



Rethinking Competition Policy and Liner Shipping Regulation

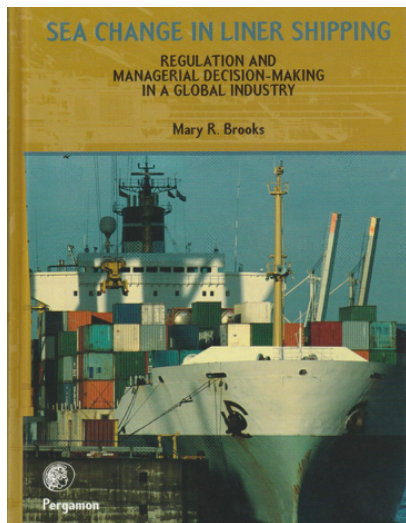
Mary R. Brooks

Chairman's Forum City University
25 September 2018

© Mary R. Brooks, 2018



A Lot Has Happened in the Last 20 Years



- OSRA 1998 as my beginning point for regulation and first alliances 1995.
- EU Repeal of Council Regulation 4056/86 in 2008
- Cooperative Working Agreements became a norm for liner shipping companies
- Periods of stability followed by periods of volatility
- Partners not always stable (considerable partner entry/exit)



Some Alliance History Since 1995

Year	Main Trade Alliances	Top 20 Share of Capacity	Top 20 Not in Alliances (Including from Top 5 ...)
1998	5	53%	7 (#2 Evergreen, #4 MSC)
2005	3	NA	10 (#1 Maersk, #2 MSC, #4 CMA CGM)
2009	3	70%	10 (#1 Maersk, #2 MSC, #3 CMA CGM)
2017	3	87%	8 (#8 Hamburg Sud BUT NOT #1 Maersk and #2 MSC [2M] OR #3 CMA CGM and #4 COSCO [Ocean Alliance]) OR #5 Hapag-Lloyd [THE Alliance])

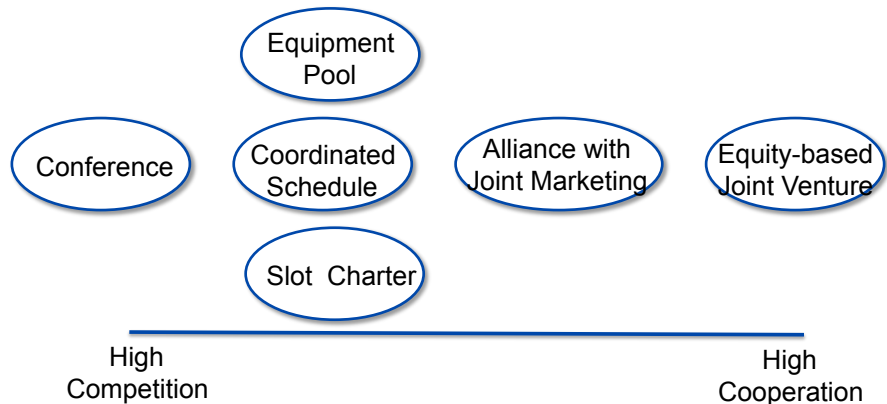
Since, ONE has been formed by 3 Japanese carriers in THE Alliance.



How Do We Know a Geographic Market is Competitive?

- Level and volatility of freight rates by trade lane (e.g. Drewry Shipping Consultants' report on *Container Freight Rates and Shipping Market Outlook*). **Challenge:** only major trade lanes.
- Herfindahl-Hirschman Index by trade lane (e.g. Drewry Shipping Consultants. In the fall of 2017, the Mediterranean–North America lane was above the 1500 HHI threshold flagged by the U.S. as of moderate concentration.
- Market share thresholds: Say 30% of share (of market) not of TEU capacity offered. **Public** data is on the wrong measure.

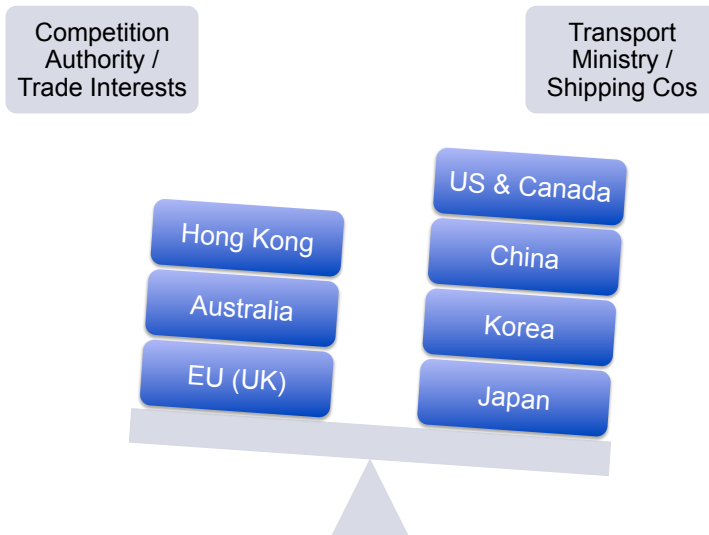
How Do We Know an Alliance [CWA] is Competitive?



Brooks, Blunden and Bidgood (1993), Figure 10.1, p. 226.

Does the alliance have too large a market share for fair competition to take place?

The Tension of Regulatory Authority 2018



Legislative Coverage (1: Confidential contracts)

Element	Canada	US	EU	Japan	Australia	China	Hong Kong	Korea
Confidential contracts with shippers allowed	✓	✓	✓	✓	✓	✓	✓	✓
Confidential contracts with shippers must be filed	✗	✓	✗	✗	✗	✓	?	?

✓ = yes; ✗ = no; ? = unknown or not verifiable
filed=registered, notified, submitted to authorities

Legislative Coverage (2: Rate-Making)

Element	Canada	US	EU	Japan	Australia	China	Hong Kong	Korea
Rate-making agreements allowed	✓	✓	✗	✓	✗	✓	✗	✓
Rate-making agreements must be filed	✓	✓	✗	✓	✗	✓	✗	✓
Filed ratemaking agreements available on-line	✗	✓	✗	✗	✗	✗	✗	?
Co-ordinated inland pricing allowed between shipping lines	✗	✗	✗	?	✗	?	✗	?

✓ = yes; ✗ = no; ? = unknown or not verifiable

Legislative Coverage (3: Cooperative Working Agreements)

Element	Canada	US	EU	Japan	Australia	China	Hong Kong	Korea
Cooperative working agreements allowed	✓ (if filed)	✓ (if filed)	✓	✓	TBD	✓	✗	✓
Cooperative working agreements must be filed	✓	✓	?	?	✓	✓	✓	?
Share thresholds applied to alliances (and/or mergers)	✗	HHI	30%	?	TBD	?	40%	?
Anti-competitive activities subject to investigation	✓	✓	✓	?	✓	✓	✓	✓

✓ = yes; ✗ = no; ? = unknown or not verifiable

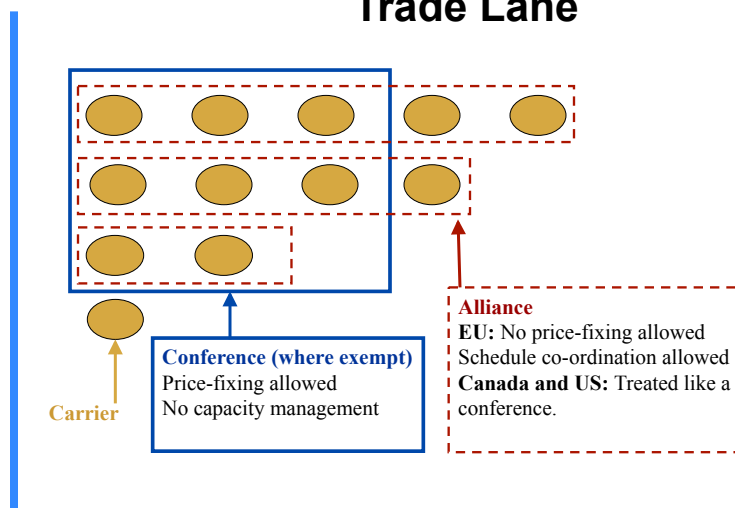


Conclusions about Liner Regulation Across These Countries

- There is no consistency in regulation across the countries noted (two broad approaches) and harmonization has not progressed well since I studied it in 1998 and published *Sea Change in Liner Shipping* in 2000.
- Regulators have missed a multi-lateral opportunity but digitalization affords a new chance to fix this.
- Australia and Hong Kong have recently updated their legislation, while the E.U. and Japan have stayed the course set they set in prior years.
- Canada's legislation is protecting alliances by virtue of antiquated filing arrangements. U.S. regulation is overdue for review. There have not been confirmed reform or regulatory reviews in Korea, China, or the U.S. in the last 5 years.
- The critical question: What will the EU do in 2020?



Fragmentation Remains: Competition on a Single Trade Lane



Source: Brooks, M.R. (2000). *Sea Change in Liner Shipping*. Figure 9.1 updated.



Final Thoughts

- While pure conferences and their rate-making capabilities are still exempt from antitrust oversight in some countries, it is primarily intra-Asian and South-South trade in practice.
- Research shows that there are benefits to be gained by both carriers and shippers from continuing to exempt non-ratemaking cooperative working agreements (CWAs) from antitrust investigation. What will EU do in 2020?
- The multilateral opportunity for harmonization on CWAs remains, but multilateralism is under threat in today's geo-political environment.
- That said, if there is political will and a champion, there is the opportunity for a global 'filing' platform for industry agreements that will make regulation of CWAs fair and transparent [logical opportunity for US or UNCTAD], but it will need to be accompanied by international agreement on when an alliance becomes a *de facto* merger.



Questions?
m.brooks@dal.ca



© Mary R. Brooks, 2018