



# The changing landscape in competition policy for liner shipping companies

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## Agenda for presentation

- ▶ Our IAME 2019 presentation summarized
- ▶ Events since 2019, e.g. A step back to understand what happened during the pandemic as opposed to the decade before that (market actions and inefficiencies)
- ▶ Research Question: **Will the future regulatory tension reflect the pattern it exhibits now?**
- ▶ Update of international regulation (U.S., Europe, U.K., Australia, New Zealand) to 2023 with conclusions
- ▶ Next steps in the research
- ▶ Q&A

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## Our earlier research 2019 (1/3)

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### REGULATION IN THE LINER SHIPPING INDUSTRY: PATHWAYS TO A BALANCE OF INTERESTS

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**ABSTRACT** · The Consortia Block Exemption Regulation (CBER) implemented by Commission Regulation (EU) No 697/2014 of 24 June 2014 expired April 25<sup>th</sup>, 2020 but was extended for a further four years. Examination of the 2020 five-year review of the CBER provides an opportunity to put forward some pathways to achieving a balance of interests between all actors involved, and in the interests of considering global regulatory implications. The main research question is: Are the interests of carriers and shippers in balance in the CBER era? If they are, will they also be in the future? If not, what evidence can be found that the interests are not in balance, and what should be changed to bring back balance? The study provides insights into the differing terms used, the varying approaches by regulators, the diversity of perspectives by the actors in a maritime supply chain, as well as explores the benefits and drawbacks of each regulatory pathway. The research is therefore relevant for scholars from a conceptual point of view, and for regulators as well as all actors in the maritime supply chain.

**KEYWORDS** · Container Liner Shipping Industry, Competition, Consortia Block Exemption, Alliances, Cooperative Working Agreements.

- ▶ 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.
- ▶ Identify three pathways (abolish, amend, retain)

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## Guidelines Recommended to the APEC Transport Working Group (2008) on appropriate CWA management — still not adopted!! (2/3)

1. Support non-ratemaking agreements in regulation, as such agreements are efficiency enhancing and the users can obtain a share of benefits.
2. Separate ratemaking and non-ratemaking agreements; this will allow countries that wish to adopt different policies for the two to do so.
3. Do not use market share testing. (The consultant concluded the benefits of limits are dubious, and defining the relevant market is difficult).
4. Allow ocean carriers to freely negotiate the duration of non-ratemaking agreements.
5. Governments should collect and exchange primary industry information in order to detect undesirable trends and take prompt and effective action.

Source: Premti, Anila (2016, March) Liner Shipping: Is There a Way for More Competition? UNCTAD Discussion Paper No. 224, Geneva: United Nations Conference on Trade and Development, [http://unctad.org/en/PublicationsLibrary/osgdp2016d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/osgdp2016d1_en.pdf), last accessed 25 October 2017.

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## Our earlier research – the findings (3/3)

- ▶ Identified poor harmonization/alignment of definitions
- ▶ The CBER was clear to the carriers, the shippers and the regulators, and therefore had less uncertainty and reduced compliance/regulatory cost **but** failed to address the concerns of ports, terminals and their supply chain partners
- ▶ The interests of carriers and shippers were **not** in balance
  - ▶ Evidence: Anecdotal only. No data supported arguments were made.
    - ▶ (Large, medium, small sized) **Carriers**: in the 2010s, were unable to get the freight rates they need/level playing field; their customers were not complying with contracts
    - ▶ (Large <> medium/small sized) **Shippers**: were unable to get the certainty they desire on non-monetary aspects
    - ▶ Both carriers and shippers were not complying with signed contracts
  - ▶ 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
  - ▶ Regulatory role needs to be not only national but a global one

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## Events since 2019

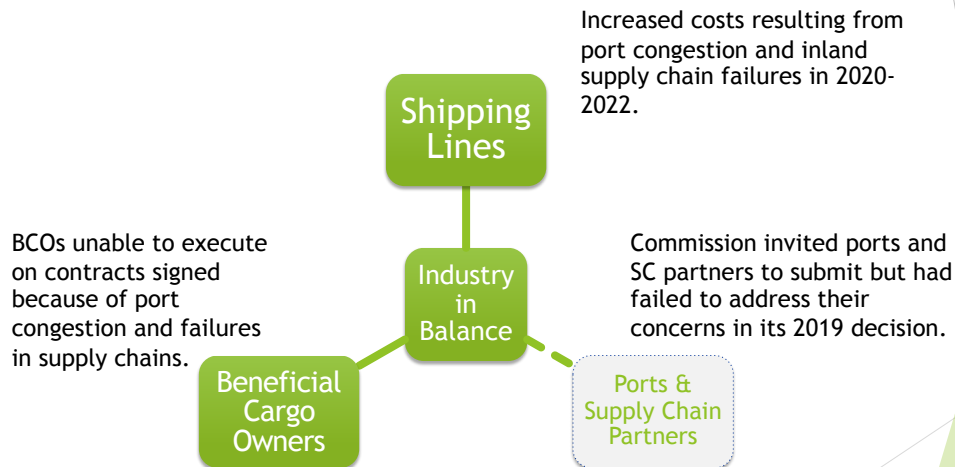
April 2020: Commission prolonged the CBER for liner shipping consortia for four years



➡ New corporate strategies have emerged to respond

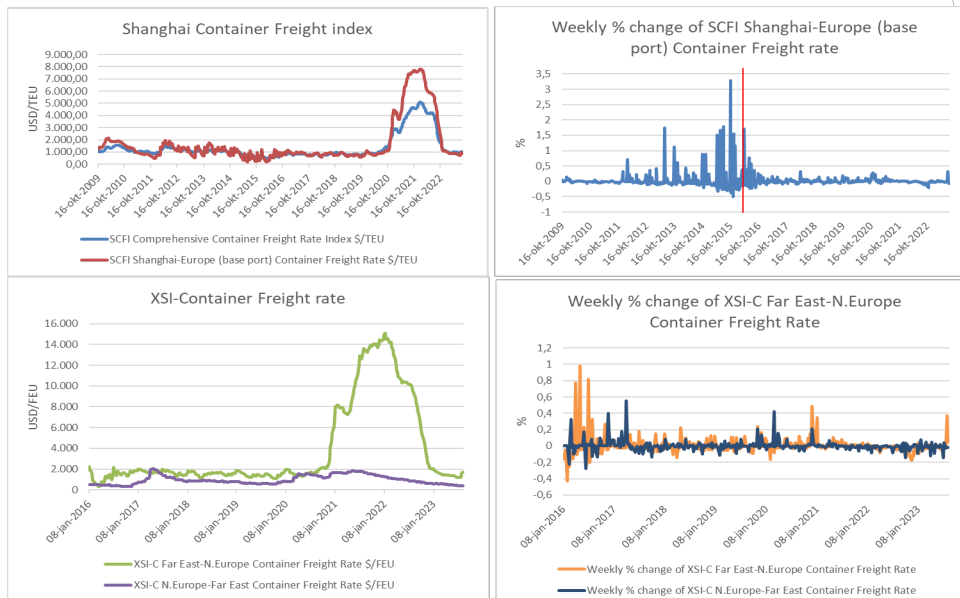
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## Did the market change? Yes.

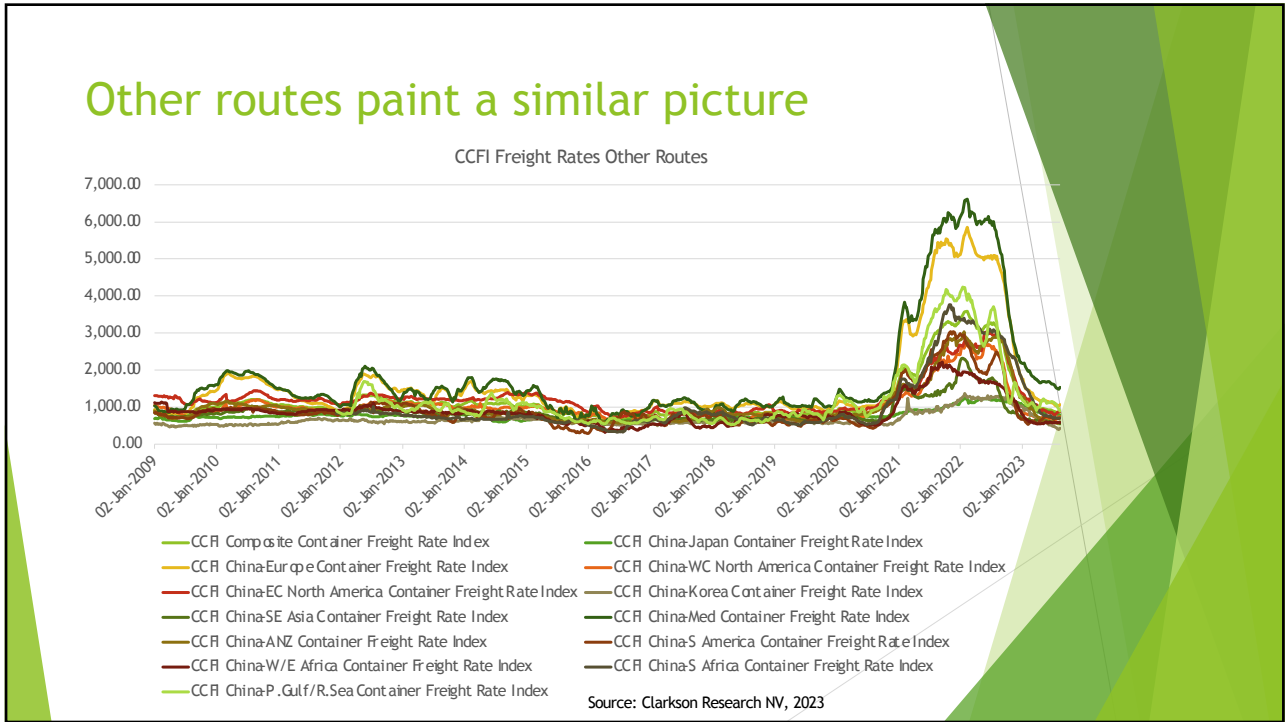


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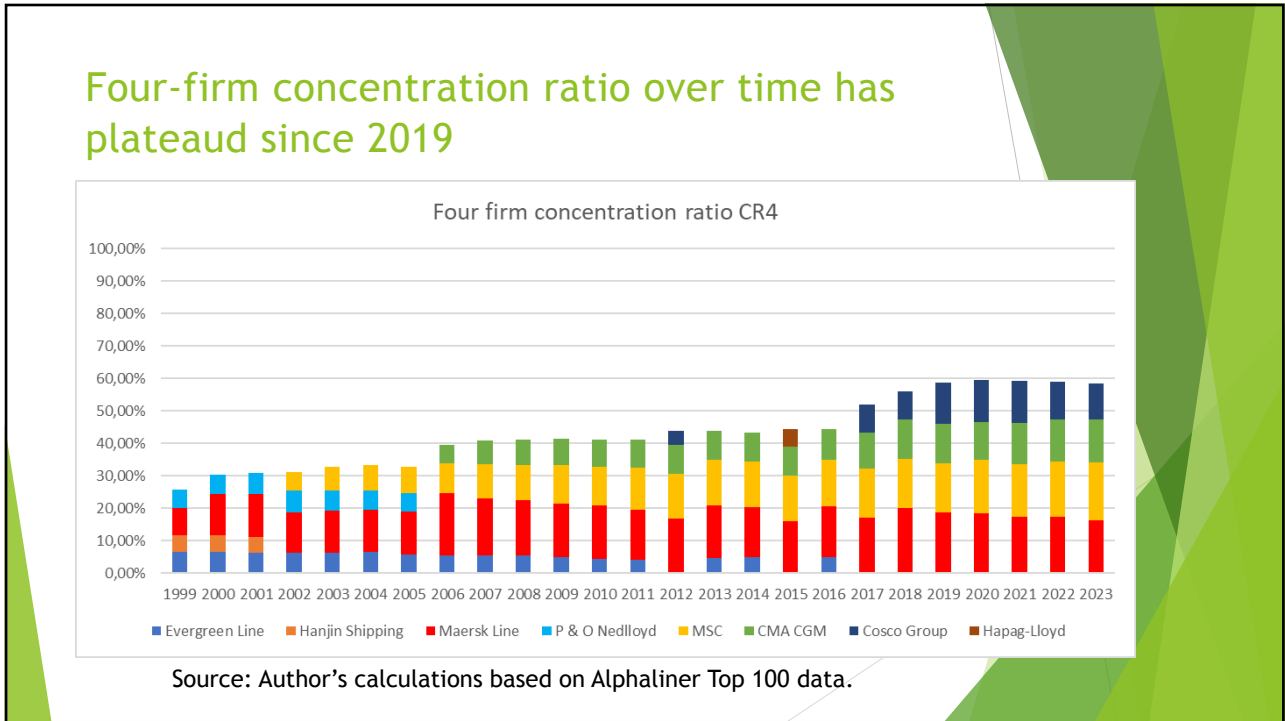
## Changes on EU routes not CBER-related but market-related—volatility of rates provides insight



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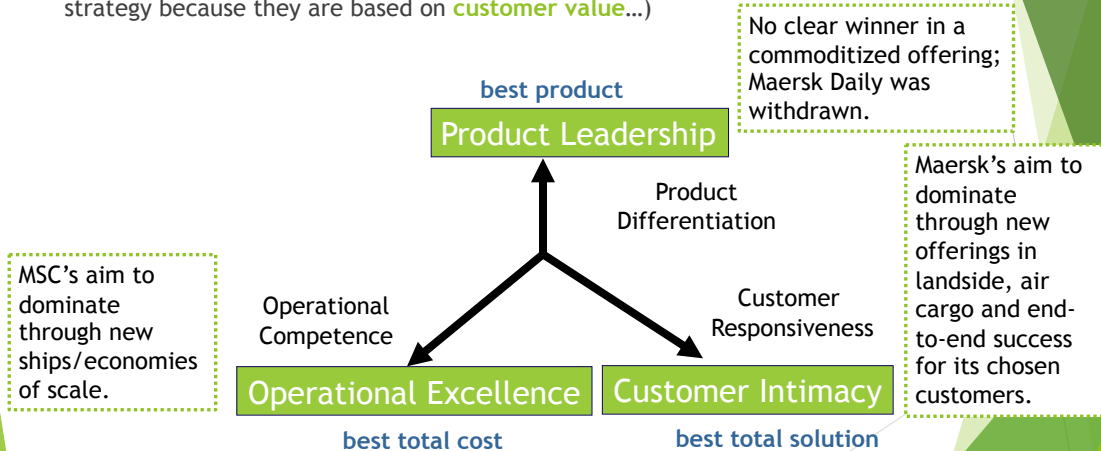
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## Using the framework of Treacy & Wiersema (1995)...

Three **corporate strategies** associated with market leaders (they guide marketing strategy because they are based on **customer value**...)



Treacy, Michael & Fred Wiersema (1995), *The Discipline of Market Leaders: Choose Your Customers, Narrow Your Focus, Dominate Your Market*, New York: Harper Collins

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## Summary of events since 2019

- ▶ Market structure
  - ▶ Shipping segment: from highly unprofitable to exceptional/temporarily high profits; expectation of this being temporary given full orderbook means long term prices will fall as new supply enters the market
  - ▶ 2020-2022: Entry/exit other players (some large shippers chartered small container vessels to support their own logistics, e.g., IKEA, Wal-Mart, Canadian Tire)
  - ▶ No (or hardly any) product differentiation continues to challenge carriers
- ▶ All players applying digital technologies to improve their operations and making moves to green those operations.
- ▶ Horizontal/vertical growth strategies are emerging and market response is not yet clear.
- ▶ Regulations remain in the 2000s and so we look at regulations next ...

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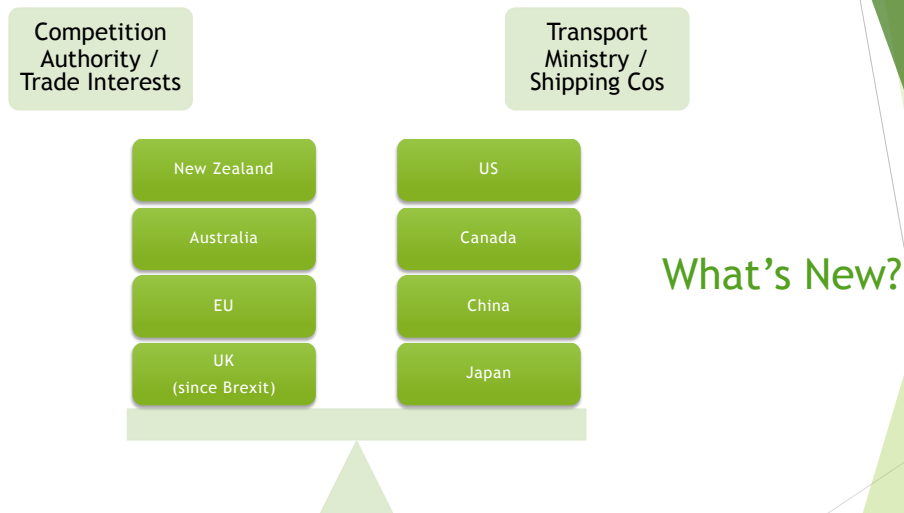
## Research question

- Will the future regulatory tension between transport-focused policies and competition-focused policies reflect the pattern it exhibited in 2019?



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## The tension of regulatory authority (updated)



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

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## Update on Competition Regulation (1/2)

Country	
Europe (EU-27)	Under (political) pressure and soliciting feedback; focused on protecting its maritime industry/reliable movement of international trade. EU CBER expires in April 2024. August 2022, EC started again the process ('call for evidence') of making its decision on whether to extend, amend or revoke (phase out) the exemption. In the current review, it is expected that EC will investigate the impact for the consumer but also the environmental impact for the society at large. The latter fits within the EU's policy on climate change.
UK	Using European approach and CBER until expiry in 2024. The lead agency during the transition (post-Brexit) is the Competition and Markets Authority (CMA) and the CMA proposed on 19 January 2023 to replace the EU CBER with a UK-business focused Liner Shipping Consortia Block Exemption Order (CBEO). Solicited input was due by 23 February. They have yet to publish their findings, anticipated fall 2023.
New Zealand	The New Zealand approach of repealing its transport legislation and introducing a block exemption in competition legislation was implemented. Change in policy is significant but outcome not as no carriers have applied for clearance of arrangements.

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## Update on Competition Regulation (2/2)

Country	
US	The FMC is examining expanding its coverage to chassis management for landside operations and has a study under NAS management. New legislation: Ocean Shipping Reform Act 2022. New FMC studies of detention and demurrage and new data requirements but not a major shift in underlying transport policy direction.
Canada (is not the US)	Block exemption legislation as an amendment to Canada's Competition Act is not possible given how competition policy in Canada is structured. There are no exemptions except as entrenched by existing Transport legislation (SCEA, 1987). Canada's competition policy view is that the <i>Competition Act</i> remain free of industry-specific elements. Canada's only policy options are retain exemption for shipping under current legislation, amend existing, or repeal the legislation and move to a competition policy that does not have a defined market threshold.
Australia	Productivity Commission investigated liner shipping and reported 21 December 2022. Recommendation 6.1 was that the Australian government should repeal Part X of the Competition and Consumer Act 2010. Shipping lines should show that their CWAs provide a net public benefit under part VII once Part X is repealed. This moves liner shipping clearly in Competition side of regulatory tension without the protection afforded by Part X.

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## Regulatory reactions to Europe's CBER decision

- ▶ “The sector-specific legal guidance the CBER offers to carriers enable the formation and reformation of consortia to adapt to changing market conditions...” [International Chamber of Shipping](#) senior adviser Georgia Spencer-Rowland.
- ▶ Any changes to the law would not preclude the formation of consortia or alliance partnerships but would put additional administrative burdens on carriers. This was one of the reasons to maintain the exemption, [Watson Farley & Williams](#) partner Solange Leandro. “Any change to the block exemption would not affect alliances so it is useful to keep it in place,” she said.
- ▶ “The commission had little incentive of its own to maintain the exemption, the only sectoral exemption under EU competition regulations.” (Note: EC has prolonged the Motor Vehicle BER for five years until 31 May2028)
- ▶ Shipping consortia block exemption remains, **for carriers**, a relevant and useful tool for businesses that increases legal certainty compared to a situation where businesses would have to rely solely on self-assessment.

Key: Legislation and regulation follow political decision-making as regulators set the rules of engagement for industry and civil society. Formation of consortia not precluded.

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## Conclusions regarding regulatory approaches

- ▶ **New Zealand: NEW SINCE 2019.** Repealed its existing legislation and introduced a limited Block Exemption. Have added a clearance application for non-listed exemptions. **No companies have applied.**
- ▶ **U.S.:** There has been a new act (OSRA 2022) but the approach is a tightening an existing philosophy not a changing of direction. There is a move towards more restrictions on carriers and more data required in the U.S.
- ▶ The **UK** appears poised to continue the EU competition-focused policy.
- ▶ There is **no consistency** in regulation across Canada, U.S., Europe, UK, Australia, New Zealand, Japan, China, ... . There are two key philosophies about the industry (**regulatory tension continues**), and that is not showing more than posturing about political change. The legacy of the Battle of Waterloo continues.... the Civil Code/Napoleonic approach that competition authority dominates one group while the British Empire legacy of transport authority dominates Canada and the US plus Asian approaches.

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## Future research: Objectives

1. To update the review of actors, market actions and impacts in greater detail than presented here.
2. To examine more closely recent developments in competition policy and determine if there is a way to reconcile competition policy and transport policy patterns globally (adding in a legal perspective to the economic and strategic management perspectives for an even more multi-disciplinary focus)
3. To make recommendations on actions regulatory leaders can take. (Focus on faster work towards common/standardized principles and identification of necessary data and uses.)

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## Future research: data, data, data,...and who?

- ▶ What data?
- ▶ Who to collect and aggregate? (*UNCTAD? Global Shippers Forum [GSF]? European Maritime Safety Administration [EMSA]?*)
- ▶ Tools to use for data collection: AI and ML (machine learning) might offer new insights
- ▶ Proposed outcome: “significant benefits to the country, with no downside” from a competition or consumer welfare perspective.

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Thank you for  
your attention.

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