to modify one's behaviour to reap the benefits of change.

This defensive attitude, however, does not take into account the fact that in the global economy the effects of single events cannot be isolated. Many analyses carried out by the International Monetary Fund (IMF) and the OECD show how countries that grow the least are generally those which have the most rigid markets, where budget policies struggle and so on.

More so: the construction of public works already faces a number of "physical" constraints: orological, geological, hydro-geological, etc. If we add new bureaucracy or procedural problems to operators, then the burdens grow exponentially and works are not carried out or are delayed and costs increase.

These observations certainly come as nothing new.

The final report of the High Level Group on the participation of public and private sectors to the financing of trans-European transport networks had already identified, among the main obstacles to the participation of the private sector, that posed by the "lack of certainties". More specifically, reference was made to the *"risks connected with public politics"* which may *"lead to an increase in the costs of the project due to administrative or legislative delays, or to unexpected changes to public regulations"*.

8. The Italian example: the role of Member States in PPP operations

Since I am also Italian I feel compelled to summarise the current Italian situation, if only for the sake of denying or confirming what is being widely published in the press with particular regard to the motorway sector. Italy is not proving to be pro-European in the way it is applying EC laws that apply to motorways under concession.

Italy continues to be plagued by critical areas and elements of risk which do not encourage private investment in public works.
These may be broken-down and looked at as follows:

- Concession rules, and in particular rules for motorway concessions, are much more stringent compared to EC rules, discriminate on the basis of nationality, fall into conflict with the most elementary principles of harmonisation of rules - a prerequisite for a truly competitive market.
- The constraints posed on motorway concessionaires with regard to the organisation of "Groups" in Italy are one of the most evident proofs of such discriminating practice, given that they are factually discriminated with respect to the rest of Europe and with respect to other industrial sectors; Italian motorway concessionaires are forced to reorganise themselves according to rules that are so rigid that we may actually describe them as having to compete with their hands tied.
- The uncertainty of the "rules of the game" discourages investors, given the danger of potentially arbitrary and discriminating interference by the authorities, as underlined by the very same European Commission in connection with our new "reform" of motorway concessions. The failure to harmonise rules – EC and national – therefore weighs more heavily if financing is the trailer, because the movement of capital does not like national fences.
- The "administrative risk" in Italy has grown due to particularly long and cumbersome procedures which guarantee no certainty with regard to the times, and therefore the costs of the construction of the works; to this we need to add the uncertainty deriving from an unclear juridical status of the Granting Authority and its rights and obligations vis-à-vis concessionaires.

All this hurts Italy, but not only; Italy is an important component of Europe, it is a founding state, a fundamental ring in Europe's connection with the Mediterranean basin and the economies of the area.
If, by not respecting the rules, Italy halts European policies for transport networks, and with these growth policies too, then it is not only hurting itself but it is hurting all of Europe.

9. The Italian example: the process of coming back to a public Motorways system

Another issue widely analysed by the National press in Italy is the creation of public law entities – for the realization of Motorways infrastructures – expressly built like companies and with the participation of ANAS (i.e. by the company that has received from the State, by law, the concession of the Motorway network and to which the realization and the management of the road network of National interest is also given.

We are talking about a reality which has already produced in 2007 a company composed by ANAS and Lombardia Region, called CAL and which has later received a generalised legislative recognition with the Italian Budgetary Law for 2008, whose provisions have already brought to the creation, just one month ago, of a company composed by ANAS and Molise Region, two weeks ago of a company composed by ANAS and Veneto Region and on e week ago to the creation of a company composed by ANAS and Lazio Region. The subject being always and only the realization of Motorways infrastructures, either as grantor either as direct operator for the execution and maintenance of the infrastructures.

I do not intend to go further, for instance analysing the Constitutional consistency of these legislative provisions: I just underline that they do not seem to contain real indications of social utility goals or criteria to which the law itself should be refer to; consequently the absence of these criteria could lead to believe that the principle of legal reserve has not been respected.

I do not intend neither to analyse the issue of how many resources it is possible to get from the toll revenues of newly public Motorways infrastructures: I can understand that the local Government are looking for these revenues in order to invest them in new regional infrastructures.

However, I just restrict myself to further reflect on the new Community legislation about toll tariffs, which is based on a strict connection between costs – of construction, maintenance and operation – and tolls and which foresees exceptions to these rules only for specific and limited cases, such as the need of tackling congestion and environmental damages, or the need of realizing alternative infrastructures in specific mountainous regions.

I feel also compelled to underline a reality with a strong political meaning, I am talking about the structural choice made by the Italian legislator and also the "reversion" of that choice occurred in few months: in 2006, with the Motorway system reform, the Roads public company - ANAS – has been identified by the Italian Government as the subject supposed to replace in the operational management, without any tender and temporarily, those Motorway concessionaires which did not intend to accept the new contractual agreements; in 2007, with the Budgetary Law, the role of ANAS, which was a replacing and transitional role, has on the contrary become direct and permanent, with the only modification that today the management is shared by ANAS and the Regions.

The final "political" aspect of the issue, the real line of demarcation lies on the fact that no democracy can exist without a market: political democracy and market economy are the two sides of the same coin. Moreover, nowadays competition is a fundamental principle of the European Union, to which Italy belongs, therefore competition is a fundamental principle for Italy too.

However, as it was said in 1996 by the former President of the Italian Antitrust Authority, Mr. Giuliano Amato, "*.... competition does not exists in the market itself; competition represents a legal order in which all the operators supposed to respect competition are obliged to move .. a system is able to develop and deploy all its dynamism only if the entrepreneur cannot live in peace, only if he is afraid of another competitor in front of him, behind him, at his' right, at his' left. But this is not the logic that leads our legislation (the National one) .... Our problem is to make entrepreneur's life very difficult concerning competition and less complicated concerning costs and rules".*

Unfortunately, twelve years later, a Government whose Mr. Amato is also a Minister, has issued the above mentioned legislation that is going to make public (coming back to the past) the first Motorways infrastructures. I underline the "first", provided that ANAS aims at managing also the other Motorways, whose concession contracts will expire in the following years.
Nevertheless it is indisputable, in the economic literature, that the expansion of the public involvement in a country's economy present limits that cannot be crossed over without negative consequences for the country's overall development.

10. Growth needs synergies: at all levels

Economic literature has widely proven that there can be no market economy, nor an efficient system of resource allocation, without a system of shared and respected rules.

Twenty-seven different legal systems, as many as there are number of national states forming the Europe of the third millennium, do not make-up a system of rules, and, on the other hand, it is no longer possible to impose one's own rules, as if, in an age of globalisation, there still were national borders halting the free movement of goods, services and capital.

If the economy is moving towards an oligopoly system, with a limited number of very large players, it follows that no European country is, on its own, sufficient large to play a significant role in the multilateral system.

The coherency of actions carried-out in different environments, from the monetary one to the financial one, up to the one of development, is an essential condition for any global policy.

There no longer is, today, a confrontation or a cooperation which does not require concerted action and efforts in different areas; failure to unite forces means running the risk of setting-off a damaging self-inflicting process.

Finally, I am firmly convinced that ASECAP must feel compelled to play its role and, confirming what we had already decided in Vienna during a session of the ASECAP Steering Committee, I intend to formalize on this occasion the guidelines that I believe will have to be part of the Association's proposal that we will submit – hopefully by the end of the present year – to the EU Institutions.
ASECAP will indeed launch a study which, starting from the subject of the present Summit "Market and Conditions", will underline those conditions that are necessary to develop, under a technical and a financial perspective, successful projects in the Single European Market and also in the world financial markets, that cannot nowadays be neglected.

Just to give you an overview – as the proposal's definition will be analysed in terms of its planning and realization by all the ASECAP members, I think that its main key points will have for sure to be the following ones:

- the return rate of the capital invested in PPP operations and, in particular, in the concession of construction and management of public works, i.e. transport networks, should be coherent with the normal market conditions, without any constraint put by the National Governments;
- concession contracts, once signed, must not be modified if not consensually, and not, for sure, under the pressure of legislative provisions;
- concessionaires must be able to act by deploying all their potential entrepreneurial capabilities, by reducing at the minimum all possible constraints affecting their internal group's organisation, according to a private-oriented logic.

We have therefore to accept this challenge; it is crucial for Europe and its members to understand the importance of not escaping from modern globalization, but, on the contrary, of leading this globalization, by accepting its rules and by applying these rules in a social and equal way, so that to maximise their positive effects for the European citizens.

In accepting this challenge lies the meaning of today's Summit.