Learning from neighbours!
Cases on benchmarking and regulation in the seaport and airport sectors

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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

PORT AUTHORITY

- Concession
- Tonnage dues
- Mooring dues
- Dock pilotage
- Port tugboat
- Berthing/unberthing

STEVEDORE

- Cargo handling on quay
- Transport to/from storage
- Storage
- Handling empty boxes

CARRIER

- Agency fee
- Sea pilotage
- River pilotage

SHIPPER OR CONSIGNEE

- Transport cost

HINTERLAND MODES

SERVICE PROVIDERS

AGENCY

GOVERNMENT
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!

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