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Granting of a concession to an integrated public passenger transport operator in a competitive procedure

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Abstract

In this paper the author examines a hypothesis based on the results of relevant studies on the inefficiency of publicly owned companies due to the influence of politics on exercising the control. By granting a concession for the management of integrated public passenger transport (“tactical level”) in a competitive procedure to the best tenderer a market test of objectively necessary management costs will be ensured and the management will be more efficient than if the state set up a company for this purpose and to which the concession would be granted unconditionally. On the basis of the arguments confirming the hypothesis, the author drafted the criticism of the proposal for a legislative arrangement of the management in Republic of Slovenia and prepared a proposal as to how the legislator should regulate the issue of management in order to achieve the ratio legis of the Regulation (EC) No 1370/2007 and national programme documents.

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1. Introduction

Pursuant to Article 8, paragraph 3 of Regulation (EC) No 1370/2007¹ the Member States that decide to entrust a third party that is not an internal operator (Article 5, paragraph 3) with the performance of public passenger transport services (hereinafter PPT) are obliged to ensure granting of concessions to the operators of PPT services by 2

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¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315/1.

December 2019 by means of calls for competition within the meaning of Directive 2004/17/EC² and/or Directive 2004/18/EC.³ The European Union (hereinafter the EU) regulates the area of PPT only within the framework of single market protection and therefore it determined in Article 5 that competent authorities of the Member States may take decisions, unless the national law prohibits this, on a direct conclusion of public service contracts, if their average annual value is estimated at less than EUR 1 000 000 or if it is their purpose to drive less than 300 000 kilometres of public passenger transport services. The Regulation further lays down that in case a public service contract is concluded directly with a small- or medium-sized company that uses 23 vehicles at most, these top limits can increase either up to the average annual value, estimated at less than EUR 2 000 000 or if they refer to the annual performance of services, at values not higher than 600 000 kilometres of public passenger transport services. Having regard to the frameworks defined in Regulation (EC) No 1370/2007 the Member States are obliged to create regulatory and organisational - functional conditions for the performance of integrated PPT services in line with their national conditions and possibilities.

Their objective is to provide affordable PPT services which will enable efficient mobility, better social and economic cohesion, prosperity, cleaner environment, safe energy supply etc. to the inhabitants by a reasonable, affordable, high quality and efficient, integrated (intermodal) transport system in the conditions of regulated competition.

On the basis of the EU legal requirements and the fact that a percentage of PPT in the Republic of Slovenia is very low when compared to the passenger car transport, the government has recently adopted several measures for improving the situation in this field. In the programme document (Resolution on national programme of transport development in the Republic of Slovenia for the period to the year 2030)⁴ it outlined further steps in the regulatory and implementation issues. Within the meaning of the planned programme activities the competent Ministry of Infrastructure has prepared draft changes and amendments to the Road Transport Act in the year 2018.⁵ The proposal contains amendments to Article 14 of the Road Transport Act,⁶ and these are the provisions 14.a, 14.b, 14.c, 14.č, 14.d, 14.e and 14.f, on the basis of which an operator of the integrated PPT is to be established as a public enterprise and its operation is to be ensured.

This paper tries to define the criteria for assessing the proposed legal form of the PPT operator in the Republic of Slovenia in a legislative procedure on the basis of the relevant studies dealing with the issues of economic and broad social efficiencies of the companies⁷ in public and private capital ownership and the objectives that should be pursued by PPT and to answer the question concerning the adequacy of proposed solutions. The examination involves wider issues from the field of capital ownership of the companies and the impact of ownership on the efficiency of their operation in the economic and broader social meanings. It includes their economic efficiency as well as other values relevant for the social community. The author has developed the following hypothesis: by granting a concession for the management of integrated public passenger transport (“tactical level”) to the best tenderer in a competitive procedure, the costs of the management will be objectively determined in terms of a market and the management will

² Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 134/1. This Directive has now been repealed and replaced by Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94/243.

³ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134/114. This Directive has now been repealed and replaced by Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94/65.

⁴ Official Gazette of the RS, No. 75/16.

⁵ The proposal of the Act Amending the Road Transport Act EVA 2016-2430-0008, available from http://www.mzi.gov.si/fileadmin/mzi.gov.si/pageuploads/DC_splosno/ZPCP-2.pdf (3 July 2018).

⁶ The Road Transport Act was adopted in 2006, but was amended several times in the years 2008, 2010, 2011, 2012, 2013 and 2015 (Official Gazette of the RS, No. 131/06, 5/07 – amended in 123/08, 28/10, 49/11, 40/12 - ZUJF, 57/12, 39/13, 92/15; hereinafter referred to as: ZPCP-2)

⁷ In this paper the term company is used within the meaning of organisation of production factors intended for carrying out of an economic activity that the legal order directly and indirectly through a carrier of entrepreneurship recognises a status of a legal entity as a bearer of rights and obligations.

be more efficient than if the state set up a company for this purpose, to which the concession would be granted unconditionally. The paper deals with the field of PPT regulation in the Republic of Slovenia as one of the EU Member States, but the answers to the research question will also be helpful to other EU Member States, especially those that have not adequately regulated this field yet.

2. Introductory theoretical definition of the economic and social meanings of public passenger transport

With the reference to the macro development model adequate supply of services of PPT is a condition for the growth of the private sector and development of social community, while the micro model stipulates it as an indirect impact on the supply and demand, and this is one of important reasons why the social market state (Korže, 2005) is obliged to play an active part in the production and dispersion of these goods. Social market state is obliged to provide the inhabitants with adequate access to public transport services (Majumdar, 2010). The nature of the public interest and intensity of the state's interference in the production of these goods in a particular society can be determined by economic theories that are faced with social, demographic, ecological and other sciences, which are reflected in real life as the result of historical processes and political compromises. The efficiency of the public interest measured by the ratio between costs and benefits, should be estimated on realistic items, so that the efficiency of intangible benefits is ascertained by the involvement of "cost-benefit analysis. "Through regulation competition the state can try to eliminate numerous externalities by the enforcement of the public interest.

In the anthropologic, moral, legal, political and broad social meanings human rights and freedoms are one of the fundamental assumptions for the understanding of modern economic, political and legal systems and processes. Human dignity is the basis which comprises the full scope of human existence, in all its manifestations and is materialized through numerous human rights and freedoms (Lampe, 2010). Exercising of the right to mobility as an important part of human freedom of movement and exercising of other human rights that mobility enables, such as the right to work, right to education, healthcare, right to economic, cultural and social development of individuals and thus the social community as a whole depend on PPT to a great extent. The General Assembly of the United Nations defined the right to freedom of movement in Article 13 of the Universal Declaration of Human Rights⁸ as a civilisation value, and with reference to it the Council of Europe laid it down as a general principle in Article 2 of the Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention).⁹ By the ratification of the Convention the signatory states of the Convention obliged to enforce the right to mobility in their national legal orders and they may restrict its enforcing only exceptionally, i.e. in cases when this would be necessary due to ensuring the national or public security, establishment of law and order, prevention of committing criminal offences, protection of health or moral or protection of rights and freedoms of other entities. In accordance with the Convention or deduction of the human right to freedom of action, the Republic of Slovenia as the member of the mentioned acts of international public law regulated the right to freedom of movement in Article 32 of the Constitution of the Republic of Slovenia,¹⁰ in substance and equally as defined by these acts.

3. Pursued effects of regulatory measures for the increase in PPT

In the programme documents of the EU, transport is defined as a basic, key activity on which competition, the complete economic development, cultural and social progress depend (OECD, 1977). More than ten million employees work in the EU transport sector (European Commission, 2007). The transport industry generates a turnover of about EUR 100 billion, which accounts for over 10% of gross domestic product (GDP) in the EU (European Commission, 2003). In addition to the economic role, transport plays also an important role in establishing relationships between citizens of the Member States. Consequently, a common transport policy of which the provision

⁸ Adopted and declared by the General Assembly of the United Nations on 10 December 1948 with Resolution No. 217 A (III).

⁹ The Convention and the Protocols have been amended in accordance with the revisions of Protocol No. 11, which was drawn up and presented for signature to the Council of Europe Member States in Strasbourg on 11 May 1994, and entered in force on 1 November 1998.

¹⁰ Official Gazette of the RS, No. 33/1991 and amendments.

of high quality PPT services has also been a component, is undoubtedly one of the foundations of modern Europe. Numerous warning signs like traffic jams and the resulting excessive pollution of the environment, traffic accidents, and consequential costs dictate the need for action. According to the EU estimate, the costs relating to traffic jams will account for 1% of the EU GDP in the year 2010.¹¹ EU actions aim at preventing such trends and establishing a balance between the different ways of transport, increasing intermodality, decreasing traffic jams, ensuring safer services and PPT services of higher quality, enabling mobility, encouraging involvement of environmentally friendly means of transport, establishing the necessary conditions for the development and construction of more fluent networks (infrastructure), and introducing new public financial sources needed to achieve the goals set.¹² These objectives can be achieved by reasonable, affordable, high-quality and efficient transport systems.¹³ Undisturbed, efficient movement of people, goods and services is not only a necessary condition for a high level of competitiveness, but also for social and economic cohesion, environmental protection, safe energy supply, increased work standards, passenger and citizen safety within the meaning of objectives mentioned in the White Paper: European Transport Policy for 2010 and for the elimination of congestions on roads, in towns and in the air traffic and for the reduction of impacts on the environment relating to the objectives determined in the Green Paper: Towards a new culture of urban mobility. Numerous scientific discussions have been held so in the field of studying the meaning of accessibility of users to public passenger transport services from the aspect of social and ecological externalities that reflect in the reduced use of passenger cars, reduced emissions and noise, less congestions in traffic (Geurs and others, 2006), and also on equity and social exclusion in accessibility (Van Wee and others, 2011).

The EU programme documents were followed by enacting Regulation (EC) No. 1370/2007 that follows, on one hand, the provision of Article 21 of the Treaty of the Functioning of the EU¹⁴ (the former Article 18 of the Treaty on European Union), in accordance with which each citizen of the EU is given, in principle, the right to freedom of movement and right to residence on the territory of the Member States under consideration of the urgent restrictions and conditions and on the other hand the provision of Article 106, paragraph one of the Treaty of the Functioning of the EU (the former Article 86 of the Treaty on European Union), which emphasises that the provisions on the protection of free competition and prohibition of state aid (provisions No. 101 to 109 of the Treaty of the Functioning of the EU) are applicable also to public undertakings or companies which are granted special or exclusive rights by the Member States. The general principle determined in the first paragraph and in accordance with which the economic operators are granted special or exclusive rights by a competent state authority (e.g. entities managing infrastructure and performing services of public enterprises) carry out the activity under competitive conditions, is amended by the provision of Article 106, paragraph two of the Treaty of the Functioning of the EU. It lays down that the operators authorised for the performance of services of general economic interest or companies with the nature of revenue monopoly have to act in line with the rules of the EU Treaties, especially the rules of the competition and that departing from these rules is admissible only if the application of these rules obstructed the performance of the assigned special tasks in law and in fact. It furthermore prescribes that departing from the rules may not affect the development of trade in the scope that would be contrary to the interests of the EU. Article 93 of the Treaty of the Functioning of the EU (the former Article 73 of the Treaty on European Union) establishes a legal basis for co-financing of the PPT services from public funds and determines that aids are compatible with the Treaties, if they are needed for the coordination of traffic or if they serve as replacement for the performance of certain services that are part of a public service.

In accordance with the nature of *acquis communautaire* (Korže, 2017) the search for the ratio legis of the above-mentioned legal norms also needs to be derived from the White paper – European Transport Policy for 2010, to which Regulation (EC) No 1370/2007 relies on in Item 4 of the Preamble and lays down that the main objectives of the regulated competition in the field of PPT are to ensure the transparent performance of safe, efficient and high-quality services taking into account social, environmental and regional development factors, in establishing special tariffs for certain categories of passengers, such as pensioners and in eliminating disparities among providers these services

¹¹ Green Paper – Towards a New Culture for Urban Mobility, COM (2007) 551 final.

¹² Ibid.

¹³ White paper – European Transport Policy for 2010: Time to Decide, COM (2001) 370 final.

¹⁴ Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 202/47, 7 June 2016.

from different Member States that may cause substantial distortions of competition. The acts, such as White Paper – “Fair payment for Infrastructure Use: A phased approach to a common transport infrastructure charging framework in the EU”,¹⁵ the Green Paper – “The citizens' network, Fulfilling the potential of public passenger transport in Europe”¹⁶ and Green Paper – Towards a New Culture for Urban Mobility are relevant for the interpretation.

Due to the geographical position of the Republic of Slovenia as a Member State of EU, transport and PPT as its integral part, are important economic branches with a huge impact on the economic, social, and total development of the society as a whole (Majcen et al., 2000). Despite the description of the meaning of PPT over 83% of passenger kilometres in the Republic of Slovenia were covered by passenger cars (Krajnc, 2010). In spite of the fact that in the recent years the Republic of Slovenia has adopted several measures for the increase in public passenger transport, such as the introduction of subsidised pupils' and students' tickets, it derives from the EUROSTAT data of 10 February 2017 that the residents in the Republic of Slovenia carried out 86.4% of all passenger transport by passenger cars and only 2.8% by rail and 10.8% by bus in 2015. The stated document further reveals that the Republic of Slovenia is ranked first among all EU Member States when the share of family budget allocated to personal mobility is considered. An average share that household budgets allocate to the purchase of passenger cars is above the average of the EU Member States and the share allocated to the operation of passenger cars is the highest among the EU members.

Ratio legis of the EU regulations governing the field of PPT is the protection of functioning of the EU single market and while following the EU legal frameworks the Member States are competent to create conditions for the performance of PPT services by a public enterprise in their national legal orders in line with their actual needs and objective possibilities.

For this purpose the Republic of Slovenia drafted a Resolution on the national programme of transport development in the Republic of Slovenia for the period to the year 2030 (hereinafter the Resolution). It is noted in the Resolution that the present PPT in the state is not competitive to the transport by passenger cars and that its competitiveness even reduced. Among the priority tasks for the improvement in current situation the Resolution emphasises the need for the introduction of an integrated ticket among the operators of rail, long-distance regular and urban passenger transport and for the appointment of a PPT operator at the state level that should manage the PPT system well. The operator should take care of the PPT planning, coordination of transport timetables among the operators, carry out settlements among the operators that will perform integrated lines and transport, supervise the performance of transport services, take care of public addressing as well as for the promotion of the PPT use. The main objectives for the development of PPT that are pointed out in the Resolution include also the increase in the sustainable transport system along with the provision of appropriate solutions to PPT that will be accessible to the majority of inhabitants. Taking into account the lack of demand for economic justification of introducing regular public transport lines in some parts of the Slovene territory (e.g. rural areas or areas of dispersed settlements), the introduction of public transport services on request of a user would provide a possibility that these services would be available also in such areas.

4. Management of PPT by a three-stage model

The effectiveness of success in the field of PPT strictly depends on the relationship between authorities and operators. One of the main functional roles of authorities is to stimulate operators to conduct their business towards the achievement of the strategic goals of the system (i.e. principal-agent theory), for which complementary schemes of incentives and penalties are an indispensable tool. Studies revealed that whenever the authorities are involved in entrepreneurial activities in competitive conditions of the operations the services are improved and they cost less. To cope with that wide overall objective, the project Managing and Assessing Regulatory Evolution in local public Transport Operations in Europe (hereafter MARETOPE) investigated in an integrated way those impacts of changes

¹⁵ COM(1998) 466 final.

¹⁶ COM (95) 601 final.

on the roles and activities of different stakeholders, public authorities, public transport operators, users and producers of transport means and systems (European Commission: TRIMIS, 2003).

The authors of the MARETOPE project defined the management of PPT on the basis of the so-called three-stage model; in accordance with it the tasks relating to the organisation and performance of PPT services are divided into the following sets:

- tasks at a strategic (normative) level that are performed by the state and comprise the establishment of legal bases by which it defines general objectives and determines funds for their implementation and strategic planning (strategic planning is involved in the formulation of general aims and in the determination of broad terms of the means that can be used to attain these),
- tasks at a tactical level (“public transport authority”, in Austria – e.g. “Verkehrsverbund” - they may operate at a state level, at the level of provinces as for example in the Netherlands, at the level of mobility regions as for example in Germany or at the level of towns as for example in Helsinki) (Lep, 2015) and include taking of decisions on the funds for the implementation of general objectives and optimal efficiency of PPT system operation (making decisions on acquiring means that can help reaching the general aims, and on how to use these means most efficiently),
and
- tasks at an operational level (performance of PPT services) that include the performance of PPT services and that they are carried out in an efficient manner (makes sure the orders are carried out, and that this happens in an efficient way).

The EU does not prescribe the way of organising PPT, it is only important that such an approach is selected that will ensure the achievement of the objectives determined in the programme and legal documents. It is therefore important that each entity participating in the system develops its own strategy, tactics and the manner for quality, transparent and economically efficient performance of the tasks imposed on it.

A number of forms of organisation of this chain of principal(s) and agent(s) are possible. On the basis of the Resolution that relies on the three-stage model of PPT management the Ministry of Infrastructure of the Republic of Slovenia prepared a draft of the Act Amending the Road transport Act, in which it proposes that the Republic of Slovenia should establish a company for the management of public passenger transport in order to perform the tasks at a tactical level (the capital of the company should be 100% government-owned). By this act the company would obtain a status of a concessionary of the obligatory state public enterprise (Article 14 a) for managing public passenger transport (Article 14 c). Its tasks define the management and development of a single-ticket system, ticket sale, determination of uniform products and general terms and conditions of their use, supervision over integrated lines and the PPT system on the principles of financial, physical, tariff and management integration of public, special and other passenger transport, supervision over the quality and promotion of PPT, implementation of the settlement system among the transport undertakings included in the single-ticket system, and expansion to secondary services, ensuring solving of complaints lodged by passengers, informing of passengers about the single-ticket system and other products, development, planning and promotion of PPT and support to the platform for the organised address of needs and opinions of the municipalities relating to the standards of accessibility to public regular transport, quality of transport services and price policy of transport services within PPT, research and development and international cooperation in the fields of managing PPT, trademark development, decision making in the procedures of transport planning, coordination and fixing of timetables in PPT, taking care of technical bases for setting standards of minimal accessibility to PPT and determining the quality of services, formulating proposals for the uniform price policy, supervision over the books of distance measurements, line register and timetables in national and international transport, supervision over the spatial information system of the transport scheme of PPT and public routes, space and other infrastructure, relating to the access to stops / stations and separate station points within them and rectification of safe and adjusted routes, supervision over records on notification of taxi transport, licences for permanent non-regular passenger transport and licences for transport on call, keeping records and registers, interconnecting of transport services as integrated PPT services in accordance with Regulation (EC) No. 1370/2007 and others tasks specified in the regulations.

In accordance with Article 14 d of the legal proposal the rules on the procedure of granting concessions to a management company are excluded. It is stipulated that the state as a concession granting authority concludes a management contract with the management company as the concessionaire for a period of 10 years; the contract is automatically extended for another 10 years. By the granted concession, the company in the territory of the Republic of Slovenia will obtain an exclusive right to perform management tasks. The integration of road, rail, cableway and PPT with inland waterways and sea transport has been foreseen. Among the sources of financing of the company Article 14b lays down the revenue from the sale of uniform products that the company will offer under the single-ticket system (it includes users' payments and payments in the form of subsidies of uniform products subject to subsidising from public sources), PPT funds, budgetary funds and other own revenue. If the company's operating costs could not be covered from the aforementioned sources, the proposal foresees covering of the difference from the PPT fund, whose establishment is foreseen in Article 14f, and the fund manager is the company. The Ministry responsible for transport, should separately collect funds for the financing of regular road PPT services, while the source of funding would be the budget. The funds should be intended to subsidise the transport of pupils and students, to finance the management activities and compensation to cover the costs exceeding revenue of the operator, subsidise rail and regular road transport services. Prices of products and services of a public enterprise should be determined by the operator with a tariff, with the consent of the Ministry, and prices of products and services from the scope of market activities should be formed by the operator in the free market. Under Article 14 d the company does not pay a concession fee or any other similar fees. The management activity is performed by the company in its own name and for its own account. In order to implement the services of a public enterprise relating to the integrated public passenger transport, the company is responsible for issuing general acts for exercising public powers (for the operation of a single-ticket system, settlement system, minimal standards of transport services, etc.). Moreover, the company should be also competent for conducting the procedures for granting concessions to PPT operators and for overseeing them. The company will operate under the administrative supervision of the Ministry.

5. Analysis of the studies on the impact of capital ownership on the efficiency of entrepreneurial action

A comparison of the performance of public and private entities in airlines, ferries and hovercraft and sale of electric and gas equipment in the United Kingdom, carried out by Pryke (1982), reveals that privately owned entities are more profitable and that they increase their market share at the expense of the public sector. Pryke notes that the result of such a situation is poor management of public undertakings, which is supposed to be the result of public ownership.

Kay and Thompson (1986) find out in the study that the productivity of privately-owned entities that tend to generate profits is higher than that of government-owned ones if they operate under competitive conditions. In the event that these entities operate in a poorly competitive market where the risk of their bankruptcy is low and if there is no significant risk of acquisition, then the market pressures have no greater impact than on public sector entities. It further notes that the ownership itself does not affect the performance, but the interaction of ownership and competition is of essential importance as it promotes efficiency. It cites the examples of electricity supply by public and private companies in the USA, and finds out that when public enterprises operate under competitive conditions, costs are generally lower. It also states the American study of waste removal costs, which showed that the differences in costs between public and private companies were largely eliminated as a result of the creation of competitive conditions. Numerous other studies show a mixed pattern of findings. Thus, the private British Caledonian company was more effective in a regulated market than the small British Airways company, which is publicly owned. A comparative study of water services in the USA also showed significantly higher costs in the public sector. Inefficiency is thought to be due to the excessive number of employees in the public sector. It derives from the analysed cases that it cannot be generally concluded that privately held entities are more efficient, but concludes that the efficiency of enterprises, regardless of their ownership, is improved in competitive conditions. The operation of private companies in non-competitive conditions often results in an increase in costs, as perceived by directly controlled public companies. Therefore, privatisation in a non-competitive environment has no positive effects.

Bartel and Harrison (1999) examined two guiding hypotheses in a public-private-sector comparative study in Indonesia: the first one by which public enterprises are inefficient due to control problems and the second one by which public enterprises are inefficient also due to the environment, in which they work. They intertwine two models within the production function and show that if the first model is correct then the ownership of the public sector will

be associated with a lower growth in production. The second model implies that different types of ownership are not associated with the productivity; it is only important if companies receive state subsidies in exchange for hiring an excessive workforce. According to their findings, public sector enterprises are inefficient due to the access to soft loans, while the ownership of the public sector has no direct impact on the growth in productivity. Privately-owned companies that had access to government loans operated equally well as other private companies. The ownership is therefore only relevant in environments where state subsidies and / or barriers to external and internal competition exist. The authors confirm the first hypothesis, but not the other one and find out that different kinds of ownership are not in correlation with productivity.

In the study Gonzalez-Paramo and Hernandez De Cos (2005) note in the case of Spain that public ownership has a significant negative effect on efficiency. They also found a significant relationship between import penetration and the degree of concentration and productivity, thus backing the assumption that greater competition gives rise to greater efficiency. Their results contradict previous studies such as Kay and Thompson (1986) and Bartel and Harrison (1999) that point out that, once a sufficient degree of competition has been achieved, ownership ceases to matter as a determinant of productivity. They found that privatisation has a positive impact on productive efficiency and that privatisation is an effective means of increasing companies' efficiency, at least in sufficiently competitive environments. The results of comparison between private and public companies are not conclusive in the case of non-competitive or regulated sectors.

Zeitun and Gang Tian (2007) conclude in the study that the ownership structure has significant effects on the accounting measure of performance return on assets (ROE) and that government shares are significantly negatively related to the company's performance ROE; defaulted companies have a high concentration ownership compared with non-defaulted companies and also high foreign ownership companies have a low incidence of default; government ownership is significantly negatively related to the company's probability of default; both mix and concentration ownership structure data can be used to predict the probability of default as the largest five shareholders and government ownership fraction are significantly negatively correlated with the probability of the default. These results further suggest that reducing government ownership can increase a company's performance but will also cause some companies to go bankrupt, at least in the short term.

The results of Al Bavon's (1998) study on the importance of ownership for the performance of companies in Ghana confirm the hypotheses of ownership and new theories of institutional economics claiming that ownership affects the company's performance and is a key variable of interests. According to the findings of the study, state property is negative and statistically significant in both models. In other words, government-owned enterprises operate worse than privately-owned companies. The study also confirms the hypothesis that companies exposed to competition are more successful than monopolies. The contribution of competition is greater than that of any other variables.

Generally, Megginson (2005) concludes that privatization in the period between 1977 and 1999 in developed countries resulted in an increase in GDP by 7.6% and in developing countries by 3.5%. The study emphasises that it is a traditionally justified fact that government ownership of companies provides socially desirable non-economic goods and that the political control over these entities reflects the demands of citizens. It states that the capital owners of economic operators in private ownership encourage the management and therefore its economic efficiency is higher than in competitive conditions that in government-owned entities, and this is due to the less motivated management in such entities. In addition, workers employed by government-owned companies do not participate in profits and are therefore not motivated to lower production costs and increase revenue. In this regard, it is stated that proponents of government ownership justify their position with the argument that in this way balancing of economic and social goals is achieved, and not only exclusively maximizing economic effects. It further states that the state responds to market irregularities, promotes economic efficiency of natural monopolies and takes care of other social goals such as environmental protection, reduces problems in the production of public goods. Provided that the "political" market operates effectively, government-owned enterprises produce more social than private goods in competitive conditions. In addition to the above, it considers that government ownership may also be justified on the basis of certain conditions of information asymmetry. It shares the views of those who believe that the best answer to market irregularities is the government ownership of companies under competitive conditions. It also emphasizes that government ownership of companies was, in history, often subordinate to political parties, especially in the area of redistribution of wealth. It is also important that in privately-owned enterprises owners replace a manager if the company does not operate efficiently, and ultimately, insolvency proceedings can be initiated against it, while government-owned companies

rely on public funding and avoid bankruptcy in this way. They also avoid the need to restructure and expose to competition of private companies, which is not the case only in transition countries. It states that many authors argue that government-owned enterprises are more responsible to political managers than the market, but that maximizing profits is also possible and desirable. Political structures force them to provide a number of important social values, but there is a great danger that politicians bribe managers of these companies to produce in their interests more social goods; in exchange, politicians provide subsidies or advantages in obtaining compensation. Privatization is considered to be the only reliable way to improve the entrepreneurial efficiency.

In the study, Domadenik, Prašnikar and Svejnar (2015) examined the theory of the influence of political cohesion (frequent political corruption) on corporate governance and production efficiency of companies. The study was based on the assumption that due to the non-functioning of democratic institutions, the players of political corruption are not penalized and that the links of companies to politics have a negative impact on their efficiency. Based on the analysis of the composition of supervisory boards in companies, the study establishes that the higher the degree of their political connection the lower their productivity. The correlation between the political impacts that the politics implements through the appointed members in the supervisory boards of companies in their capital ownership is more evident in non-trading activities, while these impacts in the trading activities that are exposed to increased competition in the market are lower. Therefore, political corruption has negative effects on corporate governance and the performance of companies that are partially or totally government-owned (public).

Kovač (1990, 14) emphasizes that the state is not a tool that would serve public goods in its own right according to the advice of economists and other experts, but is a set of individuals (ministers, deputies, officials) and stakeholders (parties, lobbies, coalitions, informal associations) that like consumers or producers tend to maximize their benefits. It is never the people as whole who choose, but the individuals. Public good is thus always a matter of political agreement. As a rule, the state does not choose objectively optimal solutions, but those that will have majority support or will retain the ruling political option in power.

6. Criteria and assessment of the adequacy of the proposed legal form of the PPT operator in the Republic of Slovenia

The EU does not prescribe the method of organising a PPT operator to the Member States, but the Member States are obliged to regulate it so that the ratio legis of the legal regulation of the EU and the Member States will be achieved to the greatest extent possible. After an introductory summary of the key elements of regulating the PPT field in the EU legal system and the tasks that the Member States have in this field, it will be tested by means of the results of relevant studies whether the legal form of the PPT operator contained in the proposal of the Road Transport Act (ZPCP-2) is an optimal solution to achieving the objectives pursued by PPT. It is thereby derived from the assumption that the regulatory framework of PPT (first level) includes all elements within the meaning of Article 106, paragraph 2, sentence 2 of the Treaty of the Functioning of the EU (measures to prevent the obstacles for the performance of specific tasks and ensure the achievement of the objectives of public enterprises of PPT) and that the management organization (second level) and the performance of PPT services (third level) are carried out in the context of Article 106, paragraph 1 and Article 106, paragraph 2, sentence 1 of the Treaty under competitive conditions.

In order to test the proposed solution stated in the proposal of the Road Transport Act the following research questions will be answered by means of the findings of selected studies:

- Are companies in public (government) ownership equally efficient as privately-owned ones?
- Does exercising of control in publicly owned companies by the representatives of the funder affect their performance?

No unambiguous answer is given to the first research question. Kay and Thompson (1986) find out that ownership is not a decisive factor in assessing efficiency, but competitiveness is more important, as the efficiency of companies, regardless of their ownership, improves in competitive conditions. Gonzalez-Paramo and Hernandez De Cos (2005) partly contradict this study, and find out that public ownership has a significant negative effect on efficiency and that privatisation is an effective means of increasing companies' efficiency, at least in sufficiently competitive environments. They also stress the importance of competitiveness for greater efficiency. Zeitun and Gang Tian (2007)

find out that the ownership structure has significant effects on the company's performance and that reducing government ownership can increase the company's performance. Al Bavon (1998) also notes that the ownership affects the company's performance and that government-owned enterprises operate worse than privately-owned ones. The reason is that companies exposed to competition are more successful than monopolies.

Based on the studies carried out it is not possible to confirm the hypothesis that publicly owned (government) owned companies are as effective as privately-owned ones, nor can it be definitively confirmed that they are not. In particular, the studies have shown that it is extremely important for efficiency that companies operate under competitive conditions.

A sufficiently convincing answer can be given to the second research question based on the results of the presented studies. Exercising of control in publicly owned companies by the representatives of the capital founder has, as a rule, negative effects on their performance. Bartel and Harrison (1999) note that public enterprises are inefficient due to control problems. Similarly, Pryke (1982) finds out that privately owned companies are more profitable due to poor management of public enterprises, which is allegedly the result of public ownership. Megginson (2005) establishes that privately-owned entities are economically more efficient under competitive conditions than government-owned entities, because of the less motivated management. Concerning the search for an answer to the question posed, the findings of the study by Domadenik, Prašnikar and Svejnar (2015), carried out in Slovenian companies, are particularly relevant in which they undoubtedly argue that the correlation of companies with the politics has a negative impact on their efficiency. Based on the analysis of the composition of supervisory boards in companies in total or partly public-owned capital, they found that these companies are less productive than their privately-owned companies. They find that the negative impact is conditioned by the degree of competitiveness that these companies are exposed to. According to their disclosures, the negative effects are due to the actions of the representatives of public equity in supervisory bodies, where they represent the interests of political forces from the background and are weaker in those industries that are more exposed to competition, but in those that are less exposed to competition, the negative effects of politically motivated exercising of controls are stronger. As the first example, trading companies are mentioned, especially those that are exposed to international competition, and as the second one, companies in processing industries. The problem of political influence on exercising the control in publicly owned companies is discussed also by Kovač (1990). He states that the politics does not choose objectively optimal solutions, but those that will have majority support or will retain the ruling political option authorities. For this reason, the control in publicly owned companies has a negative impact on the efficiency of their operations. The composition of supervision is the result of public ownership, and it can be concluded that public ownership, insofar as it does not operate under competitive conditions, has a negative impact on the efficiency of the company.

7. Test of the hypothesis and assessment of adequacy of the proposed organisation of the PPT management

The test of the formulated hypothesis, in accordance with which the implementation of the management of the integrated PPT (second or “tactical level) will be more efficient by granting of the concession in the competitive procedure to the best tenderer than in case the state established a company for this purpose and directly transferred the management and implementation of public authorisations, and at the same time the market test of objectively needed costs of management will be ensured, is confirmed on the basis of the following findings:

Public (government) ownership of companies per se has no negative impacts on their efficiency of operation, if their operation is exposed to competition. However, studies confirm that negative impacts on efficiency are reflected as a result of ownership control in these companies that is carried out by politically delegated supervisors. This especially applies to cases when a company is established by a public entity (e.g. government), and the impact on its operation, which reflects the interests over a certain period of dominant political forces, is carried out through the management of a capital contribution and through supervisory functions. It is important to emphasise that the influence of the politics on publicly owned companies is also reflected in the personal composition of the management, which is appointed by the supervisory body or the general meeting, which also includes politically delegated representatives of public capital.

The assessment of the proposed regulation of PPT management in the Republic of Slovenia that was carried out on the assumptions presented and which the legislator would have enacted by supplementing Article 14 of the ZPCP-2 with the provisions of 14a to 14f shows that the establishment of a publicly-owned company for the implementation

of the PPT management (second or tactical level) does not prevent the implementation of the objectives pursued by PPT per se. The risk of adverse effects on the performance of the PPT management company appears, on the one hand, to be a result of the implementation of state management of a capital investment and through exercising supervisory functions, but on the other one, as a result of its monopoly in obtaining a concession and public authorisations. Management within the meaning of a legislative proposal includes individual public authorisations, but mainly the operational activities that can be carried out under market conditions. Management covers activities in the field of PPT planning, the selection of the most favourable operators (competitors) of PPT services, field supervision of fulfilment of contractual obligations of concessionaires, kind of coordination tasks, coordination of relations with users of PPT services, etc., which can be effectively implemented through entrepreneurial activities that are more pronounced in privately owned companies than in public ones, as they are under the management or supervisory influence of politically delegated representatives according to studies. Therefore, in accordance with the provision of Article 106 of the Treaty of the Functioning of the EU, the efficiency of managing the PPT system could only be guaranteed by granting a concession in a competitive procedure, because the direct award of a concession to a publicly owned company will not guarantee the achievement of optimal results that are achieved through the implementation of PPT. The award of a PPT management concession to the best tenderer in a competitive procedure would allow the cost of carrying out the activities by the operator to amount as much as it is objectively necessary in accordance with market rules. According to the proposed regulation (Article 14b, paragraph 2, in conjunction with Article 14a), it has been, contrary to market rules, foreseen that the budgetary PPT Fund (Article 14f), which will be managed by the PPT operator under the authority of the state itself (Article 14 d, paragraph 1, indent 3), will finance the PPT in national road transport. In the event the costs of the transport cannot be covered by the sources referred to in Article 14 b, paragraphs 1 and 2, the Fund will cover also the costs of carrying out the operator's activities (Article 14b, paragraph 14 b). Furthermore, the proposal stipulates that, in the event that the operator is not able to cover the costs of its activities from the sources mentioned, the costs exceeding the revenue will be covered by the government from the budget of the Republic of Slovenia according to the provision of Article 14f, paragraph 2, indent 3. The solution presented to the monopoly operator enables the operation on an "open" account to the debit of the public Fund or public funds (budget), which means that so much public funds will be provided for the implementation of the activities to the operations as much money as it actually needs, regardless of the fact whether the costs of carrying out the activity will be objectively justified, or whether they will result from inefficient operation. The share of costs intended for the performance of the integrated PPT activity (e.g. subsidies) will decrease at the expense of the costs incurred as a result of the ineffective operation of the operator.

8. Conclusion

This paper assesses the proposed regulation of the operator formulated in the proposal of the amendment to the Road Transport Act (ZPCP-2) on the basis of the results of relevant research in the comparison of the efficiency of publicly-owned companies with the performance of private companies and the political impacts implemented through politically delegated representatives in the supervisory bodies of public companies. It has been found that the proposed solutions are not in compliance with the intention of the Regulation (EC) No 1370/2007 and that they will not ensure objectively effective management of the integrated PPT in the Republic of Slovenia, as an EU Member State. In order to effectively implement the activities by the operator (second - "tactical" level), which, in addition to individual public authorisations, performs a number of operational activities, the state should grant the concession for the implementation of the management activities of the integrated PPT in a competitive procedure to the best tenderer. In the process of granting the concession, interested public and private companies could be present, and the best tenderer for the implementation of the management would be selected on the basis of market criteria. In the event that the best tenderer in the procedure would be a publicly-owned company, the risk of the influence of the politics through the exercise of supervision on the implementation of PPT management activities would not be eliminated. But because of its competitiveness in the selection process, the probability of entrepreneurial nature would be greater and the efficiency of its operations would be, at least initially, competitive with other interested tenderers as if the concession were granted directly to it. In this way, it would be possible to verify on an objective basis what kind of cost will be objectively needed to finance the activities of the PPT system operator and to foresee the volume of funds and sources

of funding in order to eliminate funding under the "open account" system as envisaged in the proposal of the amendment to the Road Transport Act (ZPCP- 2).

References

- Bartel, A.P., Harrison, A.E., 1999. Ownership versus environment: Why are public sector firms inefficient? NBER Working Paper Series 7043.
- Bavon, A., 1998. Does Ownership Matter? Comparing the Performance of Public and Private Enterprises in Ghana. *The Journal of Developing Areas*, 33.1, 53-72.
- Domadenik, P., Prašnikar, J., Svejnar, J., 2016. Political Connectedness, Corporate Governance, and Firm Performance. *Journal Business Ethics* 139.2, 411-428.
- European Commission: Directorate-General for Energy and Transport, 2007. EU energy and transport in figures. Office for Official Publications of the European Communities, Luxembourg.
- European Commission: Directorate-General for Energy and Transport, 2003. EU energy and transport in figures. Office for Official Publications of the European Communities, Luxembourg.
- European Commission: TRIMIS, 2003. MARETOPE Handbook, final report. Available from: https://trimis.ec.europa.eu/sites/default/files/project/documents/20050928_155922_41348_maretope_final%20_version.pdf (3 July 2018).
- EUROSTAT. Statistics Database - 10. 2. 2017. Available from <http://ec.europa.eu/eurostat> (3 July 2018).
- Gonzalez-Paramo, J. M., Hernandez De Cos, P., 2005. The Impact of Public Ownership and Competition on Productivity. *KYKLOS*, 58.4, 495–517.
- Kay, J.A., Thompson, D.J., 1986. Privatization: A policy in search of a rationale. *The Economic Journal*, 96(March), 18-32.
- Geurs K. T. and others, Accessibility appraisal of integrated land-use transport strategies: methodology and case study for the Netherlands Randstad area, *Environment and Planning B: Planning and Design* 2006, volume 33, pages 639 – 660
- Korže, B., 2005. Uloga tržišno-socijalne države u usposabljanju slobodne konkurencije u uvjetima ekonomske globalizacije. *Pravo u gospodarstvu*, 44.3, 123-138.
- Korže, B., 2017. Pravo družb in poslovno pravo. Založba Uradni list, Ljubljana.
- Kovač, B., 1990. Uvod v podjetništvo : analiza poslovnega načrta. Univerza, Ljubljana.
- Krajnc, R., 2010. Elementi kakovosti javnega linijskega cestnega potniškega prometa. *Proceedings of the 10. Slovenski kongres o cestah in prometu* (20 – 22. October 2010). Portorož, 204-210.
- Lampe R (2010) Pravo človekovih pravic. Uradni list, Ljubljana, st. 171
- Lep, M., et al., 2015. Razvrščanje vozniških redov po vrsti prevoza : končno poročilo. Fakulteta za gradbeništvo, Maribor.
- Majcen, B. et al., 2000. Setting Expert Basis for the Strategy of Regional Development of Slovenia. Institute for Economic Research, Ljubljana.
- Majumdar, S. R. (2010) The Case for the Development of Public Transport in an Urban Boundary Rural Area, *Review of Policy Research*, 27(6), pp. 741-760, doi: 10.1111/j.1541-1338.2010.00469.x.
- Megginson, W.L., 2005. *The Financial Economics of Privatization*. Oxford University Press, New York.
- Organisation for Economic Co-Operation and Development, 1977. *The Future of European Passenger Transport : final report on the OECD study on European intercity passenger transport requirements*. Organisation for Economic Co-operation and Development, Paris.
- Pryke, R., 1982. The comparative performance of public and private enterprise. *Fiscal Studies* 3.2, 68-81.
- Van Wee B, Geurs KT (2011) Discussing equity and social exclusion in accessibility evaluations. *European Journal of Transport and Infrastructure Research* 11(4): 350–367.
- Zeitun, R., Gang Tian, G., 2007. Does ownership affect a firm's performance and default risk in Jordan? *Corporate Governance: The international journal of business in society*, 7.1, 66-82.