ITMMA INSTITUTE OF TRANSPORT AND MARITIME MANAGEMENT ANTWERP
Universiteit Antwerpen

ESPO

The awarding of seaport terminals in Europe

Results from the ITMMA survey commissioned by ESPO

FINAL DRAFT – 28 May 2008

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1. Introduction

This report contains the main findings of a survey on the awarding of terminals in Europe. The survey was commissioned by ESPO in response to the European Commission's ports policy communication which was published in October 2007. In its position paper of 31 October 2007 ESPO gave general support to the Commission's interpretation regarding the use of concessions. ESPO however also indicated that it would study how European port authorities were currently using terminal awarding arrangements as governance tools as a basis for further comments and initiatives at a later stage.

The survey aims to provide a better understanding of current practices and viewpoints of managing bodies of seaports in Europe. We would however like to emphasize that the viewpoints and observations presented in this report do not necessarily represent the views of ESPO on the awarding of terminals.

The survey was prepared by ITMMA (the Institute of Transport and Maritime Management Antwerp) of the University of Antwerp. It consisted of two parts. The first part seeks in-depth information on current practices. It aims at collecting information on existing terminal projects or terminals in Europe. This is why it focuses on a selection of recent terminal awarding projects in about 80 ports. A balanced distribution across regions, size of terminals and types of terminals was pursued.

The second part seeks viewpoints and perceptions of managing bodies of ports around Europe on tendering and contractual arrangements linked to the awarding of terminals. This part was sent to some 300 ports all over Europe. The survey was performed in the period early March-late May 2008, but formally the collection of responses has not ended yet. As such, the report will highlight some of the results where relevant.

Due to confidentially, this report retains any project-related information. All data on specific terminal projects or individual ports are kept confidential. The report only contains aggregated results grouping terminal projects and ports considered.

The report does not pretend to offer an in-depth analysis of all technical and legal aspects related to the awarding of terminals in all member states. Instead, it attempts to provide a condense overview of some of the practices and viewpoints on a number of key issues in the awarding of seaport terminals. For the purpose of this report, we have classified the relevant issues into the following sections:

- The legal frameworks
- The terminal awarding process
- The duration of the terminal award contract
- The contract stipulations

2. Theme setting and survey sample

The awarding of port services to private operators has become one of the most important tools for managing bodies of ports to influence the prosperity of the port community. Through the awarding procedures and the contract, managing bodies of ports can in principle retain some control on the organization and structure of the supply side of the terminal market, while optimizing the use of scarce resources such as land.

In order to shed light on terminal awarding practices in Europe, the first part of the survey contained questions related to the 'as is' situation in Europe. In total about 80 managing bodies of ports around Europe received the survey. Answers were obtained for 43 terminal projects in European seaports, resulting in a fairly high response rate of 54%. Two thirds of these projects relate to greenfield developments (i.e. the terminal site is either reclaimed from the sea or encompasses land not previously used for port or industrial activities), while the remaining cases relate to brownfield sites (i.e. site has been used before for other port or industrial activities). About 42% of all terminals considered started operations recently. For about a quarter of the projects, the awarding and contracting procedures are already completed, but the terminal has not started up operations yet.

Figure 1: Distribution of responses to the 'as is' survey according to the current status of the terminal awarding process.

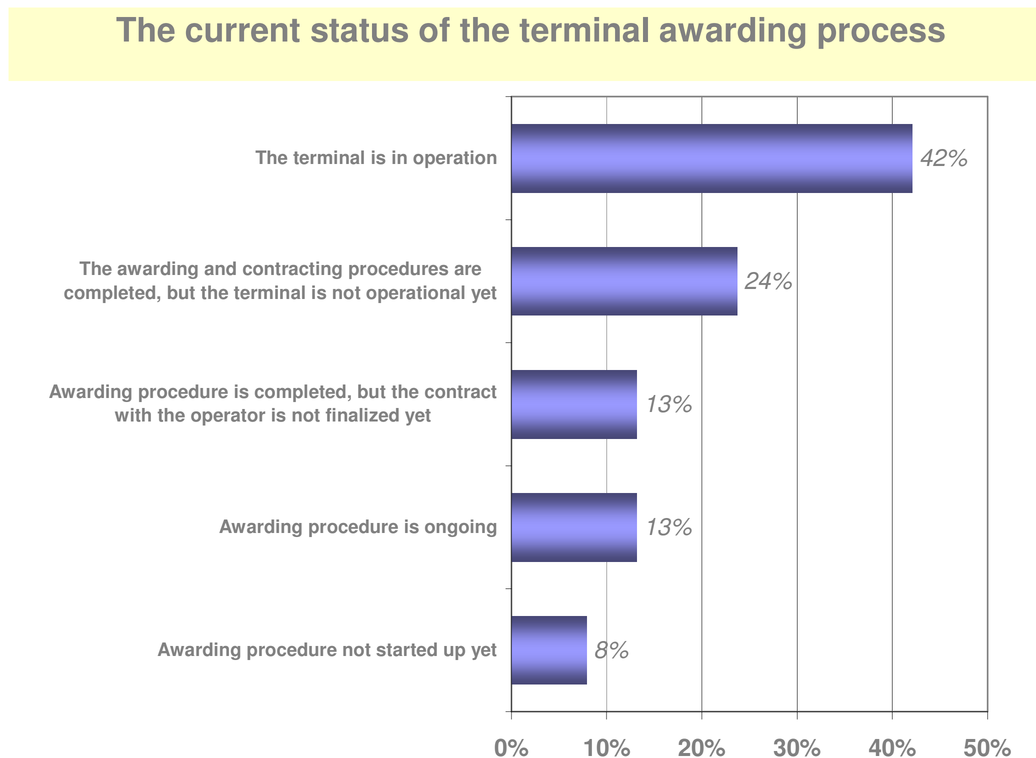


Table 1. Distribution of responses to the 'as is' survey (42 terminal projects in Europe)

Terminal size	No.
0-5 ha	4
5-50ha	17
50-100ha	6
>100ha	9
Not indicated	7
TOTAL	43

	No.
Hamburg-Le havre range	12
Scandinavia/Baltic	10
Mediterranean	12
Atlantic range	5
United Kingdom/Ireland	0
Black Sea	3
Other	1
TOTAL	43

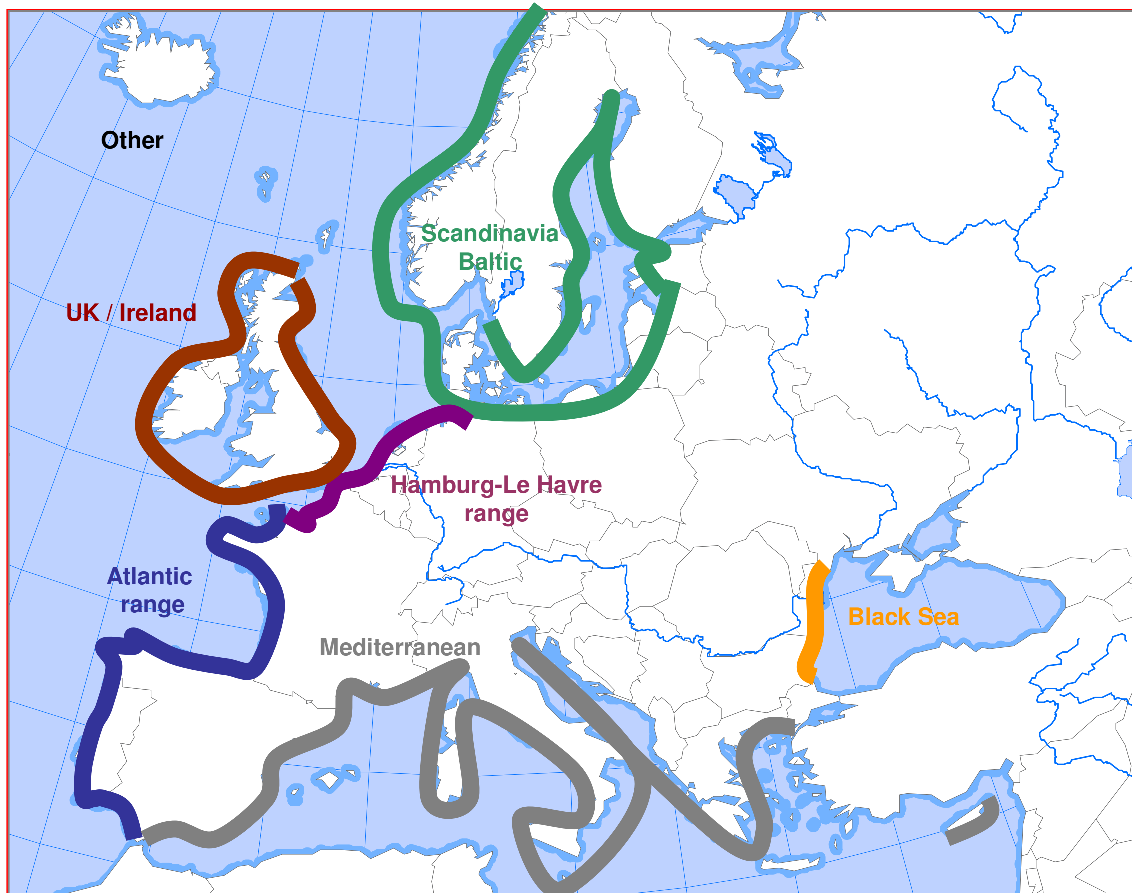
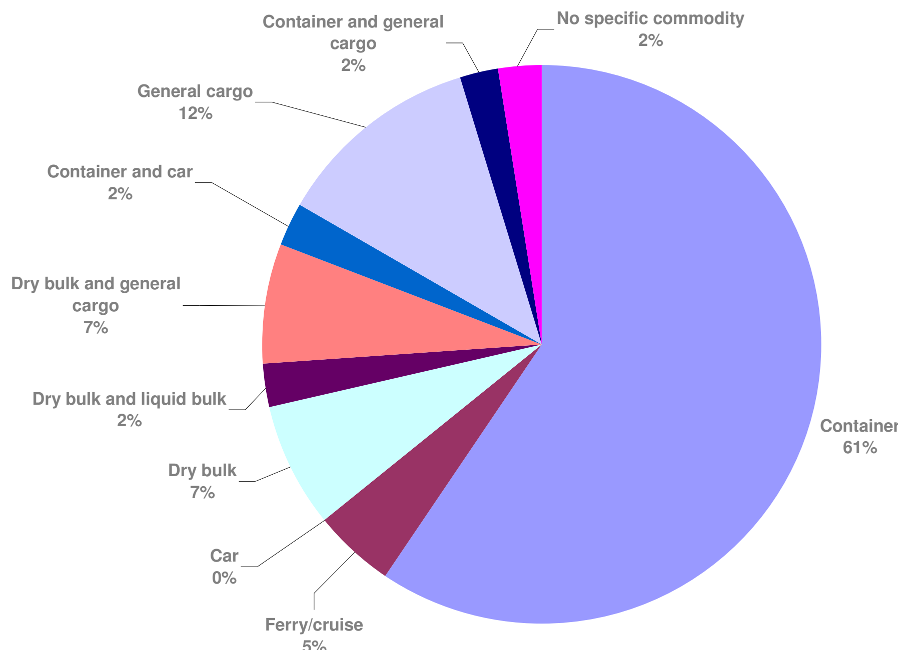


Table 1 depicts the distribution of responses to the 'as is' survey. Large, medium-sized as well as small terminal projects are represented in the survey. None of the responses relates to a terminal project in the United Kingdom or Ireland. All other port ranges in Europe are well represented.

About 61% of all responses relate to container terminal projects. While accurate figures on the total number of recent terminal projects in Europe are very hard to collect, we estimate that the non-container terminal projects among the responses represents less

than 5% of all terminals that have been taken into operation in the last five years or will start operations during the coming two years. The survey results contain 26 container terminal projects. We estimate that this represents about 35 to 40% of all container terminals in Europe that have started/will start operations or have been/will be awarded in the period 2003-2010 (excluding the phased extension of existing terminals that were already awarded earlier to an incumbent terminal operator). Given these figures, the survey results are mainly providing a good representation of the 'as is' situation in the European container terminal industry. Later in this report, it will be underlined that quite a number of individual ports use similar awarding procedures for terminals in their respective port area, but still it is more than appropriate to restrain from just generalizing the conclusions to terminals handling non-containerized cargo.

Figure 2: Distribution of responses to the 'as is' survey according to terminal type



Some important remarks should be made with respect to the terminal projects considered in the 'as is' survey.

First and foremost, port management systems differ significantly in Europe. This observation is supported by ESPO's factual reports on European ports as well as by academic literature on port governance and port management systems. The survey was mainly relevant for 'landlord' ports in Europe, thereby excluding quite a number of European ports mainly situated in the United Kingdom, Scandinavia but also elsewhere. For example, Cyprus Ports Authority is the owner, operator and regulator of all the ports of the island. There are no private terminal operators within the ports, except for the horizontal transportation of cargo which is done by licensed companies.

Second, ongoing port reform programs imply that quite a number of European ports are in a transition phase. Newer EU Member States such as Poland, Bulgaria and Romania have recently witnessed a shift from state-owned and state-operated ports to a landlord-type of port management system. For example, the Polish 'Law Act on ports and harbours' demands from port authorities to execute privatization of port terminals/operators which formerly were state-owned companies. Such activities are in

progress in Gdynia since 2001 and up to now two of the four terminals have been privatized, while the other two are still owned and controlled by the State. Countries like France and Spain are presently undergoing major changes in their respective national port policies. Although we acknowledge the dynamic nature of port policies and practices in Europe, the 'as is' survey provides a snapshot of the situation in the first half of 2008 and the results should be interpreted as such.

Third, we received a limited number of responses from managing bodies of ports which did not provide information on one particular terminal project, but explained the general principles of the awarding of terminals in the port. The implication was that not all questions could be answered. The results presented in this report take into account these answers.

As mentioned earlier, the second part of the survey aimed at gathering viewpoints and perceptions of managing bodies of ports around Europe on tendering and contractual arrangements linked to the awarding of terminals (hereafter called the 'viewpoints' survey). This part was sent to some 300 ports all over Europe. Only 72 managing bodies of ports responded. The geographical distribution of the respondents is depicted in table 2. The response rate of 24% is rather low and survey results are still received on a weekly basis. It was decided not to provide a full discussion on the 'viewpoints' survey in this report given the very preliminary nature of the results of the second part of the survey and associated concerns about the representativeness of the sample for the entire European seaports' population. Still, some of the 'viewpoints' survey results will be presented where relevant.

Table 2. Distribution of responses to the 'viewpoints' survey (status on 28 May 2008)

Port region	No. of respondents	%
Atlantic range	7	9.7%
Scandinavia/Baltic	22	30.6%
Black Sea	2	2.8%
Hamburg-Le Havre range	12	16.7%
Mediterranean	24	33.3%
UK/Ireland	4	5.6%
Other	1	1.4%
Total	72	100.0%

3. The survey results: the legal frameworks

This report does not intend to provide an in-depth overview of all local, regional and national legal arrangements with a relevance to the awarding of terminals. Still, the survey contained some questions on the legal frameworks applicable to the awarding of terminals.

A first point relates to the ownership structure of the land. The 'as is' survey revealed that in only 28% of the projects considered the terminal site is owned by the managing body of the port. In most cases, the site is a public domain area and only administered by the managing body of the port. A few respondents made a distinction between the legal ownership (by the city or a government body) and the economic ownership of the port site (by the managing body of the port).

Figure 3: 'As is' survey: land ownership structure

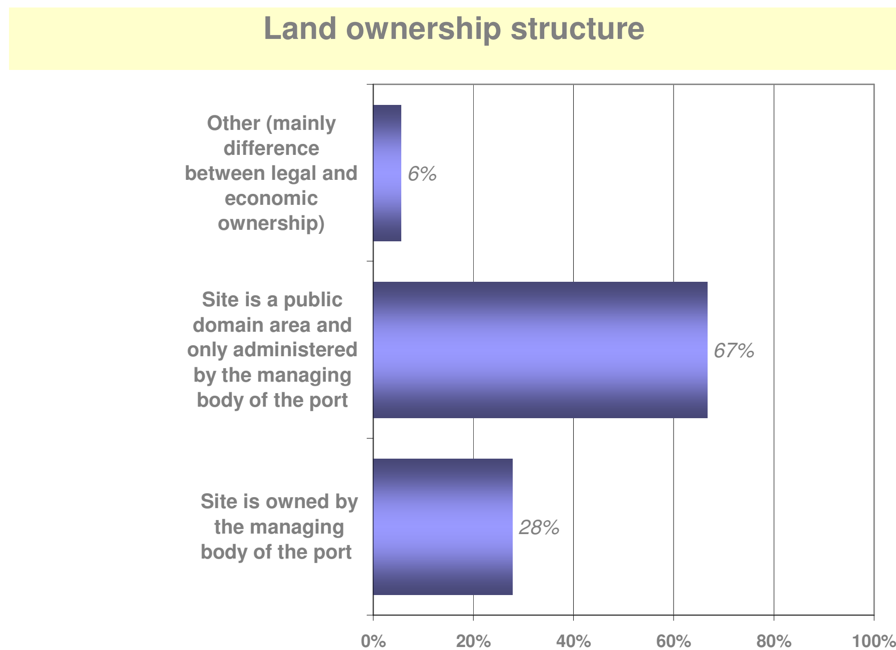
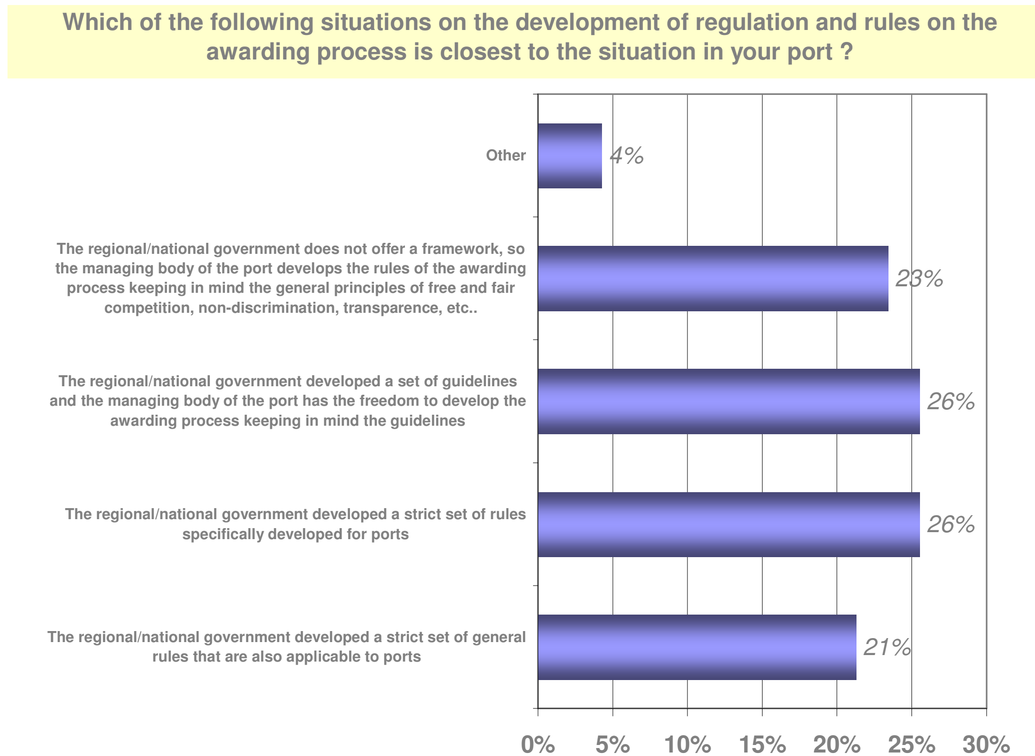


Figure 4 depicts the situation for the individual terminal projects with respect to the legislation and rules applicable to the awarding process. It can be concluded that a large variety exists among the projects concerned. The spectrum ranges from the development by the regional/national governments of a strict set of general rules that are also applicable to ports, to a situation where the regional/national government does not offer a framework, so the managing body of the port develops the rules of the awarding process keeping in mind the general principles of free and fair competition, non-discrimination, transparency, etc.. . In quite a number of cases, rules and legislation are found at various levels. For example, the national government in Italy developed a general framework for ports (Italian ports reform law no. 84/94) and the managing bodies of the ports develop the criteria ruling the awarding process taking into consideration the general principles of free and fair competition. Next to this there is the more general public contracts code in Italy which is also applicable to ports. In Spain, there is a state administration order establishing a general regulatory document ruling the port awarding process. The responsibility for the setting of rules is occasionally

entrusted to a separate entity. For instance, the Maltese government developed a set of guidelines, and a so-called privatisation unit, established by the government, develops and conducts the award procedure.

Figure 4: 'As is' survey: type of awarding process used



The 'viewpoints' survey revealed three quarters of the respondents argue general regulatory frameworks can only partially be applied to the awarding of terminals as they don't take into account the specific nature of seaport terminals (figure 5). An elevated 90% of the respondents agree with the statement that it is up to the managing bodies of ports to work out awarding procedures for new terminals (figure 6).

Figure 5: 'Viewpoints' survey: appreciation of general regulatory frameworks

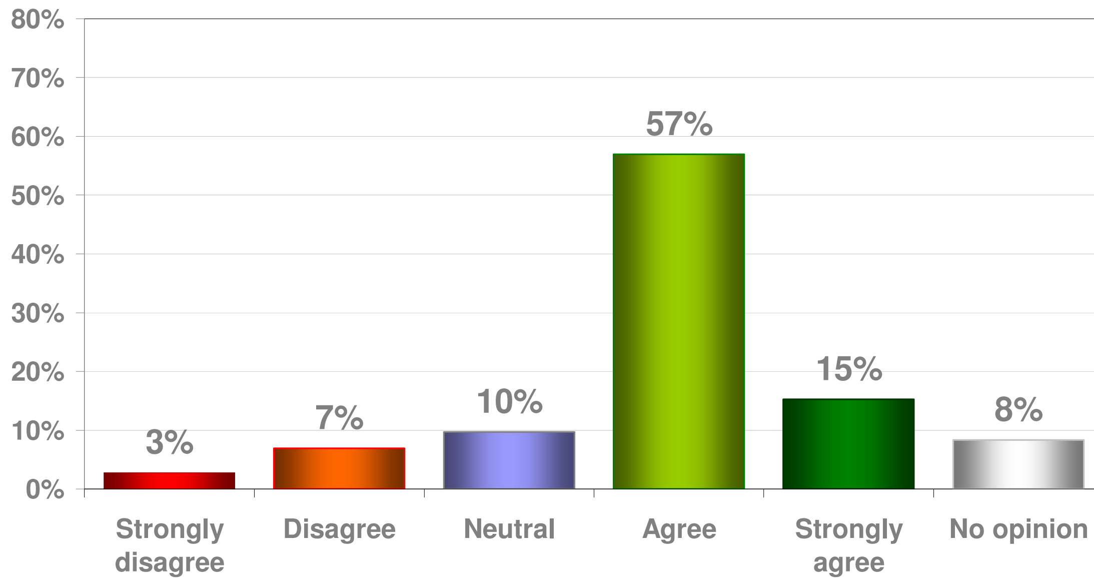
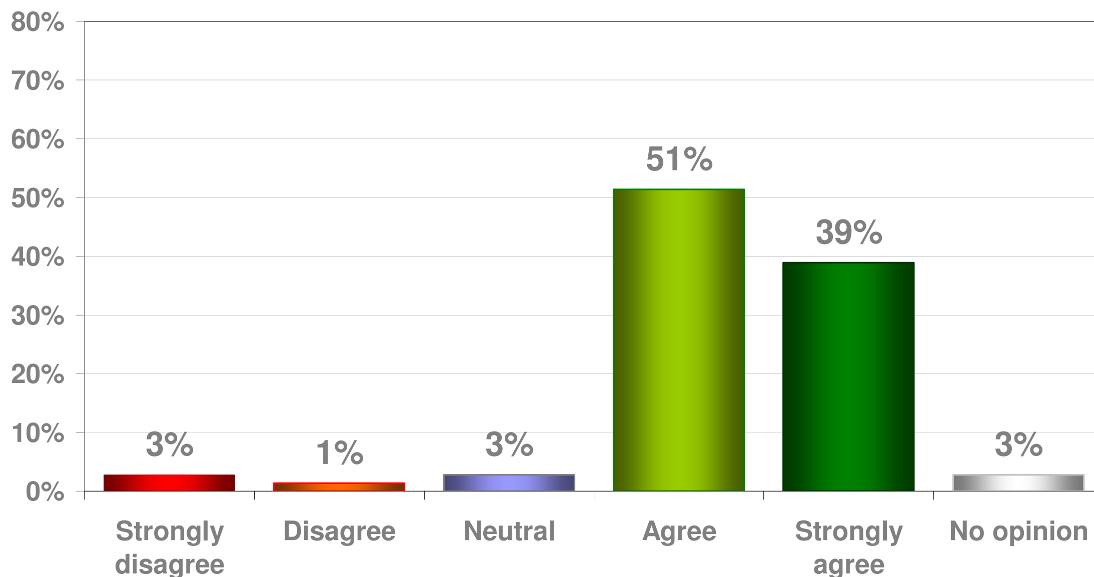


Figure 6: 'Viewpoints' survey: the role of the managing body of the port



4. The survey results: the terminal award process

4.1. A classification of awarding procedures

Terminals may be awarded by several methods, including without limitation, by direct appointment, private negotiation from a qualified pool, or using a competitive process. The awarding practices in many ports around the world have undergone quite some changes in recent years. Where before there were often no formal conditions required, the granting nowadays typically consists of a thorough inquiry of the different candidates for obtaining a terminal.

The 'as is' survey revealed that, for the given port project sample, competitive bidding is the most common procedure used in concession granting today (figure 7). It is difficult to quantify to what extent national and supranational legislation, port privatization schemes and legal disputes have contributed to this situation. Any competitive bidding should comply with the principle of equality, which states that every candidate should be equally treated and compared and that there will be no favoritism in the awarding of the concession or no substantial reduction of competition.

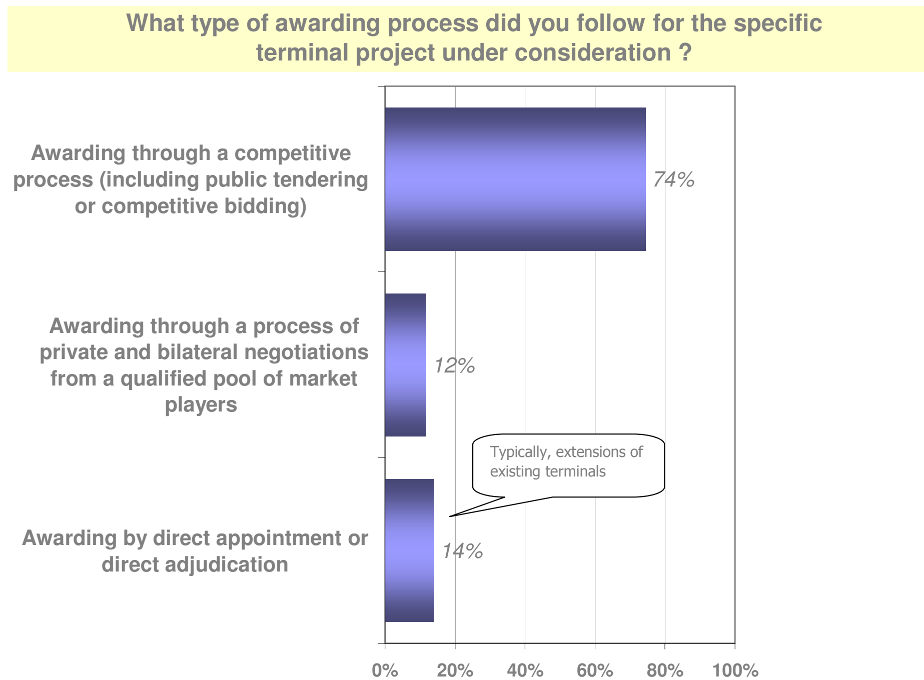
In only 21% of the projects following a competitive bidding process, potential candidates were invited by the managing body of the port. In 83% of the cases, the managing body of the port published an open call for tender. It has to be stressed that such an open call in quite of number of cases does not involve a public tendering procedure. It often involved an open assessment procedure with room for negotiations and the submission of improved proposals during the process. The 'as is' survey revealed that in 68% of the 'open call for tender' cases the terminal is awarded on the basis of the offers of the eligible candidates, followed by one or more negotiation rounds. In the remaining cases the terminal is awarded on the basis of the offers of the eligible candidates without any negotiations or the possibility for candidates to submit a revised proposal during the awarding process. Some ports use different types of tendering procedures depending on specific criteria: for example, a limited or 'light' version for smaller facilities and a full version for larger terminals.

In some cases the decision level regarding the awarding of terminals shifts from one authority to another depending on certain parameters. For example, one respondent pointed out the land in the considered port can only be leased for more than one year when using an open tendering procedure. Up to a ten year lease the final decision on the awarding of the terminal resides with the managing body of the port. For longer periods, the approval of the Ministry of Treasury is required.

In the cases where terminals were directly appointed, managing bodies of ports did so mainly for strategic reasons (e.g. the creation of intra-port competition or the securing of further expansion possibilities for efficient incumbent firms) or because the terminal project represented a marginal extension of an existing facility (for instance the extension of an existing container terminal with one berth). The 'viewpoints' survey revealed that more than 70% of the respondents agreed or even strongly agreed with the statement that managing bodies of ports (should) have the right to award terminals by direct appointment when they have strategic reasons to do so (figure 8).

In case of a competitive bidding process, in almost half of the cases the managing body of the port announced the awarding process on an international scale, 35% on a European scale and only 17% on a national scale. When asking about the kind of terminal operators involved in the awarding process, 71% of the respondents pointed out that the bidding process involved local, national and foreign operators, whereas the remainder only included local and or national operators.

Figure 7: 'As is' survey: the type of awarding process used



	Yes	No
The potential candidates where invited by the managing body of the port	21%	79%
The managing body of the port published an open call for tender	83%	17%

Figure 8: 'Viewpoints' survey: the awarding of terminals by direct appointment

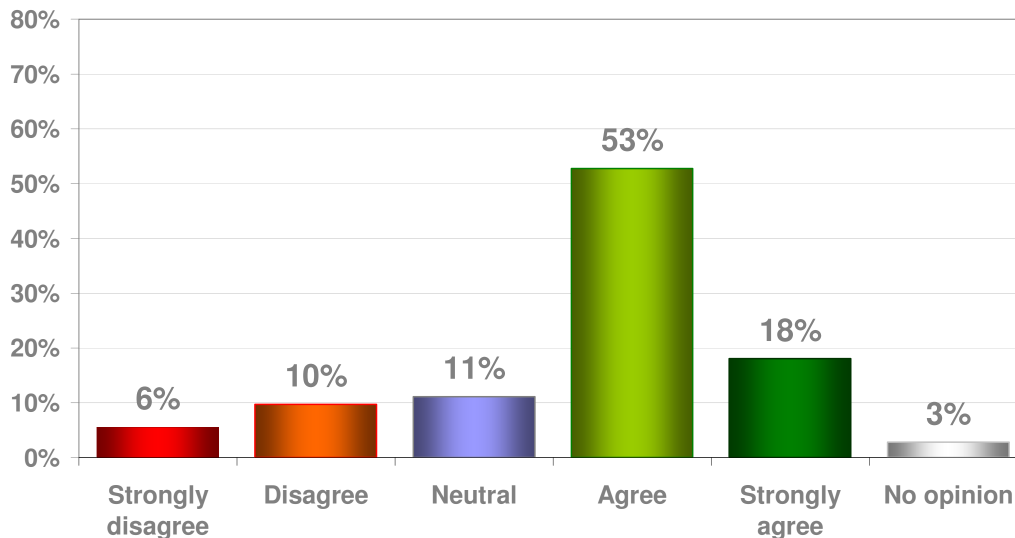
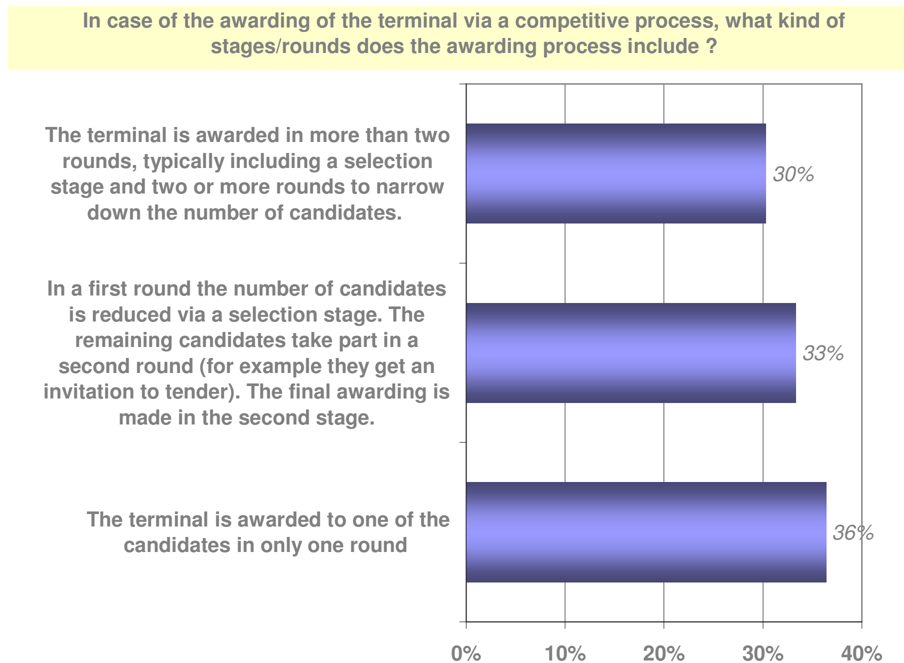


Figure 9: 'As is' survey: the stages in the awarding process



In case the awarding of the terminal takes place via a competitive process, a wide diversity exists in stages/rounds included in the awarding process (figure 9). In about 36% of the cases, the terminal is awarded to one of the candidates in only one round. One third of the projects considered involves the reduction of the number of candidates in a first round (via a qualification/eligibility stage or selection stage). The remaining candidates take part in a second round (for example they get an invitation to tender). The final awarding is made in the second stage. Almost equally important is an awarding process covering more than two rounds, typically including a selection stage and two or more rounds to narrow down the number of candidates.

The 'as is' survey also gives insight into the methodology used to award terminals. In about 46% of the terminal projects, the managing bodies of the ports used some sort of uniform awarding formula or system for all terminals in the port. In the remaining 54% of the cases the method was determined ad hoc based on the specificities of the terminal project under consideration.

4.2. Competitive bidding: the selection phase

Figure 9 revealed that in about two thirds of the cases, the competitive bidding procedure consists of two or more stages. The first phase typically involves a selection or qualification stage based on experience and financial strength of the candidates. The first stage in the bidding procedure reduces the number of potential bidders thereby avoiding the risks of non-compliance by unreliable bidders.

In approximately 86% of the competitive bidding procedures considered, the selection stage includes minimum requirements related to the financial strength of the candidates. The most commonly-used financial parameters relate to a threshold value for the turnover of the candidate (mentioned by 38% of the respondents who use minimum

requirements related to the financial strength of the candidates), a threshold value for the cash flow of the candidate (22%) and a maximum value for the ratio between the amount to be invested by the company and the turnover or net accruals of the company (28%).

In approximately 92% of the competitive bidding procedures considered, the selection stage included minimum requirements related to the relevant experience of the candidates. The experience of the candidate can for instance be demonstrated by the management of facilities for similar cargo in the same or other ports. The candidate thus has to credit his experience in the activities related to the project by giving proof of specific antecedents in the exploitation of terminals. The most common ways for managing bodies of ports to ask proof of relevant experience relate to:

- Experience in any part of the world in the operation of terminals of the same kind as the terminal that is being awarded (mentioned by 62% of the respondents who use minimum requirements related to the relevant experience of the candidates);
- A minimum worldwide terminal throughput (in tons, TEU, number of passengers, etc..) required to be eligible as a candidate (24%)
- Experience in any cargo handling operations in ports located in any part of the world (24%)
- Experience in the operation of terminals of the same kind and in the same region as the terminal that is being awarded (6%)
- Experience in any cargo handling operations in the same region as the terminal that is being awarded (3%)

4.3. Competitive bidding: the final awarding phase

Figure 10 gives an idea of which documents and plans candidates have to submit to the managing body of the port in view of the final awarding of the terminal. A technical implementation plan is compulsory in nearly all terminal projects under consideration, while requesting a financial plan and a marketing plan is a very common practice as well. Although the required contents of such plans can differ significantly from case to case, an implementation plan is backed by the results of a market study. The calculations of handling capacity will have to demonstrate that the installations offered will have the necessary capacity to serve adequately the needs of the projected throughput. The marketing plan typically includes a market study that defines the demand of services for the terminal and justifies the previsions about the magnitude and requirements of the installations, including projections of yearly throughput for a number of years. It can also include a section on how the bidder intends to attract the highest proportion in the market and to obtain the highest efficiency of his operations.

In about 70% of the terminal projects of the 'as is' survey, each bidder had to quantify the staff requirements and also had to present studies of environmental and territorial impact covering aspects such as the impact of the terminal operations on the environment and the alternatives to eliminate, reduce or mitigate certain effects (figure 10).

Managing bodies of ports generally expect candidates to come up with a well–prepared and integrated proposal following a continuous chain of logic, which flows from the market demand and cargo projections through to the physical layout, equipment purchases, manning levels and operating assumptions.

Figure 10: 'As is' survey: documents to be provided by the candidates

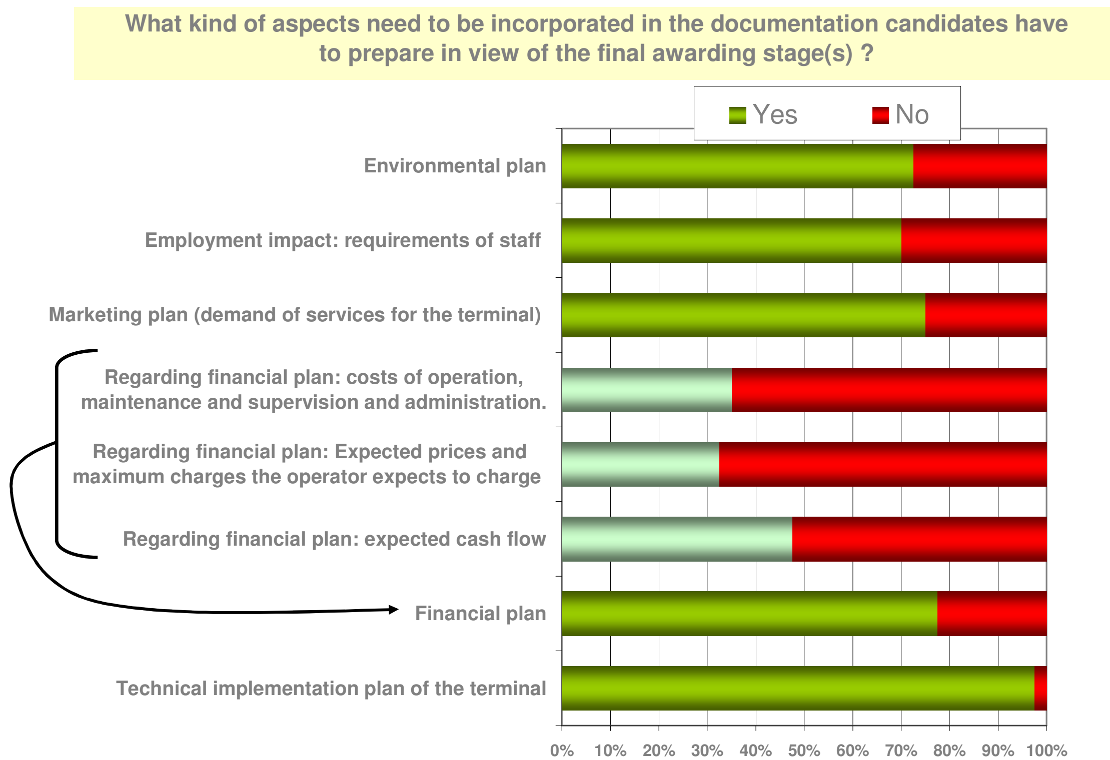
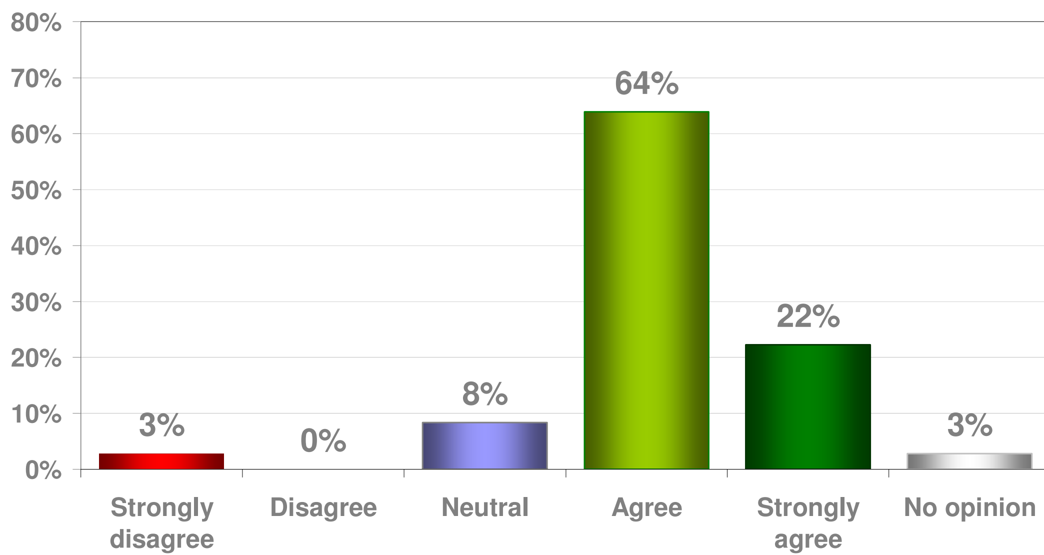
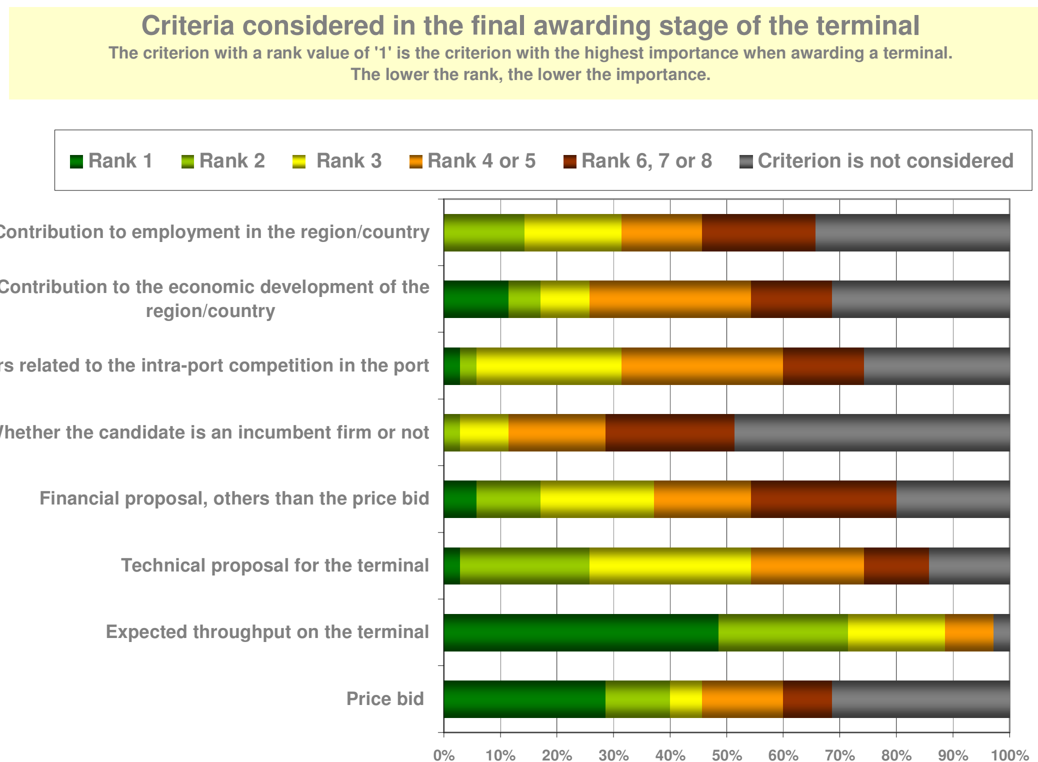


Figure 11: 'Viewpoints' survey: transparency related to the selection mechanism (72 respondents)



When asking about whether or not the managing body of the port uses a formalized system in the final awarding stage, 41% of the respondents of the 'as is' survey indicated they have no specific quantitative mechanism in place, but make a final choice based on a qualitative overall appreciation of the proposals. In 59% of the cases, the respective managing bodies of ports use some sort of scorecard system: various aspects of the proposal are rated and the results are added up to a weighted or unweighted score, based on a score for each of the evaluation criteria related to the elements in the proposal. The 'viewpoints' survey revealed that, irrespective of the existence of a scorecard system, managing bodies of ports should explain how the final selection among the candidates is made (figure 11). The weights and passing criteria are thus to be included in the bidding documents if applicable.

Figure 12: 'As is' survey: criteria used in the final awarding stage



The 'as is' survey also contained a section on the importance of the various criteria used in the final awarding of the terminal (see figure 12). The results show that the expected throughput is considered as the most important criterion in about 50% of the terminal projects considered. In about 23% of the cases, the managing bodies of ports attributed the second highest priority to the throughput criterion. Price bids play an important role as well, but in 30% of the terminal projects the price bid was not part of the awarding process due to the specificities of the pricing system used by the managing body of the port (see next section for a more detailed analysis). Other important criteria used in view of the final awarding stage of a terminal include the contribution to the economic development of the region/country, the financial proposal (others than the price bid) and the technical proposal for the terminal.

It is interesting to observe that in about three quarters of the terminal cases, the respective managing body of the port explicitly or implicitly includes criteria related to the preservation or introduction of intra-port competition in the port. Other factors

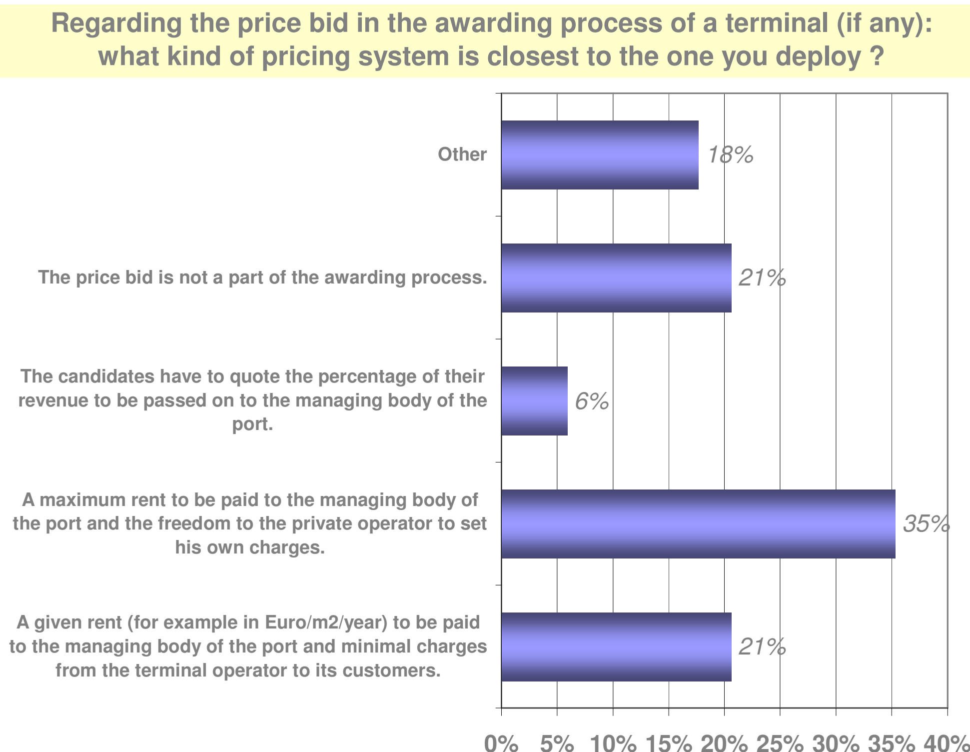
related to the market structure within the port (such as whether the candidate is an incumbent firm or not) are less frequently used as criteria in the final awarding phase.

Other factors that were occasionally mentioned by respondents relate to the expected time gap between the awarding of the terminal and the start of the operations, the inland transport issue, the feeder network concept and the risk profile of the candidate (loyalty concerns).

4.4. The pricing system

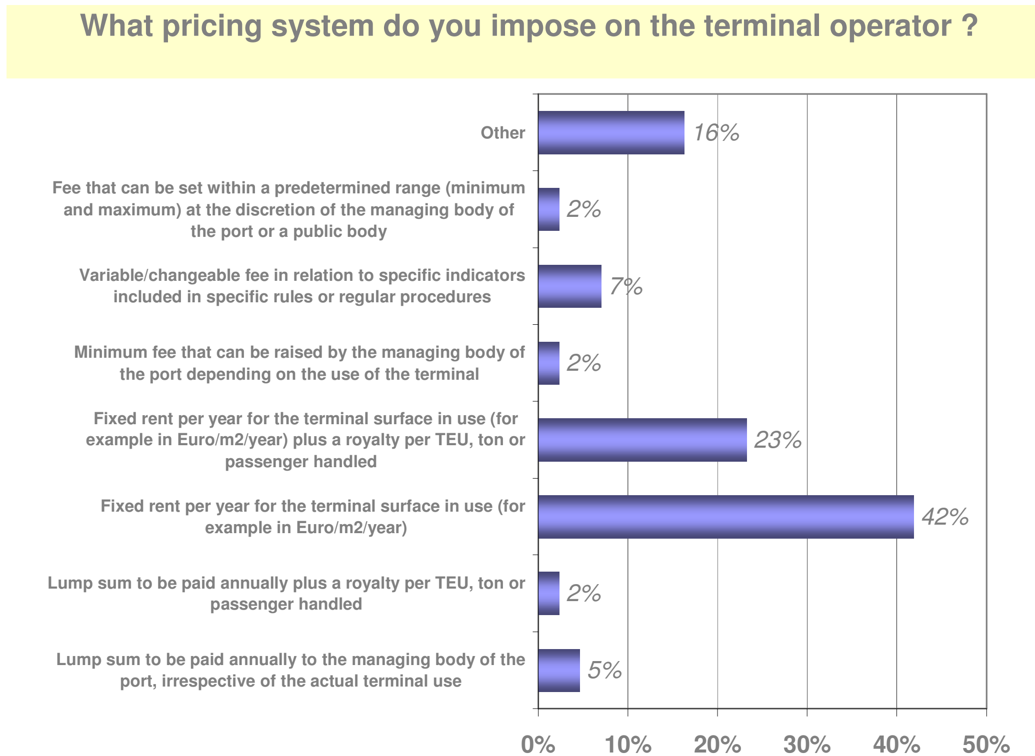
There are quite some price bidding systems that can be used in case of the awarding of terminals. The alternatives available range from a given rent but minimal charges to a maximum rent and freedom to the private operator to set his own charges. Figure 13 offers more insight into the real use of the various price bidding systems. The most common system in use entails a maximum rent to be paid to the managing body of the port and the freedom to the private operator to set his own charges. The winner is the highest payer for the right to provide terminal services (market mechanism in setting the rent for the managing body of the port). Another popular system focuses on a given rent to be paid to the managing body of the port and minimal charges from the terminal operator to its customers. The bidder who is offering the lowest price to be paid by the terminal users is the winner. The survey results indicate there are quite a few cases where either the price bid is not part of the awarding process or the managing body of the port applies a slight variation on one of the two dominant price bidding systems. A few respondents highlighted that the price bidding system is based on a basis bid defined by national law with increases determined by the local managing body of the port.

Figure 13: 'As is' survey: the price bidding system used



Given an investment level and quality requirements, the winner is either the highest payer for the right to provide terminal services, or the bidder who is offering the lowest price to be paid by the terminal users. In the first option the managing body of the port aims at maximizing the revenue. The second option focuses more on the interest of the port users and ensures price minimization rather than revenue maximization.

Figure 14: 'As is' survey': the price system used



The pricing system deployed by the managing body of the port for the use of the port land tends to vary widely among European ports (figure 14). In 42% of the cases, the managing body of the port imposes a fixed rent per year on the terminal operator for the terminal surface in use (for example in Euro/m^2/year). About 23% of the sample projects feature a fixed rent per year plus a royalty per TEU, ton or passenger handled. The category 'other' in figure 14 includes the following variations on the more common pricing systems:

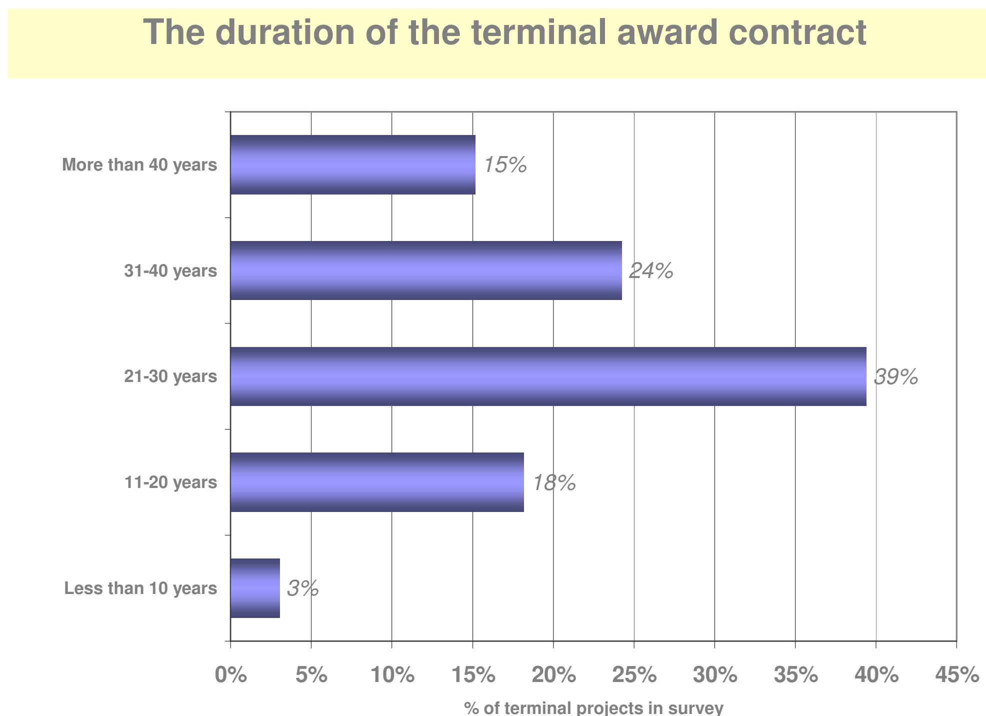
- A lump sum to be paid annually regardless the financial results from the operating activity plus a variable payment (the bigger of the sums: percentage from the total cash flow or coefficient per ton);
- A fixed rent per year on the terminal area plus a percentage of the revenue earned;
- A fixed rent for the terminal surface in use adjusted for a bonus/males system, depending on an annual throughput in relation to the guaranteed volume.

5. The survey results: the duration of the terminal contract

An internal survey by the European Sea Ports Organization (ESPO) held a few years ago revealed a big variety in terminal contract durations in European ports. It is not in line with reality in the port sector to try to fit everything in one set of average durations. The existence of a wide variation in durations is confirmed in the 'as is' survey (figure 15). Contract durations in the sample ranged from 4 to 65 years. Two thirds of all terminal contracts have a term of 21 to 40 years.

In 58% of the terminal award procedures included in the 'as is' survey, existing laws impose minimum and or maximum limits on the duration of the terminal award contract. Legislators have developed thresholds on concession durations in view of safeguarding free and fair competition in the port sector.

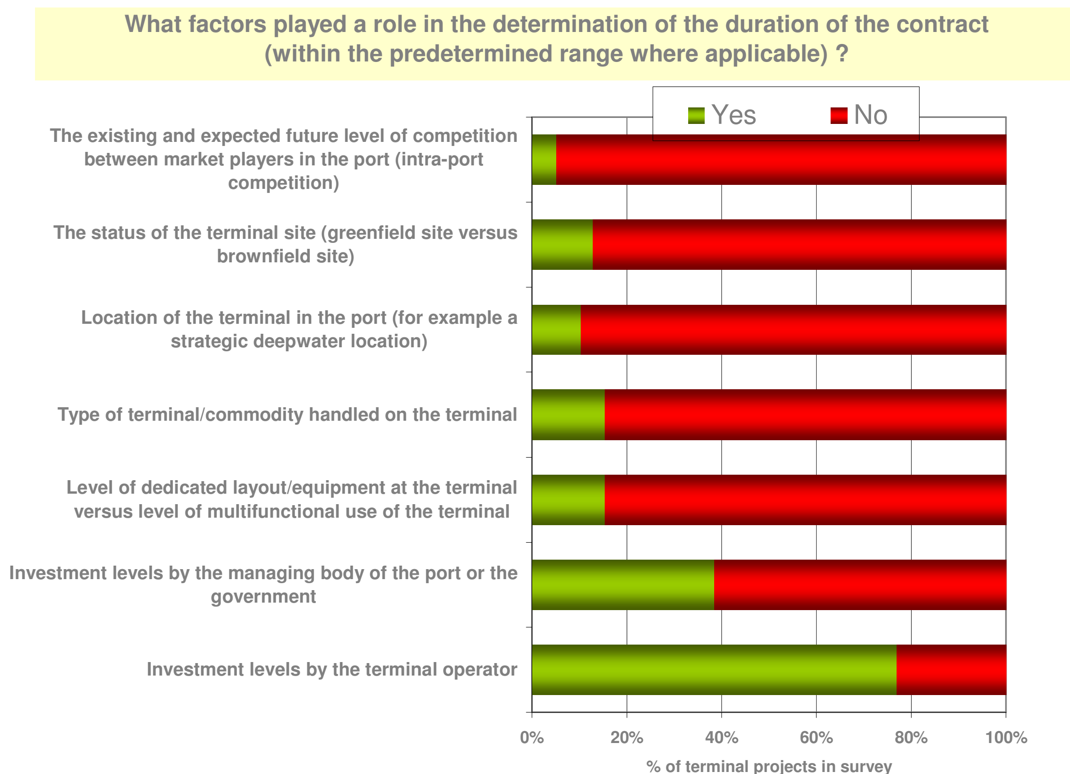
Figure 15: 'As is' survey: the term of the terminal award



About 59% of the managing bodies of ports in the 'as is' survey sample point out that the duration is determined ad hoc based on the specificities of the terminal under consideration. The remaining respondents underline they deploy some kind of uniform formula or system to determine the contract durations for all terminals in the port. While clear rules of thumb on the determination of the contract duration seem hard to find, the 'as is' survey clearly indicates the duration mainly varies with the amount of the initial investment required both from the terminal operator and the managing body of the port. Many of the other factors considered in figure 16 have direct implications on the required investment levels, e.g. the type of terminal/commodity handled on the terminal, the level of dedicated layout/equipment at the terminal, the location of the terminal in the port and the status of the terminal site (greenfield site versus brownfield site). Surprisingly, managing bodies of ports in the sample generally seem not to take into account the existing and expected future level of competition between market players in the port (intra-port competition) when deciding on the contract duration. In other words, the

number of players in one specific terminal market segment inside the port area does not seem to have an impact on the contract term. Other factors that can play a role in the setting of the contract duration relate to the compliance with the development policy of the port, land lease and other easement rights and the refurbishment of historical sites within the concession area.

Figure 16: 'As is' survey: criteria used for the determination of the contract term



In 60% of the terminal projects the term of the contract was or is preset by the managing body of the port. In the remaining cases, the term is the result of a negotiation between terminal operator and the managing body of the port. Occasionally, the managing body of the port might opt to leave it up to the bidder to indicate the term in years that he requires.

The duration of the agreement is of crucial importance both to terminal operators and managing bodies of ports. In general, long-term agreements allow private port operators to benefit from learning-by-doing processes and to achieve a reasonable ROI. Managing bodies of ports try to find a balance between a reasonable payback period for the investments made by terminal operators on the one hand and a maximum entry to potential newcomers on the other. As long-term agreements limit market entry, intra-port competition will only take place among the existing local port operators.

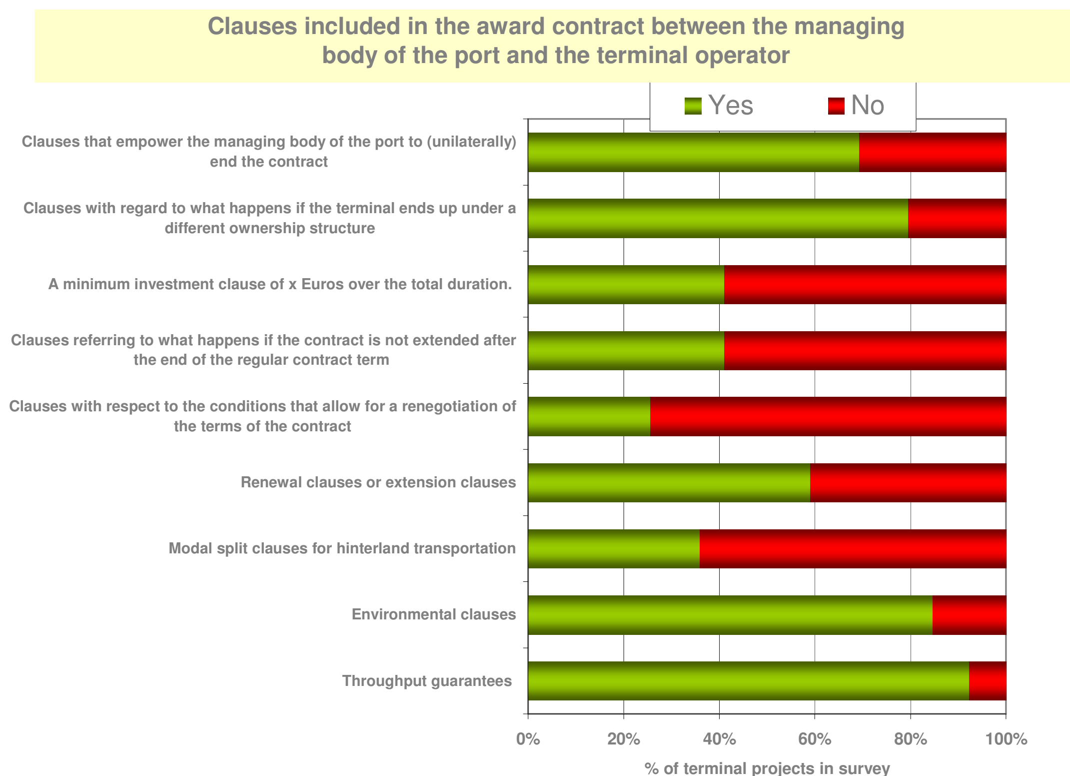
However, even when concession periods are long, new players can still enter the market either through a merger or acquisition of a local operator or when a long-term concession or lease of a new terminal expansion is allocated to them. As discussed in the next section, managing bodies of ports can even build safety valves in the contract, so as to make the terminal available to other candidates in case the existing operator does not meet specific performance thresholds.

6. The survey results: contract stipulations

6.1. General overview

Once the terminal has been awarded, the managing body of the port and the terminal operator draw up a contract. The contract typically stipulates that a private company is allowed to operate a specified terminal for a given duration. The design of the contract, starting with the rights and obligations of both parties involved is a key element. In principle, the managing body of a port has no guarantee that the terminal operator will meet its objectives. As such, contracts often take the form of performance-based agreements to create incentives for the terminal operator to meet the objectives of the managing body of the port. The results of the 'as is' survey allow to identify key elements in terminal contracts (figure 17).

Figure 17: 'As is' survey: clauses in a terminal contract



The most commonly used clauses relate to minimum throughput requirements, environmental clauses and clauses with regard to changes in the ownership structure of the terminal (present in over 80% of the contracts). Slightly less widely used are renewal or extension clauses and stipulations that empower the managing body of the port to end the contract. In about 40% of the cases the contract contains clauses on minimum investment levels required, modal split and or clauses referring to what happens if the contract is not extended after the end of the regular contract term. Clauses with respect to the conditions that allow for a renegotiation of the terms of the contract are not widely used (mentioned in only 24% of the cases). The sections below zoom into the various clauses. The inclusion and enforcement of specific clauses depends partly on the existing balance of power between the managing body of the port and the terminal operator.

6.2. Throughput guarantees

Figure 17 reveals throughput guarantees are included in more than 90% of the sample of terminal contracts. The managing body of the port generally indicates upfront a minimum throughput to be guaranteed by the terminal operator. This should encourage the operator to market the port services to attract maritime trade and to optimize terminal and land usage. The 'as is' survey results show that in 67% of the contracts with throughput guarantees, contract clauses explicitly mention that the terminal operator has to achieve a minimum cargo volume for the terminal as a whole. In only few cases managing bodies of ports put forward a minimum cargo volume to be handled per hectare of terminal area or per meter of quay.

The survey results made it clear that the threshold values in the throughput clauses are often determined via negotiations between terminal operator and the managing body of the port (mentioned by respondents in 46% of the terminal cases). Also quite common is the fixing of the throughput guarantees by the managing body of the port based on port benchmarking exercises (32%). The involvement of a public/government body, other than the managing body of the port, in the setting of the minimum throughput requirements is far less likely to take place (mentioned in only 14% of the cases). One of the respondents referred to a system of minimal threshold values determined by the managing body of the port based on port benchmarking exercises and final threshold values in the throughput clauses determined by the results from the awarding process. The 'viewpoints' survey results strongly support the view that the determination of the minimum throughput levels by the managing body of the port should be based on a transparent and uniform calculation system used within the port (figure 18).

Figure 18: 'Viewpoints' survey: throughput guarantees

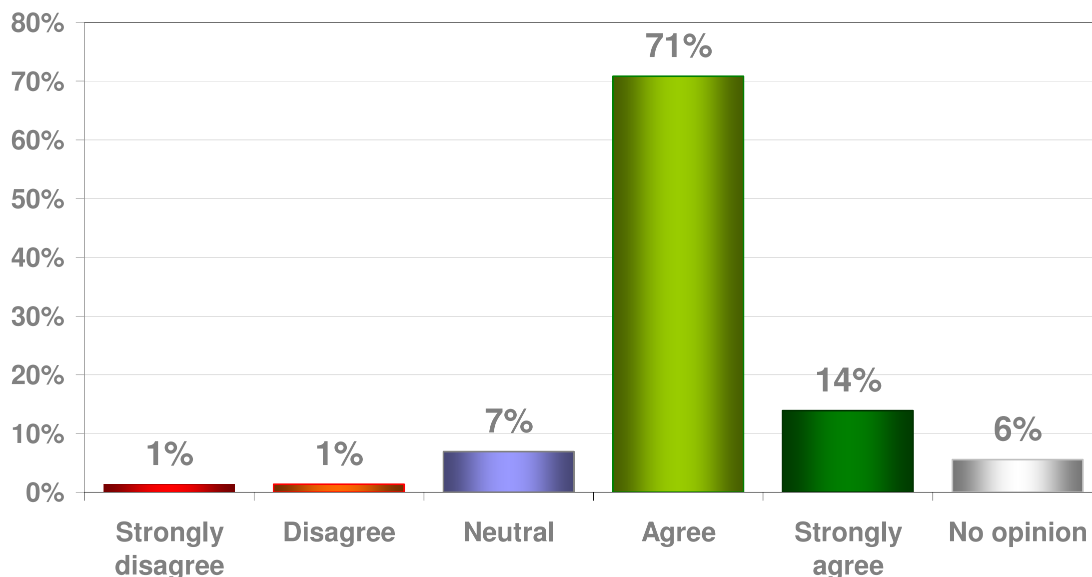
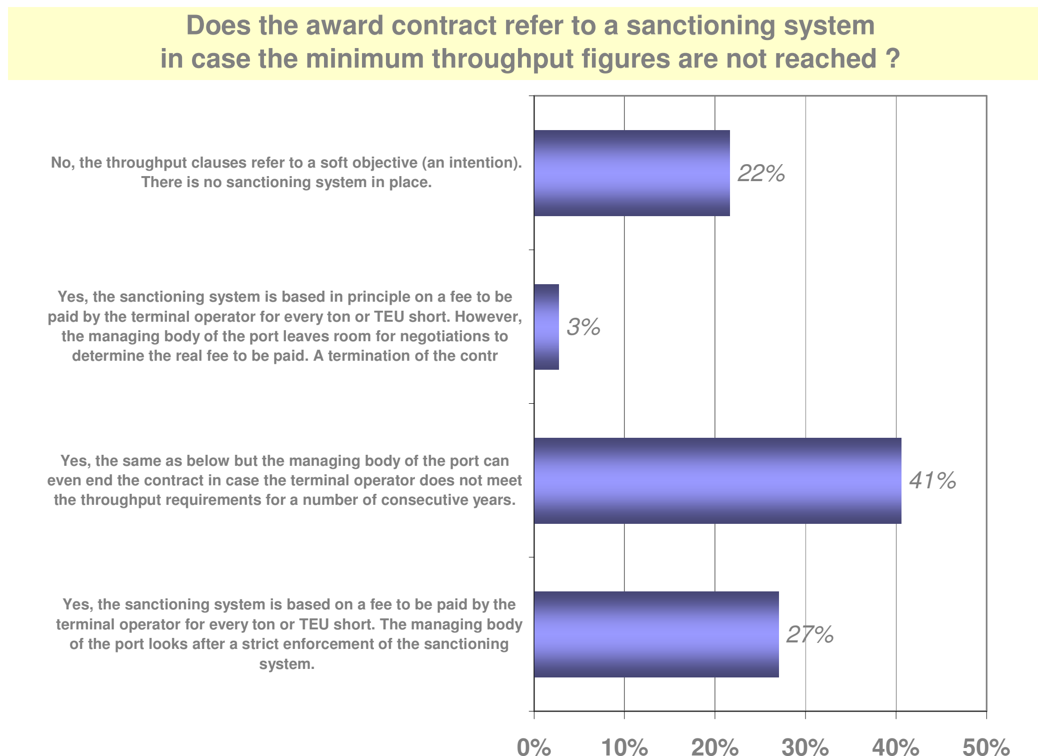


Figure 19: 'As is' survey: the inclusion of sanctions in the contract



The contracts typically contain provisions in view of protecting the terminal operator and the managing body of the port against arbitrary and early cancellation. However, about 70% of the contracts also contain clauses that empower the managing body of the port to (unilaterally) end the contract in case the terminal operator does not meet certain preset performance indicators (figure 17). Figure 19 highlights that in case the terminal operator does not meet the throughput guarantees as set in the agreement, contract stipulations commonly refer to the payment of a penalty to managing body of the port (e.g. a fixed amount per ton or TEU short) or, in the most extreme case, the terminal will be taken away from the operator. One of the respondents clarified the port uses a sanctioning system based on a fee to be paid by the terminal operator as a percentage of the amount of a year's lease payment. In only 3% of the analyzed terminal projects, the managing body of the port leaves room for negotiations to determine the real fee to be paid. Quite a number of managing bodies of ports (i.e. 22%) use throughput clauses as a soft objective (an intention) and consequently do not impose a sanction in case the throughput figures are not reached.

Specific throughput guarantees will deliver the expected results only if the performance of the terminal operator can be adequately monitored and if the targets can be enforced. Ideally, penalties should be related to the economic loss caused by not reaching the throughput levels as set out in the contract. The economic loss includes terminal-related elements (terminal underutilization) and broader economic elements (missed added-value and employment). High penalties give the contract a rigidity that is inefficient. Non-credible threats and sanctions are not effective as they are rarely enforced and give the managing body of the port a reputation of non-enforcement that induces the terminal operator to violate the rules or try to renegotiate any decision it does not like. One respondent of the 'as is' survey pointed out the managing body of the port combines a system of penalties in case of non-compliance with traffics objectives with a bonus system in case the throughput is higher than the objectives.

Throughput guarantees, if properly enforced, are a powerful tool to port authorities. They should guarantee a reasonable level of land productivity. Efficient land use becomes a shared responsibility between port authority and terminal operator. Furthermore, the managing body of the port could retract or reallocate certain parts of a terminal due to under-utilization thereby increasing the contestability in the container handling industry.

6.3. Environmental clauses

Figure 17 demonstrated that environmental clauses appear in 85% of all terminal contracts of the 'as is' survey. In about 30% of these cases, the environmental clauses refer to the compulsory use of some sort of environmental management/reporting system, while maximum emission levels are included in 18% of the contracts. About 9% of the contracts only refer to specific technical equipment to be used to limit emissions (for example coldironing for vessels, electric yard equipment, etc..). About one fourth of all contracts combine several of the above environmental clauses. Occasionally, ports include clauses on existing or future contamination of the terminal site. Quite a number of respondents who do not include specific environmental clauses in the contract added that the terminal operations should comply with national environmental standards stipulated by the law.

6.4. Modal split clauses for hinterland transportation

Recent terminal contracts increasingly adopt modal split specifications, particularly in a container terminal context. The results of the 'as is' survey point to the inclusion of modal split clauses in nearly 37% of all contracts considered (figure 17). In half of these cases, the contract elaborates on some technical specifications and compulsory investments to be done by the terminal operator in hinterland transport infrastructures on the terminal site. In only 21% of the cases, the modal split clauses explicitly impose a specific modal split on the terminal operator to be reached by a certain year (for example: 40% road, 40% barge and shortsea and 20% rail by 2010). In about 14% of the cases, the modal split to be reached is specified for each year of operation. The modal split target is often formulated as a soft objective (an intention).

6.5. Renewal clauses or extension clauses

Many terminal award contracts (nearly 60% in the survey sample) contain stipulations on a possible prolongation of the terminal award beyond the official term (figure 17). The most popular contracts arrangements are:

- Clauses referring to the conditions for renewal of the terminal use after the end of the regular contract term (mentioned by 39% of the respondents who included renewal or extension clauses in the contract)
- Clauses referring to an extension of the contract term if the terminal operator makes additional investments during the regular contract term (18%)
- Clauses referring to interim evaluations (for example every five years) during the contract term. The continuation of the terminal use is subject to a positive evaluation during the interim evaluations (18%)

Figure 20: 'As is' survey: the extension of the contract term

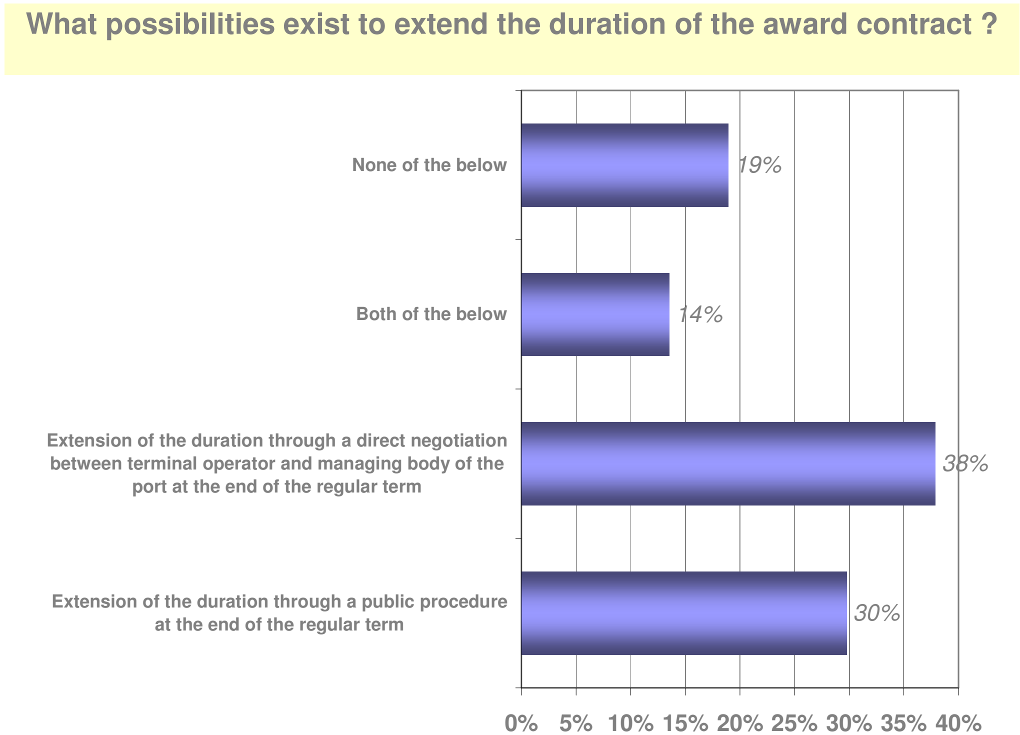
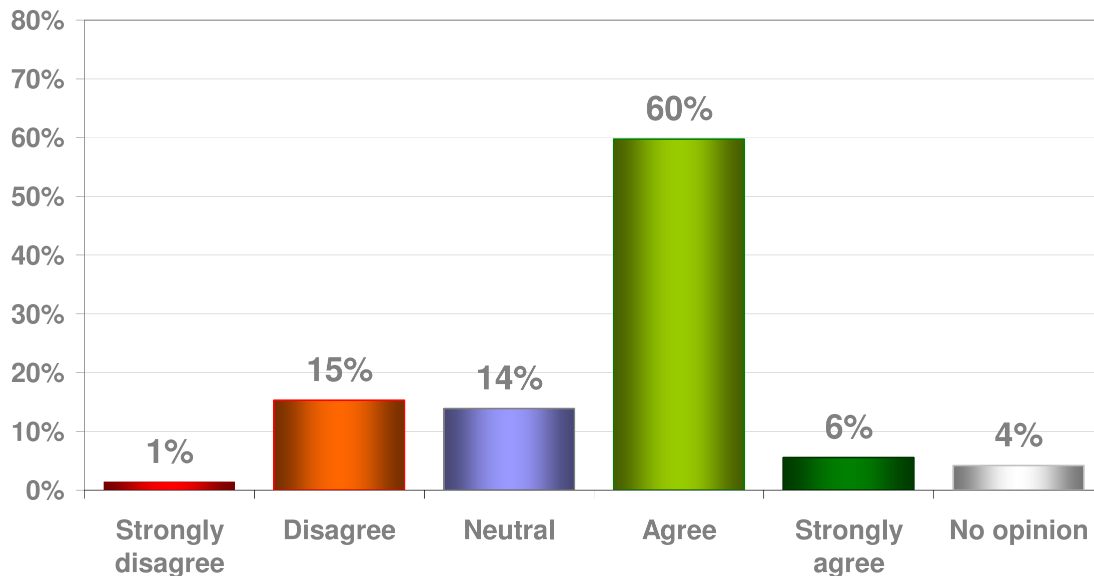


Figure 21: 'Viewpoints' survey: renewal and extension clauses



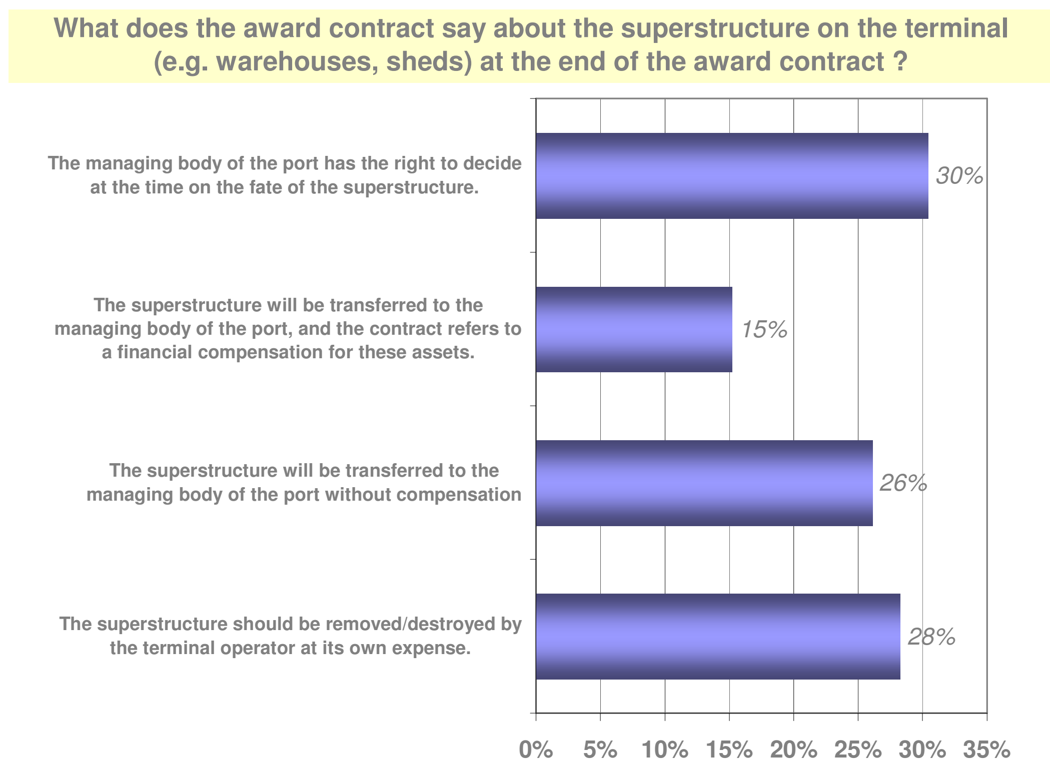
Furthermore, figure 20 reveals many managing bodies of ports make a possible extension of the contract term subject to a direct negotiation between terminal operator and the managing body of the port at the end of the regular term. Managing bodies of ports opt for a public procedure in 30% of the cases. In some ports, the terminal operator can request a prolongation of the terminal contract based on major investments made by the operator throughout the contract term or in the last years of the contract term. Such request is then examined by the managing body of the port.

The 'viewpoints' survey results show two thirds of the respondents underwrite the statement that managing bodies of ports should include renewal / prolongation clauses in the contract to guarantee terminal efficiency and sufficient investments levels by the terminal operator also in the last few years of the contract term (figure 21). This percentage is in line with the percentage of contracts that already include renewal / prolongation clauses.

6.6. Clauses referring to what happens if the contract is not extended after the end of the regular contract term

Some 40% of the contracts considered contain clauses referring to what happens if the contract is not extended after the end of the regular contract term (figure 17). In 63% of these cases, the clauses explicitly refer to financial compensations for the value-added linked to investments made by the terminal operator in a specified period prior to the end of the contract term. In less than 7% of the sample, the managing body of the port included clauses referring to arrangements with respect to employees/personnel linked to the terminal operations once the contract term ended.

Figure 22: 'As is' survey: terminal superstructure at the end of the contract term

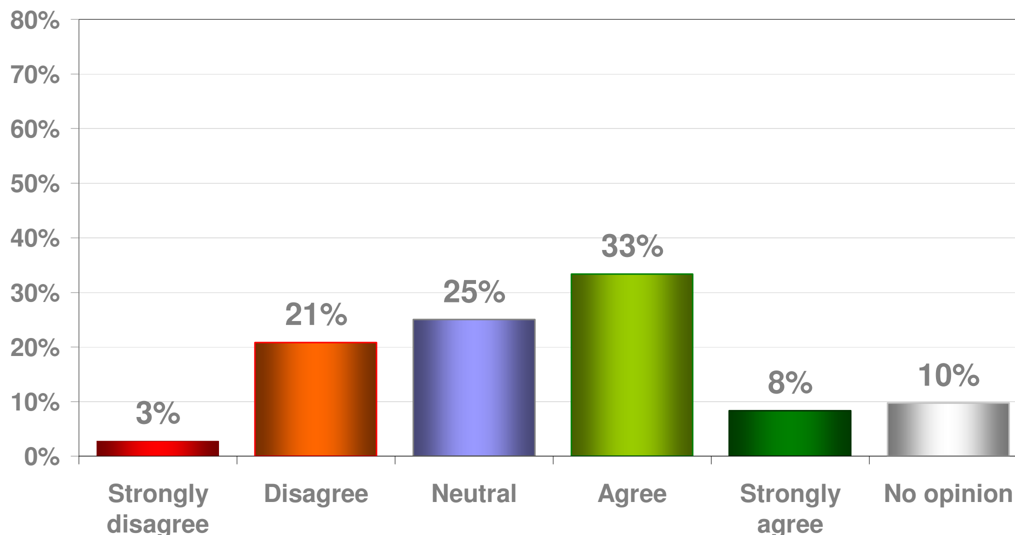


Managing bodies of ports in Europe seem to follow different paths when it comes to dealing with the terminal superstructure at the end of the contract term (figure 22). In 30% of the cases under consideration, the managing body of the port decides at the end of the contract term on what to do with the superstructure. Common approaches also include the removal/destruction of the superstructure by the terminal operator at the end of the contract term or the transfer of the assets to the managing body of the port without any form of compensation. The 'as is' survey further revealed that it is not common practice for the managing body of the port to financially compensate the terminal operator for the superstructure that was transferred at the end of the contract term.

6.7. Clauses with regard to what happens if the terminal ends up under a different ownership structure

Managing bodies of ports widely include clauses in terminal contracts which specify what happens if the terminal ends up under a different ownership structure during the contract term (occurrence of 79% in the sample of the 'as is' survey, figure 17). This trend can be seen as a direct result of the M&A activity (mergers and acquisitions) in the terminal operating market and the increasing role of various forms of partnerships between global terminal operators, shipping lines and investment groups. Approximately 71% of the contracts that explicitly refer to ownership changes contain clauses stating that the managing body of the port has to give permission before the terminal can be transferred to a new owner or a new shareholder structure. In 55% of the cases, the agreement between the managing body of the port and the terminal operator includes clauses stating that the terminal operator has to notify the managing body of the port about the transaction before the terminal can be transferred to a new owner or a new shareholder structure.

Figure 23: 'Viewpoints' survey: M&A activity in the terminal operating business



In only 3% of the sample, the contract stipulates that the managing body of the port has the right to impose a royalty fee in case the terminal is transferred into other hands due to a merger or acquisition operation. Nevertheless, the 'viewpoints' survey showed that about 42% of the respondents agrees with the statement that managing bodies of ports should have the right to impose a royalty fee in case the terminal changes hands during the contract term (figure 23). A right to impose a royalty fee does not imply they will do so in practice. A lot depends on the existing balance of power between the managing body of the port and the terminal operator.

7. Discussion and conclusions

This report summarizes the main findings of the ITMMA survey on the awarding of terminals in Europe. Through the survey, we have tried to provide a better understanding of current practices and viewpoints of managing bodies of seaports in Europe on this topic. The survey brings together information on existing terminal projects or terminals in Europe and on the viewpoints and perceptions of managing bodies of ports around Europe on tendering and contractual arrangements linked to the awarding of terminals. While the report does not offer an in-depth analysis of all technical and legal aspects related to the awarding of terminals in all member states, it does provide quite some food for thought.

First of all, the survey made clear that a large diversity exists among European ports, particularly in terms of the legal frameworks used and specificities of the awarding procedures deployed. The 'as is' survey results mainly capture current practices in 'landlord' ports in Europe, thereby excluding quite a number of European ports. Hence, the issue discussed in the report is not relevant for highly integrated ports. While performing the survey and analyzing the results, it became clear that the observed diversity is to a large extent the consequence of:

- The range of and priorities in objectives followed by the respective managing bodies of ports (e.g. micro-economic objectives such as profit maximization or throughput maximization and macro-economic objectives such as the creation of value-added for the community and employment)
- The specific local situations and markets the ports are operating in.

In other words, the specific design of the contract, its regulatory regime, the pricing regime and the way the terminal is awarded reveal the priorities of individual managing bodies of ports and as such play an important role in local port governance.

Notwithstanding existing differences, the terminal awarding practices in European ports seem to be converging with respect to some specific aspects. The survey made clear that the vast majority of managing bodies of European ports are trying to optimize the use of scarce land via the inclusion of throughput specifications in the contract. They are also increasingly using the terminal awarding process in view of a broader environmental compliance of port activities and a sustainable development of the port.

Managing bodies of ports continue to use terminal award procedures also in view of shaping the structure and market organization of the terminal handling business in the port area, thereby ensuring further capacity growth for efficient incumbent firms and ensuring intra-port competition by allowing new entrants in case a poor competitiveness urges the port to do so.

All of the above points makes that managing bodies of ports should be given the possibility to work out awarding procedures for new terminals taking into account local objectives and the need for a sustainable and highly competitive port context. However, fierce competition and the fear of traffic losses increase the risk of putting managing bodies of ports in a weak position, eventually making them less observant and strict with regard to the editing and the enforcement of the rules in the contract. With the emergence of international terminal operator groups and shipping lines, managing bodies of ports are confronted with powerful and footloose players. If further policy action at a national or supranational level were to be envisaged, it should be aimed at empowering managing bodies of ports better to fully take up their responsibilities and to further develop their role as (local) regulator in an environment that provides legal certainty to all parties involved. The survey results seem to suggest this can best be done through guidelines on general principles instead of detailed legislative proposals. The results show that many of the basic principles as laid down in the European Commission's ports policy communication of October 2007 are already applied on a large scale in European ports. It is worthwhile for managing bodies of ports to consider to what extent these basic principles are sufficient to serve the above-mentioned purpose of empowerment.

Terminal awarding policies as part of governance structures are not static but evolve constantly in line with the requirements imposed by the market. The dynamics in the port environment urge the managing body of the port to continuously evaluate the effectiveness of their terminal award policies in light of market trends. This further supports the argument for giving full 'ownership' and responsibility on terminal awarding procedures to the managing bodies of ports.

Disclaimer

The views and opinions expressed by the writer of this report do not necessarily state or reflect those of the European Sea Ports Organization (ESPO) or any member of ESPO. The survey results are based on an aggregation of information provided by managing bodies of ports across Europe. ITMMA of the University of Antwerp does not assume any legal liability or responsibility for the accuracy, completeness or usefulness of the information provided by the respondents.

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