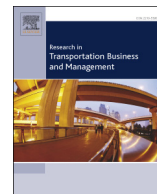




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Institutional reforms of port authorities in the Netherlands; the establishment of port development companies

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ABSTRACT

In this paper we argue that much of the literature on port governance takes the embeddedness of the port authority in the public sector as a given, whereas we argue that port development is intrinsically commercial and it is thus appropriate to regard a port authority as a port development company. In line with this, we provide a critique of the term 'port authority'. Next, we describe the cases of the Dutch seaports as an illustration of the transition away from 'authority' and towards a model with state owned port development companies (PDCs). The following topics are addressed: the changing institutional position of the port development companies, the legal status of the PDCs, the financial performance of the Dutch PDCs and the commercial activities of the PDCs. Finally, we address the changing approach to small scale port development in the Netherlands.

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1. Introduction

Many governments devolved the responsibility for port development to a port authority. Port authorities are government owned in virtually all countries except the UK, Australia and New Zealand. There is a clear transition towards a more autonomous and commercially operating port authority (see Brooks, 2004; Verhoeven, 2010; Debie, Lavaud-Letilleul, & Parola, 2013, De Langen & Heij, 2014; Van der Lugt, Langen, & Hagdorn, 2015). Port authorities in the Netherlands, Germany, France, Portugal, Oman, South Africa, New Zealand, Canada and Saudi Arabia operate as formally autonomous state-owned corporate entities. However, much of the literature on port governance takes the embeddedness of the port authority in the public sector as a given. For instance, Verhoeven (2010) describes a transition of the activities of port authorities, but does not address potential implications for their institutional position. Likewise, Stevens (2007) analyses the institutional position of seaports, but with limited attention for the mismatch between their commercial activities and embeddedness in government administration. Debie et al. (2013) describe port authorities as a government actor that shapes 'public private partnerships'. Likewise, Parola, Tei, and Ferrari (2012) describe the role of port authorities in concession granting process from the same perspective in which the port authority is taken as a representation of government.

We argue that port development is intrinsically commercial and it is thus appropriate to regard a port authority as a port development company. This notion challenges the current set of concepts and thought

patterns regarding port authorities and thus can be thought of as a different 'paradigm'. We acknowledge that the fact that port authorities engage in commercial activities has been widely observed (for instance in Suykens, 1985), our paper is novel in its argument that this implies that port development is appropriately done by a corporate entity and that this in turn implies that all public interests have to be secured explicitly, instead of assumed to be taken care of by that same corporate port development entity. The new paradigm is discussed in the next section, together with a critique of the term 'port authority'. Next, we describe the cases of the Dutch seaports as an illustration of the transition away from 'authority' and towards a model with state owned port development companies (PDCs). The empirical analysis covers the changing institutional position of the port development companies, the legal status of the PDCs, the financial performance of the Dutch PDCs and the commercial activities of the PDCs. Finally, we address the changing approach to small scale port development in the Netherlands.

2. A paradigm shift in port governance

As outlined above, the conventional approach treats port authorities as government entities. In this approach, increasing private sector involvement is accommodated through port reform towards a 'landlord model' (Brooks, 2004). In the conventional government-centred paradigm ports are quasi public goods, like other basic infrastructure that is provided for by the government (Goss, 1990). In addition, the provision of port infrastructure is important to regional economic development. Thus, in the same way that the government provides road infrastructure, the provision of port infrastructure is in this paradigm a responsibility of national and/or regional government.

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The paradigm shift lies in the fact that we argue that port development is intrinsically a commercial activity. So while there may be a case for government involvement in ports, the commercial nature of port development requires a governance structure focused on effective commercial operations i.e. a company.

Two arguments sustain the commercial nature of port development. First, ports compete fiercely for attracting ships, cargo volumes and investments in their complex. Many ports have contestable hinterlands, meaning that they compete with other ports for attracting vessels and cargo. And they compete with other industrial and logistical sites for attracting investments in their ports, for instance in manufacturing and warehousing and other logistics services. The port managing body (that we refer to as port development company and that is conventionally termed 'port authority') provides assets (land) and services (nautical access) to specific port users and charges fees that are based on the commercial value of this offer.¹

Second, ports can be seen as economic clusters (de Langen & Haezendonck, 2012) or business ecosystems (Van der Lugt, Doods, & Parola, 2013). Port development is more than 'just' granting land lease agreements to tenants. In land lease choices, creating synergies between companies is crucial for the attractiveness of the port. In addition, port development includes developing connections in the port cluster, be it through open access pipelines, port community systems, utility infrastructures as well as initiatives for the collaborative utilization of these infrastructures. In that sense, port development is similar to the development of a shopping mall, a chemical complex, and an airport complex – all commercial activities carried out by companies (that may be privately or government owned). Port development, like the development of airport complexes, chemical complexes and shopping malls is intrinsically commercial. For this reason, the conventional paradigm of a public sector embedded port authority is problematic. This does not imply a 'laissez faire' approach; governments continue to influence port development through regulation, and potentially also through the shareholder policy regarding government owned port development companies. The core implication is a regulatory approach where public interests are secured, either through regulation or through a shareholder policy, so that the port development company is fully autonomous in achieving its mission.

Notwithstanding the increasingly commercial attitude of port authorities, the majority continues to use the term 'port authority'. However, it is relevant to note that port authorities in their marketing increasingly leave out the term 'authority' and simply refer to themselves as, for instance 'Port of Barcelona'. We argue that the term port authority is confusing and that 'port development company' better describes the core role of these organisations.

The term authority is often used for an agency or body created by a government to perform a specific function, such as environment management, tax collection or monetary policies. Likewise, local governments are also often termed 'local authorities'. However, none of these authorities provide commercial services in competitive environments. Some of them may charge users for services, (think of inspection authorities) but they all operate based on power that is delegated formally and they do not 'negotiate' prices or other agreements. Furthermore, they often operate based on a legal framework in which failure to adhere to the authority is penalised, for instance through fines or the loss of a permit.

In contrast most so-called 'port authorities' operate in a competitive environment. Many port authorities have limited or no authority, and when they do this is often unwarranted. In some countries (such as Spain and Oman), the port authority establishes maximum tariffs for port services provided by third parties. In our view, this only makes sense to prevent abuse of market power, in which case a competition

agency is much better placed to regulate and monitor pricing than the port authority, especially given the fact that the port authority generally has commercial relations with these third parties. For instance, the value of a concession depends to a large extent on the prices that may be charged; so there may be a conflict between increasing revenue through higher prices for concessions and the general interest of securing competitive prices. Therefore, if it is in the public interest to monitor and approve pricing of port services, this activity is best carried out by a competition authority or by a specific ports regulator (such as in Greece or South Africa).

The port authority is often mandated to act as competent harbor master. However, this mandated activity is not a convincing reason for the term 'port authority': in the UK, the authority of the harbor master is mandated to individual employees of private companies. Another activity of port authorities with a reference to authority is the control of access to quays. This in itself is not a basis for claiming 'authority' any more than the owner of a publicly accessible shopping mall. Some 'port authorities' have police staff on their payroll (e.g. Spanish port authorities) or engage in ship inspections (e.g. Dutch port authorities). In our view it is questionable whether this combination of policing/inspection activities and the port development activities in one entity does really create synergies. Furthermore, this combination may be problematic in the sense that commercial objectives and law-enforcement objectives may not always be aligned. In these cases, the public interest of law-enforcement may not be effectively secured.

In conclusion, we argue that the conventional perspective of a public sector port authority that promotes general interests and leaves port operations to third parties does not do justice to the (perhaps increasingly) commercial nature of port development. We do not argue that this implies port development should be left to private enterprise, but that if governments want to retain control over port development, the appropriate model is a state owned port development company, not a public sector embedded port authority. In the latter conventional perspective, port authorities often do regulate tariffs, employ a port police force, carry out inspection services and employ public sector mechanisms to grant concessions/land lease contracts.² These practices prevent a focus on the core challenge in port development: creating value for port users.

In this context, it is relevant to note that in the Dutch language the term 'port company' has always been used. For instance 'Havenbedrijf Rotterdam' was established in 1932, the term literally means 'Port Company Rotterdam', (see Broelsma, 2009). In English, the company uses the term 'port authority' (see <https://www.portofrotterdam.com/en>) but, like other port authorities, increasingly omits the term authority and presents itself as 'Port of Rotterdam' (this is for instance the text on the logo).³ Omitting the term authority may be a signal that these port authorities do not position themselves as such. Leaving semantics aside, we argue that there is a (slow) transition in port governance, away from the public sector embedded 'authority' model, and towards the commercial and self-sustaining 'corporation' model (Verhoeven, 2010 and later Van der Lugt et al., 2015, discuss this transition in terms of the role of the PDC). The benefits of this transition and implications for policy makers are further discussed in Section 3.

In the Netherlands, the transition of port governance towards the 'PDC-model' has taken shape in the past decade, even though next steps to complete this transition remain. This transition as well as the remaining issues is discussed in the next sections.

² As a related 'semantic' issue, the term 'landlord' has a public sector connotation; i.e. provide basic port infrastructure and leave operations to private companies. In line with the arguments above, we argue that the landlord model is not a way to split government sector and private sector activities, but a potential *business model* for a port development company. The PDC has good commercial reasons for attracting third party service providers to provide services in the port, but may also provide some services in-house.

³ Simply omitting authority is unsatisfactory because this suggests an operational involvement, whereas many landlord port companies do not operate terminals in the port. For this reason in this example, the term Port Development Company in our view is a more precise term.

¹ A review of the literature on port competition is beyond the scope of this paper, for a review of the whole field of port studies, including port competition: see Pallis, Vitsounis, and De Langen (2010).

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