Intergovernmental Group of Experts on Competition Law and Policy

17th Session
11-13 July 2017
Room XVII, Palais des Nations, Geneva

Friday, 13 July 2017
Morning Session

Agenda Item 3a. Challenges faced by developing countries in competition and regulation in the maritime transport sector

Presentation by
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CHALLENGES FACED BY DEVELOPING COUNTRIES IN COMPETITION AND REGULATION IN THE MARITIME TRANSPORT SECTOR

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SEVENTEENTH SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON **COMPETITION LAW AND POLICY**

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WORLD TRADE, MARITIME TRANSPORT AND LINER SHIPPING

- World seaborne trade - 80 percent of world merchandise by volume and 70 percent by value.

- Containerized cargo represents 52% (value) of global seaborne trade (2007 data); 10% of world seaborne trade (volume) in 2000 and 16% in 2017 (UNCTAD secretariat based on data from Clarksons Research).

- World containerised trade volumes expanded by a strong 6.4 per cent in 2017, the fastest rate since 2011.

- Transport costs (2016): 15% of the value of imports goes to international transport on average globally; 22% in small island developing States, 19% in landlocked developing countries, 21% in LDCs (Review of Maritime Transport 2017).

- Shipping connectivity improved significantly between 2004-2017. UNCTAD study "*Maritime Connectivity and Trade, Policy Issues in International Trade and Commodities* " demonstrates that maritime connectivity is a significant determinant of foreign market access and export performance.

DENSITY MAP OF CONTAINER SHIP MOVEMENTS (2017 REVIEW OF MARITIME TRANSPORT REPORT, UNCTAD)

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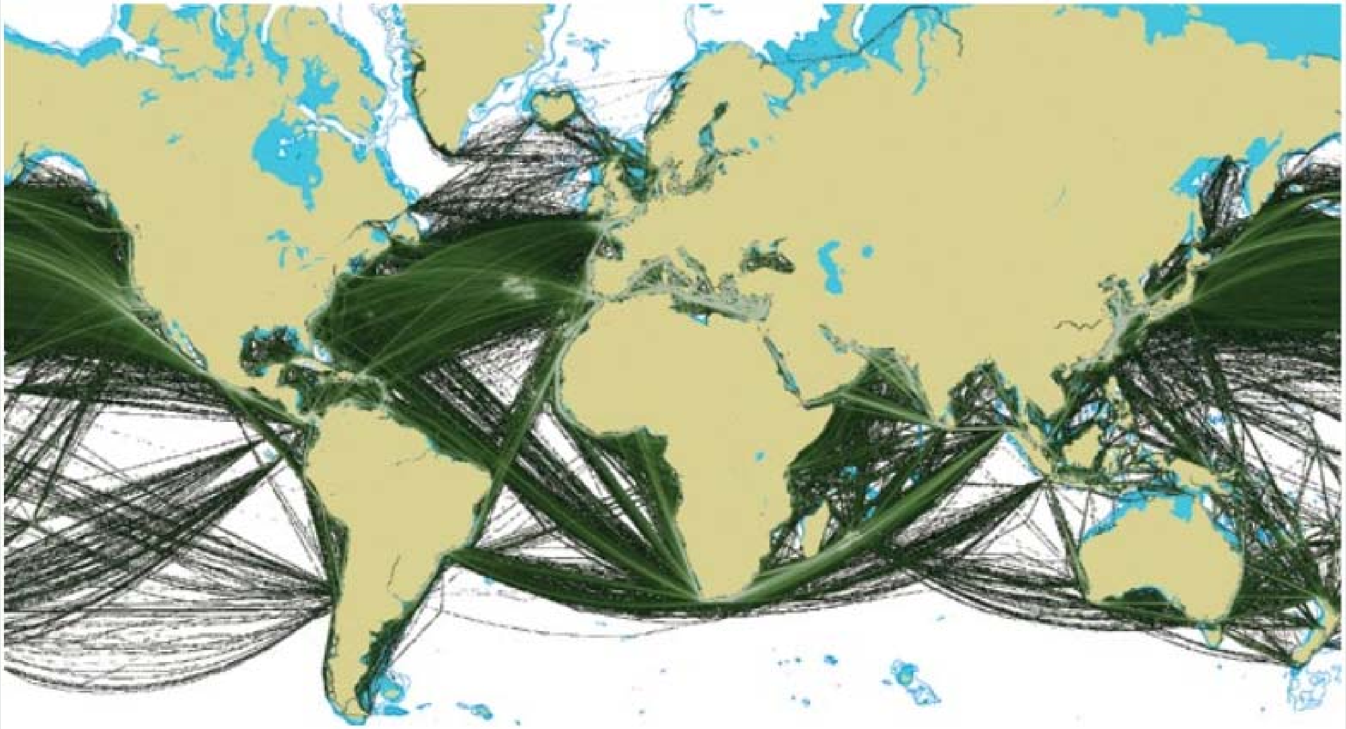

Source: Prepared for UNCTAD by Marine Traffic.
Note: Data depict container ship movements in 2016.

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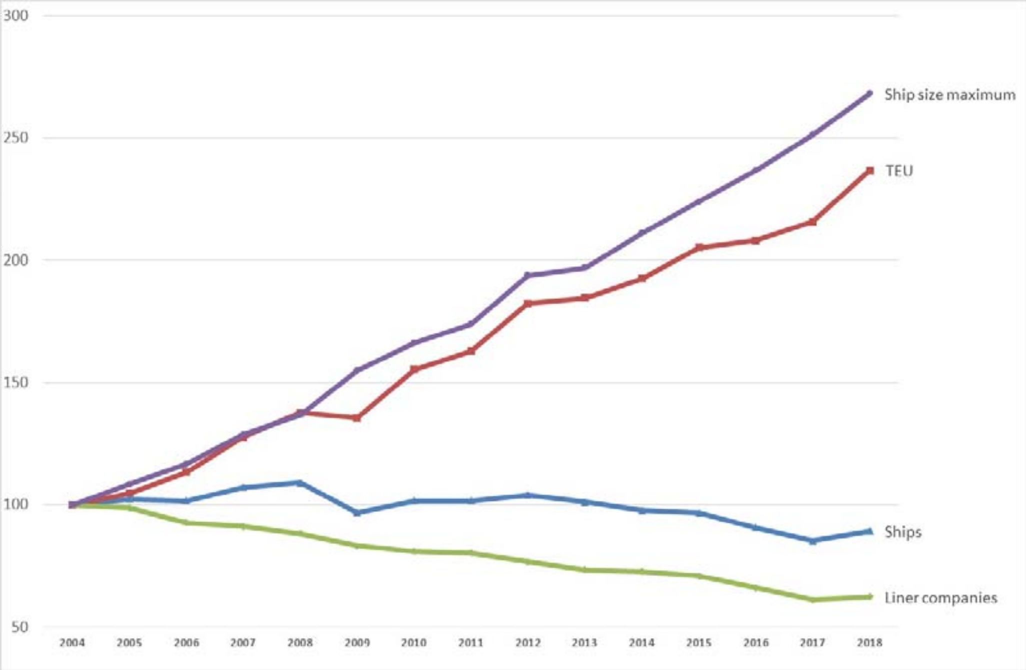
LINER SHIPPING INDUSTRY: MAIN FEATURES

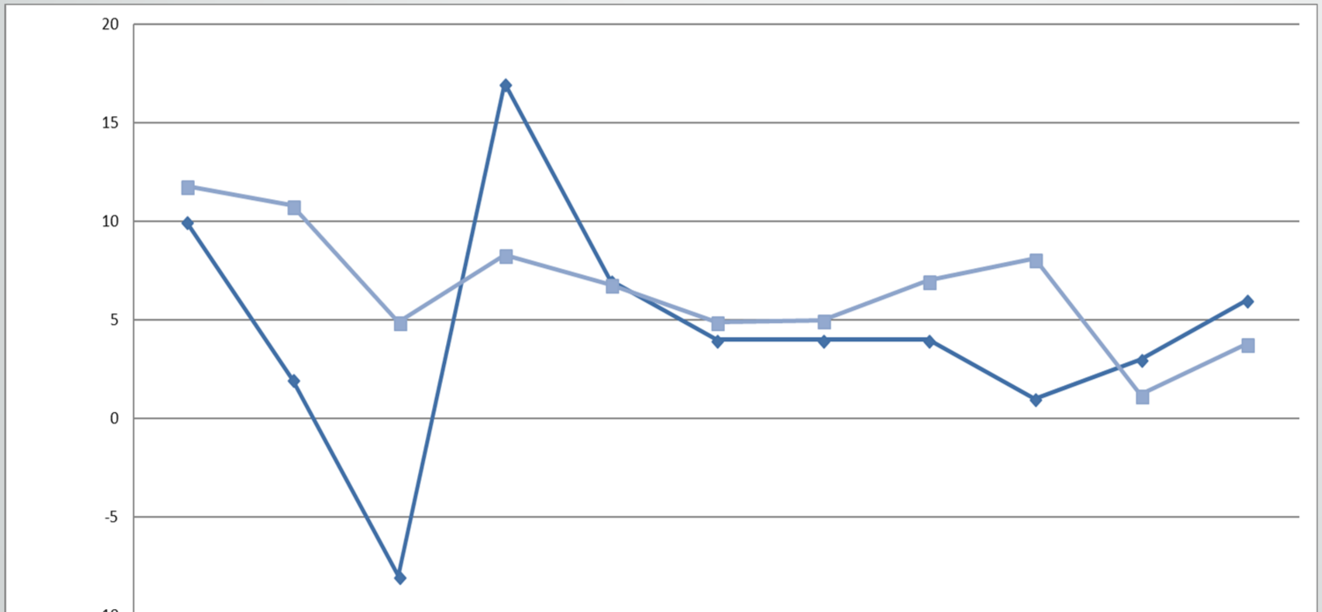
- Search for economies of scale leading to increase in vessel size - mega ships - and capacity in the last decade, triggering increased consolidation.
- Market concentration:
  - In 2014, the top 10 carriers accounted for 68% of deployed capacity;
  - By 2018, their share increased to 83 %.
  - Five largest carriers account for 61% of global vessel capacity (July 2018).
- Liner shipping services: The average number of carriers providing services from and to countries fell by 7.3% in the first quarter of 2018 compared to the second quarter of 2016. In the same period, the number of operators decreased by 19% in Brazil, 17% in Egypt, 13% in South Africa, 8% in Malaysia and 5% in China (MDS Transmodal).
- The number of services provided by all carriers fell by 7.5% between 2014 and 2018 (MDS Transmodal).
- The impact of increasing consolidation on smaller operators, which are not part of global alliances: Their share of deployed capacity is 11% on the Trans-Pacific route, 7% on the Transatlantic route and 1% on the Asia–Europe route (MDS Transmodal).

TRENDS IN CONTAINER SHIP DEPLOYMENT (AVERAGE PER COUNTRY, INDEX 2004 = 100)



Source: UNCTAD secretariat calculations, based on data from MDS Transmodal and earlier years of the Review of Maritime Transport. Data is for 1 May of each year.

GROWTH OF DEMAND AND SUPPLY IN CONTAINER SHIPPING 2006–2017



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Demand	10.0	2.0	-8.0	17.0	7.0	4.0	4.0	4.0	1.0	3.0	6.0
Supply	11.8	10.8	4.9	8.3	6.8	4.9	5.0	7.0	8.1	1.2	3.8

Source: UNCTAD secretariat calculations based on Global Insight Database (2010), United Nations Economic Commission for Latin America and the Caribbean (ECLAC) from 2009 onward MDS Transmodal data and Clarksons Research Services.

LINER SHIPPING: COOPERATIVE ARRANGEMENTS

- Liner conferences
- Consortium
- Global alliance
- Vessel-sharing agreement
- Voluntary-discussion agreement

LINER SHIPPING: REGULATORY FRAMEWORK FOR COMPETITION

CHINA

- The Ministry of Transport - Authority responsible for enforcing the maritime transport regulations since 2002, which regulate maritime transport, protect fair competition and apply to liner agreements to and from ports in China.
- No exemption for liner conferences - all agreements must be filed with the Shanghai Shipping Exchange, as the authority designated by the Ministry.
- In 2014, Ministry of Commerce reviewed the P3 alliance initiative based on the powers granted by Anti-Monopoly Law (2008) to review and approve/reject mergers and concentrations based on their competition effects.
- MOFCOM decided that the alliance would significantly enhance the market power of parties and market concentration on the Asia–Europe route. The combined capacity of the top three carriers in this route had reached 46.7 per cent by January 2014.
- MOFCOM also reviewed impacts on competing liner shipping carriers, shippers and ports, and decided that the increased market power of three carriers would have a negative impact on these players by strengthening their bargaining power vis-à-vis shippers and port authorities.

LINER SHIPPING: REGULATORY FRAMEWORK FOR COMPETITION

UNITED STATES OF AMERICA

- Federal Maritime Commission is the independent regulatory agency responsible for the regulation of seaborne transportation in foreign commerce.
- US has a statutory antitrust exemption for liner conferences. Ocean Shipping Reform Act (1998), includes limited antitrust immunity for agreements between liner shipping carriers from competition law.
- No carrier conference agreements filed with FMC since 2000.
- All conduct that does not fulfil antitrust exemption requirements is subject to competition law, investigated by DOJ if it involves cartel-like practices - price fixing, bid-rigging and market allocation.
- Parties must notify the Commission of agreements between carriers and state their purpose. FMC conducts a competition impact assessment and develops monitoring report requirements before clearing an agreement.

LINER SHIPPING: REGULATORY FRAMEWORK FOR COMPETITION

EUROPEAN UNION

- EU Regulation No. 1419/2006 repealed the block exemption for liner conferences with effect from October 2008. Anti-competitive practices of liner conferences on routes to and from the EU no longer exempted from the scope of article 101(1) of the Treaty on the Functioning of the European Union (TFEU).

- Block exemption on consortiums since 1995 and reviewed every five years since then. Regulation No. 906/2009 extended the block exemption for consortiums until April 2020.

- Rationale of EU approach to consortiums and vessel-sharing agreements: Benefits for not only carriers but also consumers and shippers by passing on gains in efficiencies.

- Consortiums and alliances exceeding 30% market share may not benefit from the exemption and must perform self-assessments of compliance with article 101(1) of the TFEU. If they cannot demonstrate compliance, they must demonstrate that the consortium or alliance creates efficiencies and passes them on to customers and complies with other conditions under article 101(3).

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LINER SHIPPING: COMPETITION CHALLENGES

- Higher concentration in smaller developing countries and small island developing States: Possibility of decreased service frequencies and higher freight rates; impact on trade costs and trade.

- Increased entry barriers to independent and medium/small carriers due to mega ships and consolidation into 3 global alliances: Superior bargaining power of large carriers vis-à-vis small importers/exporters; adverse potential impact on export competitiveness of SMEs in smaller developing countries.

- Higher market concentration – less competition – “decrease in service quality” (Global Shippers’ Forum).

- Vertical integration between carriers and terminal operators/ports: Potential risk of foreclosing access by competing carriers to key facilities and quality services.

POLICY OPTIONS FOR COMPETITION AUTHORITIES

- Cooperative arrangements like vessel-sharing agreements may be pro-competitive and create efficiencies, ensure service reliability and sustainability.
- Changes in market structure – possibly revisit the need to maintain exemptions for voluntary-discussion agreements and liner conferences.
- Consider reviewing global alliances under merger control regimes and/or impose reporting requirements on alliances.
- In analyzing mergers, need to examine other impacts than price competition: effects on the variety and quality of services provided to shippers.
- Closely follow and monitor developments in the liner shipping sector to ensure competition.
- Cooperation between competition authorities and port authorities to address competition concerns, ensure fair competition and competitiveness at ports.
- International cooperation is essential in dealing with competition cases in liner shipping.

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THANK YOU FOR YOUR ATTENTION!

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