

Learning from neighbours!

Cases on benchmarking and regulation in the seaport and airport sectors

Prof. Eddy Van de Voorde
University of Antwerp



As a starter

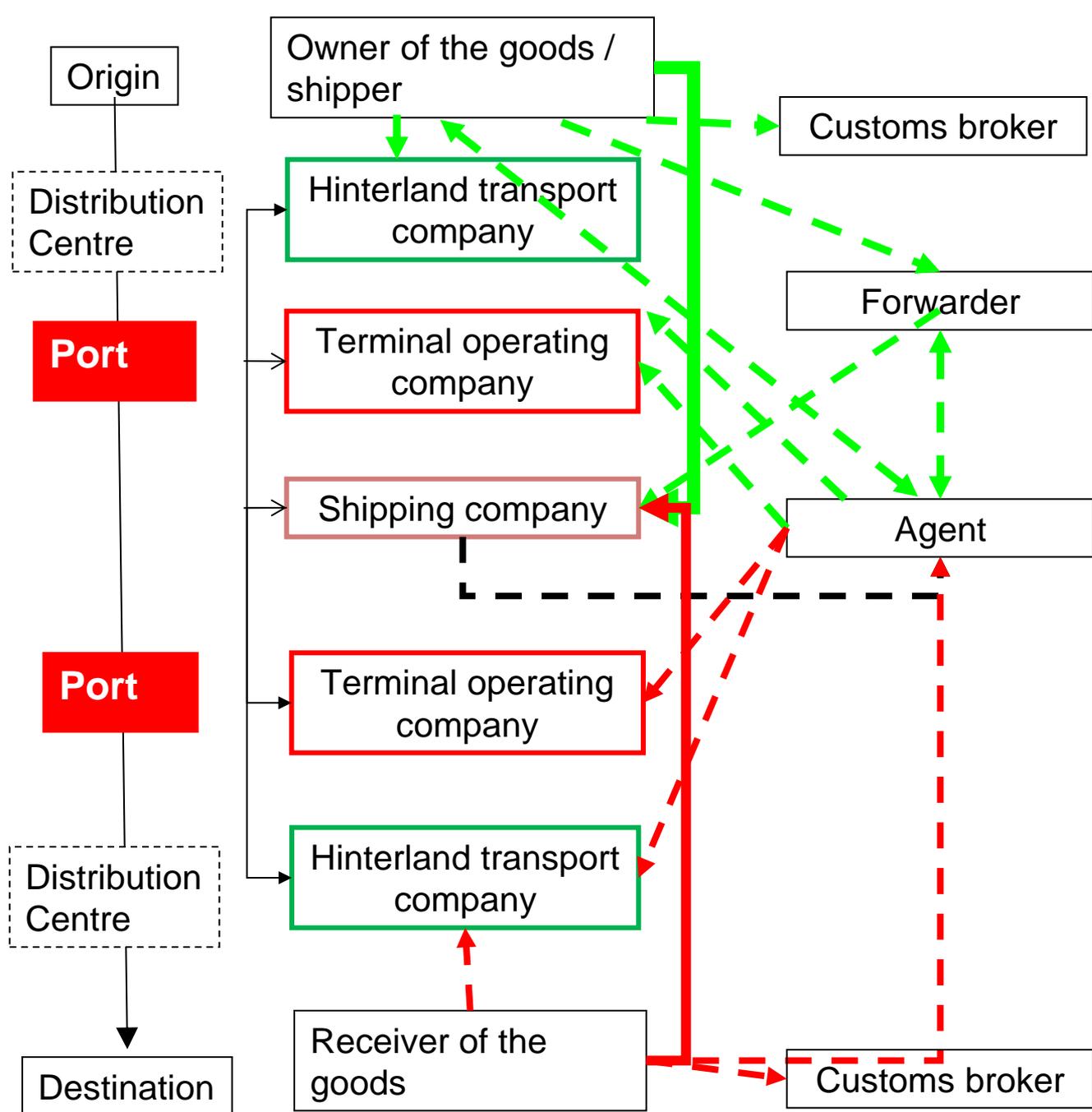
- Seaport and airports are highly competitive
- However, sometimes monopoly power exists for particular actors
- Always a risk that such power will be abused
- Benchmarking as a means of identifying potential problems of inefficiency and/or abuse of monopoly power

Our aim

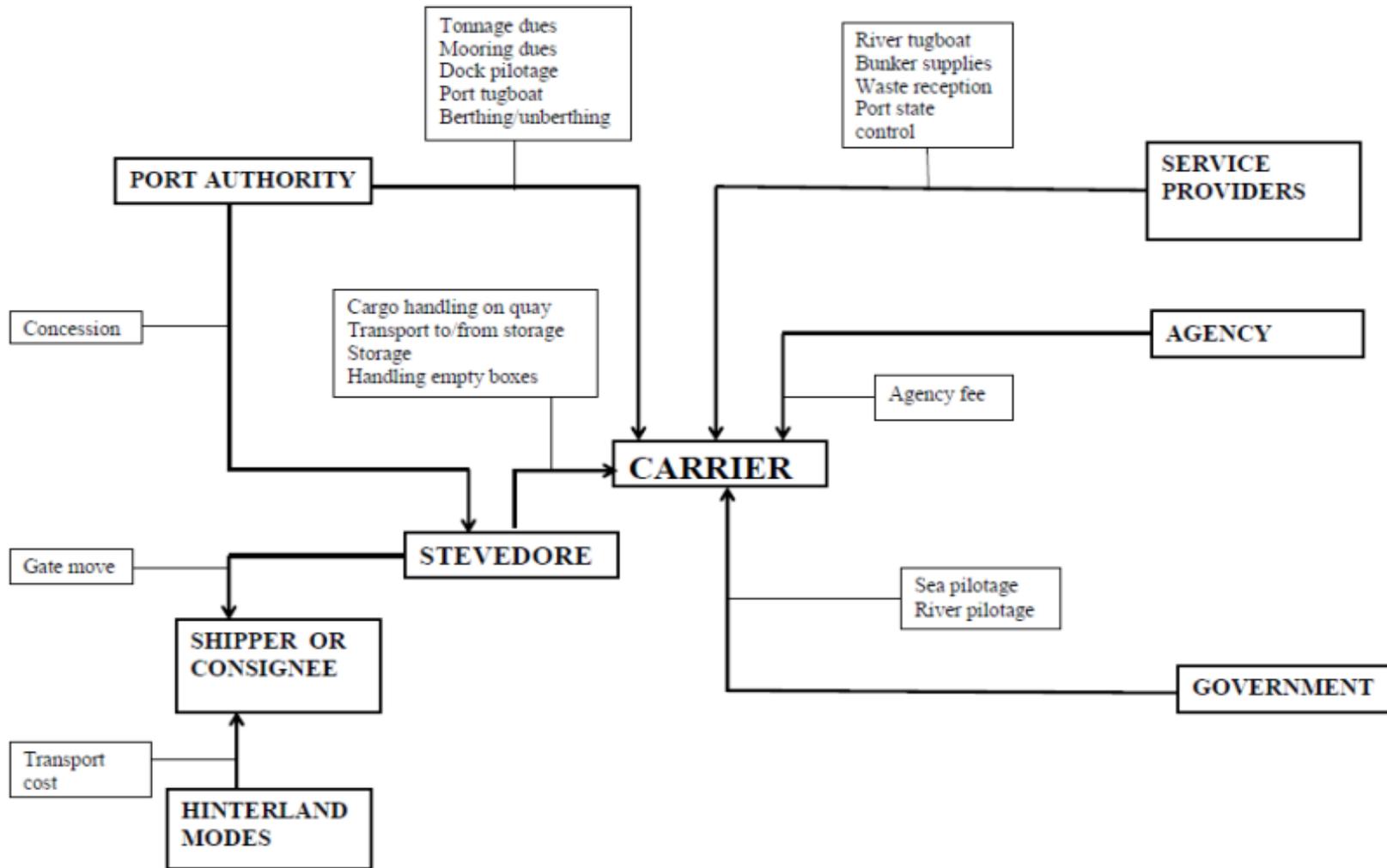
- To identify potential problems and the resulting need for regulation
- Based on two cases
- Underlying idea: each case and the corresponding learning process offer potential input for other port situations
- Typical examples:
 - types of incentive schemes to be adopted
 - the ways in which quality levels are measured
 - coping with concessions and penalties

The cases

- 1. Coping with concession penalties
 - concession agreement
 - enforcement of penalties by third parties
 - effect of not collecting the penalties
- 2. Regulation of an airport
 - duration of the regulated period
 - adjusted single till versus dual-till systems
 - tariffs based on referee airports?
 - regulated and non-regulated activities
 - the role of the economic regulator



Pricing and payment of port bills



Case 1: coping with concession penalties

- Existing international port regulation (e.g. Port State Control)
- The issue: are concession terms specified in a contract being respected? Should a port authority collect fines specified in a concession agreement linked to tonnage obligations?
- Learning process: concrete steps by all actors and legal arguments adapted
- Generic decisions for global port sector?

Case 1: various steps

- Concession agreement and payment
- Throughput obligations
- Failure to meet these objectives
- The 2 largest TOC's (PSA and DPW) had to pay fines accounting to € 51 million in 2012
- November 2012: Antwerp PA wants to reduce the fines drastically, or even to waive them (argument: economic crisis)
- Other companies go to European Union

Case 1: EU report in anticipation of ruling (March 2016)

- Long period between the economic crisis (2008-09) and the decision taken in 2013 to waive a portion of the fines
- Disproportionality: throughput decrease by 38%, fines decrease by 80%
- Selective measure, as it applied to only two companies
- Government funds involved, as the Port Authority is not a private company

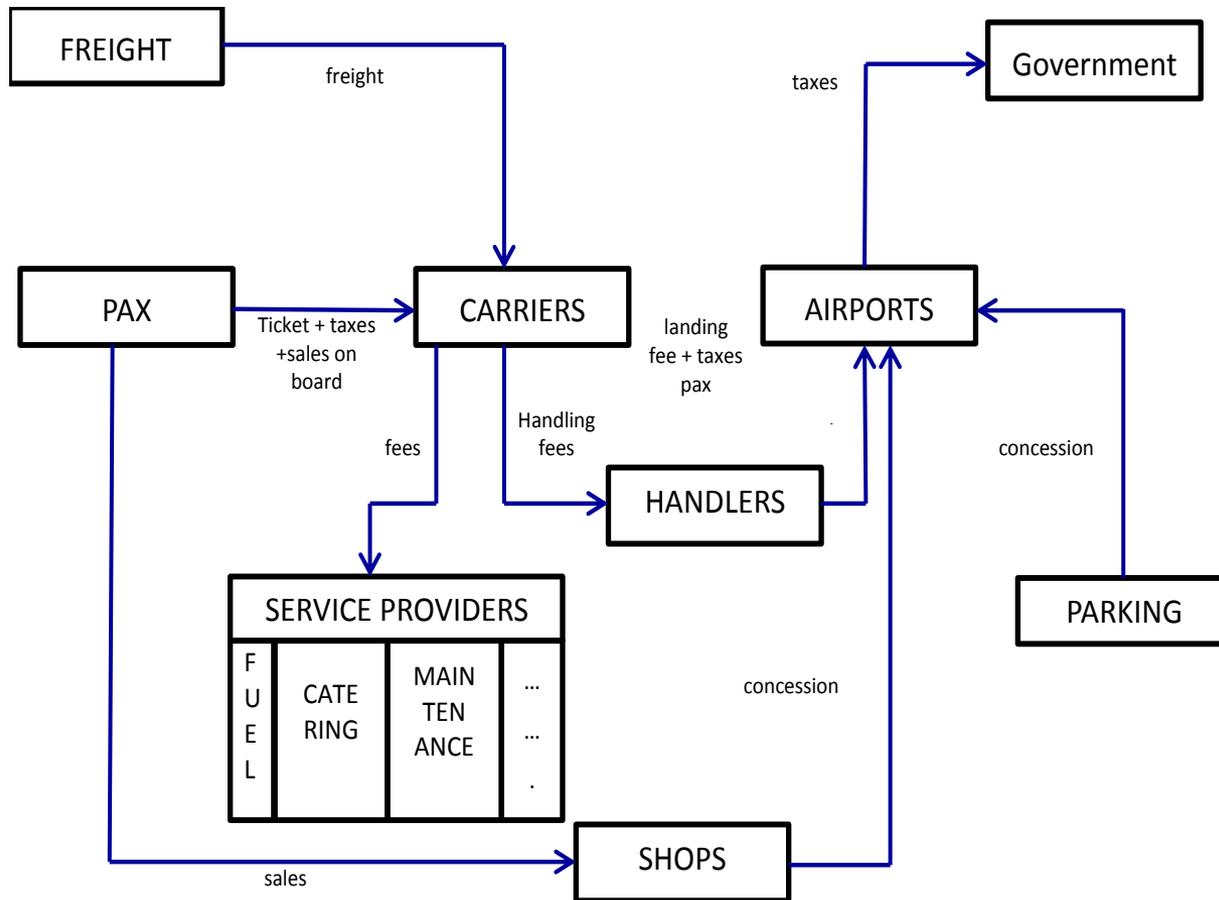
Case 1: ruling (December 2016)

- Reduced fines for failing to meet the tonnage obligations did not constitute illegal state aid
- The port Authority's decision could be defended within the broader framework of the economic crisis after 2009
- PSA and DP World were still in the start-up phase
- The intervention of the PA was in line with what a private company would have done

Case 1: the learning process

- Few characteristics that could lead to possible abuse of monopoly power
- PA as a possible exception (cf. concessions)
- Incentive to conduct a detailed analysis in the initial phases w.r.t. all concession agreements
- Would yield many good comparisons, including between terminal operators
- Openness of administration takes precedence over commercial confidentiality

The case of airports



Case 2: the regulation of Brussels Airport

- Possible revision of Brussels Airport Company (BAC)
- BAC privatised in 2004 (75% private)
- 5 issues to be investigated:
 - length of the regulated period
 - adjusted single-till or dual-till systems
 - coordination of fees to reference airports
 - level of economic regulation
 - the role of the economic regulator

Case 2: length of the regulated period

- Possible reduction from 5 years to 1 year
- Annual price-setting does require a great deal of negotiation and can lead to volatility
- All actors have interest in stability
- A 'step-wise' system proposed:
 - fees are set for a period of 5 years
 - result of negotiations between BAC and airlines
 - annual consultation
 - fees adjusted in case of clear deviations

Case 2: adjusted single-till or dual-till

- In an adjusted single-till system, the airport operator is guaranteed a fair profit margin (due to partial subsidisation through the income from non-regulated activities)
- Regulator suggests an immediate shift towards a dual-till system (no cross-subsidisation)
- Proposal: to retain the adjusted single-till system (and shifting to a dual-till system over a period of time)

Case 2: coordination of fees to reference airports

- The regulator wanted to abandon the fee-determination mechanism based on referee airports; to be replaced by a financial model
- Decision to work with a broader array of referee airports
- A financial model: not imposed, but only used for assignment purposes (and consultation!)
- BAC has every interest in fees that are competitive

Case 2: level of economic regulation

- Starting point: it's clear that BAC cannot be considered being a 'natural monopoly'
- Is BAC capable of abusing its dominance?
- Should the economic regulation of the regulated activities be stricter?
- The presence of nearby competing airports creates a prominent likelihood of substitution
- Some level of dispute is possible, e.g. 'fast lane' (regulated or non-regulated?)

Case 2: the role of the economic regulator

- The extent of independence the economic regulator should have
- The necessity of oversight on BAC is beyond dispute (cf. European Directive)
- Ex-ante economic regulation is relatively complex and expensive
- The regulator should be positioned between the market parties, intervening in case of complaints or irregularities and reporting to the government

Conclusion: what to be learned?

- Case studies provide an important source of information (arguments, decisions, processes...)
- To be interpreted within their economic and geographical frameworks
- Results cannot be automatically extrapolated
- To what extent does another country differ from the situation in Belgium?
- Calls for the elaboration of several micro-studies (e.g. concession agreements)

THANK YOU!

eddy.vandevoorde@uantwerpen.be

