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Comments to Agenda Paper 2b for IFRS Interpretation Committee July 2014 Meeting

Dear Sirs,

Ferrovial is one of the world's leading private investors in transport infrastructures with operations in more than 15 countries (mainly Spain, the US, the UK, Canada, and Poland). Ferrovial is listed in the Madrid Stock Exchange (11 billion euros of market cap and 8,1 billion of total turnover). One of the main activities of Ferrovial is the construction of civil works (roads, bridges, dams, harbours, airports etc..) and part of this activity is done through joint operations.

As we have had the opportunity to collaborate with the IASB staff in the past and recently in relation to different issues related to "joint arrangements accounting", we would like to provide you with some comments to Agenda Paper 2B for the July 2014 meeting, "Consideration of a specific type of joint arrangement structure", that we think could be useful for the IFRS Interpretation Committee (hereinafter, IFRIC) analysis:

First of all, as an overview of our understanding of this Paper 2B, we believe the conclusion of the IASB staff could lead to a very restrictive interpretation regarding the assessment of "other facts and circumstances". The reason is not because the assessment shall be based on the access to rights and obligations (narrow view agenda paper 2D p14.a), rather than other features such as design, economic compulsion or business needs (examples of "broader view", Agenda Paper 2D p14.a), but because as we see it, the Paper suggests an even more restrictive interpretation of the "narrow view". The restriction is stated in the paper, when concluding that the assessment of "other facts and circumstances" does not lead to classify the Joint Arrangement as a Joint Operation in situations, as in the case of

paper 2B example, where, due to the guarantee mentioned in feature D, the parties of the joint arrangement could be in the same contractual position as the joint arrangement relating to the assets and liabilities of the arrangement (this means the rights and obligations related to the assets and liabilities of the arrangement are the same for the parties and for the joint arrangement). This general overview is developed in detail below through three main arguments:

1. **The first argument is regarding Paper 2B Analysis 1 and 2, specifically paragraphs 15 and 16.**

   Our main concern here is that, even if Case 2 of paragraph 11 applies ("Parties A and B are in the same position as Entity C in terms of providing the construction service to the government"), which in practice would mean A and B having the same rights and obligations than C, the conclusion of the IASB staff is that A and B do not have direct access to rights and obligations because they do not have "substantially all" the economic benefits of the assets, but only "some". The argument of the IASB staff is that if A and B had "substantially all" the economic benefits, C would be precluded from having them.

   Apart from difficulties we have to understand the reasons that lead to the conclusion that, even when having the same rights and obligations, A and B would only have "some" of the economic benefits, **we think the argument** that if A and B had "substantially all" the economic benefits, C would be precluded from having them (i.e. A, B and C could never have "substantially all" the economic benefits at the same time), **would lead, in practice, to a non-application of "other facts and circumstances" whenever the entity C were a separated entity.**

2. **The second argument is related to Analysis 3 paragraph 21.**

   As stated in the paper, we do believe that Feature F (unlimited cash calls) is an indicator that A and B have direct access to liabilities, but we do not agree with the conclusion that if C may receive a prepayment from the Government that fact would exclude A and B from having so. We believe that if the simple fact of C having the possibility of receiving cash from third parties changes the conclusion, it means there would not be in practice any cases in which to assess the "other facts and circumstances".

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3. **The third comment is related to Analysis 4.**

Finally, we would like to point out that, in order to analyse the analysis 4 example, it is very important to consider the fact that in the case of entity Y (legal personality entity), the government requires A and B, as parties of Y, such a guarantee as mentioned in feature D, to be sure that even though Entity Y has legal personality, parties A and B´s position is the same as in the case of A and B as parties of Entity X (non legal personality entity).

We think this fact is crucial, because, although IFRS 11 states that the legal form of the separate vehicle affects the rights and obligations of the joint arrangement, and those rights and obligations may be very different even when the activities of the arrangements might be operationally very similar**, in this specific** case due to other facts and circumstances and specially feature D guarantee, **the parties of the joint arrangement could be in the same contractual position as the joint arrangement, regarding to the assets and liabilities of the arrangement.**

We want to remark this concern because the proposed application of "other facts and circumstances" will introduce a lack of comparability between arrangements with the same economic substance, understanding economic substance not as "operationally very similar" but as "having the same economic rights and obligations".

To sum up, we would like to emphasise in our statement that, from our point of view the interpretation of "other facts and circumstances" included in Paper 2B migth be restrictive, and could not cover in some cases the objective of paragraph BC 43 of the standard (joint arrangements should faithfully reflect the rights and obligations that the parties have in respect of the assets and liabilities relating to the arrangement). **We think that in practice, this interpretation could lead to a conclusion that the assessment of "other facts and circumstances" would only be possible to be fulfilled in the specific case where the 100% of the output were sold to the parties, case that is specifically included in example 5 of the standard, and that is only applicable in a limited number of arrangement in specific industrial sectors.**

Last but not least, we believe that if the conclusion is that the current wording of the standard is so specific that it is impossible to resolve the issue through an

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interpretation, we think it would be useful to analyse a possible amendment of the standard, in order to ease preparers to apply the standard properly, reflecting the faithful representation of rights and obligations. Otherwise, the preparers will be forced to provide non-gap measures with the aim of explaining the economic substance that the strict application of the standard does not allow to disclose in the financial statements.

Thank you very much for giving us the opportunity to explain our concern, we would be happy to provide any additional clarification if necessary.

Yours sincerely,

Jesús Herranz
Financial Planning and Control Director