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## OPERATING COMPANY AT THE MULTIMODAL TRANSPORTATION MARKET

### ОПЕРАТОРСЬКА КОМПАНІЯ НА РИНКУ МУЛЬТИМОДАЛЬНИХ ПЕРЕВЕЗЕНЬ

Olena A. Lypynska, DEcon, Professor  
Odessa National Polytechnic University, Odessa, Ukraine  
ORCID: 0000-0002-6317-7511  
Email: alenalip@ukr.net

Oleksii M. Kotlubai, DEcon, Professor  
Odessa National Maritime University, Odessa, Ukraine  
ORCID: 0000-0002-6317-7511

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*Липинська О.А., Котлубай О.М. Операторська компанія на ринку мультимодальних перевезень. Оглядова стаття.*

Розвиток мультимодальних перевезень являє собою один з головних напрямків розбудови транспортної системи як кожної окремо взятої країни так і всього світу, оскільки суттєво зменшує перешкоди на шляху вільного просування товарів кінцевого споживання. У статті розглядається питання узагальнення умов входження операторських компаній на ринок мультимодальних перевезень. Виходячи з позиції про B2B відносини між учасниками мультимодальних перевезень, в статті дається аналіз головних умов функціонування відповідних ринків та участі в них операторських компаній у сучасних умовах; узагальнюються тенденції і напрямки трансформації ринків мультимодальних перевезень та структури послуг, що надаються операторськими компаніями; обґрунтовуються рекомендації учасникам ринку мультимодальних перевезень щодо підвищення попиту на їх послуги.

*Ключові слова:* Мультимодальні перевезення; операторська компанія; економіко-правові відносини; міжнародні конвенції; відповідальність оператора мультимодальних перевезень

*Lypynska O.A., Kotlubai O.M. Operating Company at the Multimodal Transportation Market. Review article.*

The multimodal transportation development is one of the main directions of the transport system development of a particular country and the whole world, as it significantly reduces obstacles to the free movement of final consumer goods. Accordingly, the article considers the issue of the conditions generalization of operating companies entry into the multimodal transportation market and the directions formation for improving economic and legal relations between market participants on this basis. Based on the position of B2B relations between the multimodal transport participants, the article analyzes the main conditions for the relevant markets functioning and the operating companies participation in modern conditions; trends and directions for transformations of multimodal transportation markets and structures provided by operating companies are summarized; the guidelines for the multimodal transportation market participants are substantiated in order to increase demand for their services.

*Keywords:* Multimodal transportation; operating company; economic and legal relations; international conventions; a multimodal transport operator's responsibility

The beginning of the multimodal transportation development fell into the middle of the last century. At that time – the 1960s – were the years of the first stage of the scientific and technological revolution, the years of enormous growth of the international market, the years of attracting the most remote corners of the globe in multilateral economic ties. It turned out that the transportation enterprises themselves (linear shipping companies, freight forwarders, port transport agents) had to engage not only by the organization and practical performance of the goods delivery in the component of the logistics chain with the participation of several carriers and transshipment points, but also at the same time solving complex legal issues based on generally accepted norms of civil law and, above all, delegation contracts, agency, commission. In particular, the segmental responsibility concept of the mixed connection participants was born, when each of the legal entities took responsibility for the cargo delivery on its specific area on its own transport document: a local bill of landing, local forwarders certificate of receipt. At the same time, the number of such transportation organizers was quite limited; moreover, with a small region of activity. So, West German linear companies limited their activities "Hansa Linie" – the North Coast of the Indian Ocean, "Norddeutsche Lloyd" – South-East Asia, the Far East and Australia, "HAPAG" – the North, and "Hamburg-Sued-Amerika Linie" – South America.

An important role of transportation organizers of foreign trade cargoes of the former USSR on cross-casements were performed by agents of Sovfracht in Rotterdam, Antwerp, Genoa, Port Said, Pyrey, Beirut, Singapore. As a freight broker, the Sovfracht needed to negotiate a complex legal relationship with the cargo owners regarding the subrogation of their property claims under the co-charter contracts for the goods carriage under the transshipment bills of landing. At the same time, it was necessary to control two parallel flows of transport documents for each consignment: order and local, regulating the participants' legal relations in combined transportation with each other.

## Analysis of recent researches and publications

In no case it cannot be considered that this system has gone to the past. In essence, it was only simplified in its design, but today it is based on the system of legal norms between the forwarder-operator of cargo carriage in mixed combination and all actual carriers and terminals.

An invaluable role in organizing the international transportation of goods in mixed and intermodal couplings in the 60's was introduced by foreign trade association (v/o) "Soyuzvneshtans". On its initiative, liner traffic was organized for transit by vessels «river-sea» navigation between the ports of the Northern – Baltic and Mediterranean Seas and ports of Iraq on the Caspian Sea via the systems "Volgo-Balta" and "Volgo-Don".

In transit transportation through the territory of the former USSR, dozens of forwarding firms from Europe, the Middle East, South-East Asia and Japan as "general use carriers who do not have a tonnage" (NVOCC) were involved in the territory of the former USSR. They issued house waybills to shippers – FCT. They themselves appeared as consignors in the SMGS railway consignment notes or in the consignment notes for Direct International Rail Traffic. According to transport statutes and codes, v/o "Soyuzvneshtans" assumed full responsibility for the cargo delivery. Thus, it acted out as the transit operator through the territory of the USSR before the railways of the USSR MPS on the land and before the MMF of the USSR and the MRF of the RSFSR on marine and river plots. It was full responsibility of v/o "Soyuzvneshtans" that made a global precedent by which now on such transportation organizer one tries to distribute full liability for cargo taken to carriage.

Proceeding from this *the main aim of this article*, is the conditions generalization of the operating company entry to the multimodal transportation market and the directions formation for improving economic and legal relations between market participants on this basis.

In order to achieve this aim, the following main objectives are set and implemented in this research paper:

- analysis of the main conditions for relevant markets functioning and operating companies participation in modern conditions;
- generalizing the trends and transformations of multimodal transportation markets and services structures provided by operating companies;
- recommendations justification to market participants in multimodal transportation to increase demand for their services.

## The main part

The draft Convention on Multimodal Freight Transportation - the TCM Convention (Transport Combine de Marchandises), which was named "the Tokyo Round", was adopted on the basis of the established principles at the Tokyo Conference in 1969. In these rules, the concept of the cargo carriage in a mixed combination – SSP first received an official legal recognition, as a legal entity that concludes with the sender contract of cargo transportation in a mixed combination and takes responsibility for the loss or damage of the cargo, regardless of which site - either sea or land they took place. The operator, in turn, signs agreements with the relevant actual carriers that are responsible directly to him.

These and other approaches to the problems were considered in 1971 in London at a conference of the Intergovernmental Maritime Consultative Organization – IM CO and the UNO European Commission (the Economic Commission for Europe – EEC).

Along with forwarding activities in the second half of the 1960s and in the first half of the 1970s, there was an activity from shipowner operations, taking a leading place in intermodal transportations on the North Atlantic, the Pacific and the Far Eastern Ocean routes.

The International Institute for Unification of Private Law and the Committee Maritime International;

International Federation of Freight Forwarders Associations (FIATA) and Baltic and International Maritime Council (BIMCO) launched activities on the transport documents development for mixed transportation under the liability of the operator and published their formulations of FIATA bills of lading in 1970, and BIMCO in 1971 under the "FBL" and "Conbiconbill" code symbols\*.

The most widespread logistics chain of mixed connections is that, which begins and ends with automotive delivery. This resulted in a fusion process in the 1960s and 1970s. Forwarding and ship-owning business with the road (since the 1920s in the USA railways have already had subsidiaries of automobile companies, and shipping company "Sea-Land" in the middle 1990s owned a fleet of tractors, trailers and chassis in 4500 units).

Further formation of intermodal legislation was marked by the fact that in 1973 the International Chamber of Commerce published "Unified Rules for Multipurpose Transport Document" (ICC Publication No. 298). Based on these rules, the International Association of Shipowners in cooperation with BIMCO in 1977 released for the linear shipping companies application of the framework trade-exchange document of combined transportation for use in the multimodal transportations implementation in certain directions – "Combidoc" (Combined Transport Document). FIATA, in its turn, continued to improve its multimodal bill of lading, focusing on the 1992 FIATA FBL proform that is currently in use (Negotiable FIATA Multimodal Transport Bill of Lading).

The 1970s became the time of countries' policy intensification development aimed at the navigable monopolies dictation on the freight market. It was practically expressed that the United Nations Conference on Trade and Development – UNCTAD/ICC held a series of international forums, the result of which was adopted in 1974 "Convention on a Code of Conduct for Linear Conferences". In 1978, the United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") was adopted.

Unfortunately, the Code Convention, not having received the required number of ratifications from states parties, did not enter into force.

In the modern period of the global economy development the material resources management has dramatically changed (raw materials, semi-finished products, finished products) when they are moved from the manufacturer to the consumer in order to achieve a minimum level of production and handling costs. It is carried out on the basis of integrating the production, transport and consumption into a single chain based on applying the progressive information exchange technologies through computing and telecommunications and strengthening the planned start in organizing the transport process on the basis of long-term transportation contracts and freight forwarding between cargo owners and carriers.

Multimodal transportation organization leads to the need to rationalize, a systematic approach to the analysis of their effectiveness, planning, management and control based on the creation and provision of effective functioning and forms improvement of producing transportation – cargo transportation systems. In the modern period in international practice of organizing multimodal cargo transportation, a number of movement control systems is used; of these, the following systems have become the most widespread: the most common are container, packet, trailer, freidgerne and feeder systems.

Already in large scales, a forwarder-operator of cargo transportation in a mixed combination is converted to a general distribution operator (GDO) or, so-called forwarder-integrator. The GDO becomes the owner of the logistics transportation and distribution system designed in a competitive struggle to provide: response to the production and transport sphere on the market requirements, transportation forecasting and planning, tracking the movement of vehicles, containers and the time of cargo delivery, optimizing the movement and storage of raw materials, semi-finished products and finished products. Anyone from GDO in his/her work relies on a powerful forwarding infrastructure, where the legal relationship between the parties is a partnership between the principals and the agents. The agency agreements concluded between them are made in the form either of "Contract of partnership" or "Cooperation agreement".

In 1990, UNCTAD published a study on the of GDO activities (Document GD/V/P.4/330), which provided recommendations addressed by operators of the "Third World" states. Their essence is the general distribution operacy in order to become equal partners from GDO in industrial developed countries. According to UNCTAD, only equitable GDO can jointly provide sellers and buyers with the most rational advice on the selection of basic supply terms for sales contracts, the transport allocation between "indicators" and terminals, by choosing the transport mode, as well as the optimal size of consignments in order to reduce inventories and ensure the goods consumption "just in time". Already in 1987, the transition to logistics transport distribution systems brought about a 20-35% increase in the efficiency of the USA exports and imports of goods.

At that time, it was believed that 70 to 80 transportation hubs, i.e. the centres of logistics automated storage and retrieval systems – should be established worldwide and linked by "corridors" with access to logistics subsystems from an unlimited number of freight forwarders and vehicle fleet to each consignor and consignee of goods.

The multimodal (intermodal) transportation operator (ITO) acts as a carrier under the contract. He/she concludes contracts with actual carriers and pays them for work performed; he/she is responsible to his/her client for preserving the cargo throughout the route. This makes the ITO fundamentally different from the freight forwarder who only arranges transport, acts in the name of, on behalf of and at the expense of his/her client, and is liable for damage or loss of the goods only if it is his fault.

Transactions of the cargo delivery are carried out by the ITO independently, through its subsidiaries and branches, or based on a contract agreement with other specialized companies:

- navigable, railway, motor transport, aviation, internal water transport;
- container terminals operators, that is, companies that have specialized port or rail terminals or rent such terminals;
- port forwarding companies engaged in customs clearance and registration of commodity conductive documents;
- warehousing companies that store and run cargo (containers repair and replacement, shipments packing, cargo packing into containers, marking).

If necessary, ITO can attract other companies: leasing, surveyor, audit.

The contract of multimodal transportation is made as an agreement on the cargo carriage by companies at least two different types of transport, and the person who has concluded such a contract and adopted responsibility for its implementation as a carrier, is called a multimodal transport operator (MTO). Such an operator, theoretically, can be, for example, a freight forwarder that confirms its contract with the publication of a FBL bill of lading, or NVCC, which signs the bill of lading "Multidoc-95".

To the term "cargo" Rules contain a shipper's any property, including its containers, pallets or similar devices for transporting or pooling small consignments in a unified shipping (articles of transport or packaging ) but not supplied by an operator (ITO).

The operator's responsibility for cargo covers the period from of the moment of its accepting, ITO, cargo in its driving (in his/her charge) until the time of cargo delivery to the recipient.

At the same time, the the operator's responsibility – RAM for the loss and damage to the cargo and for the delay in delivering a carrier's adequate responsibility, which is determined by the norms of civil law.

Accordingly, having satisfied the client's claims or complaint for damages, the operator has a «right of recourse against any person who caused damage», in this case to the actual carrier or to the transshipment terminal owner.

If necessary, the customer may also directly appeal to the actual carrier after the operator has affixed the appropriate transfer inscription to the customer on the reverse side of the actual carrier's bill of lading.

The operator's responsibility (if the nature and value of the cargo were announced by the shipper and were not included in the multimodal transport document – MT) for any loss or damage to the cargo in contracts as a rule limited in the amount that does not exceed the equivalent of 666.67 SDRs (special drafting rights), or about 960 US dollars per place or cargo unit, or 2 SDRs – about 3 US dollars per a kilo gross weight of goods lost or damaged, whichever is greater. A container, the pallet etc. are regarded as a place or cargo unit if the MT document has not been listed the number of places loaded in it or the cargo laid upon it. If mixed transportation does not include cargo carriage by sea or internal water transport, then this limit is increased to 8.33 SDRs, or about 12 US dollars per a kilo weight gross lost or damaged cargo. However, if a particular transport agreement will be compiled for a particular transportation area, the limitation of transportation subjects responsibility in this area is determined either by the norms of the branch international convention or the imperative norm of national law (for example, KTM or the statute of the corresponding type of transportation).

Of course, no privileges for responsibility limitation cannot be discussed if it is proved that loss, damage or delay in the cargo delivery occurred as a result of an operator's personal action or omission.

The operator's report of loss or damage to the cargo should be made at the time the goods are handed over to the consignee and, in case of tacit nature, within six calendar days after the day on which the cargo was handed over to the consignee.

As a rule, transport documents, in particular the "Multidoc-95" bill of lading are liable for loss due to cargo delay, limited to a size not exceeding the of freight equivalent under the multimodal transportation agreement. It should be taken into account that is in the article 6.2 of the "FBL" bill of lading adopted in 1992, this norm was been doubled (twice the freight, art. 8.7) higher.

We trace typical legal relations that arise when organizing export shipments of cargoes heading to intermodal traffic.

When loads are delivered in containers and sent with full filling of the container (FCL basis), and loading the container by goods is carried out by the consignor itself or his freight forwarder and the loaded container is delivered by the consignor to the container platform (CY), used by the operator, then in this case the operation marked as D/CY, is drawn up by two documents transferred to the operator and auto carrier: export cargo shipping instruction – ECIS weight container certificate if gross container weight exceeds 29,000 pounds (13154 kg). The authorizing must state: a shipper's name; name of the destination; a recipient's name; name and quantity sheet about the cargo; information about cargo and its external condition; information about the size of the freight payable to the recipient. This package may also include, depending on the cargo nature, a container load plan and a certificate on loading the container with dangerous goods.

A road carrier dealing with containers delivery directly to the terminal, draws up agreements on circulation of containers (with leasing companies, with operators, terminals, etc.). The role of the road consignment note is usually performed by one of the ECIS copies and Dock Receipt, if the operator is a shipowner. The road carrier does notify the operator or a shipper representative in the port of the cargo arrival to the port and receives information from him/her on the name of the vessel, the date of departure, the dock number or place of parking, and other instructions. In this case, freight forwarders can be provided by packaging and marking of cargoes, weighing, measurement, with regard to supporting documentation, etc.

In the case of sending small consignments that do not provide complete loading of the container, containers are formed under the operator's control of or his/her agents in the agroupage depot or on a container freight station (CFS) and is disbanded with similar operator control in the destination country (LCL – FCL – FCL – LCL). Such stations (CFS) are usually erected near the marshalling yard (MY), adjacent to the container berth. (A container grouped by a freight forwarder in its agroupage depot is considered as FCL). Many CFS perform simultaneously functions of internal customs warehouses, where customs clearing of cargo is carried out. Forwarding firms act and as custom brokers, having a corresponding license for this purpose. The completed LCL (Less than Container Load) goes to the operator terminal with the application of the ECPC document (Export cargo packing certificate) at the driver. In the paperless technologies mode (cargo data coded), information input into teleprocessing system (TPS), are issued in the inter-media turnover (input via TPS) bills of lading, manifests. At the same time, traditional departure expedition operations are performed: reservation (buffering) of capacity on the relevant shipping vehicle to the final destination. Transactions with other cargo modules or operations performed by a conventional method, differ from differ from what is stated only in details (lat. Mutatis Mutandis).

The transactions with import include a message to the recipient operator two days before the the goods arrival and the transferring cargo lists of the terminal, organizing the customs clearance of cargo, formalizing the delivery orders for the delivery of goods and containers (interchange documents), the container construction and the FCL or LCL freight production to the recipient against the presentation of the original transaction bill of lading or overhead received by the cargo sender from the operator at the departure point.

## Conclusions

Thus, any logistics system of cargo transportation in the intermodal traffic can be considered as documented legal relations subsystems: trunk-feeder for cargo delivery from the sender in the reference terminal of departure; trunk-feeder subsystem for the goods distribution from the support terminal of destination for the warehouse of the recipient and cars, container, trailer and other cargo transportation systems between the reference terminals of both departure, appointment and intermediate in the points of transshipment as effective means of transport. In order to concentrate a large amount of information on a limited space in a transport document, special abbreviations have been developed and have already been given. One can also refer to the following: "from the terminal – to the terminal – p/c", "the gate of the container terminal – g (gate)", "reception – delivery of the container at the railway station – R", "at the bus station – M" etc.

Proceeding from this, work on further improvement and development of contractual legal relations between market participants regulating the goods transportation in multi- and intermodal connections should be extended. First of all, it is necessary to resuscitate rules to facilitate customs transit procedures laid down in the "United Nations Convention on Multimodal Freight Transportation" of 1980. They, as it follows from the content of applications to this Convention, are reduced to the facts that in the international multimodal transportation of goods, as a rule, are not subject to a customs review. Customs authorities are recommended to be limited to checking customs locks and not subject to loads of additional formalities or requirements that belong to export or imported goods. Unfortunately, this procedure, as well as the recognition of authorized economic operators of other countries as equal participants in the customs process, is virtually non-existent in Ukraine, this greatly limits the ability of Ukrainian operators to provide multimodal transport services and market development in the country.

## Abstract

The beginning of the multimodal transportation development dates back to the middle of the last century. At that time, the transport companies themselves (liner shipping companies, freight forwarders, port transport agents) had to deal not only with the organization and practical implementation of cargo delivery on the logistics chain component with the participation of several carriers and transshipment points, but also at the same time solving complex legal issues on the basis of common legal issues and, above all, delegation contracts, agency, commission. Thus was born, in particular, the segmental liability concept of mixed traffic the participants, when each of the legal entities assumed the responsibility for the cargo delivery at its specific site on its own transport document: local bill of lading, local freight forwarding receipt.

In no case it cannot be considered that this system has gone to the past. In fact, it was only simplified in its design, but today it is based on the system of legal norms between the forwarder-operator of cargo carriage in mixed combination and all actual carriers and terminals.

Along with freight forwarding activities in the second half of the 1960s and in the first half of the 1970s, the activity of ship ownership developed, taking the leading place in intermodal transportations in the North Atlantic, Pacific and Far East.

The International Institute for the Unification of Private Law and the Maritime International Committee; The International Federation of Freight Forwarders Associations (FIATA) and the Baltic International Council (BIMCO) launched the activity of developing transport documents for mixed carriage under the operator's responsibility and published their FIATA bill of lading in 1970 and BIMCO in 1971 under the code symbols.

The most common logistic chain of mixed transportation is the one that starts and ends with car delivery. The consequence was the process of splicing and shipping in the 1960-1970s of freight forwarding and ship ownership (in the United States, railroads has had subsidiaries of motor vehicles since the 1920s, and the shipping company Sea-Land in the mid-1990s owned a trucks, trailers and chassis fleet of 4,500 units.

In the modern period of the global economy development dramatically changed the material resources management in their movement from producer to consumer in order to achieve minimum level costs of production and turnover. It is carried out on the basis of integration of production, transport and consumption into a single chain based on using advanced technologies of information exchange by means of computer technologies and telecommunications and strengthening of the planned start in the transport process organization on the basis of long-term contracts of carriage and freight forwarding between cargo owners and carriers.

The operator's liability (if the nature and the cargo cost was declared by the cargo consignor and not included in the mixed transport document) for any loss or damage of the cargo in the contracts is usually limited to an amount not exceeding the equivalent of 666.67 SDRs (special rules borrowing), or about 960 US dollars per place or cargo unit, or 2 SDRs – about 3 US dollars per kg of gross lost or damaged cargo, whichever is greater. A container, the pallet etc. are regarded as a place or cargo unit if the MT document has not been listed the number of places loaded in it or the cargo laid upon it. If mixed transportation does not include goods transportation by sea or inland waterway, then this limit is increased to SDR 8.33, or about 12 US dollars per kilo of gross lost or damaged cargo. However, if a specific contract of carriage is drawn up for a particular section of the carriage, then the liability limitation of the carriage operators at that section is determined by either the norms of a sectoral international convention or a mandatory rule of national law (for example, KTM or the Statute of the relevant transport mode).

Of course, no privileges for responsibility limitation cannot be discussed if it is proved that loss, damage or delay in the cargo delivery occurred as a result of an operator's personal action or omission.

The operator should notify the consignee of the loss or damage of the goods at the moment of goods delivery to them, and in the case of their implicit nature, within six calendar days after the day of delivery of the goods to the consignee.

Traditionally, transport documents, in particular, the Multidoc-95 bill of lading, are limited by liability for damages associated with delayed cargo, which does not exceed of the costs freight equivalent under the mixed carriage agreement. It should be borne in mind that in Art. 6.2 the FBL bill of lading, adopted in 1992, increased this rate twice (twice the freight, art. 8.7).

On this basis, work on further improvement and development of contractual relations between market participants governing the goods carriage in multi and intermodal shipments should be continued. First of all, the rules on the facilitation of customs transit procedures laid down in the 1980 United Nations Convention on Multimodal Freight Transportation should be resuscitated. As is clear from the contents of the Annexes to this Convention, they are reduced to the fact that in international mixed carriage, are generally not subject to customs inspection. Customs authorities are recommended to be limited to checking customs locks and not subject to loads of additional formalities or requirements that belong to export or imported goods. Unfortunately, this procedure, as well as the recognition of authorized economic operators of other countries as equal participants in the customs process, is virtually non-existent in Ukraine, this greatly limits the ability of Ukrainian operators to provide multimodal transport services and market development in the country.

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