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Study on Economic Regulation of Collaborative Strategies among Container Shipping Companies Following Repeal of European Union Regulation 4056/86

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ABSTRACT

The European Union removed the block exemption granted under Regulation 4056/86, to liner shipping companies to provide scheduled services on a collaborative basis effective October 2008. This has also been followed by the proposed P3 alliance with participation of Maersk, MSC and CMA CGM. This paper explores, the arguments adopted by the US Federal Maritime Commission, the European Commission and the Ministry of Commerce of China, in rejecting the case proposed by the P3 alliance. The findings of this paper will inform on understanding strategies adopted by major Competition Regulatory authorities in their interpretation of horizontal collaboration in the industry.

1. Background

The global container shipping industry witnessed a major shift in economic regulation when the European Union removed the block exemption that had been granted to collaborative agreements since 1987 under EU Council Regulation EC No. 4056/86. This Regulation (Official Journal No 378/4 of 31.12.86) had laid down detailed rules for applying the competition principles of the European Union Treaty to liner shipping transport services. However, by EC Council Regulation (EC) No 1419/2006 of 25 September, the EU repealed Regulation (EEC) No 4056/86, with effect from 18 October 2008. The removal of this block exemption and shift towards application of the provisions on competition in the Treaty on Functioning of the European Union (TFEU) has raised international interests. This was apparent for example, when there followed a major study of the implications of the decision carried out by the US Federal Maritime Commission. In their report, the FMC came to the conclusion that the US would continue to apply the US Shipping Act of 1984 and allow collaboration among liner shipping companies to continue regardless of the stance taken by the European Union (FMC, 2012). It is interesting that there were also emerging at this time

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perspectives from other jurisdictions on how the future would be on whether strategies similar to the EU should be adopted. In this regard there were reviews on the application of competition law regimes on the container shipping industry in other major jurisdictions including China, Japan, Australia, New Zealand and Canada. The period following the repeal of the EU Council Regulation, therefore led to reviews worldwide from regulatory authorities worldwide, on how best to interpret the legal implications of competition of an industry that provided for transport of global seaborne trade in containers.

In order to place the regulatory regimes in context a unique opportunity emerged in a case which explored the relevance of competing economic regulations in June 2014. This case, reported in the media since 2013, was the P3 alliance which provided an opportunity to explore the approach of three major jurisdictions on the same set of facts with regard to the interpretation of the meaning of an acceptable alliance as a form of horizontal collaboration, which was proposed for the three main arterial services (Lloyd's List, 2014; FMC, 2014; European Commission, 2014). In this case, the top three shipping companies in the industry, i.e. MSC, CMA-CGM and Maersk had in early 2013 declared their intention to form an operating alliance called the P3 Service Network and had made applications to seek approval or clarification with regard to compliance with the competition laws in a number of jurisdictions which would be covered by their services. The jurisdictions relevant here included the US Federal Maritime Commission, the European Commission and the Ministry of Commerce of China.

Interestingly, the application from these carriers, also came at about the time when there were a number of developments in the industry which included for example, when in June 2013 there was the launching of the latest 18,000 teu capacity triple-E Maersk ships. This single move alone would bring the size of ships deployed in the container shipping sector into the ultra-large ship sector. Interestingly the entry of mega ships by Maersk had begun much earlier with the 1996 built, 6,400 teu ship followed by the 2006 built 15,000 teu ships, entering into service to potentially exploit economies of scale with larger ships. The very nature of scheduled services would on the one hand be effective through the deployment of larger ships that offer the scope to exploit economies of scale (Gardner et. al., 2002). However, on the other hand, considering the fleet of ships needed for scheduled services, had to consider, as they have done historically, to do this by working through the mechanism of horizontal collaboration including since 1875 with price and supply as the core components of these agreements (Marx, 1953, Gardner, 1999; Nair 2008). While these collaborative agreements were basically anti-competitive, they have been allowed to operate through the facility of exemptions from anti-competition laws of several international jurisdictions since 1916 (FMC, 2012; Nair, 2009; Marx, 1953)

These regulatory authorities however have not all proceeded on the same basis in providing the framework of exemptions for collaborative agreements in the container shipping industry. While the industry had evolved within these multiple international jurisdictions, the continued regulatory challenges to the efforts by these shipping companies to provide scheduled services remain in varying degrees under their economic regulation (Nair, 2009; Marlow and Nair, 2010; Gardner et al, 2002; Davies, 1980;) It was evident that even from the perspective of these economic regulators, there was a variety of interpretations to the application of diverse competition law regimes on the same set of facts in this very high capital intensive industry. At the same time, it is important to note that the industry continued to display features of concentration seen from the supply of capacity that was held by a few, coupled with the structure of actual fleet of larger ships also with the few carriers at the top of the table (FMC, 2012; Nair, 2009). Following all this, a unique opportunity emerged in mid-2013, when there was the announcement of these three world's largest container shipping companies declaring their intention to form a horizontal collaboration through the alliance called the P3 Network service. This study will explore the wider international debate that followed the decisions of major economic regulatory jurisdictions on the proposal by the top three carriers to collaborate through an alliance called the P3 service to ports in the main arterial routes.

2. Research Method

In this study the perspectives of relevant stakeholders who include not only regulatory authorities but also shipping companies and shippers, are explored as they respond to the P3 alliance in relation to the application of legal principles in a public law domain. These perspectives, from different global jurisdiction are on the similar facts, and in doing so the empirical facts as disclosed in the public domain of the P3 is selected as the case study method. The analysis will be on the basis of an interpretation on the statements of key stakeholders engaged in the phenomena under study as they are expressed in major professional media sources including Lloyd's List. The statements and other published material are then discussed in order to draw any rationale or perceptible idea that may be emerging to explain the view that the global scenario is becoming hugely complicated. It is about a group of shipping lines who perceive in their wisdom that their services are best offered in a way that would require them to collaborate with other carriers in the groups although they are basically in competition with those other carriers. Their perception, as seen in the model they present to and the response of these competition authorities, provides a unique case study experience to see the way that the economic regulatory regimes interpret the perception of these shipping lines. This is explored through highlighting the decision process involving stakeholders who are making sense of the case submitted by business entities within the P3 network.

2.1 *Case Study*

This study will firstly provide an outline of the P3 alliance, which is the collaboration agreement that has now reported to have been discontinued following, the international regulatory scrutiny. In order to explore issues from a wider perspective, the frame of the P3 will be compared to the G6 alliance which has also been referred to by regulatory authorities as having distinctly different collaboration format. A starting point for the analysis will be the approach taken by the US Federal Maritime Commission, when the case first entered the public domain in 2013. This will then form the basis for the analysis of the diverse interpretation to rules on competition as adopted by other selected regimes which are the European Commission and the Chinese Ministry of Commerce. The study will explore theoretical constructs on the rationale adopted by regulatory authorities when exploring horizontal collaboration within the framework of scheduled services and will then provide the format for the discussion for the study. This will then explore the likely future scenario to determine, if the regulatory frame presently applied appears to be hostile to the

supply-side challenges faced by container shipping companies.

The three members of the P3 Network comprising Maersk Line, Mediterranean Shipping Co and CMA CGM filed for approval under the US Shipping Act of 1984, details of their vessel-sharing agreement with the Federal Maritime Commission in December 2013. Following this, the FMC called for a summit of regulators from the European Union, China and the FMC which took place in the US in December, 2013 (Porter, 2013). According to Lloyd's List, the FMC in its investigation would explore whether the agreement would have a negative impact on competitiveness and to approve if found to be not anti-competitive. In the event that the FMC concluded that the agreement was likely to reduce transport services or resulting in unreasonable increase in price, then under the US Shipping Act, the FMC would have to apply to a district court, which could either issue a temporary restraining order or preliminary injunction, or a permanent injunction against the P3 agreement (Porter, 2013). In comparison, however, under the rules in the EU, the lines must conduct a self-assessment to ensure they do not abuse a dominant position and in China, there is another perspective, which is that the authorities regard this P3 joint fleet operation as a merger, delivering an added complication to the subject (Porter, 2013).

The P3 fleet as constituted in the proposal would have comprised 255 vessels initially with some 2.6m teu of capacity, with the fleet operated independently from a London-based office. Although they included the independent office in their collaboration, the carriers, in the agreement stated that they would negotiate separately with customers including when they set freight rates. (P3, 2014). The routes covered would be the arterial routes of transpacific, transatlantic and the Europe-Far East.

3. Economic Regulatory Authorities

The analysis of relevant regulatory authorities would be taken on a time line basis starting with the decision on the proposal of the P3 alliance adopted by the US Federal Maritime Commission, followed by the decision of the European Commission and finally the most recent decision in June 2014, of the Chinese Ministry of commerce. While there are likely to be other economic jurisdictions that are relevant to this case, these three selected jurisdictions can be regarded as crucial to the P3 to place their alliance into service along the major trade routes. The case study analysis will explore the implications arising from the decisions of these jurisdiction together exploring likely future scenario that are predicted both by accepted economic fundamentals as well as by expert statements by relevant stakeholders as reported in selected media.

3.1 *Federal Maritime Commission*

Since the analysis is based on public statements, the approach that will be adopted will be to examine the initiative taken to have a meeting with others taken by the US Federal Maritime Commission (FMC). Interestingly, the FMC adopted an international profile to the application of the P3, which could have been due to the fact that the proposal of the alliance covered all the three major global arterial routes. Thus when the P3 had made its application to the FMC, there was the initiative also from the FMC that maritime regulators from the United States, the People's Republic of China (PRC), and the European Commission met in Washington, D.C. in December 2013, to consider the international maritime landscape.

This meeting in Washington preceded the consideration and decisions taken not only by the FMC, but also the European Commission and the Chinese Ministry of Commerce. According to the FMC, the officials who met on the invitation of the FMC had open and candid discussions on their differing regulatory frameworks and the potential effects of carrier cooperation on international trade.

The FMC Chairman Cordero stated:

"I called for this Global Regulatory Summit given the rapidly changing face of the international maritime sector demands 'out of the box' thinking. The scope and size of the changes taking place provides an opportunity for our respective governments to dialogue and share our views on global regulatory challenges, and the impacts to international trade. …. From this Summit, I believe we all have a better understanding and appreciation for our respective legal regimes and views on global implications of the international maritime sector that we regulate."

The Chinese delegate Mr. Li responded that:

"We are very glad to have been invited by the FMC to attend the Summit. The United States, EU, and China are important economies in the world, and maritime transport plays a very important role. Ninety percent of China's foreign trade is carried by sea. The sustainable growth of the maritime sector is of great importance to China and globally, and it is our common duty to protect the sound development of maritime transport. Through this summit we exchanged ideas about the maritime regulatory policies and rules and continue to strengthen our partnership."

Finally the statement from the European Commission leader at the meeting, Mr. de Broca was that:

"We welcome the opportunity to discuss our comparative regulatory regimes. Discussion is the best vehicle we have to share our collective expertise given that we each have different tools. We thank the FMC for initiating this summit and inviting us to participate what has been an informative dialogue."

Following the summit, the P3 was the subject of separate consideration by the three regulatory authorities, and according to the March 20, 2014 statement on their website, the FMC announced that it had concluded an extensive review of the P3 Network Vessel Sharing Agreement (FMC Agreement No. 012230). The Commission went on to add that it approved the agreement effective March 24, 2014, after the FMC received information on the agreement which concerned the sharing of vessels and other related cooperating activities in the trades between the U.S. and Asia, North Europe, and the Mediterranean (FMC, 2014)

The Commission's decision also noted that there could be circumstances that could permit the P3 Agreement parties at some point in the future, to unreasonably reduce services or unreasonably raise rates that could raise concerns under section 6(g) of the US Shipping Act of 1984. Since this was a key regulatory provision which the FMC had to address, the Commission included in its decision, certain reporting requirements to the P3 Agreement parties in order to assist the Commission in monitoring of the agreement (FMC, 2014). The FMC through the Chairman Cordero added that:

"The Commission's actions on the P3 Agreement takes into account the comprehensive, competitive analysis conducted by the FMC staff and comments received from shippers and other stakeholders. While

the agreement is expected to produce operational efficiencies for the benefit of the U.S. consumer, the new reporting requirements specifically tailored to this agreement's unique authority will ensure we have timely and relevant information to act quickly should it be necessary,…"

The FMC has therefore seen that the agreement would produce benefits that outweighed any negative impacts and that there were reporting and monitoring mechanisms in place to ensure that the alliance would deliver as proposed in their agreement.

3.2 *European Union*

When exploring the position of the EU, a useful starting point will be to be aware that the European Commission had recently taken the decision not to extend the block exemption granted under EEC 4056/86 to liner agreements, contained in EC Council Regulation (EC) No 1419/2006 of 25 September, 2006 and which took effect from October, 2008. Following this outcome, the interpretation of the EU with regard to the legal implications of horizontal collaboration would have to be seen from the statements made public to interpret and decide upon behaviour among shipping companies in the industry. An opportunity to examine the approach to interpretation adopted by the European Commission was provided when referring to the public debate on the conformity of the same P3 alliance that proposed their service to ports in the European Union. When exploring interpretations to the position of the European Union, it is also useful to acknowledge that around the same time that the P3 alliance was under scrutiny by the European Commission, there was also the decision of the EC to extend consortia rules (Porter, 2014, Lloyd's List Intelligence) for a further five years. The arguments raised by the EC as the basis for the decision on consortia are relevant and will be raised here since this will inform understanding the current debate on collaboration within transnational alliances.

The EC has confirmed that the maritime consortia block exemption will remain in place until April 2020 and will extend the existing regulation that was due to expire next year, 2015. The EC, had concluded that the exemption has worked well, providing legal certainty to agreements which bring benefits to customers and do not unduly distort competition, and that current market circumstances warrant a prolongation. The first consortia block exemption regulation was adopted in 1995 and prolonged several times. Under these latest consortia rules, the EU would allow lines with a combined market share under 30% to enter into co-operation agreements referred to as consortia, for another five years. The extension of this rule followed a lengthy review of the industry practices on these operational efficiency agreements that had been in operation since the application of the exemption rules in 1987 (Porter, 2014; Nair, 2012; FMC, 2012).

The view here is that the commission favours co-operation that allows member shipping lines to reduce costs, as long as customers benefit from the greater operating efficiencies (Porter, 2014). In their statement released with the extension of the consortia rules, the EC stated that:

"If consortia face sufficient competition and are not used to fix prices or share the market, users of services provided by consortia are usually able to benefit from improvements in productivity and service quality…" (Porter, 2014).

There has also been stakeholder support for consortia for example with the European Shippers' Council stating that:

"Historically, the ESC has had no major problem with the principles of the consortia regulation. … The ESC views consortia and alliances as the most acceptable and preferable form of cooperation between shipowners (provided they meet the requirements set out in the EU Consortia Block Exemption Regulation). … It has always been the ESC's view that consortia can potentially provide the opportunity for genuine economies of scale, enhanced efficiency and cost reduction."

This discussion on the consortia reveals that the EU does acknowledge that scheduled services are efficiently provided through some form of horizontal collaboration, although within the limits as outlined. When referring to the case under study here, i.e. the P3 alliance, and therefore in cases where for an alliance, their market shares exceed the market share threshold established in the consortia exemption regulation, the legal procedure is that the companies themselves have to make sure that their agreements comply with the law. Therefore when their market share exceeded the 30 per cent threshold in the consortia regulation, the EC would responded by exploring whether there were sufficient grounds to open an anti-competitive investigation in order to determine whether there is compliance to the EU rules. In the case of the P3 alliance, the members' market share did go beyond the threshold and therefore the alliance had to wait for the determination as to whether the EC would open the investigation.

In this case, the EC has decided not to initiate investigation on the P3, however, in their announcement did state that certain safeguard provisions were made known to the parties in the P3 alliance application. Further, it is also noted that the EC had soon after this, announced the renewal of the consortia regulation and thus taking a position that showed that the EU favoured collaboration among shipping companies providing scheduled services. In so far as the procedure for the P3 was concerned, the EU approach was that because of the market share threshold size, the P3 would have fallen outside Europe's consortia requirements and in such circumstances applicant member lines would have to conduct a self-assessment to ensure they were in compliance with EU competition law. The indication that the agreement would not be allowed is when there is an initiation of an investigation and in this case there would be none by the European Commission.

It would now be appropriate to examine the recent decision on the same P3 by the Chinese Ministry of Commerce and to explore the international public law issues that the decision raised, when seen against the background of the FMC and the decision of the European Commission.

3.3 *China Ministry of Commerce*

According to report on 17 June, 2014, the Ministry of Commerce of China rejected the application of members in P3 Network which would have provided scheduled services on the basis of the alliance among the three largest container carriers (Jing Yang, Lloyd's List, 2014). The review process took more than seven months and came just after decisions from the US Federal Maritime Commission and the European Commission with regard to the P3 services. The principal argument raised in the decision was that, the applicants, viz., Maersk Line, Mediterranean Shipping Co and CMA CGM would through their alliance

network be able to alter their structure that would lead to greater concentration in the industry (Leander and Yang, 2014: Lloyd's List) and therefore:

"*Based on a comprehensive analysis of market share, market access and industry characteristics, MofCom concludes that, if completed, the concentration will enable the operators to become a close-knit alliance, commanding 47% market share in Asia-Europe container liner service and will result in a significant increase in market concentration rate,"*

When examining the arguments that are now in the public domain, the core element of the decision on the principle of concentration and its likely negative impact on consumers of services was highlighted. In their statement, the MoC mentioned that:

"*After evaluation, MofCom thinks the relief plans lack corresponding legal grounds and convincing supporting evidence and that they failed to prove the proposed concentration will bring more advantages than disadvantages to market competition, or in accordance with public interest. Therefore, MofCom decides to forbid such concentration of business operators according to the Anti-Monopoly Law."*

The reference to concentration was emphasized by findings that the analysis showed that the Asia Europe container shipping market will see the Herfindahl-Hirschman Index, a commonly accepted gauge for market concentration; rise from 890 to 2240 after P3 is formed. Further, the three lines combined will retain a capacity share of 46.7%, with Maersk Line, MSC and CMA CGM commanding 20.6%, 15.2% and 10.9% respectively. Thus, from a position of policy, the view is that there will be adverse impacts on both shippers and ports and this is argued by the statement that:

"The review finds out that shippers are inferior when negotiating freight rates. [P3] parties may take advantage of the increased market share to undermine shippers' interest."

"The concentration will also enhance the parties' bargaining power against ports. In order to vie for calls, ports may be forced to accept lower handling charges, which will cast adverse impact on the development of ports." (Yang, 2014):

The Ministry of Commerce also made another argument to reject the P3 application and this referred to the proposed joint fleet-operation center of the P3 to be based in London. This center which would be set to operate as a separate legal entity in London was deemed a factor that made this alliance "essentially different" from other container alliances. The statement went on to add in its official ruling that:

*"In the case [of P3], the participants integrate all of their capacity in the east-west trades through a network centre, which makes itself essentially different from traditional shipping alliances in aspects including the form of co-operation, operational management and cost sharing," (**Jing Yang** Thursday, 19 June 2014- Lloyd's List Intelligence)*

The overall impression arising from the listing of the basis for the decision of the Chinese Ministry of Commerce is that there is a strong position to reject the P3 Network and this of course as seen earlier is in sharp contrast to the decisions taken in Washington and Brussels.

It is also useful to note that, according to the information on the site of the Ministry of Commerce there is no right of appeal on this decision, which is based on the Anti-Monopoly adopted in 2007. This Act of 2007, require companies that propose to concentrate, as in this case the three carriers who intended to form the P3 alliance, to lodge a declaration with the MofCom.

There were also voices, within Chia, in support of this decision by the MoC, to reject the P3 alliance. The vice-chairman of the China Shippers' Association, Mr Cai Jiaxiang said:

"We welcome MofCom's decision, which is a very wise one. MofCom's analysis entirely reflects the reality. P3 indeed excludes competition."

The vice-chairman went on to add that

"P3 will greatly hurt the interest of China's exporters," he said. "China's situation is different from that in the US, where there are no international lines. If P3 comes online, eventually it will be China's exporters that bear the costs of the surcharges that always go up and never go down.P3's market share in China trade will probably exceed 65%. It was never looked into, but I estimate just Maersk Line alone already reaches the 30% cap set by China's international maritime regulation."

4. Analysis

In order to understand the flow of arguments and where there could be clear divergences in the interpretation or similar views on the facts as proposed by the P3 alliance, it would be appropriate to bring together the key elements in all the three decisions. Since the decision of the Chinese Ministry of Commerce does go clearly distinctly separate from the decisions of the FMC and the European Commission, the analysis will explore the Chinese decision as the core and how both the other two reflect upon this decision.

Here, it would be appropriate to explore initially the view of the US Federal Maritime Commission on the decision of the Chinese MoC and on this subject, the FMC made a statement on June 18, 2014 as follows:

"The Federal Maritime Commission (FMC) notes the decision announced by its Chinese regulatory counterpart, the Ministry of Commerce (MOFCOM), with regard to the P3 Network Vessel Sharing Agreement. The agreement between A. P. Moller-Maersk A/S, CMA CGM S.A., and MSC Mediterranean Shipping Company, S.A. would have authorized the parties to share vessels and engage in related cooperative operating activities in the trades between the U.S. and Asia, North Europe, and the Mediterranean.

In March 2014, the FMC concluded extensive review of the Trans-Pacific and Trans-Atlantic effects of the P3 Agreement and determined that the agreement was not likely at that time, by a reduction in competition, to produce an unreasonable increase in transportation cost or an unreasonable reduction in transportation service under section 6(g) of the Shipping Act. P3 Agreement parties would have been subject to specifically tailored monitoring reports to ensure compliance with the Shipping Act once the agreement became operational. The Commission's decision remains in effect absent a withdrawal of the agreement by the parties.

"Ocean carrier vessel space alliances offer the potential benefit of cost savings and environmental efficiencies that come from coordinated deployment of newer, larger vessels. The FMC, in evaluating such agreements, will continue to balance those benefits with the potential

harm from a concentration of decision-making power in terms of port coverage, sailing schedules, and necessary trade lane capacity," stated Chairman Cordero."

The statement from the FMC could possibly reflect the view that a response is needed, since firstly not only is the decision of the Chinese MoC, in contrast to that delivered by the FMC in March, 2014, but secondly it follows upon the decision to hold joint consultation initiated by the FMC in December, 2013.

It would be useful to refer here to the lone voice in the FMC who had voted against the P3 decision of the FMC who came out in support of the decision of the MoC, i.e. Commissioner Richard Lindinsky. He stated in response to the decision from China, that:

"So I am personally pleased that other regulatory colleagues apparently shared my concerns over the excessive dangers to all of maritime commerce of the late P3 combination."

He then added that:

"it was apparent that the Chinese maritime authorities fully understood and appreciated not only their national, but international responsibilities, in this landmark case, and by studious and serious process, have taken a decision that will benefit carriers and shippers of all nations."

Lloyd's List in its earlier report had mentioned that FMC commissioners voted four to one in support of P3, but with modifications to the agreement and stipulating that it should be monitored closely.

While there was not a response from the European Commission, there was the response in support of the decision of the Moc from Europe was from the European Shippers' Council (ESC). The ESC stated that the P3 Network had failed to convince the regulatory authorities in China, on the benefits of the alliance and in its response to the decision from China went on to state that:

"The ESC understands this decision since it has already expressed its concern about the risk of dominant situation created by an alliance that could represent 44% of market shares for trades between China and Europe.

"This danger had also been evoked by the US Federal Maritime Committee which had coupled its green light given to P3 with strict conditions of control, unlike the European Union which had authorised the P3 without condition."

The reference by the ESC is to the nature of concentration that would evolve from this P3 service and went on its statement that:

"On the Transatlantic trades the P3 Network would for example have a market share of 44 percent," it said. (Porter, J; 2014)

According to the ESC, there was the fear that this 44 percent would be able to create a potential non-competitive environment and in view of that it was necessary to ensure:

"the free choice of shippers should be and remain the highest priority. Individual shipping lines have to distinguish on price, service levels and routing".

As mentioned earlier, the EC had not only decided not to open investigations on the P3, but had also just after the MoC decision announced their intention to renew the consortia regulations.

There are therefore variations in the interpretations of the impact of collaboration on competition seen from the perspective of these three major jurisdictions on the same set of facts as presented by the P3 case.

5. Discussion

Since this survey of the decision of major economic regulatory jurisdictions raise important international public policy issues, it would be useful to examine in some detail on aspects of the P3 which has been highlighted by the Chinese authorities. For example, the Ministry of Commerce of China referred to another major alliance, the G6, which had also been announced at the same time as the P3. According to industry sources, it was estimated that on the transatlantic route, the two alliances, i.e. P3 and G6 would have a combined market share of as much as 82%, with Hapag-Lloyd estimating that the G6 would have a market share of 40% on services between Europe and North America and the FMC estimating that the P3 carriers will have a 42% share. (Brett and Leander, 2014). Further there is also the view that according to Brett, D, (2014) the G6 Alliance is thought to be more of a traditional alliance than the P3 set-up and is not expected to be affected by Chinese regulators' decision to stop the P3 Network.

Some arguments presented by Brett (2014) in contrasting the G6, were that the G6 Alliance was already operational on the Asia-North Europe, Asia-Mediterranean and transpacific east coast trade lane. Further, it was only expanding onto the transatlantic and transpacific west coast trade lanes, unlike the P3, which is a new start-up proposing to cover all three major trade routes.

Further, the only part of this expansion of the G6 that would affect China is the transpacific west coast move. This followed by the reported material that the MoC, in their decision suggested that the G6 was a more traditional slot sharing alliance than the P3 Network. In order that the variations as well as approaches to the decisions made among the regulatory authorities with focus on the decision of the MoC, it would be useful to highlight the key aspects.

The principal elements relevant to the decision on the format of the P3 in terms of the differences are shown in the box below.

P3	G6-Traditional
• much more control by coordination center, as they would be responsible for operational procedures	• only slot/vessel share
• operational costs would be calculated by trades and split between the carriers, with set voyage costs	• would each be responsible for t heir own costs
• the center would be responsible for selling unused slots	• would individually sell spare slots
• the center would make decisions on service suspensions	• would make operational decisi ons - including service suspens ions - through a committee

As is evident from the information in the table above, the view of the MoC was that the co-ordination office that the G6 Alliance planned to set up would operate along the model of a committee. In contrast, the same Ministry was of the view that the P3 service centers would have a separate

company with a separate legal entity. It is evident that the level of reasoning to highlight criteria for the decision is entering new terrain and it may be useful for container shipping lines in future to be aware that there are different dimensions of collaboration, all of which are seen differently by different economic regulators.

Arguing along these lines, the MoC was of the view that the market share threshold figures of the P3 Network on the Asia-Europe trade could be as high as 48% and that the G6 was a "true alliance". This is a new concept that would need to be defined on a global context for container shipping lines that would want to collaborate on the basis of an alliance or even as a consortia, what is a "true alliance".

Interestingly, a view that was similar to the concept of a "true alliance" was offered by the US FMC Commissioner, Richard Lidinsk, who had stated that the G6, with:

> *"…organisational chart, multi-diverse membership, rotating chairmen, vessel-sharing agreement terms and flexible operational procedures, it is well-equipped to serve the international waterborne commerce of the US in a fair and efficient manner,…".*

The G6, which is made up of APL, Hapag-Lloyd, Hyundai Merchant Marine, Mitsui OSK Lines, Nippon Yusen Kaisha and OOCL, had its plan to extend to the transatlantic and Asia-US west coast trade lanes unanimously approved by all five FMC commissioners in April, 2014. However, Mr Lidinsky was the sole FMC commissioner who had voted against the P3 Network although it was approved by the FMC, as the four other commissioners voted in its favor.

In explaining the decision, Mr Lidinsky said the P3 agreement would allow the controlling carrier the ability, when coupled with existing discussion agreements, to deploy its assets along with those of the other two carriers, to dominate vessel competition and narrow shipper options at US ports. Finally there is the observation of SeaIntel shipping analyst Kasper Hansen, who recently remarked that the G6 centre could work more like a co-ordination centre, whereas the P3's would function like a manager of fleet operations. The arguments raised for the decision to reject the P3 by the Chinese authorities show that there are new legal grounds emerging and which are not seen similarly by different regulatory authorities.

More recently are the reflections on the P3 decisions that VSA between container lines promote competition and enable smaller companies 'to stay in business' as stated by a lawyer for Maersk, i.e. Holtse, Camilla Jain, amid concerns on potential powers of new global alliances emerging in the global industry (Porter, 2014).

It will be useful to note that, following the failure to receive the regulatory approval required, two major players in the original P3, namely Maersk and MSC went on to form the 2M alliance. The third carrier, CMA CGM is now in collaboration with CSCL and UASC in another alliance, the Ocean Three. The collaboration permutations among carriers are not over, and we are witnessing formation of other alliances emerging to serve the main arterial trades. It is likely that these forms of horizontal collaboration will continue; although, the broad frame of the P3 will be the guide to ensure global regulatory compliance.

6. Reflections and Conclusions

There is clearly a situation where the interpretation given to these collaborative arrangements by liner shipping companies are different. This has led to statements on the need for some form of rationalisation in the international interpretation of the validity of this collaboration agreement. One view on this has been raised by Mr Woolich, an industry analyst, who said at the 2014 TOC Europe Conference in London, that:

> *"The P3 deal is a classic example of how the industry would benefit hugely from there being a worldwide competition authority." (Nightingale, 2014)*

This view appears to be similar to that stated by Analyst MDS Transmodal, who referred to the element of 'level of market share' that were raised during the investigation by regulators. This they regard as a crucial component that should be public knowledge in so far as it concerned what is acceptable for alliances operating in the main trade route (Brett, 2014b). On the same point, the analyst went on to state that:

> *"The Federal Maritime Commission, the EU Commission and the Chinese Ministry of Commerce should perhaps come out with some clearer and consistent indications of what is/is not acceptable for fair global competition," the analysts said. (Brett, 2014b)*

Following the uncertainty that was created by the decision from China, according to Drewry, cited in Lloyd's List:

> *"The P3 (sic.)… might even be allowed to form a trilateral consortium in the transpacific, as their current 20% market share of effective eastbound vessel capacity to the west coast alone is well below the G6's 34%," Drewry said.*
>
> *"This would enable them to deploy surplus ultra-large container vessels from the Asia-Europe trade lane on the route, and cascade the displaced vessels into other services, which may well have been envisaged at the outset of P3."*

Drewry is of the view that in the transatlantic trade, there could even be the option to set up the P3 Network in the form of joint services. There are now obviously views that a diverse range of options will be explored and Drewry also stated that:

> *"Because the US Federal Maritime Commission and the European Commission have not blocked the alliance, the three carriers could decide to implement joint services on the transatlantic route, as planned, even without a P3 global setup.*

According to Lloyd's List (Nightingale, 2014b), Drewry Maritime Research senior analyst Neil Davidson believes that the P3 carriers may have to explore other options, and thus to be better positioned to the arguments raised by Beijing. He is quoted as saying that:

> *"Could two or the three lines form a kind of P2 alliance…Or could there be moves to involve one or both of the big Chinese lines in some kind of alliance, in order to establish a better position with the Chinese authorities?...The fact is that in order to fill very large ships, carriers have to get together more, and so further alliance-related developments seem likely – the story doesn't end here"*

This reinforces the theoretical arguments that the very basis of scheduled services which has been in existence since 1875 from the UK/Calcutta Conference has been through joint collaboration beginning with price and supply agreements (Marx, 1953; Gardner et al., 2002). Further it is also known that their price ratio of very high fixed to variable costs, also makes it inevitable that the route to stability in the provision of scheduled services is through horizontal collaboration (Davies, 1980; Marx, 1953, Nair, 2008; Gardner et al., 2002; Mason and Nair, 2012; Nair 2013). There is the acceptance of the need for collaboration even as seen

in the decision of the FMC and the EU.

At the time of writing, and as mentioned earlier Maersk and Mediterranean Shipping Company (MSC) announced their 10-year vessel sharing agreement (VSA) to be deployed on the main trade routes as an alternative to the P3 alliance that did not receive the Chinese regulatory approval (Walters, 2014). In this VSA referred to as the 2M, the combined market share would be much smaller than the P3, and the cooperation will be only on a VSA basis without the likes of the operations centre under the P3 and thus avoiding some of the objections raised in the Chinese decision to reject the P3. In their statement to the media, the VSA would also not include joint marine operations where each party would take care of their own stowage, voyage and port operations. The Walters (2014) report contained the statement that emphasised the element of fully independent sales, pricing, marketing and customer service functions within the 2M VSA. These elements appear to address concerns of the Chinese and the restrictions that were put on the P3 applications.

The lines which form the top three in the world have to address their operational challenges such as their ability to exploit the economies of scale offered by larger ships within the constraints of regulatory regimes when exploring the limits to horizontal collaboration. They would have to take into account that while the major jurisdictions have allowed some form of collaboration, the exact format of these limits are not clearly spelt out and could be more likely be regarded as a decision made on a case by case basis. The scale of the confusion that prevails based on the reading of the public debate could be daunting for these liner shipping companies that are striving to provide the global stretch in scheduled services for container services. The regulatory authorities are in the case of the P3 giving different interpretations to the same set of fact and are seen to be explaining their decisions in terms of aspects such as market share, global coverage, position in the international list by the leading suppliers and their proposal to set up a joint operations centre. It is evident from the comments that are emerging that the broad nature of collaboration is not clearly defined and the attempt for example by the FMC to attain a common understanding before all went their way to look at the details may not have been achieved. Interestingly the core points raised by the Chinese authorities are now being seen as a major yardstick that could be adopted especially by the liner shipping companies themselves to set their platform for future collaboration among their competitors. We have now at the time of writing seen another development that is the creation of the new 2M alliance between Maersk and MSC, which already are based on what these two carriers determine would be within and 'off limits' they expect from these regulatory authorities and we will explore these ideas in future research.

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