FMC and Ports 2017:
Challenges of a 19th Century Regulatory Regime in a 21st Century Port Environment

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Main Points

- Shipping Act of 1984, as amended, is not that distant from its progenitor, the Shipping Act of 1916
- Streamlines agreement process
- Expands, clarifies antitrust immunity
- Liberalizes tariff regime
BUT...

- Agreement filing requirement is expansive, well beyond antitrust implications
- No recognition of changing structures and business models in ocean carrier industry
- No distinction between port authorities and other MTOs
- Prohibitions still larded with vague “reasonableness" standards
Five Areas of Stress and Uncertainty

- Dealing with global alliances
- Competitive practices – may or may not have antitrust impacts
- Non-carrier issues
- Environmental/infrastructure issues
- Hearing the shippers' voices
Global Alliances

- In many ways very different than steamship conferences that the 1916 and 1984 Acts addressed
  - Highly integrated
  - Not primarily or overtly rate driven
  - Very large market shares and geographic coverage

- FMC appears to be feeling its way

- FMC not only player
  - China
  - Europe
Non-carrier Issues

- Four major recent alliance decisions
- All presented issues related to procurement of domestic US ancillary services
- FMC throat clearing, jawboning seem to have resulted in some contraction of ambition
- Car carrier agreement
  - Spawned several interpretive utterances
  - Key element appears to be professed intent to target one tug operator in one port
Interesting Provision

"...[A] group of two or more common carriers may not—

(4) negotiate with a non-ocean carrier (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part...."
Thank you

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