

**Dr. sc. Ana Perić Hadžić / Ph.D.**  
Sveučilište u Rijeci / University of Rijeka  
Pomorski fakultet Rijeka /  
Faculty of Maritime Studies Rijeka  
Studentska 2, 51000 Rijeka  
Hrvatska / Croatia

**Prethodno priopćenje**  
**Preliminary communication**  
UDK / UDC: 334.722(497.5)  
656.615(497.5)

Primljeno / Received:  
3. travnja 2012. / 3<sup>rd</sup> April 2012  
Odobreno / Accepted:  
4. svibnja 2012. / 4<sup>th</sup> May 2012

## JAVNO-PRIVATNO PARTNERSTVO U HRVATSKIM MORSKIM LUKAMA

### **PUBLIC-PRIVATE PARTNERSHIP IN CROATIAN SEAPORTS**

#### **SAŽETAK**

Suvremeno doba, s prevlačju neoliberalnog koncepta gospodarstva, uz razumijevanje uloge države i njezinih institucionalnih oblika, otvorilo je prostor i uzrokovalo potrebu iznalaženja metoda i modela funkcioniranja gospodarskih subjekata, ponajprije na planu finansiranja projekta. Kao dio sadržaja održivog razvoja, pojava i razvoj javno-privatnog partnerstva temelji se na nastojanju da se unaprijedi kvaliteta i raspoloživost roba i usluga bez nametanja, u pravilu, dodatnih poreza i sredstava (fondova) za nove projekte. Nadalje, suvremeni trendovi na svjetskom tržištu, liberalizacija i globalizacija su izravno utjecale na lučko okružje što je dovelo do novog modela finansiranja lučkih investicija u suradnji s privatnim sektorom. Stoga je cilj ovoga rada ukratko elaborirati aktualno stanje u hrvatskim morskim lukama u pogledu finansijskih sposobnosti za finansiranje kapitalnih projekata te ukazati na potrebu za participacijom privatnog sektora, domaćeg ili inozemnog kapitalnog podrijetla u finansiranju lučke infrastrukture i suprastrukture kroz "zdrave" i održive projekte javno-privatnog partnerstva. Stoga se u radu detaljnije razrađuje iskustvo Republike Hrvatske u primjeni javno-privatnog partnerstva kao i pravni okvir koji podupire/ograničava upliv privatnog kapitala u lučki sektor te dosadašnje iskustvo povezivanja privatnog i javnog u sustavu luke Rijeka. Održivost pristupa finansiranja javno-privatnim partnerstvom u sustavu morskih luka, nije samom sebi svrha. Potreba za boljim poslovanjem, nužno traži partnera koji će moći ispuniti tri ključna uvjeta: postizanje efikasnosti (ekonomičnost, profitabilnost) lučkih operacija na svjetskoj razini, konkurentnost cijena spram sjevernojadranskih i mediteranskih luka te kvalitetu lučkih usluga na svjetskoj razini.

**Ključne riječi:** javno-privatno partnerstvo, morske luke, pravni okvir, luka Rijeka

#### **SUMMARY**

The modern era, with the concept of supremacy of the neoliberal economy and understanding the role of the state and its institutional forms, has opened space and caused the need for finding new business methods and models, primarily in the area of project financing. As part of the sustainable development contents, the emergence and development of the public-private partnership is based on an effort to improve quality and availability of goods and services without the imposition of the additional taxes and funds for new projects. Furthermore, current trends in the world market, such as liberalization and globalization have impacted directly on the port environment and led to the new models of financing port investments in collaboration with the private sector. The aim of this paper is to elaborate the current situation in the Croatian seaports in terms of financial capacity to fund capital projects and to indicate the need for private sector participation, domestic or foreign origin, in financing the port infrastructure and suprastructure through "healthy" and sustainable projects of the public – private partnerships. In addition, this paper elaborates the Croatian experience in applying public-private partnerships, as well as the legal framework that supports or limits the influence of private capital in the port sector and previous experience of the private-public partnerships in the port of Rijeka. The sustainability approach of funding through the public-private partnership in the seaports systems is not purpose by itself. The need for more business requires a partner who will be able to meet three key criteria: the achievement of port operation efficiency (economics, profitability) at the global level, price competition against the Northern and Mediterranean ports and the quality of port services at the global level.

**Key words:** public-private partnership, seaports, legal framework, port of Rijeka

## 1. UVOD

Koncept javno-privatnog partnerstva, kao dijela sadržaja održivoga razvoja važan je model financiranja javnog sektora. Osnovna zamisao se temelji na težnji da se unaprijedi kvaliteta i raspoloživost roba i usluga bez nametanja dodatnih poreza i sredstva za financiranje novih projekata. Početkom devedesetih godina ovaj model financiranja javnoga sektora postaje prepoznatljiv kao svjetski trend, da bi danas postao značajnim sredstvom koncepta ekonomije vala 21. stoljeća. Kao funkcija povijesnog, ekonomskog, socijalnog i političkog konteksta njegova primjena moguća je na svim razinama gospodarstva gdje su ulaganja u javnu infrastrukturu, uvjet dalnjih razvojnih projekata i povećanja standarda življenja, među glavnim područjima primjene.

Potreba za participacijom privatnog sektora u lukama značajno je porasla u proteklom desetljeću, rukovođena općim trendovima u sektoru transporta, decentralizacije, globalizacije, liberalizacije, privatizacije, restrukturiranja, informatizacije te novim saznanjima o ulozi javnoga sektora. Danas, najveće i najefikasnije luke u svijetu su i dalje javne luke, ali samo ne-kolicinom upravlja javni sektor. Upravo u nemogućnosti osiguranja kontinuiranog razvoja i ostvarenja svojih ciljeva luke su se okrenule privatnom sektoru kao partneru u financiranju i upravljanju.

Po svojoj suštini modeli povezivanja javnog i privatnog sektora na području lučkih djelatnosti trebaju afirmirati dva bitna sadržaja:

- S gledišta javnog interesa osigurati što bolje obavljanje lučkih djelatnosti, u smislu povećanja efikasnosti i produktivnosti, boljeg menadžmenta i slično. Istdobro javna vlast zadržava zemljište i osnovnu infrastrukturu, pomaže privatnom partneru u realizaciji kapitalnih ulaganja, obvezna je za ekonomsku regulaciju i donošenje mjera lučke politike te za unapređenje cestovne i željezničke povezanosti s lukom, brine o zaštiti i unapređenju pomorskog dobra itd.
- S gledišta privatnog interesa sve prednosti (motive, ciljeve) privatnog poduzetništva koji se ne mogu ostvariti angažiranjem samo javnog sektora. Privatni sektor daje javnom, kadrisku, operativnu, komercijalnu, financijsku, marketinšku, menadžersku podršku.

## 1. INTRODUCTION

The concept of the public-private partnership, as part of the sustainable economic development is an important model for financing the public sector. The main idea is based on a desire to improve the quality and availability of goods and services without the imposition of additional tax and financing for new projects. In the early nineties, this model of financing the public sector was recognized as a worldwide trend and today is the major tool of new economy waves for the 21st century. As a function of the historical, economic, social and political context of its application, its usage is possible at all levels of the economy where the investment in public infrastructure, as a condition of further development projects and increase standards of living, are among the main fields of application.

Over the past decade, the need for private sector participation in ports has significantly increased, guided by the general trends in the transport sector; decentralization, globalization, liberalization, privatization, restructuring, information technology and new knowledge about the role of the public sector. Today, the largest and the most efficient ports in the world are still public ports, but only few of them are publicly managed. Inability to ensure continuous development and achievement of their primary goals, ports turned to the private sector as equal partner in the financing and management port activities.

In its essence, the public-private partnership models in port activities should promote two major points:

- from the standpoint of the public interests PPPs need to ensure better performance of port activities, in terms of increasing efficiency and productivity, better management and etc. At the same time the public authorities (government) hold the land and basic infrastructure, help the private partner in the realization of capital investment, promote the economic regulation and adoption of the port policy measures, improve the port hinterland (road and rail links), care about protection of the maritime domain, etc.
- from the standpoint of the private interests PPPs need to ensure all benefits (motives, purposes) of private businesses that cannot be achieved by employing only the public

Javno-privatno partnerstvo je u Republici Hrvatskoj u primjeni od njenog osamostaljenja do danas i pomalo poprima značajnu ulogu u razvoju infrastrukturnih projekata te pružanju kvalitetnijih javnih usluga. Iako su mnogobrojni uspješni primjeri partnerstva u različitim gospodarskim sektorima, primjena u lučkom sustavu još je u začetku.

Institucionalni i pravni okvir ne rješava složena pitanja ulaganja kapitala na pomorskom dobru, primjerice pitanje stjecanja vlasništva, prenosivosti koncesije, nemogućnost stjecanja hipoteke i drugih stvarnih prava na području pomorskog dobra, koncesionarsko pravo na naknadu za ulaganje u infrastrukturu i nadgradnju u slučaju da se ugovor o koncesiji prekine i slično. Istodobno, aktualno stanje u hrvatskim morskim lukama može se ocijeniti kao nezadovoljavajuće, naročito u pogledu finansijskih sposobnosti za financiranje kapitalnih projekata. Ograničen pristup izvorima dugoročnoga financiranja, uz nedostatna vlastita sredstva za financiranje većih kapitalnih ulaganja rezultiraju zastojem u razvoju pojedinih luka što ukazuje na potreba za participacijom privatnog sektora, domaćeg ili inozemnog kapitalnog podrijetla u financiranju lučke infrastrukture i suprastrukture kroz "zdrave" i održive projekte javno-pravtnog partnerstva.

## **2. ISKUSTVO JAVNO-PRIVATNOG PARTNERSTVA U REPUBLICI HRVATSKOJ**

Tijekom pretvorbe i privatizacije bivšeg društvenog vlasništva, poduzeća su se transformirala u različite vlasničke strukture mješovitog vlasništva javnog i privatnog karaktera. Sa strane javnog sektora kao vlasnici su se pojavili Hrvatski fond za privatizaciju, Hrvatski fondovi mirovinskog osiguranja, banke (u prvoj fazi državne), osiguravajuća društva (npr. Croatia osiguranje) i neka velika državna poduzeća (npr. INA). Na strani privatnog sektora već na početku pretvorbe javili su se mali dioničari kao stvarni vlasnici dijela portfelja, a kasnije i svi drugi oblici organiziranja privatnog vlasništva, prvenstveno pojedinci i privatna poduzeća nastala autonomno ili također iz procesa privatizacije. Na prvi pogled, devedesetih godina prošlog stoljeća, iz procesa vlasničke transformacije proizašle su stotine primjera privatnog i javnog partnerstva. Razvidna je, međutim, su-

sector. The private sector provides the public sector with personnel, operational, commercial, financial, marketing, managerial support.

In the Republic of Croatia public-private partnerships are in the implementation from its independence to the present day and overtime PPPs take a significant role in the development of infrastructure projects and providing better public services. Although there are many successful examples of partnerships in different economic sectors, the usage in port community is still at the beginning.

Institutional and legal framework does not solve the complex issue of capital investment in the maritime domain, for example the issue of the ownership acquisition, concession transferability, impossibility of acquiring mortgages and other legal rights in the maritime domain, concessionary right for compensation for the infrastructure and suprastructure investments after the concession contract terminates and etc. Meanwhile, the current situation in the Croatian seaports can be assessed as an unsatisfactory one, particularly in terms of financial capacity to fund capital projects. A limited access to long-term sources of financing, the lack of own funds to finance major capital improvements, resulted in a slow port development. That points the need for the participation of the private sector, domestic or foreign origin capital, in the financing of the port infrastructure and suprastructure through "healthy" and sustainable public – private partnership projects.

## **2. PUBLIC – PRIVATE PARTNERSHIP EXPERIENCE IN THE REPUBLIC OF CROATIA**

During the privatization of the former socially ownership, enterprises were transformed into a different structure of mixed public and private ownerships. On the side of the public sector as owners they have appeared in the Croatian privatization fund, Croatian pension funds, banks (in the first phase of the state ownership), insurance companies (e.g. Croatia Insurance) and some large state enterprises (e.g. INA). On the side of the private sector, at the beginning of the privatization process, small shareholders were reported as owners of the portfolio, and later all other forms of private property organization. First, there were individ-

štinska razlika koja počiva u spoznaji da je riječ o posljedici koja je proizašla iz procesa pretvorbe i privatizacije, a ne kao rezultat planskog, programiranog povezivanja javnog i privatnog na rješavanju određenih problema.

Zadnjih godina u praksi su zaživjeli i zahtjevni modeli JPP-a, posebice kada je riječ o području obrazovanja i znanosti, očuvanju prirodnog okoliša, turizmu, stanogradnji, izgradnji objekata javne uprave, izgradnji sportske i urbane infrastrukture, te razvoju zdravstva i socijalne skrbi. Dosadašnja praksa je potvrdila da JPP može imati važnu pozitivnu ulogu u podizanju razine javnih usluga, ubrzavanju gospodarskog razvoja i reformi javne uprave prijenosom posebnih znanja o upravljanju JPP projektima s privatnog na javni sektor. Pri tome su osnovne prednosti JPP-a osiguravanje novih izvora svježeg privatnog kapitala potrebnog javnom sektoru zbog pružanja kvalitetnijih i jeftinijih postojećih i/ili novih javnih usluga što dugoročno može dovesti do oslobođanja dodatnih proračunskih sredstava koja se mogu usmjeriti u postojeće, odnosno nove razvojne projekte. Pri tome javni sektor osigurava stabilan politički i pravni okvir, potiče, prati, usmjerava i razvija JPP, a privatni sektor osigurava novi menadžment, komercijalnu i finansijsku disciplinu te nove privatne izvore za financiranje vrlo velikih i složenih projekata bitnih za dugoročan razvoj različitih dijelova hrvatskoga društva.

Usporedo s razvojem modela JPP-a, razvijale su se i prateće gospodarske djelatnosti, profesionalne i stručne sposobnosti javnog i privatnog sektora za pripremu, ocjenu i vrednovanje JPP projekata, te institucionalni kapaciteti nužni za uspješnu primjenu JPP-a u Republici Hrvatskoj, kao što su Smjernice za primjenu ugovornih modela javno-privatnog partnerstva Vlade Republike Hrvatske [8], objavljene krajem 2006. godine. Osnovna načela i ciljevi JPP-a zacrtani su Strategijom razvoja sustava javne nabave u Republici Hrvatskoj [16] koju je Vlada Republike Hrvatske usvojila u lipnju 2009. godine. Sastavni dio politike Vlade Republike Hrvatske u provedbi Strateškog okvira za razvoj 2006. – 2013. [10] je i primjenom JPP-a osigurati snažan, dugoročno održiv gospodarski razvoj, koji će uz višu razinu javnih usluga za stanovništvo omogućiti hrvatskom gospodarstvu veću konkurentnost te razvoj malog i srednjeg poduzetništva, a što je temeljni preduvjet općeg društvenog napretka i razvoja hrvatskog društva.

uals and private enterprises that emerged autonomously or from the process of privatization. In the early nineties, at the first sight, the process of the ownership transformation resulted in hundreds examples of the public-private partnership. Obviously, the essential difference lies in the knowledge that this is a consequence raised from the process of privatization, and not as a result of planned, programmed plan that connects public and private sector in order to solve certain public problems.

In recent years, even more demanding models of the PPPs have become a reality, especially in the sector of education and science, preservation of natural environment, tourism, housing, public facilities construction management, construction of sports and urban infrastructure and developing health and social care. Previous practices have confirmed that PPPs can play a significant role in raising the level of public services, accelerating the economic development, reforming the public administration, and, in the same time, transferring the special knowledge of the PPP projects management from the private to the public sector. The main advantage of the PPPs is to assure new private capital sources for the public sector in order to provide better and cheaper production of existing and/or new public service. In the long term it can lead to liberation of additional budgetary resources that can be channelled into the existing or new development projects. The public sector needs to provide a stable political and legal framework, support, monitor, direct and develop the PPPs. The private sector provides a new management, commercial and financial activities and new sources of private funding for very large and complex projects essential for sustainable society development.

With the development of the PPP models, the different associated economic activities, professional and technical skills of public and private sectors for the preparation, review and evaluation of the PPP projects are developed. Furthermore, the institutional capacity necessary for a successful application of the PPP in the Republic of Croatia have been developed, such as Guidelines for the application of the contractual model of public-private partnership [8], published late in the year 2006 by the Croatian Government. The basic principles and objectives of the PPP were outlined by the Strategy for the Development of the Public Procurement System in the Republic of Croatia [16] adopted in June 2009 by the Croatian Gov-

tva u cjelini na korist svim građanima u Republici Hrvatskoj.

Dosadašnje iskustvo u primjeni partnerstva u Republici Hrvatskoj je mnogobrojno. Iako ima i neuspješnih primjera ili primjera koji su prizvani u javnosti partnerstvom, a zapravo se ne pozivaju na taj sustav optimizacije društvenih interesa ponajviše iz razloga jer je suradnja ostvarena na programima koji su orijentirani na određeni proizvod za tržište (primjerice Sunčani Hvar), mnogobrojni uspješni primjeri mogu se naći u različitim gospodarskim djelatnostima primjerice:

- Prometna infrastruktura – Projekt Istarskog ipsilona [2] odnosi se na izgradnju cestovne infrastrukture temeljenom na Ugovoru o koncesiji. Ovaj projekt smatra se prvim projektom javno-privatnog partnerstva za projekt izgradnje autocesta u Hrvatskoj. Republika Hrvatska i Bina-Istra, 1995. godine, potpisali su Ugovor o koncesiji s ciljem razvoja prometne infrastrukture u RH. Projekt uključuje financiranje, projektiranje, izgradnju i upravljanje cestovnom mrežom dužine 141 kilometar. Ugovor o koncesiji zaključen je na rok od 32 godine nakon kojeg će autocesta biti predana državi Hrvatskoj bez naknade.
- Komunalna infrastruktura – Projekt plinifikacije [7] temeljem Ugovor u koncesiji tri općine: Kraljevica, Kostrena, Bakar i poduzeća AMGA iz Udina, Italija. Kao strateški partner pojavila se AMGA S.p.A. – komunalno poduzeće koje osigurava sva potrebna sredstva za izgradnju objekata i mreže u predmetnim općinama, koordinira kod projektiranja i realiziranja infrastrukture i objekata potrebnih za nabavu i distribuciju plina, vodi njenu realizaciju, redovito i izvanredno održava sve objekte itd.
- Energetska infrastruktura – Projekt dokapitalizacija trgovackog društva Energo d.o.o. u gradu Rijeci radi program zamjene mreže plinovoda. S obzirom da takav projekt iziskuje relativno velika ulaganja u komunalnu infrastrukturu donijeta je odluka o modelu dokapitalizacije kojim će se nadomjestiti potrebna novčana sredstva. To je zasigurno bila jedna od najvažnijih komunalnih odluka u gradu Rijeci, jer se po prvi puta u Hrvatskoj odlučivalo o privatizaciji (djelomičnoj) jednog gradskog komunalnog poduzeća.

ernment. The main part of the Croatian Government policy in implementing the Strategic Development Framework 2006-2013 [10], is to ensure strong, long-term sustainable economic development with the implementation of public-private partnerships. The PPP models will be able to ensure a higher production level of public services for the population, to enable more competitive Croatian economy and to develop small SMEs, which is a fundamental prerequisite for the social progress, society development as a whole, and for the benefit of all citizens in the Republic of Croatia.

The previous experience in applying the partnership models in the Republic of Croatia is mainly positive. Although there are failed examples or cases that are named public-private partnership but, in fact, do not refer to the optimization of the social interest, because there were collaboration programmes oriented to a specific product for the market (e.g. Sunčani Hvar), many successful cases can be found in various economic sectors such as:

- Transport infrastructure – Project of the Istri-an Y [2] refers to the construction of the road infrastructure based on the concession contract. This project is considered to be the first public-private partnership project for the construction of Croatian highways. In 1995, the Republic of Croatia and Bina-Istra signed a concession contract to develop the transport infrastructure in Croatia. The project involves the financing, design, construction and management of the road network of 141 kilometres in length. The concession agreement was concluded for a period of 32 years, after which the highway will be submitted to the Croatian state without financial compensation.
- Public utility infrastructure – Project of gasification [7] under the Concession Agreement in three municipalities of Kraljevica, Kostrena, Bakar, and the company AMGA from Udine, Italy. As a strategic partner appeared AMGA S.p.A. – a utility company that provides all the necessary funds to build facilities and networks in the relevant municipalities, coordinates the design and implementation of the infrastructure and facilities required for the procurement and distribution of gas, leading its implementation, and regularly maintains all emergency facilities, etc.
- Energy infrastructure – Recapitalization project of the public utility company Energo

Istodobno, ovo je primjer rijetke dokapitalizacije u kojoj će se sredstva dobivena od prodaje vlasničkog udjela i naknadne dokapitalizacije u cijelosti transferirati u razvojne investicije društva.

- Sportsko-rekreacijski i poslovno-komercijalni sadržaji – Projekt izgradnje sportsko-poslovnog kompleksa u gradu Splitu realizacijom inovativnog DBFOOT modela JPP-a. Tijekom 2006. godine grad Split je otpočeo s aktivnostima definiranja Projekta izgradnje polivalentne sportske dvorane s pratećim komercijalnim i uslužnim sadržajima. Realizacija Projekta u Splitu, na atraktivnoj mikrolokaciji Lora, određena je okružjem u kojem se nalaze vojni kompleks, brodogradilište i gradski stadion Poljud s bazenima. Zemljište površine oko 31.500 m<sup>2</sup> na kojem će se izgraditi sportsko-poslovni kompleks vlasništvo je Republike Hrvatske i grada Splita [4].
- Obrazovanje – Grupa projekata JPP u školstvu Varaždinske županije prema modelu privatne finansijske inicijative (PPP/PFI) čime se zadovoljava interes javnog partnera Županije kroz izgradnju objekata za potrebe škola te interes privatnog partnera kroz povrat uloženih sredstava i dobit. Temelj na kojima se zasniva Ugovor o javno-privatnom partnerstvu gdje će privatni partner financirati, izgraditi i održavati školske objekte, a Županija će izgrađene objekte uzeti u najam. Ukupno je sklopljeno 8 ugovora s 4 tvrtke posebne namjene za izgradnju/nadogradnju-tridesetak objekata. JPP je omogućio u tri godine ravnomjerni standard izgrađenosti na cijelom području Županije za koji bi bilo potrebno dvadeset godina po dosadašnjem modelu izgradnje te je standardizirao i stabilizirao troškove održavanja koji se ne smanjuje tijekom 25 godina, i svim učenicima bez obzira na socijalni status daje jednake šanse kroz razvojne programe. Budući da je gradenje i održavanje u nadležnosti privatnog partnera izbjegnuta je bilo kakva korupcija u izgradnji objekta, te njihovom održavanju [3].

Navedeni primjeri u potpunosti koreliraju s idejom javno-privatnog partnerstva, a ukazuju na raznovrsnost oblika i modela koji stoje na raspolaganju u formiranju i oblikovanju partnerstva. Također, neki primjeri odlikuju se i specifičnošću glede podrijetla privatnog kapitala koji dolazi iz inozemstva. Ta činjenica ilustrira i domaće gospodarske prilike glede akumu-

d.o.o. in the City of Rijeka for the network pipelines replacement programme. As the project required a relatively large investment in the municipal infrastructure, the company has decided for the model of additional capitalization, which will replace the needed capital funds. It was certainly one of the most important decisions of the utility company in the city of Rijeka and the first case of partial privatisation of the public utility company in Croatia. At the same time, this is a rare example of recapitalization where the funds received from the sale of the equity shares and subsequent recapitalization in its entirety was transferred to the company development investment.

- Sport and recreation – Project of the sport and business complex construction in the city of Split thought implementation of innovative PPP model – DBFOOT. In the year 2006, the City of Split began with defining the project construction activities for a multipurpose sport hall with the supporting commercial and service facilities. The project realization at an attractive micro-location Lora was determined in the environment where there was a military complex, shipyard and city stadium Poljud with pools. The land area of 31,500 m<sup>2</sup> at which the sport and business complex will be built is owned by the Croatian city of Split [4].
- Education – Group of PPP projects in the education sector was realised in the Varaždin County by the model of private financial initiative (PPP/PFI) that satisfies the public interest through the construction of school facilities and private partners' interest through cost recovery and profit. The base is a public-private partnership contract where the private partner binds himself to finance, build and maintain school facilities and the County is obligated to rent these facilities. A total of 8 contracts are concluded with 4 special purpose companies for the construction of more than thirty structures. The PPP enabled, in only three years, a uniform standard of construction throughout the County for which it would take twenty years more if the County had used a traditional model of building. Moreover, the PPP standardized and stabilized the costs of maintenance that is not to be reduced during the next 25 years, and all students, regardless of their social status, are given an equal chance through the develop-

lativne sposobnosti i uvjeta financiranja investicije i, istodobno, naznačuju pravac i način kako se i u narednom razdoblju mogu rješavati određeni konkretni razvojni problemi lokalnih zajednica.

### **3. PRAVNI OKVIR PRIMJENE JAVNO-PRIVATNOG PARTNERSTVA U LUČKI SUSTAV REPUBLIKE HRVATSKE**

Pravni okvir primjene javno-privatnog partnerstva sastoji se u nizu zakona, propisa i uredbi uredenim od strane Republike Hrvatske. Kako je cilj ovoga rada primjena javno-privatnog partnerstva u lučki sustav, nužnim se ukazalo dati pregled zakona i propisa koji uređuju javno-privatno partnerstvo te onih koji se odnose na upravljanje pomorskim, ponajprije lučkim sektorom. Stoga se u nastavku ukratko navode značajnije odrednice Zakona o javno-privatnom partnerstvu, Zakona o koncesijama i Zakona o pomorskom dobru i morskim lukama kao osnovnim pravnim okvirom za primjenu javno-privatnog partnerstva u lukama.

#### **3.1. Zakon o javno-privatnom partnerstvu**

Zakon o javno-privatnom partnerstvu [15], donesen je 7. studenoga 2008. godine. Ovim se Zakonom uređuje postupak pripreme, predlaganja i odobravanja prijedloga projekata javno-privatnog partnerstva, te prava i obveze javnih i privatnih partnera i osnivanje i nadležnosti Agencije za javno-privatno partnerstvo.

U okviru Zakona dana su osnovna obilježja dugoročnog partnerskog odnosa između javnog i privatnog partnera, temeljni pojmovi i značenja. Definirano je **Ugovorno javno-privatno partnerstvo** te Ugovor o javno-privatnom partnerstvu i Trgovačko društvo posebne namjene. Definiran je i postupak predlaganja, odobravanja i provedbe projekata JPP-a, te uloga Agencije za javno-privatno partnerstvo [1] u projektima JPP-a. Također, definirano je i **Statusno javno-privatno partnerstvo** kao model JPP-a koji se temelji na članskom odnosu javnog i privatnog partnera u zajedničkom trgovačkom društvu koje je nositelj provedbe projekta JPP-a, pri čemu se taj odnos između javnog i privatnog partnera u zajedničkom trgovačkom društvu može zasnovati na osnivačkim ulozima u

pment programmes. Since the construction and maintenance are in the jurisdiction of the private partner, any kind of corruption in the facility construction and maintenance are avoided [3].

These examples are fully correlated with the idea of public-private partnership and indicate a variety of forms and models that are available in shaping and designing the partnership. In addition, some examples are characterized by the origin of private capital fund coming from the international market. This fact illustrates the Croatian economic situation regarding the accumulative investment possibilities and financing conditions, and, at the same time, indicates the direction and way how some specific problems of local community development problems can be solved in the future.

### **3. LEGAL FRAMEWORK FOR THE PUBLIC-PRIVATE PARTNERSHIP IN THE CROATIAN PORT SYSTEM**

The legal framework for the public-private partnership implementation consists of several acts, regulations and ordinances regulated by the Croatian government. Since the purpose of this paper is the public-private partnership in the port system, it is necessary to point out some acts and regulations that govern public-private partnerships and those related to the port sector management. Therefore, the following section briefly outlines the Act on Public-Private Partnership, Concessions Act and the Maritime Domain and Seaports Act as a basic legal framework for the implementation of public-private partnership in ports.

#### **3.1. Act on Public-Private Partnerships**

The Act on Public Private Partnerships [15] was adopted in November 2008 by the Croatian Parliament. This Law regulates the process of preparing, proposing and approving proposals for public-private partnerships, rights and obligations of the public and private partners and the establishment and jurisdiction of the Agency for Public-Private Partnership.

The legal framework gives the basic characteristics of a long-term partnership between the public and private partners, the basic concepts and definitions. The terms such as: contracting

novoosnovanom trgovačkom društvu, ili na otкупu vlasničkog udjela u postojećem trgovačkom društvu.

Osim Zakona o javno-privatnom partnerstvu u posljednjih nekoliko godina u Republici Hrvatskoj izdano je nekoliko pravnih propisa koji obuhvaćaju tematiku javno-privatnog partnerstva. Primjerice, to su:

- Smjernice za primjenu ugovornih oblika javno-privatnog partnerstva [9]
- Uredba o kriterijima ocjene i odobravanja projekata javno-privatnog partnerstva [12]
- Uredba o nadzoru provedbe projekata javno-privatnog partnerstva [13]
- Uredba o sadržaju ugovora o javno-privatnom partnerstvu [14]
- Uredba o izobrazbi sudionika u postupcima pripreme i provedbe projekata javno-privatnog partnerstva [11].

### **3.2. Zakon o koncesijama**

Zakon o koncesijama [17] propisuje način stjecanja prava na korištenje prirodnih bogatstva Republike Hrvatske koncesijom, drugih dobara od interesa za Republiku Hrvatsku određenih Zakonom, pravo obavljanja djelatnosti od interesa za Republiku Hrvatsku, izgradnju i korištenje objekata i postrojenja potrebnih za obavljanje tih djelatnosti. Zakonom se propisuju i dobra u vlasništvu države na koja se ne može dati koncesija, kojim se osobama daje koncesija, na koji vremenski rok se daje koncesija, te koje nadležno tijelo utvrđuje kada postoji interes RH.

Zakon o koncesijama iz 1992. godine nije dao dostatan pravni okvir primjene i iskorištavanja instrumenata koncesije, stoga je bila nužna izmjena i dizajniranje modernog sustava i koncepcata koncesije što se postiglo novim Zakonom o koncesiji koji je stupio na snagu 01. siječnja 2009. godine gdje se na jednom mjestu regulirao postupak davanja koncesije i pravne zašite u području koncesija. Tako se ovim Zakonom uređuju postupci davanja koncesije, prestanak koncesije, pravna zaštita u postupcima davanja i prestanka koncesije te druga pitanja u vezi s koncesijama.

U smislu ovoga Zakona prepoznaju se tri vrste koncesija: koncesija za gospodarsko korištenje općeg ili drugog dobra, koncesija za

public-private partnership, public-private partnership contract and the company for special purposes were defined. The procedure for proposing, approving and implementing the PPP projects and the role of the Agency for Public-Private Partnership [1] in PPP projects were defined too. Furthermore, the public private partnership, based on a status model, was explained as the PPP model based on the equity ownership relation between public and private partners in a joint company. This very company is undertaking the implementation of the PPP projects, where the relationship between public and private partners is based on the founders' shares in the newly established company, or on the sale of the equity share in an existing company.

Except for the Act on Public Private Partnerships, in the last few years, several guidelines and regulations that cover public-private partnerships have been issued in the Republic of Croatia. These are for example:

- Guidelines for the Use of Contractual PPP Projects [8],
- Regulation on the Criteria for Assessment and Approval of PPP Projects [12],
- Regulation on the Supervision of Implementation of PPP Projects [13],
- Regulation on the Content of Public – Private Partnership Contracts[14],
- Regulation on the Training of Participants in Procedures for the Preparation and Implementation of PPP Projects [11].

### **3.2. Concessions Act**

The Concessions Act [17] prescribes a way of acquiring rights to use the natural resources of Croatia through a concession form, other goods of special Croatian interest predominated by the Act, the right to conduct activities of special interest and to construct and use facilities and equipment necessary to perform these activities. The Act prescribes the state-owned property that cannot be an object of concessions, concession time period and the competent authority that determines concession when there is an interest of the Republic of Croatia.

The 1992 Concessions Act did not provide an adequate legal framework for the implementation and use of the instruments of concession, so the change was necessary. A design of mod-

javne rade te koncesija za javne usluge. Također, potrebno je istaknuti da se u Zakonu spominju i projekti javno-privatnog partnerstva. Ukoliko se utvrdi da se radi o koncesiji koja ima obilježja projekta javno-privatnog partnerstva primjenjuju se odgovarajuće odredbe propisa kojima se uređuje javno-privatno partnerstvo u dijelu koji se odnosi na predlaganje i odobravanje projekata javno-privatnog partnerstva (Članak 13).

S obzirom da je dodjela koncesija na lučkom području, području od posebnog državnog interesa djelomično regulirana Zakonom o pomorskom dobru i morskim lukama, u okviru toga Zakona bit će riječi o dodjeli koncesija na pomorskom dobru što je vrlo složeno i interesantno pitanje.

### **3.3. Zakon o pomorskom dobru i morskim lukama**

S obzirom na tematiku ovoga rada te problematiku javno-privatnog partnerstva upravljanja lukama, pomorskim dobrrom, koncesijama, ukratko će se elaborirati problemi gospodarenja pomorskim dobrrom i dodjeljivanje koncesije na pomorskom dobru.

Zakonom o pomorskom dobru i morskim lukama [18] iz 2003. godine uređuje se pravni status pomorskog dobra, utvrđivanje njegovih granica, upravljanje i zaštita pomorskog dobra, upotreba i korištenje, razvrstaj morskih luka, lučko područje, osnivanje lučkih uprava, lučke djelatnosti i njihovo obavljanje, gradnja i korištenje lučke nadgradnje i podgradnje, te bitna pitanja o redu u morskim lukama.

Pomorsko dobro je opće dobro od interesa za Republiku Hrvatsku i ima njezinu osobitu zaštitu, a upotrebljava se ili koristi pod uvjetima i na način propisan Zakonom. Primjerena zaštita pomorskog dobra i racionalno upravljanje pomorskim dobrrom može se osigurati jedino cijelovitom primjenom odredbi o pomorskom dobru i lukama te primjenom posebnih propisa iz područja prostornog planiranja, urbanizma, graditeljstva, zaštite okoliša, rudarstva, morskog ribarstva, zaštite prirode i spomenika kulture, te učinkovitim inspekcijskim i upravnim nadzorom.

Gospodarsko korištenje pomorskog dobra može se odobriti fizičkim i pravnim osobama (koncesija) s ili bez korištenja postojećih grade-

ern systems and concepts of concessions were achieved with a new Concession Act adopted in January 2009. The procedures for granting concessions and legal protection in the field of concessions are now regulated at place. Thus, this Act regulates the procedures for granting concessions, the termination of the concession, legal protection in case of termination, and other issues related to the concessions.

The Concessions Act recognizes three types of concessions: concessions for the right to exploit a common good or other goods, public works concessions, public service concessions. It should be also noted that the Act referred to the public-private partnerships. If it is determined that the concession has characteristics of a public-private partnership, the corresponding act and regulations governing the public-private partnership need to apply in the part relating to the proposal and approval of the public private partnership (Article 13).

Granting the concessions in the port area regarded as an area of special national interest is partially regulated by the Maritime Domain and Seaports Act. In the next section, the concession on a maritime domain, being a very complex and interesting question, will be explained.

### **3.3. Maritime Domain and Seaports Act**

With regard to the subject of this paper and the issue of public private partnership in ports, maritime domain and concessions, problems of the management of the maritime domain and of awarding concessions on the maritime domain will be briefly elaborated.

The 2003 Maritime Domain and Seaports Act [18] regulates the legal status of the maritime domain, the establishing of the maritime domain limits, management and protection of the maritime domain, its use, classification of seaports, dock area, the establishing of port authorities, port activities and their performance, building and use of port suprastructure and infrastructure, as well as the basic problems concerning order in seaports.

The maritime domain is a public domain of interest for the Republic of Croatia; it is under a special protection of the Republic of Croatia and is used and/or exploited under the conditions and in the way as specified by the Act. The management of the maritime domain and its

vina i drugih objekata na pomorskom dobru, te s ili bez gradnje novih građevina na pomorskom dobru. Koncesija je pravo kojim se dio pomorskog dobra djelomično ili potpuno isključuje iz opće upotrebe i daje na posebnu upotrebu ili gospodarsko korištenje pravnim i fizičkim osobama. Koncesija daje ovlašteniku pravo uporabe i/ili gospodarskog korištenja dijela pomorskog dobra u opsegu i pod uvjetima određenim u odluci i ugovoru o koncesiji.

Zakon o vlasništvu i drugim stvarnim pravima [19] propisuje da nisu sposobni biti objektom prava vlasništva i drugih stvarnih prava oni dijelovi prirode koji prema svojim osobinama ne mogu biti u vlasti niti jedne fizičke ili pravne osobe pojedinačno nego su na raspolaganju svima kao što su to atmosferski zrak, voda u riječima, jezerima i moru te morska obala (opća dobra). Sukladno Zakonu, pravno nisu dijelovi općeg dobra one zgrade i druge građevine koje su na njemu izgrađene na temelju koncesije, pa one tvore zasebnu nekretninu dok koncesija traje. Na isti način Zakon o pomorskom dobru i morskim lukama, u čl. 5. kaže da se na pomorskom dobru ne može stjecati vlasništvo ni druga stvarna prava po bilo kojoj osnovi. Građevine i drugi objekti na pomorskom dobru koji su trajno povezani s pomorskim dobrom smatraju se pripadnošću pomorskog dobra. Takva "antivlasnička" konцепција Zakona o pomorskom dobru i morskim lukama ne daje mogućnost stjecanja hipoteke i drugih stvarnih prava na području pomorskog dobra. Upravo nemogućnost zasnivanja hipoteke na objektima izgrađenima na temelju koncesije kao i nemogućnost stjecanja prava vlasništva na istima za vrijeme trajanja koncesije, uz potrebu donošenja i drugih jasnijih pravnih uredjenja, predstavljaju ozbiljne prepreke za potencijalne investitore i finansijske institucije u smislu njihovih ulaganja u lučke projekte u Republici Hrvatskoj, što se može i potvrditi činjenicom da i nije bilo ozbiljnih privatnih ulaganja u hrvatskim lukama u posljednjih dvadeset godina.

Sukladno Zakonu o pomorskom dobru i morskim lukama, koncesija se ne može prenositi na drugog bez izričitog odobrenja davatelja koncesije. Mogućnost prenošenja koncesije dobiva svoje posebno značenje u osiguranju potraživanja kao i u stečaju dužnika. U postupku restrukturiranja gospodarskih sustava kao i u postupku novih investicija na pomorskom dobru prenosivost koncesije je nužna prepostav-

adequate protection can be secured only by a comprehensive application of the Maritime Domain and Seaports Act and other regulations in the area of development, urban planning, construction, environmental protection, mining, tourism, marine fishing, nature protection and protection of cultural monuments, as well as through an efficient inspection and administrative supervision.

The economic use of the maritime domain can be granted to physical and legal persons (concessions) with or without the use of the existing buildings and other structures in the maritime domain, and with or without the construction of new buildings on the maritime domain. A concession is the right by which a part of the maritime domain is partially or fully excluded from the general use and is given to physical or legal persons for special use or for economic exploitation. The concession gives the beneficiary the right to use and/or the right for economic exploitation of the maritime domain to the extent and under the conditions specified in the concession contract.

The Ownership and Other Property Rights Act [19] states that parts of nature such as atmospheric air, water in rivers, lakes and the sea and seashore (general goods) are available to everyone and according to its characteristics cannot be in the ownership of any physical or legal person individually. They are also not able to be an object of property rights and of other proprietary rights. According to the Act, buildings and other structures constructed on the basis of concessions are not legally part of the common good and they form a separate property, while the concession lasts.

The same Maritime Domain and Seaports Act, in article 5, says that on the maritime domain property or other proprietary rights of any kind cannot be acquired. Buildings and other structures on the maritime domain that are permanently connected with the maritime domain are considered as belonging to the maritime domain. Such "anti-property" concept of the Maritime Domain and Seaports Act does not provide the possibility of acquiring mortgages and other real rights in the maritime domain. The impossibility of establishing a mortgage on the buildings built on the basis of concessions and the impossibility of acquiring property rights to them for the duration of the concession, with the need for more descriptive and clearer legal framework, represent serious obstacles and problems for po-

ka. Ograničenja u pogledu mogućnosti prijenosa koncesije, svakako bi negativno utjecala na kreditnu sposobnost koncesionara, a time i na gospodarske aktivnosti na pomorskom dobru. Ne može se od koncesionara očekivati da ulazi u neizvjesne poslovne projekte na pomorskom dobru ako nisu transparentno postavljeni pravni i ekonomski okviri koncesijskog sustava.

U praksi se javlja i niz drugih problema prilikom realizacije koncesija na pomorskom dobru [10], primjerice nejasne su odredbe koje definiraju ima li koncesionar pravo na naknadu za ulaganje u infrastrukturu i nadgradnju u području koncesije u slučaju da se ugovor o koncesiji prekine. Dozvolu i nadzor gradevinskih radova na području koncesije moguće je dobiti tek nakon dobivanja koncesije, utvrđivanja načina na koji će davatelj koncesije potvrditi prihod koncesionara i dozvoliti nezavisnu kontrolu knjiga, evidencije i financijskih izvoda radi naplaćivanja varijabilnog dijela koncesije itd. Isto tako, absurdna je činjenica da se koncesija na pomorskom dobro daje isključivo za djelatnosti vezane za pomorstvo, pa je ograničena upotreba pomorskog dobra za urbane sadržaje komercijalne namjene. To je ujedno i razlog minimalne participacije privatnog sektora u ulaganju u razvoj i korištenje pomorskog dobra.

Može se zaključiti da Zakon o pomorskom dobru i morskim lukama ne rješava složena pitanja ulaganja kapitala na pomorskom dobru i stečena prava, posebno na području luka otvorenih za javni promet, kao i niz pitanja imovinsko-pravne naravi što usporava mogućnosti upliva privatnog kapitala u morske luke, bilo da je riječ o razvoju pomorskih ili komercijalnih djelatnosti.

#### **4. OCJENA POSTOJEĆEG STANJA U LUKAMA OD MEĐUNARODNOG ZNAČENJA ZA REPUBLIKU HRVATSKU**

Sukladno činjenici da je relevantan indikator značaja određene luke za prometni i gospodarski sustav države količina robnih tokova i broj putnika koji cirkuliraju kroz luku, u ovome dijelu rada ukratko se analizira promet morskih luka od međunarodnog značenja – Rijeka, Zadar, Šibenik, Split, Ploče i Dubrovnik s obzirom na intenzitet prometa (količinu roba i broj putnika), dinamiku prometa (količinu roba i broj

tential investors and financial institutions in terms of their investment in port projects in the Republic of Croatia. That is a reason why there were no serious private investments in the Croatian ports in the last twenty years.

Pursuant to the Maritime Domain and Seaports Act, concession cannot be transferred to another provider without the approval of the concessionaire. The possibility of concession transferring gets a special meaning in case of investment insurance or in the case of bankruptcy. In the process of restructuring the economic system and in the process of new investments in the maritime domain concession transferability is a necessary prerequisite. Future limitations in the transfer possibilities of the concession would certainly have a negative impact on then creditworthiness of the concessionaire, and on the economic activity in the maritime domain. It is not possible to expect that the concessionaire enters into an uncertain business project on a maritime property if the legal and economic frameworks of the concession system are not transparent.

In practice other problems in the realization of concessions on the maritime property [10] occur, such as: unclear terms that define whether the concessionaire is entitled to compensation for investments in the infrastructure and superstructure in the concession area in case the concession contract expired, the license and supervision of the construction work on the concession area can be obtained only after obtaining the concession, how the concession provider will confirm the concessionaire income and permit independent control of books, records and financial statements for charging the variable part of the concession, etc. Besides, the absurd fact is that concessions on the maritime property provide only for activities related to maritime affairs, including the limited use of the maritime domain for urban facilities for commercial purposes. It is also the reason for the minimal participation of private sector investment in the development and use of the maritime domain.

It can be concluded that the Maritime Domain and Seaports Act does not solve the complex issues of capital investment in the maritime domain and the acquired rights, particularly in the ports open for public transport, as well as a number of issues of legal nature of the property which slows the influence of private capital investment opportunities in maritime ports, whether regarding the development of maritime or commercial activities.

**Tablica 1:** Promet u lukama od međunarodnog značenja za Republiku Hrvatsku u razdoblju od 2001. do 2009. godine  
*Table I Cargo and passenger traffic at seaports of international importance for the Republic of Croatia in the period from 2001 to 2009*

	2001.	2002.	2003.	2004.	2005.	2006.	2007.	2008.	2009.	Indeks	Indeks
	1	2	3	4	5	6	7	8	9	(9/1)	(9/8)
<b>RIJEKA</b>											
Tekući teret / <i>Liquid cargo</i>	4.280.000	4.990.000	5.240.000	6.260.000	7.020.000	5.880.000	7.59.000	*	*	*	*
Generalni teret / <i>General cargo</i>	800.000	830.000	800.000	1.100.000	1.440.000	1.570.000	2.160.000	2.370.000	2.110.000	2,64	0,89
Rasuti teret / <i>Bulk</i>	1.700.000	1.900.000	1.700.000	2.300.000	3.190.000	3.200.000	3.140.000	3.380.000	2.870.000	1,69	0,85
Drvno / <i>Wood</i>	170.000	150.000	200.000	170.000	220.000	240.000	330.000	270.000	220.000	1,29	0,81
Ukupan promet / <i>Total traffic</i>	6.950.000	7.870.000	7.940.000	9.830.000	11.870.000	10.890.000	13.210.000	*	*	*	*
<b>ZADAR</b>											
Teretni promet / <i>Freight traffic</i>	303.000	330.000	361.000	432.000	235.000	497.000	570.000	493.000	*	*	*
Putnički promet / <i>Passenger traffic</i>	1.190.000	1.374.000	1.464.000	1.555.000	1.696.000	2.064.000	2.165.000	2.280.000	*	*	*
Promet vozila / <i>Vehicles transport</i>	187.076	215.159	237.264	263.006	293.587	300.628	332.639	*	*	*	*
<b>ŠIBENIK</b>											
Teretni promet / <i>Freight traffic</i>	528.000	471.000	602.000	840.000	1.410.000	739.000	1.239.000	862.820	599.013	1,13	0,69
Putnički promet / <i>Passenger traffic</i>	435.000	475.000	507.000	520.000	535.000	538.000	550.000	545.000	540.000	1,24	0,99
<b>SPLIT</b>											
Teretni promet / <i>Freight traffic</i>	2.151.013	2.082.502	2.401.549	2.581.931	2.773.912	3.032.701	3.024.279	2.993.257	2.486.175	1,16	0,83
Putnički promet / <i>Passenger traffic</i>	2.286.898	2.562.694	2.891.271	3.183.743	3.482.567	3.541.231	3.776.234	4.090.995	3.955.846	1,73	0,97
Promet vozila / <i>Vehicles transport</i>	433.401	486.951	537.127	572.644	646.022	645.330	672.415	699.737	657.871	1,52	0,94
<b>PLOČE</b>											
Teretni promet / <i>Freight traffic</i>	921.000	1.063.000	1.281.000	2.031.000	2.815.000	3.181.000	4.214.000	5.142.000	2.869.000	3,12	0,56
<b>DUBROVNIK</b>											
Putnički promet / <i>Passenger traffic</i>	430.935	533.133	742.933	767.000	830.000	911.000	961.000	1.075.000	1.193.000	2,77	1,11
Promet vozila / <i>Vehicles transport</i>	23.304	26.500	29.123	30.924	32.844	26.884	37.000	40.000	45.000	1,93	1,13

Izvor: prilgodeno prema <http://www.mmpi.hr>, <http://www.cpa-sibenik-knin.hr>, <http://www.portsplit.com>, [www.port-authority-ploce.hr](http://www.port-authority-ploce.hr), <http://www.portdubrovnik.hr>, <http://www.cpa-zadar.hr> (March 2012).hr  
 (ozujak 2012.)

putnika u određenom razdoblju) i strukturu prometa (s obzirom na različite kriterije, kao što su putnički i tereni promet, usmjerenost prometa, vrste roba (tereta ...)). Slijedom toga, interesantno je osvrnuti se na značaj, odnosno udio kojega spomenute luke imaju u ukupnom teretnom i putničkom prometu luka od osobitog gospodarskog značaja. Kako bi se došlo do konkretnih konstatacija u tablici 1. prikazan je promet zabilježen u svim lukama od osobitog gospodarskog značaja za Republiku Hrvatsku.

Prometni kapaciteti luka međusobno se razlikuju, a za sve luke iznose 23,000,000 tona godišnje. Doda li se tome i kapacitet Jadranskog nafotovoda u Omišlju na otoku Krku od 20,000,000 tona, tada je ukupni kapacitet glavnih luka u Republici Hrvatskoj veći od 43,000,000 tona tereta godišnje.

Glavnina se teretnog prometa odnosi na luku Rijeka i luku Ploče koje su postale glavne teretne luke Republike Hrvatske, ostvarujući gotovo 90% ukupnog teretnog prometa. Nasuprot tomu, najveći broj prevezениh putnika bilježe luke Split i Zadar, koje je stoga opravданo smatrati vodećim srednjojadranskim lukama u putničkom prometu. S obzirom da riječka luka ostvaruje oko 70% ukupnog teretnog prometa, te da je gotovo cijeli tranzitni promet usmjeren preko sjevernojadranskog prometnog pravca, opravданo je isticati posebno značenje luke Rijeka u nacionalnom lučkom sustavu, a time

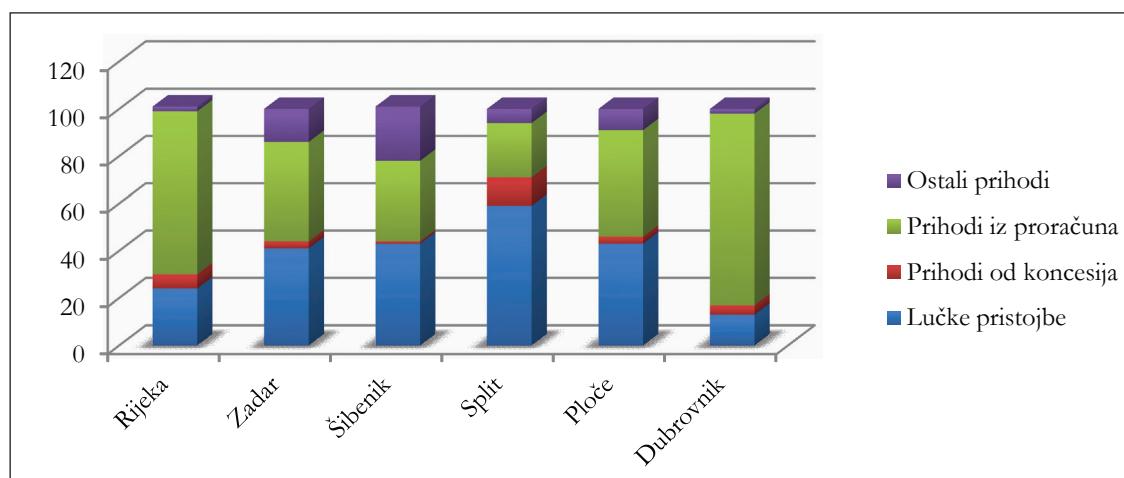
#### 4. ANALYSIS OF THE CURRENT SITUATION IN THE PORTS OF INTERNATIONAL IMPORTANCE FOR THE REPUBLIC OF CROATIA

In accordance with the fact that the amount of cargo flows and the number of passengers that circulate through the port are relevant indicators for the importance of certain port traffic and economic system of Croatia, the traffic in seaports of the international importance – Rijeka, Zadar, Šibenik, Split, Ploče and Dubrovnik, are briefly analysed in this chapter. The analysis regards the traffic intensity (the amount of goods and passengers), the dynamics of traffic (the amount of goods and passengers within a certain period of time) and traffic patterns (based on various criteria, such as passenger transport and facilities, direction of traffic, types of goods, cargo ...). Consequently, it is interesting to reflect on the significance or on the proportion which these ports have in the total cargo and passenger traffic from the seaport of special economic importance. In order to reach some specific conclusions, Table 1 shows the traffic observed in all seaports of special economic importance for the Republic of Croatia.

The transport capacity of each seaport is different, and for all Croatian ports it is 23,000,000 tons per year. If we add to this amount the ca-

**Grafikon 1:** Struktura prihoda lučkih uprava od osobitog međunarodnog interesa za Republiku Hrvatsku u 2009. godini

*Figure 1 The 2009 structure of revenues of the port authorities of particular international interest for the Republic of Croatia*



Izvor: Ministarstvo mora, prometa i infrastrukture, [www.mmp.hr](http://www.mmp.hr), (01.04.2012.)  
Source: Ministry of sea, transport, infrastructure, [www.mmp.hr](http://www.mmp.hr) (1<sup>st</sup> April 2012)

ujedno u nacionalnom prometnom i gospodarskom sustavu.

Ekonomski pokazatelji u lučkom poslovanju proučavaju se i izračunavaju prema osnovnim postavkama ekonomike prometa, uz određene nadopune s obzirom na posebnosti lučke usluge. Za analizu i ocjenu uspješnosti poslovanja luka od međunarodnog interesa za Republiku Hrvatsku značajna je struktura prihoda lučkih uprava Rijeke, Zadra, Šibenika, Splita, Dubrovnika i Ploče.

Podaci o strukturi prihoda lučkih uprava ukazuju na nekoliko bitnih zaključaka. Postotak učešća prihoda od lučkih pristojbi pokazatelj je opseg poslova koji se u pojedinim lukama obavlja (prihvati i otprema brodova u direktnoj su vezi s veličinom lučkog prometa), što ga veliki dio lučkih pristojbi u ukupnom prihodu ne iznenaduje. Jedini izuzetak su luke Rijeka i Dubrovnik gdje velike kapitalne investicije prate veliki prihodi iz proračuna, iako njihov promet tereta i putnika iz godine u godinu iskažuju rast od oko 25%.

Minimalni prihodi od koncesija ukazuju da implementacija zakonskih odredbi nije učinkovita. U ovoj stavci u idućem razdoblju treba očekivati povećanje prihoda pod pretpostavkom uhodavanja koncesijskog režima na lučkom području. Očigledno je nejednako učešće proračunskih sredstava u pojedinim lukama: npr. u luci Rijeka i Dubrovnik prihodi su izuzetno visoki, dok se u luci Split kreću oko 20%. Razlog tome su postojeći razvojni projekti i državni udio u financiranju takvih projekata (najčešće infrastrukturnih).

Struktura rashoda lučkih uprava prikazana je na grafikonu 2.

U strukturi rashoda za 2009. godinu najveća stavka su investicijski rashodi koji u ukupnim iznosima svih lučkih uprava čine između 46% i 79%. Analiza rashoda u usporedbi sa strukturom prihoda evidentno pokazuje da se investicijska ulaganja najvećim dijelom pokrivaju iz proračunskih sredstava Republike Hrvatske. To znači da sredstva za financiranje lučkih investicija prvenstveno dolaze iz proračuna RH i kreditnih aranžmana, a ne iz osnovnih lučkih djelatnosti. Takva analiza potvrđuje već postavljeni zaključak za nužnim razvijanjem koncesijskog režima na lučkom području koji bi trebao potaknuti ulaganja i tržišno gospodarenje i na taj način smanjiti prinose iz državnog proračuna.

pacity of the Jadranski naftovod (Oil Pipeline Company), located on the island of Krk, of 20,000,000 tons, then the total capacity of the major ports in the Republic of Croatia, is more than 43,000,000 tons of cargo annually.

The majority of the freight transport refers to the port of Rijeka and the port of Ploče that have become the main Croatian cargo ports, achieving almost 90% of total freight traffic. To the contrary, the largest number of passengers is recorded in the ports of Split and Zadar. Therefore, it is justified to consider these ports as the leading northern ports in the passenger traffic. Since the port of Rijeka generates about 70% of the total freight transport, and that almost the entire transit traffic is directed over the North-Adriatic route, it is reasonable to highlight a special meaning of Rijeka in the national seaport system, and thus also in the national transport and economic system.

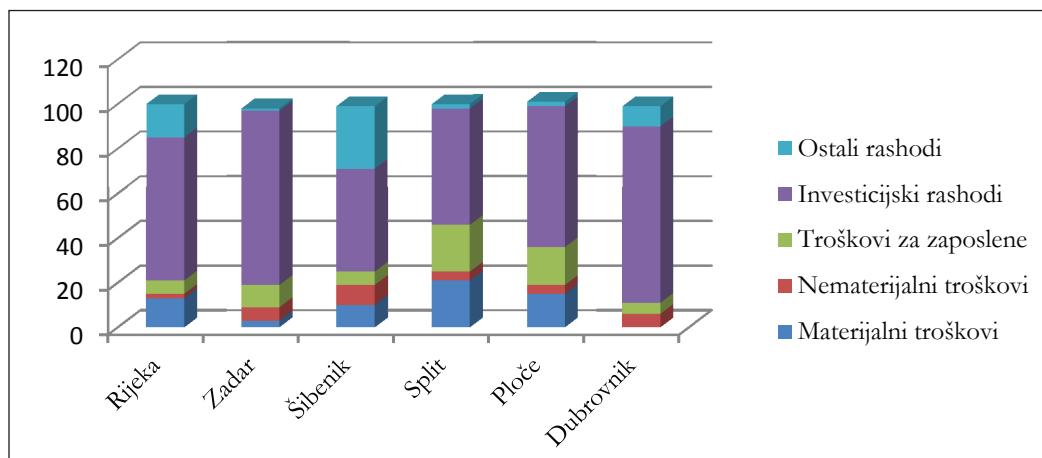
Economic indicators in the port operations are studied and calculated according to the basic principles of economics and transport, with some additions due to the particularities of the port services. For the performance analysis and the evaluation of ports of international interest for the Republic of Croatia, it is relevant to note the revenue structure of the port of Rijeka, Zadar, Šibenik, Split, Dubrovnik and Ploče.

The revenues structure of the port authorities suggests several important conclusions. The percentage share of the revenues obtained from port charges (fees) is an indication of the quantity of work that is done in some ports (handling vessels are in direct relation to the size of the port traffic). In that way, the port fees usually have an important share in the total port revenue. The only exceptions are the ports of Rijeka and Dubrovnik, where large capital investments during the year derive from the state budget, although their cargo and passenger traffic has been increasing for about 25% from year to year.

Minimal revenues from concessions indicate that the implementation of the concession act is not effective. In the next period, an increase in revenue should be expected assuming the development of the concession regime in the port area. Apparently, there is an unequal share of the state budget revenues in some ports, as can be seen in the ports of Rijeka and Dubrovnik – incomes are extremely high (more than 70%), while the income in the port of Split figures out at about 20% only. This is due to the existing

**Grafikon 2:** Struktura rashoda lučkih uprava od osobitog međunarodnog interesa za Republiku Hrvatsku u 2009. godini

**Figure 2** The 2009 structure of the expenditures of the port authorities of particular international interest for the Republic of Croatia



**Izvor:** Ministarstvo pomorstva, prometa i infrastrukture, [www.mppi.hr](http://www.mppi.hr), (01.04.2012.)

**Source:** Ministry of sea, transport, infrastructure, [www.mppi.hr](http://www.mppi.hr) (1<sup>st</sup> April 2012)

U prilog tome ide i činjenica da je u luke od međunarodnog gospodarskog interesa za RH u razdoblju od 2004. do 2007. iz državnog proračuna RH (ulaganja u lučku infrastrukturu i prema kreditnim zaduženjima za projekte) radi izgradnje kapitalnih infrastrukturnih projekata uloženo ukupno 382.534.095,99 kuna [6]. Od 2001. do 2005. godine u lučku je infrastrukturu ukupno uloženo 67 milijuna eura, a planom razvoja hrvatskih morskih luka od 2006. do 2013. godine planiraju se ulaganja u lučku infrastrukturu u iznosu 531 milijun eura, što se smatra uvjetom za veći promet i razvoj luka te davanja koncesija domaćim i stranim ulagačima. Detaljnija podjela planiranih investicija prikazana je u grafikonu 2.

Većina planiranih ulaganja odnosi se na različite projekte koje luke planiraju kao što su Projekt Rijeka Gateway (vrijednost projekta je 55,1 mil. USD), Projekt integracije transporta i trgovine u luci Ploče (70 mil. EUR), Projekt izgradnje nove luke Zadar u Gaženici (220 mil. EUR), Izgradnja putničkog terminala u Šibeniku (4 mil. EUR), Projekt izgradnje ljetnih vezova i Ro-Ro terminala u luci Split (20 mil. kn) te Projekt izgradnji obalne infrastrukture u luci Dubrovnik (26,5 mil. EUR).

Iz provedene kratke analize može se zaključiti da postoji značajna neuravnoteženost u rashodovnoj i prihodovnoj strani među pojedinim lukama (lučkim upravama) i to u absolutnim i

development projects and the state share in financing such projects (mainly infrastructure).

The structure of the expenditures of the port authorities is shown in Figure 2.

In the year 2009, the largest amounts in the structure of expenditures, in the total amount, were investment expenditures of all port authorities (between 46% and 79%). The analysis of expenditures, compared with the revenue structure, clearly shows that investments are mostly covered from the Croatian state sources. This means that funds for the financing of port investments mainly come from the state budget and credit arrangements and not from the revenues based on the main port activities (own resources). This analysis again confirms the conclusion for the necessary development of the concession regime in the port area, which should boost the capital investment and the market economy, thus reducing the yield from the state budget.

This is confirmed by the fact that the ports of international economic interests for the Republic of Croatia in the period from 2004 to 2007 received from the state budget (investment in port infrastructure and the credit agreements for the projects) a total of HRK 382,534,095.99 [6] for the construction of capital infrastructure projects. From 2001 to 2005, a total of EUR 67 million was invested in the port infrastructure. In the plan for the development of the Croatian seaports covering the 2006 to 2013 period, the amount of EUR 531 million has been planned

vrijednosnim pokazateljima. Neujednačena strukture prihoda najviše dolazi do izražaja pri usporedbi triju prihodnih stavki svih lučkih uprava – lučkih pristojbi, prihoda od koncesija i prihoda iz državnog proračuna. Na isti način, neujednačene strukture rashoda najviše dolaze do izražaja kod materijalnih i investicijskih troškova.

U svim lučkim upravama prihodi od koncesija za korištenje objekata ili od lučki djalatnosti iznimno su mali, što znači da sustav koncesija nije zaživio u svom pravom obliku. Nužno je razvijanje koncesijskog režima na lučkom području koji će potaknuti razvijanje ulaganja i tržišno gospodarenje i na taj način smanjiti neodržive prinose iz državnog proračuna. Realno je za očekivati da će s porastom prometa ili drugaćijim uređenjem koncesijski prihodi imati tendenciju rasta.

Analiza prihoda i rashoda pokazuje da se investicijska ulaganja najvećim dijelom pokrivaju iz proračunskih sredstava Republike Hrvatske. Drugim riječima, investicije se ne pokrivaju iz prihoda osnovnih lučkih djalatnosti, već iz državnog proračuna te kreditnih aranžmana. U razdoblju od 2001. do 2005. godine preko 67 milijuna eura je uloženo iz državnog proračuna, a u narednom razdoblju planiraju se ulaganja iz proračuna više od 500 milijuna eura.

Neintegrirani sustav financiranja očita je posljedica. Planirana ulaganja u luke Republike Hrvatske ne temelje se na stvarnim potrebama hrvatskog lučkog sustava u odnosu na teretni ili putnički promet koji ostvaruju. U lučkom sustavu još uvijek nije jasno utvrđen značaj, položaj i djelokrug poslovanja pojedinih luka. Nužno se postavlja pitanje prioriteta ulaganja u hrvatske luke kako bi se stvorio transparentni model razvoja lučkog sustava Republike Hrvatske. Upravo se tu ukazuje na mogućnost primjene i implementacije modela javno-privatno partnerstva u lučkom sustavu koji bi mogao omogućiti realan gospodarski razvoj lučkog sustava Republike Hrvatske.

## 5. JAVNO-PRIVATNO PARTNERSTVO U SUSTAVU RIJEČKE MORSKE LUKE

Dosadašnje iskustvo riječke luke vrlo je različito u primjeni ideje partnerstva javnog i privatnog sektora. Naime, može se tvrditi da partner-

for investments in the port infrastructure. It is considered as a prerequisite for a higher turnover and development of ports and providing concessions to domestic and foreign investors.

Most of the planned investments are related to the various port projects planned such as the Rijeka Gateway Project (USD 55.1 million), Project for the Transport and Trade Integration in the Port of Ploče (USD 70 million), Project for Building a new Port of Zadar in Gaženica (USD 220 million), The Passenger Terminal at Šibenik (EUR 4 million), Project for the Construction of Summer Moorings and of the Ro-Ro terminal in the Port of Split (HKN 20 million) and Project for the Construction of the Coastal infrastructure in the Port of Dubrovnik (EUR 26.5 million).

From this short analysis, it can be concluded that there is a significant imbalance in the expenditures and revenues sides between individual ports (port authorities) in the absolute and relative indicators. Uneven revenue structure is the most evident when comparing three revenue items in all port authorities – port fees, concession revenues and revenues from the state budget. In the same way, the uneven structures of expenditures are most prominent in financial and investment costs.

In all port authorities revenues received from concessions for the use of port facilities or port activities are extremely small. That means that the concessions regime is not developed in its true form. It is necessary to develop the concession regime in the port area which will encourage the investment and development of the market economy, thus reducing the unsustainable returns from the state budget. It is realistic to expect that, with the traffic increase or with a different concession arrangement, the concession revenues will have a tendency to increase.

The analysis of revenues and expenditures shows that the investments are mainly funded from the state budget. In other words, the investments are not covered by the revenue received from the basic port activities, but from the state budget and credit arrangements. In the period from 2001 to 2005, over EUR 67 million were invested from the state budget and in the forthcoming period more than EUR 500 million will be invested.

The system of financing seaports is obviously not integrated. Planned investments in the Croatian ports are not based on the actual needs of the Croatian port system in relation to

stvo postoji odavna. Ono se provodi temeljem koncesije za obavljanje ostalih gospodarskih djelatnosti koje su u neposrednoj ekonomskoj, prometnoj ili tehnološkoj vezi s osnovnim lučkim djelatnostima. Dakle, riječ je o većem broju malih privatnih poduzeća koji su koncesionari za obavljanje djelatnosti, primjerice kontrola količine i kakvoće robe, opskrba brodova, pranje brodske robe, čuvanje luke itd. Upravo iz činjenice, da ne obavljaju osnovne lučke djelatnosti koje su vitalne za funkciranje lučke zajednice, njihov doprinos razvoju cjelokupnog lučkog sustava je marginaliziran.

Koncesije su jedan od osnovnih oblika primjene partnerstva pogotovo u sektoru transporta, pa tako i u grani pomorstva gdje privredni partner stječe dugoročnu koncesiju nad nekim lučkim područjem te je odgovoran za upravljanje, poslovanje i financiranje navedenim područjem. Međutim, kada je riječ o sustavu luke Rijeka (a i drugih hrvatskih morskih luka) potrebno je naglasiti da su glavni koncesionari npr. Luka Rijeka d.d. i JANAFA d.d. koji obavljanju osnovne lučke djelatnosti *de facto* državne kompanije, nastale u razdoblju tranzicije hrvatskog gospodarstva, pretvorbom društvenog u državno vlasništvo. Da bi u ovome segmentu partnerstvo oživjelo potrebno je pokrenuti postupak daljnje privatizacije preostalog dijela gdje bi nastalo niz novih manjih privatnih kompanija koje bi preuzele poslove i odgovornosti za obavljanje lučkih djelatnosti te bi se tada moglo govoriti o primjeni partnerstva u pravom smislu. Luka Rijeka d.d., danas već ima detaljni plan za privatizaciju, koja je ugovorenata Rijeka Gateway projektom pod pokroviteljstvom Svjetske banke. Za JANAFA d.d., drugog najvećeg koncesionara nema konkretnog plana privatizacije, a vrlo vjerojatno je da će još dugo biti u rukama javne vlasti zbog specifične djelatnosti koja se obavlja na naftnom terminalu. Ovdje je potrebno istaknuti da je naftni terminal specifičnost riječke luke čime joj daje izrazitu konkurentnost spram ostalih luka sjevernog Jadrana i cijelog Mediterana.

U sustavu luke Rijeka pokušalo se realizirati nekoliko projekata javno-privatnog partnerstva koji su nažalost bili neuspješni. Najnoviji projekt koncesionara za kontejnerski teret Jadran-ska vrata d.d. i International Container Services Inc. – Manila može se smatrati uspješnim primjerom, iako treba imati na umu, da će tek vremenska distanca zaista pokazati uspješnost ovoga projekta.

the freight or passenger traffic what they realize. In the port system, the character, location and scope of individual ports is still not clearly defined. Necessarily raises The question of priority investments in the Croatian ports in order to create a transparent model of the Croatian port system necessarily arises. It indicates that the application and implementation of public-private partnerships in the port system could provide a realistic economic development of the Croatian port system.

## 5. PUBLIC-PRIVATE PARTNERSHIP IN THE PORT OF RIJEKA

The previous experience of the Port of Rijeka in the implementation of public and private sectors varies a lot. It can be argued that the PPP has existed for a very long time. It is performed under the concession to carry out activities that are in the economic, transport and technology relation with the basic port activities. Thus, there are a large number of small private companies that are concessionaires. These companies carry out several activities, for example control the quantity and quality of goods, ship supply, ship cleaning supplies, storage ports, etc. But the fact is that these companies do not perform the basic port activities that are vital for the port community, so their contribution to the development of the entire port system is marginalized.

Concessions models are one of the basic models of partnerships, especially in the transport sector, including the maritime industry where a private partner acquires a long-term concession to some of the port areas (usually terminals) and is responsible for the management, operation and financing of these areas. However, in the case of the Port of Rijeka (and other Croatian seaports), it must be emphasized that the main concessionaires, such as the Luka Rijeka d.d. and the JANAFA d.d. acting as main concessionaires, are "*de facto*" state companies, formed in a transition period of the Croatian economy, namely, in the social transformation of the state ownership. In order to revive the partnership in this segment, it is necessary to initiate the process of the further privatization of the remaining parts. In that way, it is possible to create new small private companies that can take over duties and responsibilities for the performance of port activities, and,

### **5.1. Projekt izgradnje žitnog terminala (Ganz-Luka Rijeka d.d.)**

Projekt Ganz, odnosno izgradnja novog sklađišnog prostora za žitarice bio je jedan od tri ključna investicijska projekta iz desetgodišnjeg programa razvoja riječke luke. Provedbom projekta Ganz, osnovana je kompanija Ganz-Luka Rijeka d.o.o. u vlasništvu Luke Rijeka d.d. i mađarskog privatnog partnera kojim se trebao ostvariti model javno-privatnog partnerstva temeljem koncesijskog ugovora.

Za potrebe projekta i dobivanja koncesionara na tom području 2002. godine osnovano je mješovito poduzeće Ganz-Luka Rijeka d.o.o. čiji su zajednički vlasnici u omjeru 51:49% mađarski Ganz i Luka Rijeka d.d., a koje je formalni nositelj koncesije na 33 godine za izgradnju i korištenje novog skladista za žitarice. Tvrтka Ganz-Luka Rijeka d.o.o. realno nikada nije ni zaživjela premda je imala svoj Nadzorni odbor. Prema Ugovoru, ona je trebala biti investitor i korisnik budućeg novog terminala uz postojeći silos gdje je mađarski partner trebao osigurati financiranje gradnje. Sukladno koncesijskom Ugovoru, mađarski Ganz je trebao dostaviti jamstvo svoje tvrtke o osiguranim sredstvima za cijelokupnu investiciju, a koje bi bilo prihvatljivo našem Ministarstvu financija. Lučka uprava Rijeka u predvidenom roku nije začimila takva jamstva, nedostajale su garancije za investicijski kredit, pa se planirani scenarij i uspostava partnerstva nije realizirala.

### **5.2. Projekt o poslovno-tehničkoj suradnji za upravljanje kontejnerskim terminalom (Jadranska vrata d.d.)**

Osnivanjem poduzeća Jadranska vrata d.d. koje ima koncesiju nad kontejnerskim terminalom te potpisivanjem Ugovora o poslovno-tehničkoj suradnji s talijanskim kompanijom Medcenter Container Terminal S.p.A. (MCT) bila je otvorena mogućnost uspostave partnerstva. Luka Rijeka d.d., odnosno njezina tvrtka kćer u 100% vlasništvu, Jadranska vrata d.d. dobila je 2001. godine koncesiju na kontejnerskom terminalu prema objavljenom javnom natječaju za desetogodišnje razdoblje uz mogućnost produženja prema Zakonu o morskim lukama.

Prema uvjetima natječaja Luka Rijeka d.d. je našla strateškog partnera i potpisala Ugovor o poslovno-tehničkoj suradnji s Medcenter Container Terminal S.p.A., Gioia Tauro, Italija i

only then, it can be possible to discuss over the implementation of a partnership in the truest sense. The Luka Rijeka d.d. has a detailed plan for the privatization process contracted through the "Rijeka Gateway" project sponsored by the World Bank. The JANAF d.d., the second largest concessionaire, has no concrete plan of privatization, and it is very likely that this company will be for a long time in the hands of public authorities, because of the very specific activities performed at the oil terminal. It should be noted that the specificity of the oil terminal gives the Port of Rijeka a distinct competitive advantage against other ports within the North Adriatic and the Mediterranean area.

The Rijeka port system has attempted to implement several public-private partnership projects that, unfortunately, have not been successful. The latest project between the Jadranska vrata d.d. and the International Container Services – Manila Inc for the concession on the container terminal can be considered as a successful example, but only time distance will really demonstrate the success of this project.

### **5.1. Project of the grain terminal construction (Ganz luka Rijeka d.d.)**

The Ganz project or the project of building a new storage area for cereals was one of three key investment projects in the ten-year long development programme for the Port of Rijeka. For the implementation of the project Ganz, the Ganz luka Rijeka d.o.o. was founded. This company was owned by the Luka Rijeka d.d. and a Hungarian private partner. This project could be an example model of public-private partnership based on concession agreements.

For the purpose of the project and of getting the concessionaire on the grain terminal in 2002, the joint venture Ganz Port of Rijeka Ltd. was established. The owners of the company were a Hungarian Ganz and the Luka Rijeka d.d., with an ownership ratio of 51:49 percent. This company could be a formal holder of the concession for 33 years for the construction and use of new storage facilities at the grain terminal. Unfortunately, the Ganz Port of Rijeka d.o.o. company never really came to life, even though it had its supervisory board. Under the agreement, the company was supposed to be an investor and future user of the new terminal against the existing silo, and the Hungarian partner should provide financing. Pursuant to the concession agree-

osnovala tvrtku-kćer Jadranska vrata d.d. za obavljanje djelatnosti na kontejnerskom terminalu. Tim projektom Luka Rijeka d.d. je dobila najznačajnijeg partnera za kontejnere u Europi, koji je trebao garantirati minimalno povećanje prometa do 55 000 TEU-a i 7 500 automobila godišnje. Luka Rijeka d.d. je prema ugovoru s MCT i budućem ugovoru s tvrtkom kćeri, trebala davati usluge lučkih radnika, operativne, komercijalne, finansijske, kadrovske, marketinške i menadžerske usluge. Temeljem ugovora s MCT, Luka Rijeka d.d. je mogla koristiti i imati na raspolaganju njihov visokostručni i kvalitetan kadar i postojeći *know-how*. Da su ciljevi i zadaci poslovnog plana postignuti, u smislu minimuma ostvarenih TEU-a na kraju treće godine ili prosječnog ostvarenja kalkuliranog na bazi godišnjeg ostvarenja, tvrtka MCT imala bi pravo otkupa vlasničkog udjela u tvrtki kćeri Luke Rijeka d.d. koja obavlja djelatnost na kontejnerskom terminalu od najviše 50% dinonika. Nažalost do toga nikad nije došlo te je projekt prekinut.

### **5.3. Strateško partnerstvo između International Container Services Inc. – Manila i kontejnerskog koncesionara Jadranksa vrata d.d.**

Dio Rijeka Gateway projekta u sklopu lučke komponente je proces uvodenja privatnog kapitala u lučke operacije. U koordinaciji sa Svjetskom bankom pokrenuo se proces realizacije prvog strateškog partnerstva na kontejnerskom terminalu (Jadranska vrata d.d.) luke Rijeka.

Proširenu listu mogućih strateških partnera za Jadranska vrata d.d. činilo je jedanaest kompanija. Nakon analize i evaluacije zaprimljenih predkvalifikacijskih dokumenata, lista potencijalnih strateških partnera sužena je na sljedeće tri tvrtke [5]: APM Terminals – Rotterdam, Hamburger Hafen und Logistik AG – Hamburg, International Container Terminal Services (ICTS) – Manila. Nakon godinu dana pregovara, odlučeno je da novi strateški partner postane tvrtka **International Container Terminal Services**, koja se obvezala u idućih nekoliko godina investirati oko 70 milijuna eura u kontejnerski terminal Brajdica. ICTS ima sjedište u Manili na Filipinima, ali su njezini vlasnici iz SAD-a. Tvrta je osnovana 1987. godine, danas posjeduje i upravlja s 21 lučkim terminalom u 15 zemalja, te je 2009. godine ostvarila ukupni

ment, the Hungarian Ganz should submit a guarantee for their insured funds on the overall investment, which would be acceptable to our Ministry of Finance. However, the Rijeka Port Authorities has not received any guarantees in due time and the guarantees for investment loans were lacking, so the planned scenario and partnership was not realized.

### **5.2. Project for business and technical cooperation for the management of the container terminal (Jadranska vrata d.d.)**

With the establishment of the company Jadranska vrata d.d. (Adriatic Gate) which had a concession for the container terminal, and by signing the contract for a business and technical cooperation with the Italian Medcenter Container Terminal SpA (MCT), a possibility of establishing partnerships was opened. The Jadranska vrata d.d., as subsidiaries of the Luka Rijeka d.d., 100% owned by the mother company, received in the year 2001 the concession for the container terminal, according to a published public tender for a 10-year period with possible extension under the Maritime Domain and Seaports Acts.

Under the tender terms, the Luka Rijeka d.d. found a strategic partner and signed a contract on business and technical cooperation with the Medcenter Container Terminal SpA, Gioia Tauro, Italy, and established a daughter company, the Jadranska vrata d.d., authorized to perform activities of the container terminal. With this project, the Luka Rijeka d.d. received the most important partner for containers in Europe, which should guarantee a minimum increase in traffic up to 55,000 TEUs and 7,500 cars per year. The Luka Rijeka d.d., according to the Agreement made with the MCT and to the contract with its company daughter, should give a long-shore-men, operational, commercial, financial, personnel, marketing and management services. According to the Agreement made with the MCT, the Luka Rijeka d.d. could use the MCT's highly professional staff and existing know-how. If the goals and objectives of the business plan have been achieved in terms of a minimum earned TEUs at the end of the three year period or at an average realization based on the calculated annual achievements, the company MCT would be entitled to purchase at the most 50% of the equity shares in the subsidiaries of the Luka Rijeka d.d. that perform the activity at the container terminal.

promet od 3,55 milijuna TEU-a. Ima terminale u Brazilu, Indoneziji, Japanu, Ekvadoru i na Madagaskaru.

Filipinska tvrtka International Container Terminal Services u Brajdicu će uložiti 70 milijuna eura, a tvrtki *Luka d.d.* mora platiti dodatnih 92,9 milijuna kuna naknade za 51 posto dionica Jadranskih vrata d.d.. Ugovor o partnerstvu i preuzimanju dioničarskog udjela od 51 posto u tvrtki Jadranska vrata d.d., koja ima koncesiju na Brajdici do 2041. godine, je potpisana 5. ožujka 2011. godine. Tako je 15. travnja 2011. godine osnovana filipinsko-hrvatska tvrtka Adriatic Gate Container Terminal.

Cilj je ulaganjem u opremu na terminalu Brajdica postići potpunu automatizaciju iskrcaja, skladištenja i otpreme kontejnera te time kapacitet povećati do brojke od 600 000 TEU jedinica, čime će se značajno povećanje efikasnosti terminala, koji ima postati europski *gateway* za tržišta Mađarske, Češke, Slovačke, Poljske, Srbije i BiH. Veliki dio investicije odnosit će se na kupnju dviju kontejnerskih dizalica, koje se planiraju pustiti u pogon čim se završi izgradnja dodatnih 330 metara nove obale. Osim Rijeke, ICTS u Europi imaju još samo terminal u poljskoj luci Gdynia, što znači da bi ova dva terminala u budućnosti povezivala novi europski prometni koridor između Baltika i Jadran. U odabiru strateškog partnera, kojeg je potvrdila i Svjetska banka, važnu ulogu imala je visina finansijske ponude za većinski vlasnički udio u Jadranskim vratima d.d., tvrtki kćeri Luke Rijeka d.d.

U dio ugovora ukomponiran je i socijalni paket u kojem se predviđa da bi ukupno 200 radnika trebalo biti uposleno u Jadranskim vratima d.d. i to po važećim uvjetima iz postojećeg kolektivnog ugovora u Luci Rijeka d.d. Utvrđeno je i da sljedećih pet godina neće biti isplate dividende, te plan povećanja prometa na Brajdici do brojke od 500 000 TEU jedinica, što je oko tri puta više od rekordnog prometa ostvarenog 2008. godine.

ICTS bi strateški i dugoročno mogao imati izuzetno važnu ulogu u razvoju riječkog prometnog pravca. To se prije svega odnosi na planove gradnje i financiranja nizinske pruge Rijeka – Zagreb – Botovo te eventualne kandidature za privatizaciju kontejnerskog terminala na Zagrebačkoj obali. Njegova izgradnja nije ni počela, ali se natječaj nalazi u završnoj fazi, te je osigurano

Unfortunately, this had never happened and the project was left unfinished.

### 5.3. The strategic partnership between the International Container Services Inc. – Manila and the container concessionaire Jadranska Vrata d.d.

The Rijeka Gateway Project in part related to the development of the port component encourages the introduction of private capital into the port operations. In coordination with the World Bank, the process of the realization of the first strategic partnership in the container terminal (Jadranska Vrata d.d.) was initiated.

An extended list of potential strategic partners for the Jadranska Vrata d.d. consisted of eleven companies. After the analysis and evaluation of the received qualification documents, the list of potential strategic partners has been narrowed to three companies [5]: APM Terminals – Rotterdam, Hamburger Hafen und Logistik AG – Hamburg, International Container Terminal Services (ICTS) – Manila. After a year of negotiations, it was decided that a new strategic partner will be the International Container Terminal Services. The ICTS committed to invest EUR 70 million in the container terminal Brajdica for over the next few years. The ICTS has its headquarters in Manila in the Philippines, but its owners are from the USA. The company was founded in 1987, and today it owns and manages 21 port terminals in 15 countries. In 2009, the total turnover was 3.55 million TEUs. They also have terminals in Brazil, Indonesia, Japan, Ecuador, and Madagascar.

The International Container Terminal Services need to invest EUR 70 million in the container terminal Brajdica and to pay an additional fee of HRK 92.9 million for 51% shares of the Jadranska vrata d.d. to the “mother company” Luka Rijeka d.d. The Partnership Agreement and the takeover of the 51% shareholder’s shares of the company Jadranska vrata d.d., that has a concession of the Brajdica terminal until the year 2041, was signed on 5<sup>th</sup> March 2011. In that way the new Filipino-Croatian company was born – the Adriatic Gate of Container Terminal. Company was established in April 2011.

The aim is to invest in equipment at the Brajdica terminal, to achieve a full automation of unloading, storage and container shipping process and to increase the container capacity to a number of 600,000 TEUs. In that way, it is possi-

gotovo 80 milijuna eura za tu investiciju. Eventualnom izgradnjom Zagrebačke obale, koja bi zajedno s Brajdicom mogla ostvariti ambiciju Rijeke da postane prva kontejnerska luka na sjevernom Jadranu. Riječ je o jednoj od rijetkih investicija danas u Hrvatskoj i daleko najvažnijoj investiciji riječke luke u njezinoj bližoj povijesti.

#### **5.4. Mogućnosti primjene javno-privatnog partnerstva u riječkoj luci**

Potrebno je istaknuti da se u riječkoj luci provedbom svih komponenti projekta Gateway, dalnjom privatizacijom preostalog dijela Luke Rijeka d.d. te rješavanjem problema dodjele koncesije, otvaraju mnoge mogućnosti za uspostavu partnerstva. Na taj je način moguće izdvojiti 3 moguća oblika pojave javno-privatnog partnerstva:

- 1. Pojava (velikih) privatnih poduzeća** kojima se daje koncesija od strane Lučke uprave Rijecka za obavljanje osnovnih lučkih djelatnosti (koncesije na terminalima za kontejnere, drvo, rasuti teret i...). Ta privatna poduzeća u prvom koraku nastaju privatizacijom preostalog dijela Luke Rijeka d.d. ili po mogućnosti dokapitalizacijom od strane privatnog stranog i/ili domaćeg partnera.
- 2. Pojava (malih) privatnih poduzeća** kojim se daje koncesija od strane Lučke uprave za obavljanje sporednih lučkih djelatnosti. Riječ je o manjim poduzećima, koji su i danas neki od njih privatnog karaktera, a dugoročno će nastupiti samo privatna poduzeća.
- 3. Pojava privatnih poduzeća za razvoj komercijalnih aktivnosti** usmjerenih na revitalizaciju dijela lučkog područja namijenjenog komercijalnim sadržajima (restorani, caffe barovi, hoteli i slično). S obzirom da je i dalje riječ o dijelu države koji pripada pomorskom dobru i ovaj oblik se može provoditi kroz dugoročne koncesije.

Održivost pristupa financiranja javno-privatnim partnerstvom, nije samom sebi svrha. Potreba za povećanjem prometa i profita u luci, efikasnosti i produktivnosti obavljanja lučkih operacija, konkurentnosti na sjevernojadranском i mediteranskom tržištu, uz isticanje komparativnih prednosti riječkog lučkog sustava, postavljen je kao cilj pred svakog privatnog partnera koji želi biti dio lučkog sustava. Potreba za boljim poslovanjem, nužno traži partnera koji će moći ispuniti tri ključna uvjeta:

ble to significantly increase the efficiency of the terminal and thus opening the possibility to the Port of Rijeka to become the Europe's "gateway" for the Hungarian, Czech, Slovak, Polish, Serbian and Bosnian and Herzegovinian markets. A large part of the investments will include the purchase of two container cranes, which are planned to be put into operation as soon as the construction of an additional 330 meter long new coastline is completed. In addition to Rijeka, the ICTS has only one terminal in Europe – in the Polish port of Gdynia, which means that, in the future, these two terminals can together connect the new European transport corridor between the Baltic and Adriatic Sea area. In choosing the strategic partner, that was confirmed by the World Bank, an important role had the amount of financial bids for a shareholder's shares in the Jadranska vrata d.d., a subsidiary of the Luka Rijeka d.d. company.

In one part of the contract a social package is incorporated predicting that a total of 200 workers should be employed in the Jadranska vrata d.d. in accordance to the terms of the existing collective agreements in force in the Port of Rijeka. It was determined that, in the next five years, there will be no dividend payments, and the plan is to increase the traffic of the Brajdica terminal up to 500,000 TEUs, which is about three times more than the record turnover realized in the year 2008.

On long terms, the ICTS could have an extremely important role in the development of the Rijeka transport route. This primarily relates to the construction and financing of the railway line Rijeka – Zagreb – Botovo and to the eventual further privatization of the second container terminal in port of Rijeka named the Zagreb Pier. Its construction has not started yet, but the competition is in its final stage and nearly EUR 80 million needs to be provided for its construction. With the potential construction of the Zagreb Pier and with the current container terminal Brajdica, Rijeka could realize its ambition to become the first container port in the North Adriatic. This is one of the few investments today in Croatia and one of the most important investments in the port of Rijeka in its recent history.

#### **5.4. The possibilities of public-private partnership implementation in the port of Rijeka**

It should be noted that the realization of all the Rijeka Gateway Project components, a fur-

- da se efikasnost (ekonomičnost, profitabilnost) lučkih operacija poveća na razinu koja je primjerena svjetskoj razini, odnosno da bude mjerena prema objektivno utvrđenom kriteriju; povrat na uloženi kapital, prihod, dobit, zaposlenost i slično,
- da cijena lučkih usluga bude konkurentna cijenama sjevernojadranskih, a po mogućnosti u specifičnim djelatnostima, i mediteranskih lučkih sustava,
- da razina kvalitete (kao jedini kvalitativni faktor) lučke usluge bude na svjetskoj razini.

Temeljem izloženog u ovome radu proizlazi da JPP pripada onim modelima, odnosno mogućim rješenjima koja optimiziraju navedena tri uvjeta. Provedbom partnerstva trebale bi se zadovoljiti sljedeće tri ciljne funkcije:

$$\begin{array}{lcl}
 \text{efikasnost,} & & \text{u odnosu na utvrđeni} \\
 \text{ekonomičnost,} & \geq & \text{kriterij vrednovanja učinka} \\
 \text{rentabilnost,} & & \\
 \text{cijena usluge} & \leq & \text{cijenama konkurenata} \\
 \text{kvaliteta usluge} & \approx & \text{kvaliteta u razvijenim} \\
 & & \text{državama}
 \end{array}$$

Zadržavanje javnog vlasništva nad lučkim poduzećima (Luka Rijeka d.d.) ne garantira ostvarenje navedenih ciljanih uvjeta na što ukuzuje i svjetska praksa. Očigledno, i po prirodi interesa, uvjeta i ciljeva, kooperacija javnog i privatnog nameće se kao mogućnost koja se može provesti u dominantan model razvoja lučkog sustava.

Za praksu je bitno istaknuti da nema ograničenja u utvrđivanju interesa mogućeg partnerstva javnog i privatnog, i da svaka strana (javna vlast, privatni subjekt) može inicirati model javno-privatnog partnerstva s ciljem obavljanja određene lučke djelatnosti koja već postoji ili ne postoji uopće ili postoji ponuda na neadekvatnoj razini. Ključno za obje strane je da se raspoloživi činitelji na danoj razini organizirano mogu objediniti na način koji zadovoljava privatni sektor (povrat ulaganja, prosječna stopa povrata) i javni sektor (otklanjanje gubitaka, viši standard života, zadovoljstvo stanovništva).

## 6. ZAKLJUČAK

Suvremeni trendovi na svjetskom tržištu, liberalizacija i globalizacija su izravno utjecale na lučko okružje što je dovelo do novog modela

ther privatization of the remaining part of the Luka Rijeka d.d. and a better resolution of the concession institute, can open many opportunities for establishing the public – private partnerships. In this way it is possible to emphasize three possible forms of the PPPs:

1. appearance of large private companies that provide concessions by the Port of Rijeka for carrying out the basic activities (concessions for container terminals, wood, bulk and others ...). In the first step, these private companies result from the privatization process of the remaining part of the Luka Rijeka d.d. or, if possible through the recapitalization by private foreign and/or domestic partners,
2. appearance of small private companies that provide concessions by the Port of Rijeka for carrying out secondary port activities. These are small companies, where even today some of them are private, and over the long term, only private enterprise will occur,
3. appearance of private companies that are the focus of the development of commercial activities, primarily aimed at the revitalization of the port area intended for commercial facilities (restaurants, coffee bars, hotels, etc.). These areas are also part of the maritime domain, so this form can also be implemented through long term concessions.

The sustainability approach of funding through public-private partnership is not the purpose by itself. The need to increase the turnover and profits in the port, to achieve better efficiency and productivity performance of the port operations, to raise the port competitiveness of the north Adriatic and Mediterranean markets, with a stress on higher comparative advantages of the Rijeka port system, is set as a goal in front of each private partner who wants to be a part of the port system. The need for more business requires a partner who will be able to meet three key conditions:

- that the efficiency (cost-effectiveness, profitability) of the port operations increases to a level that is appropriate to the global level and can be measured according to the established objective criteria, the return on equity, revenue, profits, employment, etc.,
- that the price of the port services must be competitive to the prices of the North Adriatic ports and to the Mediterranean ports in some specific activities,

financiranja luka uz pomoć privatnog partnera. Po svojoj suštini modeli povezivanja javnog i privatnog sektora na području lučkih djelatnosti trebaju s gledišta javnog interesa osigurati što bolje obavljanje lučkih djelatnosti, a s gledišta privatnog interesa sve prednosti (motive, ciljeve) privatnog poduzetništva koji se ne mogu ostvariti angažiranjem samo javnog sektora.

Javno-privatno partnerstvo je u Republici Hrvatskoj pomalo poprima značajnu ulogu u razvoju infrastrukturnih projekata te pružanju kvalitetnijih javnih usluga. Iako su mnogobrojni uspješni primjeri partnerstva u različitim gospodarskim sektorima dok je primjena u lučkom sustavu još u začetku. Trenutno stanje u hrvatskim morskim lukama u pogledu finansijskih sposobnosti za financiranje kapitalnih projekata nije zadovoljavajuće. Vlastiti izvori financiranja su minimalni, a državne investicije su neodržive posebice u posljednje dvije godine otežanih finansijskih uvjeta uzrokovanih svjetskom krizom. Također, pravni okvir ne podržava uplitanje privatnog kapitala u obavljanje lučke djelatnosti iz nekoliko razloga primjerice; ne rješava složena pitanja ulaganja kapitala na pomorskom dobru, stjecanja vlasništva, prenosi-vosti koncesije, nemogućnost stjecanja hipoteke i drugih stvarnih prava na području pomorskog dobra i slično što zasigurno ne otvara mogućnosti jače afirmacije privatnog kapitala u hrvatski lučki sektor. Stoga je uspostaviti cjeloviti, jasan i transparentan integralni model upravljanja pomorskim dobrom kako bi se oživjelo pomorstvo i gospodarenje lukama, kao vitalni gospodarski segment Republike Hrvatske.

U sustavu riječke luke pokušalo se realizirati nekoliko projekata javno-privatnog partnerstva koji su nažalost bili neuspješni kao što su projekt Ganz i Projekt o poslovno-tehničkoj suradnji za upravljanje kontejnerskim terminalom. Najnoviji projekt koncesionara za kontejnerski teret Jadranska vrata d.d. i International Container Services Inc. – Manila može se opisati kao strateško partnerstvo. Također, treba imati na umu, da će tek vremenska distanca zaista pokazati uspješnost ovoga projekta.

Održivost pristupa financiranja javno-privatnim partnerstvom u sustavu morskih luka, nije samom sebi svrha. Potreba za boljim poslovanjem, nužno traži partnera koji će moći ispuniti tri ključna uvjeta: postizanje efikasnosti (ekonomičnost, profitabilnost) lučkih operacija na svjetskoj razini, konkurentnost cijena spram

- that the level of the port service quality (as the only qualitative factor) is on the world level.

Based on the conclusions in this paper, the PPP is one of those models and possible solutions that has optimized the three possible conditions. The implementation of the partnership should meet the following three functions:

$$\begin{array}{lcl} \text{efficiency}, & & \text{established performance} \\ \text{cost-effectiveness}, & \geq & \text{evaluation criteria} \\ \text{profitability} & & \\ \text{service price} & \leq & \text{competitors' prices} \\ \text{service quality} & \approx & \text{quality in developed} \\ & & \text{countries} \end{array}$$

Retaining the public ownership of the port companies (Luka Rijeka d.d.) does not guarantee the achievement of these target conditions that are highlighted by the world practice. Obviously, the nature of interests, requirements and objectives, public and private cooperation is imposed as an option that can be the dominant model of the port system development.

It is important to emphasize that in practice there are no limitations in determining the potential interest of public and private partnerships, and that each party (public authorities or private entity) can initiate the model of public-private partnership in order to conduct certain port activities that already exist or do not exist at all or offer them at an inadequate level. The key for both sides is that the available factors at the given level of organization can unite interests of the private sector (return on investment, the average rate of return) and of the public sector as well (the elimination of losses, a higher standard of living, the satisfaction of the population).

## 6. CONCLUSION

Current trends in the world market, such as liberalization and globalization, have impacted directly on the port environment and led to new models of financing port investment in collaboration with the private sector. In its essence the public-private partnership models in ports should promote public interests through better performance of port activities and to ensure all benefits (motives, purposes) of private businesses that cannot be achieved by employing only the public sector.

The Public-Private Partnership in the Republic of Croatia takes a significant role in the infrastructure projects development and in providing better public services. There are many successful

sjevernojadranskih i mediteranskih luka te kvalitetu lučkih usluga na svjetskoj razini. Uz uspostavu cjelovitog, jasnog i transparentnog integralnog modela upravljanja pomorskim dobrom ovaj model financiranja zasigurno pridonosi rastu i razvoju hrvatskog lučkog sustava.

examples of partnerships in different economic sectors, while the use in the port system is still in its infancy. The current situation in the Croatian seaports, in terms of financial capacity to fund capital projects, is not satisfactory. That indicates the need for private sector participation, of domestic or foreign origin, in financing the port infrastructure and suprastructure through "healthy" and sustainable projects of the public – private partnerships. The Port own financial sources are at a minimal level and government investments are unsustainable, especially because of the difficult financial conditions caused by the global crisis in the last two years. Furthermore, the legal framework does not support the involvement of private investment in port activities for several reasons: for example, it does not solve the complex issues of capital investment in the maritime domain, ownership acquisition, portability of concession, concessions transferability, the impossibility of acquiring mortgages and other legal rights in the maritime domain. In these circumstances a stronger affirmation of the public-private partnership in the Croatian port sector is not achievable. Therefore, it is very important to establish a comprehensive and transparent governance model of the maritime domain and concession in order to revive the maritime and port management as a vital segment of the Croatian economy.

The Rijeka port system attempted to implement several projects based on public – private partnerships. Some of them were unfortunately unsuccessful such as the Ganz project and the Project on Business and Technical Cooperation for the Management of Container Terminals. The latest project between the Jadranska vrata d.d. and the International Container Services Inc. – Manila can be described as a strategic partnership. But, keep in mind that only the time distance will really demonstrate the success of this project.

The sustainability approach of funding public-private partnership is not a purpose by itself. The need for a better business search for partners that can meet three key conditions: achieve better efficiency, cost-effectiveness, profitability compared to the world level, raise the port competitiveness on the North Adriatic and Mediterranean markets and increase the quality level of services. With the establishment of a comprehensive and transparent model of the maritime domain, public-private partnership can certainly be a good model of financing the port system, and can contribute to the growth and development of the Croatian port system.

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