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Regulation in the liner shipping industry: pathways to a balance of interests

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Context (1/2)

- ▶ Review of the Consortia Block Exemption Regulation (CBER) No 697/2014 of 24 June 2014 (expire April 25th, 2020) > much debate
- ▶ Commission Regulation (EC) No 906/2009 (Art. 2[1]) defines a consortium as:
An agreement or set of interrelated agreements between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo relating to one or more trades, the object of which is to bring about co-operation in the joint operation of a maritime transport service, and which improves the service that would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial agreements.
- ▶ Market threshold: <30%, otherwise self-assessment
- ▶ Public and targeted consultation (Autumn 2018)
- ▶ The critical question: What will the EU do in 2020?

Context (2/2)

Year	Main Trade Alliances	Top 20 Share of Total Capacity*	Top 20 Not in Global Alliances (including from Top 10...)
1998	5	53.0%	7 (#2 Evergreen, #3 Hanjin/DSR-Senator, #9 MSC)
2001	3	58.7%	8 (#1 Maersk SeaLand, # 3 Evergreen, #5 MSC, #8 CMA CGM, and #10 CP Ships)
2005	3	70.5%	8 (#2 MSC, #3 Evergreen, #5 CMA CGM, #10 CSCL)
2009	3	70.0%	9 (#1 Maersk, #2 MSC, #3 CMA CGM, #4 Evergreen, #8 CSCL)
2017	3	90.4%	1 (#7 Hamburg Süd)
2019	3	92.7%	1 (#9 PIL)

Note: * Capacity share for Top 20 of all TEU in service worldwide from Containerisation International Yearbook, various years to 2009. After 2011, the capacity share was only available for the Top 100 from Alphaliner.

- ▶ What role was played by the element of regulatory uncertainty?

Research Question

- ▶ Are the interests of carriers and shippers in balance in the CBER era?
 - ▶ If they are now, will they also be in the future?
 - ▶ If not, what evidence does each actor have that the interests are not in balance, and what should be changed to bring back balance?



Research Objectives

1. To **define the terms used**, not just from a European perspective, taking a broader worldview as the regulation of consortia, and other forms of cooperative working agreements.
2. To **examine the differing approaches** by regulators of the industry, and builds on an explanation as to how these regulatory tensions may be put in balance.
3. To **review the perspectives of three major industry players** affected by the CBER—carriers, shippers (including freight forwarders and others acting on their behalf), and other stakeholders in the maritime supply chain respectively.
4. To **present the pathways available** in moving forward on the issue of future regulation of the container liner shipping industry.
5. To **discuss the regulatory data collection** and explores the opportunities that better global data collection might lend to improved regulatory outcomes.

Research Approach

- ▶ No rehashing of previously published reports, academic articles,...
- ▶ Applying the framework by Meersman et al. (2010)
 - ▶ to discuss the varying perspectives of the stakeholders involved
 - ▶ to explore whether the tools to materialize the respective objectives are aligned with the operators' strategies and perspectives.

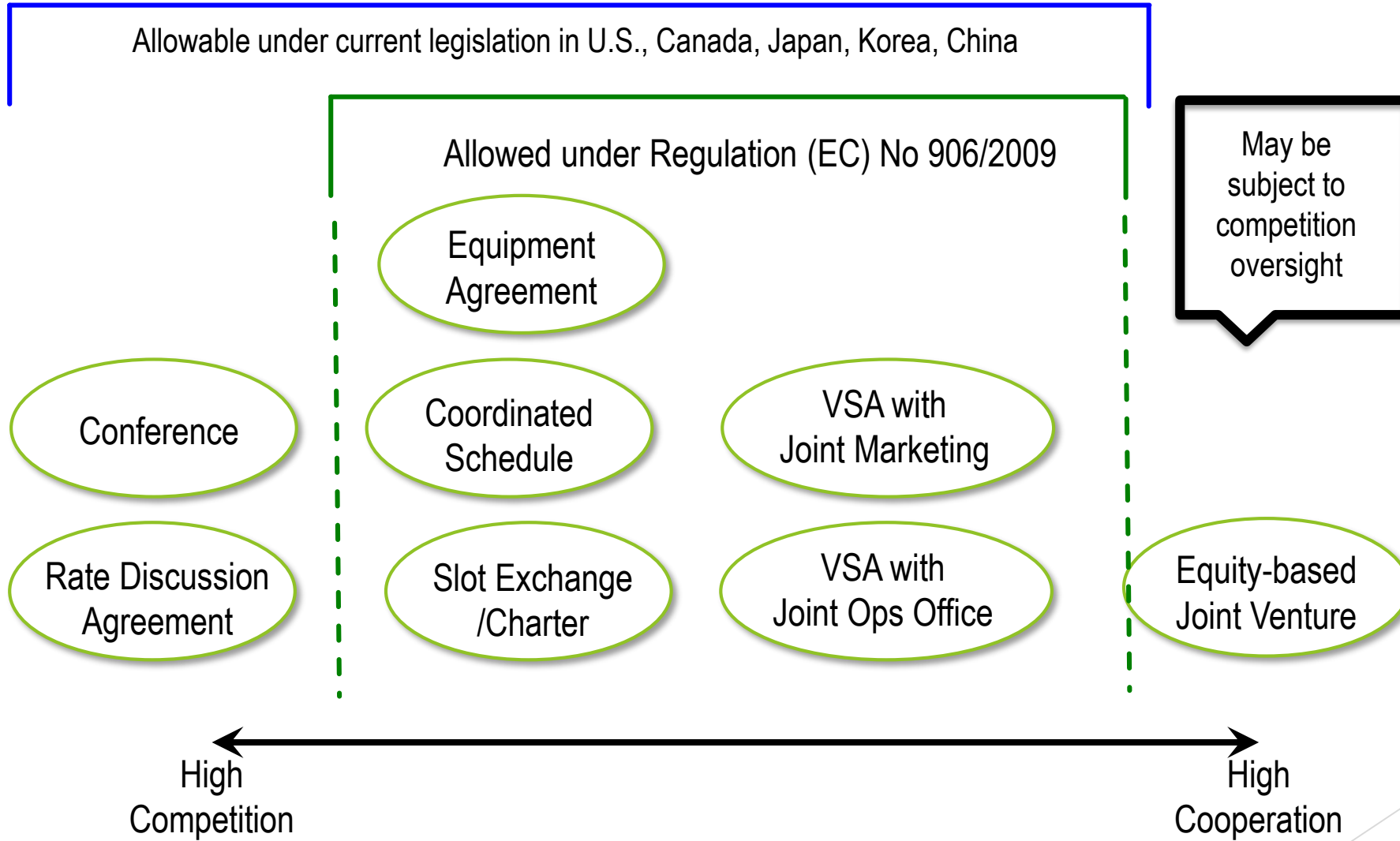
Research Scope

- ▶ Jurisdiction of eight countries
- ▶ Container liner shipping industry as other segments of liner shipping (RoRo, ferries, and the like) that rely on the CBER are not under threat from the impacts of the restructuring seen recently in the large main trades.
- ▶ Geographic trade lane(s) covered by the agreement (more than just Europe's trade routes)
- ▶ NOT: Regulations regarding emissions, ballast water, ship scrapping, and the like

When industrial economics
and strategic management
approaches meet...



Definitions Used

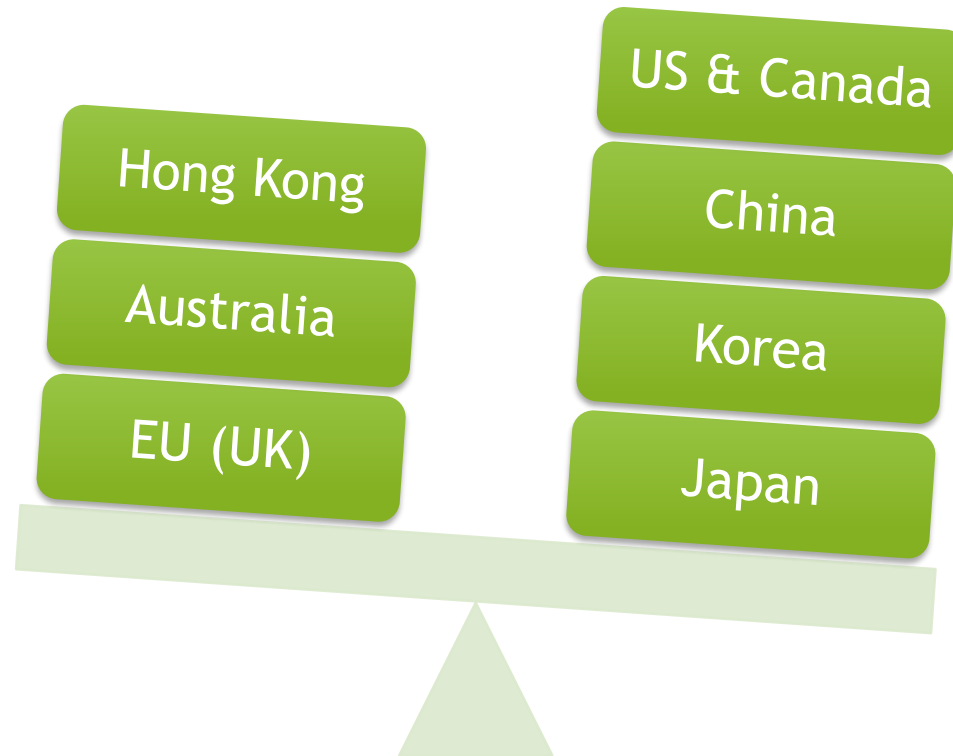


Source: Variant of Brooks, Blunden and Bidgood (1993), Figure 10.1, p. 226.

The Tension of Regulatory Authority

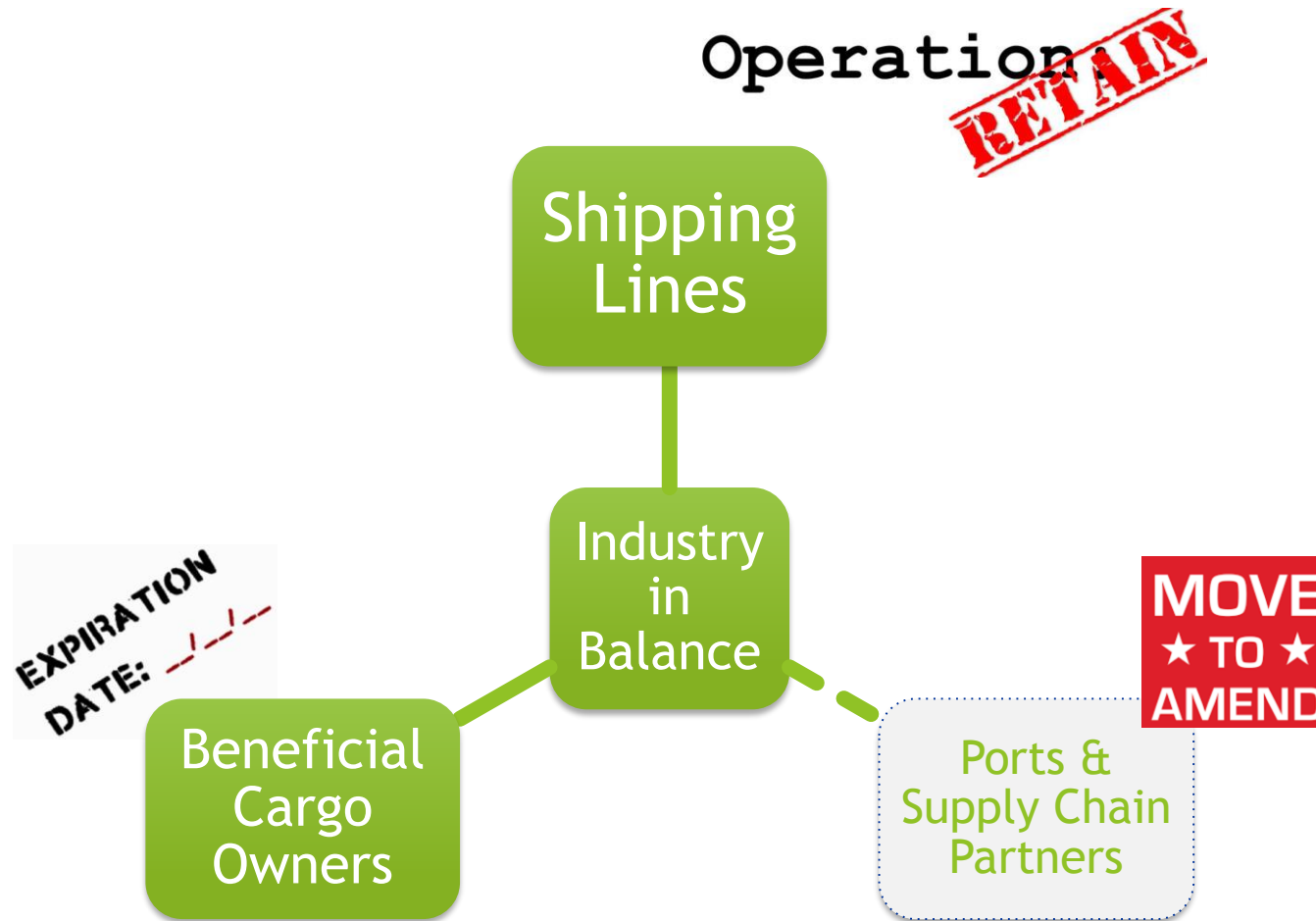
Competition
Authority /
Trade Interests

Transport
Ministry /
Shipping Cos



Source: Brooks, M. R. (2018, September). *Rethinking Competition Policy and Liner Shipping Regulation*.
Presented at the City University, London.

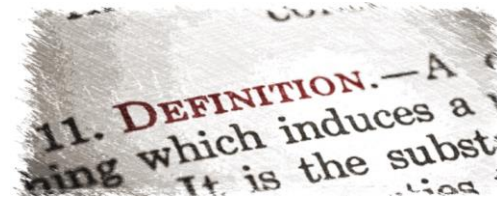
Three Industry Perspectives



Distinctive Characteristics of Container Liner Shipping

- ▶ if not different from other industries, then no different regulatory approach is necessary.
- ▶ BEFORE ABOLITION OF CONFERENCES
 - ▶ 1994: Capital intensive, surplus capacity, low production flexibility, no stock production > The sector differs fundamentally from other industries
 - ▶ 2004: Not much different from tourism/hotel or airlines
 - ▶ Customer acquires most of the surplus
- ▶ AFTER ABOLITION OF CONFERENCES
 - ▶ 2015: Need for adequate monitoring of market evolutions
 - ▶ 2019: **still distinctive** but losing its unique characteristics (economies of scale, differentiation opportunities, personal relationship, type of cargo)
 - ▶ New technological developments will help sector in this transition

01: Defining the Terms



- ▶ Different definitions in use across the study countries
 - ▶ A core of CWA activities of the **non-rate-making variety** currently occurs globally and is accepted by most of the countries studied as being appropriate
 - ▶ Regulators differ primarily in the area of **rate-making CWAs**
- ▶ One globally-accepted definition of CWAs will contribute to a better understanding worldwide of what activities this global industry uses and that all stakeholders will benefit from such clarity.
- ▶ Harmonisation/alignment of definitions is quite possible.



02: Different Jurisdictions

- ▶ All countries studied have competition laws that can be used as a regulatory tool to dampen predilections for and investigate any anti-competitive behavior that may be attempted.
- ▶ A definite need for regulation
 - ▶ greater certainty of the impact of regulations,
 - ▶ greater clarity of their interpretation, and
 - ▶ a time frame that will more closely mediate between the short time frame used by the majority of cargo interests (annual confidential contracts for example) and the longer time frame of carrier capital investment decision-making (the life span of a vessel investment).
- ▶ The approach under the existing CBER is clear to the carriers, the shippers and the regulators, and therefore has less uncertainty and reduced compliance/regulatory costs

03: Varying Perspectives

- ▶ The interests of carriers and shippers are not entirely in balance
- ▶ Evidence
 - ▶ (Large, medium, small sized) Carriers: unable to get the freight rates they need/level playing field
 - ▶ (Large <> medium/small sized) Shippers: unable to get the certainty they desire on non-monetary aspects
 - ▶ No data supported arguments
- ▶ Moving towards the middle ground might bring it back to balance
 - ▶ Carriers: pay (more attention) to non-monetary elements
 - ▶ Shippers: provide stronger volume guarantees over longer contracts
- ▶ Role, not only national but a global one, for regulators

04: Three Pathways from the Perspective of the Regulator



Allow the existing CBER to expire

- The most dangerous of all pathways
- The industry currently faces global uncertainty
- Highest risk of seeing carriers disappear from the market
- Future capacity risk decisions of carriers may go against the interests of shippers and terminal operators

Retain the existing CBER

- Fits best the needs of the carriers
- Shippers benefit from better-equipped shipping companies guaranteeing capacity

Amend the existing CBER

- Most balanced one, but unclear which amendments
 - More transparency: relevant geography market, data/information collection
 - No point to reduce market threshold
 - Regarding review period: difficult as timeline is the same for all sectors

05: Regulatory Data Collection

- ▶ Data gap that stymied a clean review of the CBER
- ▶ Recommended:
 - ▶ A global registry of CWAs for regulators to access
 - ▶ Type of agreement
 - ▶ Geographic trade lanes covered by the agreement
 - ▶ Agreement duration
 - ▶ If selling of space to third parties is allowed
 - ▶ The legal party to contact for further details on the nature of the CWAs
 - ▶ A trade data warehouse for consortia monitoring
- ➔ Need further exploration at a multi-lateral level

Next Steps...

- ▶ A data-supported matching of perspectives of different players
- ▶ Quantification of consequences on each actor's cost function and revenue
- ▶ Develop a consortia monitoring data warehouse
- ▶ Study efficiency and welfare properties
- ▶ Evaluate the type of alliances and how to manage them

TECHNICAL REPORT

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Thank you for your attention.

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Europa herbekijkt consortiumwet scheepvaart, UA onderzoekt impact



12 juni om 13:40

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De Europese commissie buigt zich over de vijfjaarlijkse evaluatie van de CBER-richtlijn, een uitzonderingsregel die de verhoudingen tussen rederijen en verladers bepaalt. Universiteit Antwerpen onderzocht de impact van een koerswijziging.

Brussels advised to stick or twist on block exemption rules

An academic paper has described three pathways available to the European Commission on the Consortia Block Exemption Regulation. None are ideal, but letting the exemption simply expire would be the worst outcome

14 Jun 2019 | ANALYSIS



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