WorldCargo news

Port potential in the Ukraine

The government in Kiev has promised a "new start" for the ports industry, but its words still have to be translated into action

The "stand-out" performer in the container handling sector is HPC Ukraina in Odessa

In recent years many countries have opened their ports to inward foreign investment, as part of general economic liberalisation, or more specifically to help generate the new capacity needed to handle growing foreign trade resulting from that economic liberalisation.

One big country that has thus far struggled to establish a stable legal and administrative framework to encourage inward investment is the Ukraine, even though its ports have great potential. Its 18 seaports and various river ports are still largely "waiting" for infrastructure development and inward foreign investment has lagged far behind what might otherwise be expected for a country of this size and geographical location.

Hard to define

One local expert, Arthur Nitsevych, a partner in International Law Offices (ILO) in Kiev, says that the main barrier is that in the Ukraine "a port is something that is very hard to understand." According to Article 73 of the Merchant Shipping Code, a port is a state-owned unitary enterprise (ie a public sector company), even though huge private terminals and even private ports exist and function. This "legislative nonsense" is probably a "relic" of the USSR, but so far efforts to adopt a new wording or even develop a new law on ports have floundered. Today a special working group is trying to satisfy the requirements of both public ports and private investors.

A Ukraine port development feasibility study financed by the EU to the tune of €1.715M and carried out in 2008-2010 by an international consulting firm "has not helped," says Nitsevych. Last October 2010 the Cabinet of Ministers of the Ukraine adopted a long-term transport strategy, but it was long on declarations of intent and short on real policy.

"What do we have?," Nitsevych asked rhetorically when speaking at the recent Port Finance International conference in Istanbul. "If we look into a manual for port development, it's reasonable to look for investors among port operators, cargo owners and shipping lines.

Absent friends

"Among port operators in the Ukraine we don't see PSA, Hutchison or any other significant international players. Only HPC Ukraina (a subsidiary of the German HHLA), operating the container terminal in the Port of Odessa, and TIS in Yuzhny can be considered as independent international players.

"Cargo traders are more active. Ukraine is a big exporter of grain, so in recent years commodity traders such as Bunge, Cargill, Glencore and others were quite active in investing in terminal facilities, mainly elevators, in ports. As for shipping lines, only CMA CGM managed to launch a container terminal in the Port of Odessa a couple of years ago, together with a local partner."

Nitsevych noted that the new law of Public Private Partnership (2010) is "declarative and does not contain real tools for implementing projects in the port sector." Among possible PPP structures are joint ventures and concessions, but these have never been launched. *De facto* a PPP arrangement in the ports is either a lease or a "joint agreement," or a mix of them.

Very complex

In any case the legal system is very complicated. ILO in Kiev reckons there are no less than 500,000 main documents deriving from Acts. Inevitably the system is very bureaucratic, court process are ambiguous and much of the law is open to interpretation and then reinterpretation. But business needs clarity and stability.

A 2009 Cabinet Resolution is supposed to regulate how investment projects are implemented in the public sector. It provides that the Ministry of Infrastructure, before bringing a project to tender (or auction), has to have it approved by the State Property Fund, the Ministry of Economy, the Ministry of Finance, the Ministry of Justice and the national projects agency.

Hardly surprisingly, not many projects have gone forward and the procedure is being challenged in the courts.

"So we face an interesting situation," said Nitsevych. "On the one hand, the government needs to assess its capability to attract foreign direct investment to the ports. On the other hand, private investors willing to invest in Ukraine are very critical and cautious in their relations with public bodies."

In February the new President of the Ukraine, Viktor Yanukovich, visited Odessa and declared that 2011 will be "the year of reforms...our waterfronts will attract investment and our ports and infrastructure will be financed internationally."

If this happens, says Nitsevych, some very interesting projects may be realised and they could alter the dynamics of the Black Sea region where Turkey, Georgia,

Bulgaria and Romania have been very active during recent years.

ILO advises investors to look for local partners, first of all, among port professional companies and traders, as they can deal with all the legal and administrative aspects. An alternative approach is to apply to an international financial institution or transaction adviser. These are active in the region and understand local requirements.

As far the container handling sector is concerned, the stand-out performer is HPC Ukraina, the HHLA affiliate based in Odessa. Last year it was reported (*WorldCargo News,* October 2010, p4) that the company is to invest €70M at its concession in Odessa, having won the port's tender to develop the Quarantine Mole site as an extension of the existing terminal.

HPC Ukraina has operated in Odessa for 10 years and traffic built up to 0.5M TEU/year before the economic crisis of 2008-9. Its management and services contract with the port was recently extended by another 20 years to 2044, providing it with the confidence to invest more.

It is almost as if HPC is the "exception that proves the rule." In Nitsevych's opinion, HPC has a sound and very thorough risk management policy and it has also had the advantage of being associated with the Port of Odessa, a pioneer of port development in the Ukraine, which is prepared to accommodate the needs of investors and customers and deal with all the "red tape" itself.

Bitter row

In contrast, Russia's TransInvest Service had problems in Yuzhny as far as container handling is concerned (but not on the bulk side). The most serious problems have concerned Uktranscontainer (UTC), the affiliate of Russia's National Container Company (NCC), and the Port of Ilyichevsk.

Last June the government in Kiev set up a working group to try and resolve this long-running and very bitter dispute. In October it was announced that the Odessa Regional Court of Appeal had ruled in favour of UTC and instructed Ilyichevsk port authority to reinstate its joint activity agreement with the company. This decision overturned a previous judgement from the Supreme Court in Kiev in favour of the port authority.

However, on December 29, the Supreme Commercial Court of Ukraine declared the joint activity agreement dissolved. After a couple of years of court battles, the Court satisfied the cassational appeals of the Prosecutor's Office, the Ministry of Transport, the port authority and its trade unions. In effect, the Court refused to hear the case again. Instead it took into account "newly disclosed circumstances," leaving the previous decision with no changes. The decision became effective immediately.

For obvious reasons, Nitsevych cannot go into the legal details of the case, but he does say that it is probably another bad sign as far as attracting investment goes. NCC has said before that it will take the case to the International Court, and that could deliver serious "moral damage" to the general climate for investing in the Ukraine, whatever the outcome.

The port accused UTC of violating many clauses in their joint activity agreement, including the timing and currency of fee payments, financing of non-joint activity assets and the allocation of non-joint activity operational expenses. "Disputes such as these make private investors think twice before entering into such arrangements, let alone committing to significant investment," said Nitsevych.

Some of UTC's former customers, such as Maersk and ZIM, are now calling at the sea fisheries port in Ilyichevsk, where two Liebherr LHM 500 cranes have been installed. It has been reported locally that two STS cranes and five RTGs are on order from Liebherr, but this could not be confirmed by *WorldCargo News*. ❑

Constantza "on track"

RETRACK (Reorganisation of Transport Networks by Advanced Railfreight Concepts) is to increase the frequency of its "demonstration" train between Köln-Eifeltor and Györ on the River Danube in Hungary from a weekly pair to three times a week in each direction, after one year of operation.

RETRACK is an integrated project within the 6th Framework Programme of the European Commission, in which 13 partners led by TNO work on the development of an innovative rail freight service across Europe. The aim is to design, develop and implement a commercial trans-European rail freight service between Rotterdam and Constantza.

The Köln-Györ service started with two regular customers and now has 10. The trains are up to 740m long and can weigh 2300t. Goods of all kinds including bulk, semi-finished products, containers and machine parts are carried.

A secondary hub is being established in the Rotterdam region to meet the increasing demand to and from Rotterdam. RETRACK consortium members include Central European Railways Rt (Hungary), LTE Logistik (Austria) and Transpetrol GmbH (Germany), with Transpetrol assuming the role of a neutral train operator and railway undertaking for the German part of the service. The destinations regularly served today include Rotterdam, Amsterdam and Oss in the Netherlands, Marl, Duisburg and Köln in Germany, Gent in Belgium, Linz and Villach in Austria and in Hungary Györ, Bekesczaba, Oroshaza and Sopron.

In from the COLD

Container Liniendienst Donau (COLD) is a project under the aegis of the EU's Marco Polo programme to examine the feasibility of a regular container barge liner between Constantza and the Austrian inland waterways ports on the Danube.

A new service has already started "lower down," connecting Budapest with Belgrade and Constantza. The HELO 1 service started up last August and is open for project cargoes up to 250t as well as containers. The line has reported that 1Q/2011 traffic was higher than expectations and utilisation levels have been running at more than 70%.

In 4Q/2010 the line carried 1100 TEU, but by February this year it had carried a further 1900 TEU. Most of the demand has been for EC transport, the familiar "start" pattern on other European waterways. However, enquiries to move loaded containers are increasing.

HELO Line is part of Helogistics Holdings GmbH, a significant mover of iron ore pellets and other bulk cargoes along the Danube and Rhine rivers from the ports of Ismail, Ukraine, and Rotterdam to various locations in Northern, Central and Eastern Europe. At the end of last year Helogistics was acquired by Ferrexpo, the Swiss-based iron ore miner and exporter in the Ukraine.

The most established container barge service on the Lower Danube is the one operated by Jugoagent between Belgrade and Constantza. In addition, Mainrom Line, with its operational HQ in Bucharest, offers a common user service between Constantza and Giurgiu. Mainrom offers an integrated service package, including storage, rehandling, depot work and trucking to/from Giurgiu. ❑