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APPLICATION OF CONCESSION IN THE REFORMING PROCESS OF
THE PORT INDUSTRY: FEATURES FOR UKRAINE
ЗАСТОСУВАННЯ КОНЦЕСІЇ В ПРОЦЕСІ РЕФОРМУВАННЯ
ПОРТОВОЇ ГАЛУЗІ: ОСОБЛИВОСТІ ДЛЯ УКРАЇНИ

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У статті досліджено концесію як важливу форму державно-приватного партнерства. Проаналізовано концесію як економічну категорію та як метод реформування портової галузі. В статті розглянуті особливості, можливі наслідки, ризики та переваги застосування концесії в портовій галузі України.

Introduction. Commercial sea ports play strategically important role for the sustainable development of Ukrainian economy. The geographical location of Ukraine promotes the development of its transport capacity, integration into the global transport system, to be a state that has the ability to ensure the transit of goods through the center of Europe by the shortest route. It is important for Ukraine to create and develop the competitive advantages in the maritime industry. Outdated management system of the maritime industry, imperfect legal framework, unflexible tariff policy, lack of investments in the modern infrastructure and new technologies confirm the need to introduce new forms of management of commercial sea ports. In order to implement the market reforms to the port sector scientists consider to study the case of privatization of the seaports or the concession as one of the most effective forms of public-private partnership. According to the Law of Ukraine «The list of objects of the state property that can't be privatized» the seaports of Ukraine are not the object of privatization [3]. But the government of Ukraine declares about the need to attract private capital to the seaports. Which way of reforming of Ukrainian port sector is optimal: privatization or concession? Scientists have different points of view.

Formulation of the problem. The reform of the port sector was established by the Law of Ukraine “The seaports of Ukraine” adopted in 2012. According to the Law, one of the most perspective form of private investment to the port infrastructure is the concession. Thus, due to the reforms of the port sector in Ukraine the issue of concession as a form of development of commercial seaports, is actual.

Analysis of the recent researches and publications. The issue of concession in the port industry is studied by domestic and foreign scientists, such as Gura O.L, Zyatina D.V., Kotlubai A.M., Baird A., Lourdes Trujillo L., Nobela G. and many others. The purpose of the article. The aim of this work is to analyze concession in the reforming process of the port industry and its features for Ukraine. In order to achieve this goal it is necessary to examine the concession as an economic category, to study the characteristics of concession in the port industry and consider the potential risks and benefits of the application of concession to the Ukrainian port industry.

Statement of base material with full justification of the scientific results. Over recent decades, a general trend has been observed for port management to move from

the public to the private sector. Advantages of greater private sector involvement in ports include increased efficiency and reduced cost to the public sector, while negative impacts include the loss or increased ambiguity of state control as well as the difficulties and risks involved in managing the tender process and subsequent monitoring [9, p.282].

First, it is important to examine the concession as an economic category.

Concession (concession agreement) – is a specific form of relationship between the public and private sector. The state (the region), being the full holder of the property, entitles the private partner to perform the certain functions under the contract and empowers it in order to ensure the normal functioning of the object of concession within a defined period of time. According to the concession agreement concessionaire pay fee for the use of state or municipal property. The products that are manufactured by the object of concession are in the ownership of concessionaire [8, p.118]. The object of the concession is always the state (municipal) property and monopolistic activities of the state or municipality. One of the concession agreement party is always the state or municipality [6, p.66].

The economic content of the category “concession” are the relations between the state and private capital on the management of state property through private initiative within the contractual relationship. Unlike the privatization, property remains in the state ownership. Unlike lease, concession agreements have longer terms that are calculated for decades [5, p.115]. A concession contract is, by definition, more complex than a license, since it involves not only questions about service provision, but also about adequate maintenance of assets, investments to be made, and risk allocation between the regulator and concessionaire [10, p.24]. Concession contracts can be regarded as an intermediate solution between public ownership and full privatization of a port. Private participation is introduced to achieve efficiency gains in the industry, and at the same time political concerns are safeguarded by not making society lose ownership of essential assets.

Concession agreement as form of the public-private partnership is characterized by a large number of species of concession schemes [5, p.115]:

- BOT (Build – Operate – Transfer) – Concessionaire ensures the construction and operation (mainly on property rights) within the prescribed period, after which the facility is transferred to the state. This scheme is considered as a classic form of concessions;

- BTO (Build – Transfer – Operate) – Concessionaire constructs the object that transfers to the state ownership immediately after completion of the construction. Then it is transferred to the concessionaire in the operation;

- BOO (Build – Own – Operate) – Concessionaire builds and operates the object of concession, having the ownership.

- BOOT (Build – Own – Operate – Transfer) – Concessionaire owns and operates the constructed facilities within a certain period, after which the facilities are transferred to the state ownership;

- BBO (Buy – Build – Operate) – form of sale, which includes restoring or expanding the facility. The state is selling the facility to the private sector that improves it in order of the effective management.

The advantages of the concession mechanism for the state are following: it removes the financial burden from the state, as the concessionaire undertakes to carry out all the costs of financing, management and maintenance of the object of concession; concessionaire has to pay concession payments to the state budget.

Because of the advantages of the concession as a mechanism for investment in the port industry (fundraising transparency, efficient management, legal protection of investments, development of the targeted port facilities) a lot of leading maritime countries use concession. [5, p.114]. Consider the possibility of application concession in the port industry in Ukraine. According to the Resolution of the Cabinet of Ministry of Ukraine (15 October 2012, N 1055) all the Ukrainian seaports can be the objects of concession. Each port can be considered as one integral property complex or as a system of integrated property complexes that provide comprehensive services in the field of operation of seaports and their infrastructure [4]. So the object of concession can be the port as a whole. Or the port can be separated into parts (integral property complexes), each of which can provide port services and be the object of concession. But today there is no clear mechanism for transferring seaports in concession in Ukraine. Concession can be useful for the state and society, can attract investments to the port industry if we can answer on the following questions: for what purposes, on what principles and whom we can transfer ports into concession. First, it is important to develop economically capable mechanism and then declare the beginning of the process.

Otherwise the process of transferring ports into concession is associated with significant risks, including the following:

- Risk of transformation of the ports to the transport link of large financial-industrial groups that are interested in handling their cargo. In the case of transferring of the ports in concession to the cargo owners, ports cease to grow and can be exhausted to the edge, because cargo owners will seek for minimization of their transport costs, they are not interested in the development of the port capacity. Thus, after the expiry of the concession agreement port assets will be unable to work effectively. The worldwide practice shows that ports are usually transferred to the concession for those companies, whose business is cargo handling. The most famous concessionaires are the companies-owners of cargo ships. These companies typically aim to manage terminals in order to control the time of cargo handling.

- The risk of appearance of monopolies in the port. Concessionaire may limit access to the port to other cargo owners and other cargo flows. Port is a public transport hub, which is never focused on one cargo owner. Therefore, the concession agreement should prescribe safeguards to prevent this situation. Otherwise, the state loses its transit potential.

- The risk of understating of the concession payment. Globally the following scheme is used: the more the concessionaire invests in the object of concession, the less concession payment is, and vice versa. The aim of the scheme – to increase the return of the object improving the quality of the asset. But in Ukraine concession rate depends on return on assets ratio (fixed assets turnover ratio): the lower return on assets ratio – the lower the concession payment. And in order to reduce return on assets ratio, it is enough to inflate the carrying value of fixed assets transferred to concession.

In order to avoid abuse, most countries prefer short-term concessions that promote competition. Long-term concessions are used only to obtain the large investments.

Despite the mentioned risks, the Ministry of Infrastructure of Ukraine continues to prepare the seaport “Yuzhnyy” for transferring to concession. This port is the most abyssal Ukrainian port. The state made dredging and reconstructed berths.

For this port the concession payment should be as high as possible. Otherwise, there is a risk that the port capacity would be used only in the interests of the concessionaire.

In order to reduce existing risks, it is important to provide the careful design of the selection process deciding which firm or consortium will be granted the concession. It is necessary to determine which candidate can more efficiently run the assets that are the object of concession, and whether they have sufficient capacity to implement associated building/rehabilitation projects.

According to Trujillo L. and Nobela G. a selection process is based on two consecutive phases [10, p.32]:

- Pre-qualification: in a first stage, those firms satisfying several criteria are selected to be evaluated on their proposals. Criteria considered in this phase usually include experience in the seaport industry and some minimum financial capacity. By this prequalification, the number of candidates can be reduced to a small number, whose proposals for the particular project can be studied in great detail.

- Concession award: in the second stage, the goal is to select a bid that is closest to the objectives pursued by the port authority. Thus, in general, if financial needs is the basic reason, the winning proposal is the one that offers a higher fee payment to the port authority. If port efficiency is in priority, the winning proposal is the one that offers lower charges to port users. If the concession involves some investment projects, it is also possible to evaluate the performance indicators of the projects.

In the example of the port of Mar del Plata (Argentina), it was decided to summarize all three criteria to a single index. The final decision was then taken on the basis of the information from this index, to which was added the first index calculated in the pre-qualification stage. Thus, this example constitutes one of the more sophisticated systems of firm selection, since it uses all the information provided by candidates. The process should be as transparent as possible. In the case of the concessions for the terminals of the port of Buenos Aires (Argentina), the selection process was designed so that a candidate was only allowed to win one of the terminals, as a way to promote competition in the bidding process (not all terminals had the same characteristics, and therefore all bidders were supposed to tailor the bids to win the more attractive assets) [10, p.32]. The Law of Ukraine “The seaports of Ukraine” was adopted in order to create a favorable investment climate in the port sector and attract private capital to increase the competitiveness of Ukrainian ports and modernize its assets. Concession is one of the most optimal forms of economic activity in the port sector. But because of the procedural complexity and the imperfection of concession legislation concession agreements are not treated in the port sector. Thus, the legislation requires changes and improvements that will take into account the legal and economic realities and all possible risks [7, p.203].

Conclusions of this study. To summarize, the concession can be an effective form of management of the port industry. In the first instance, it is necessary to improve the legislation in this area and to develop a transparent mechanism for signing the concession contract. The concession is appropriate only if it provides construction of new facilities – terminals, berths, dredging of the water area, but not if it only provides the benefits of the use of existing port assets to the concessionaires. The concession can be an effective method of reforming of the port sector in Ukraine, if it ensures the interests of the state and society.

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Анотація

Морські торговельні порти стратегічно важливі для сталого розвитку української економіки. Географічне розташування України сприяє розвитку її транспортного потенціалу, інтеграції у світову транспортну систему, насамперед як держави, що має можливість забезпечити транзитне перевезення вантажів через центр Європи найкоротшим шляхом. Для України є важливим створювати та розвивати власні конкурентні переваги в морській галузі. Застаріла система управління морської галузі України, нерозвиненість державного партнерства та нормативно-правової бази, негнучкість тарифної політики, недостатність інвестицій в сучасну інфраструктуру та нові технології підтверджують необхідність впровадження нових форм управління морськими торговельними портами. У зв'язку з реформуванням портової галузі України питання концесії, як форми розвитку діяльності торговельних морських портів, потребує детального вивчення.

Концесія є важливою формою державно-приватного партнерства. Аналізуючи концесію як економічну категорію, в статті розглянуті характерні ознаки концесії, її предмет, суб'єкти, види концесійних схем. У статті проведено дослідження щодо застосування концесії в процесі реформування портової галузі України: приведені переваги концесійного механізму для держави, розглянуті можливі ризики, з якими пов'язаний процес передачі портів у концесію, проаналізовано правове регулювання концесії портів, розглянуто механізм відбору фірми, якій буде надана концесія.