Chapter 8
Co-operation in Liner Shipping

The application of competition or antitrust policy to sea transport is probably the most developed and complex area of international shipping policy. The central question which has confronted governments for 120 years is whether, and to what extent, co-operative ventures between liner shipping companies should be exempted from the prohibition of cartel and antitrust activity which applies to business generally under national and international laws; and, if so, under what circumstances and subject to what alternative requirements.

This chapter explores the origins of co-operative agreements, starting with conferences and their origins and what they are allowed to do in practice. It also sets out and examines the position since the early 1980s up to the end of the twentieth century in Europe, the USA, and other major jurisdictions. Further explanations of governments' perception of such arrangements and their reactions, investigations and the later development of international policies, are elaborated in the next chapter.

It is important, however, to be aware that the conference system has frequently been under the microscope in Europe. The changes have encouraged similar reviews in other major jurisdictions. Despite carriers' reasoned case that the unique attributes of liner shipping argue for a special regime to permit co-operation and avoid a return to the economic chaos of the pre-conference era, the European Commission has been less disposed to any provisions which are incompatible with its philosophy of uninhibited competition, a position supported by many shipper representatives.

The Conference System

The modern conference system emerged in the Indian trade in 1875, although similar arrangements can be traced back to the Hanseatic League in medieval times. Following a period of instability, over-capacity and cut-throat competition, the British lines in the trade homeward to the United Kingdom from Calcutta agreed to charge the same rates for carrying cargo. This arose as much from the desire of

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importers and exporters of such commodities as tea for a stable rate of freight as from the shipowners' need for more rationalised earning power in an increasingly capital-intensive industry.

In the tea-exporting ports, huge variations in freight rates would result from the over- or under-supply of space. These were inevitable when the supply of vessels was subject to immense variations, owing to the vagaries of weather on the performance of sailing ships. Thus, often only one vessel would be in port at a given time and able to charge premium rates.

This might be followed shortly afterwards by a spate of vessels. The surplus space available after the previous famine would substantially depress freight rates. The less delay there was in the shipment of a valuable cargo, the greater the profit for both the shipowner and the cargo owners, especially if the goods reached market during a period of shortage of the commodity involved.

With the expansion of trade in the second half of the nineteenth century and the change over from sail to steam, liner companies were able to provide an increasingly regular service. Traders accepted the idea of a group of lines co-operating on the numbers and frequency of ships and charging common rates of freight. It removed a number of risks for them and gave a degree of certainty and stability, coupled with the assurance that they were receiving the same treatment as their trading competitors and that their goods would arrive in the market when required.

Thus emerged, albeit in a rudimentary form and in a sense out of necessity, the first liner conference. Others followed until by the beginning of the twentieth century the world was covered by a comprehensive system of liner services operating under the same basic practice and philosophy. A world-wide network of conferences continues to operate today but changes in form and substance have for some time now called their future in to question.

The major liner trade routes are: trans-Pacific, Europe–Far East, trans-Atlantic, intra-Asian, and the so-called "long thin" trades serving Europe–South America, Europe–Australia/New Zealand and Europe–Southern Africa. There are, in addition, many local conferences serving for example Mediterranean Europe, the Middle East and North Africa, and the Baltic Sea and adjacent ports.

A liner conference is a free association of lines operating in the same trade or route who agree on certain basic principles, the fundamental one being that the more closely space available can be equated to cargo flow, the more efficient and competitive the operation. In short, agreement on capacity and on common rates of freight.

Unlike commodities or manufactured goods which have a continuing or residual value even if unsold, surplus shipping space loses its value immediately the vessel sails. Thus a service that rationalises, and as far as possible equates, supply to the requirements of traders, and which assures both regularity and certainty, provides benefits for both the user and the supplier of the service.

The principal benefit to the shipper or transport-user (including freight forwarders)—and therefore for the economies of individual countries—is stability. This manifests itself in the availability of regular and reliable services which are responsive to customers' needs. Traditionally, it has been the role of the conference

to "cover the berth"—in terms both of cargo types and of geography. In return for the privilege of being permitted to co-operate commercially, there has been a clear understanding that conferences on a particular route will ensure that all major areas are served and that a pricing structure is applied which will enable most cargo types and values to be moved. This obligation is undertaken in good times and in bad, whether cargo is offered or not.

What regular shippers (or transport-users) want is:

- Frequent services and regularly interspersed sailings.
- Full coverage for all cargo types, attractive or unattractive, easy to handle or difficult.
- A reasonable and stable price. This is of course subjective.
- Freedom of choice of carrier although shippers have argued that the workings of a particular conference may not allow them to choose the carrier.

All this is achieved by the conference mechanism.

The term "conference" is generic and covers a wide variety of different associations. Some are formal with written agreements and permanent secretariats, some looser agreements about frequency of service, others purely informal associations of lines covering only general working arrangements. The distinguishing feature for all is the published tariff of common or uniform rates of freight. However, as we shall see later, the growth of individual service agreements has resulted in the tariff assuming the role of a benchmark only for the growing number of one-to-one negotiations between carriers and individual shippers.

In practice, little has changed since the classic explanation of the conference system in 1958 by Sir Donald Anderson, the then Chairman of P&O: "Shippers want to be able to buy or sell large or small quantities at short notice with knowledge that shipping space will be available. They want their goods to be carried in large or in small lots, regularly or irregularly, in season or out of season, at ordinary temperatures, or chilled, or frozen or deep frozen. Their shipments may be dry or liquid, dirty or clean, safe or dangerous, live or dead, animal, vegetable or mineral. The essence of the liner conference system is that it constitutes a real service, as essential to trade and commerce on the route it serves as rail and bus services combined are to an isolated community."

Today, this could equally be taken as a description not only of conferences, but of customers' needs generally. Although shippers and some governments argue increasingly that the conference system is no longer acceptable, shippers' commitments to their customers still require the certainty and stability of regular and reliable services—or failure to meet "just in time" obligations will mean lost business.

Common Elements

The traditional common elements which applied, wholly or partly, depending upon the degree of sophistication of the association, were:

- Common freight rates and conditions of carriage;

and probably one or more of the following:

- Regulation of the carrying capacity offered by the individual lines;
- Agreed frequency and allocation of sailings, including co-ordination of time-tables;
- Common approach to membership;
- Arrangements for concluding joint "service contracts" with individual shippers on the basis of a quantity or frequency discount;
- A common approach to surcharges;

and in the more formalised, sophisticated conferences:

- Pooling of cargo; and/or
- Pooling of revenue possibly, but not always, through some integrated joint service arrangement.

However, legislative and regulatory changes in the USA and Europe have resulted in changes in the extent to which conferences today exert their influence.

Conferences operating on the basis of these common elements to some degree restrict competition. However, while they are cartels, they are not monopolies. This is because the member lines are open to competition both internally within the conference, as to quality of service and nowadays increasingly on rates linked to the service package they provide, and externally from non-conference or independent operators (sometimes called "outsiders") in the same trade. There is also competition from other forms of shipping (for example, bulk ships carrying liner-type cargo), from airlines for high-value/low-volume commodities, from other maritime routes involving a different mix of sea and land legs, and in some cases from other transport modes such as rail, road or inland waterway.

Liner Freight Rates

The underlying principle of the liner conference system was that the members agreed to charge the same rate for the same commodity to the same destination, whether or not the vessel is fully loaded by sailing day. This was originally supported by shippers who knew that competitors were largely paying the same rate for the same route and commodity. However, shipper representative bodies later actively campaigned for an end to carrier immunity arguing for individual negotiations.

A significant factor is that conferences try to quote rates which will remain the same for a period, frequently 6 months or more, although when conditions are unstable this is not always possible.

It is up to the lines in the conference to set the level of freight rates over the vast range of commodities they may be called upon to carry. A rate is not set, as might be supposed, just on the basis of the distance the cargo is carried. There are many factors taken into account including value of the goods, weight/measurement ratio, nature of the cargo, ports and their facilities and other competitive factors.

The basic desire of the liner carrier is to maximise trade both for itself and for its customers. Traditionally, the endeavour was to ensure that the relatively lower volumes of high-value manufactured goods were supported by the greater volumes of lower-value goods. The freight earnings/costs of the latter were effectively subsidised by the higher relative freight earnings/costs of the former. This mix of high- and low-value cargoes with high- and low-bulk factors, each freighted (priced) using the elements set out above, provided the opportunity to maximise the trade—and thereby cover the berth in terms of cargo—on a particular route.

Basic freight rates are set out in the conference tariff, a published document which conferences are nowadays required to make freely available. The tariff gives a broad indication of the actual freight price and of the surcharges which apply, but may well not reflect the actual rate charged in the market-place. That will be a product of negotiation in the light of the competitive pressures at any one time and of the situation of individual shippers. Increasingly, the tariff is the starting point for individual carrier/shipper negotiations on individually tailored contracts.

Membership

Traditionally, there were two types of conferences—“closed” and “open”. Most were “closed”. Their member lines were like members of a club. They did not necessarily wish to let in others in a way that upset the carefully balanced coverage achieved by existing members. Nor did they particularly wish to see their share of the market reduced to accommodate others. Thus there was a constant battle over the years to achieve a balance between existing members and those who would like to join but who were currently operating as independent lines. Applicant lines had to have certain qualifications, mainly as to size and quality, including ownership (as opposed to chartering-in of ships); long-term commitment to the trade; proven ability to bring business to the trade; mutual benefit; and sufficient resources.

Membership was therefore not a matter of course. Lines usually gained membership by demonstrating that they had the right qualifications through operating on the same route as the conference and by attracting cargo away from the conference lines, thereby creating a situation in which it was mutually beneficial for there to be a joining of forces.

From the viewpoint of governments, the key factor in the right of closed conferences to operate was that there should be sufficient actual or potential

competition in practice in a particular trade outside the conference. The key concept was "closed conferences in open trades". Up until the 1970s, non-conference lines rarely lifted more than 5 % or 10 % of liner cargo on their trade-route. However, the competitive environment subsequently intensified and with the growth of very large carriers which operate alone in most trades, it became not infrequent for as much as 50 % or more to be carried by independents.

The contrasting system was that of open conferences, which was that accepted by the world's largest trading power, the United States. This was important because the US lay then at the heart of two of the largest liner trade routes in the world—the trans-Atlantic and the trans-Pacific. It secured freedom of trade by requiring conferences to admit any applicant into membership subject to reasonable and equal terms and conditions; and to allow any existing member to withdraw from membership of the conference on reasonable notice without penalty. The fact that the UN Liner Code endorsed the closed conference system was one of the major factors that lay behind the US's adamant opposition to that convention.

The whole question of conference membership was, for many years, a matter of considerable sensitivity. At different times, there have been pressures for liner conferences to admit as of right the national shipping lines of any countries they served. While 50 years ago such lines rarely achieved membership, eventually there were few trades where true national lines, where they exist, which were not in membership. These pressures reached their peak at the time of the UN Liner Code, but faded somewhat as more market-oriented trade philosophies spread to many of the developing countries.

The structures in liner shipping changed, with the increasing focus on co-operative arrangements other than conferences (for example, consortia, alliances and trade-lane agreements) and the declining trade shares carried by conferences compared to the growing number of large independents. As a result, the differences between closed and open conferences became far less relevant resulting in few being closed in the traditional sense of the word.

Loyalty Arrangements

In return for offering regularity, frequency and stability in good times as well as bad, conferences generally expected their customers, the shippers, to support them with a measure of "loyalty". This was the origin of what is known as the "loyalty" system which gave shippers who regularly supported the conference a rate advantage.

Two options were available. The contract system required support for all shipments unless a dispensation was granted to use non-conference carriers in special circumstances. Under the deferred rebate system, a percentage discount would be returned after a period of 3 or 6 months "loyalty" to the conference but repayment would be forfeited if an outsider was used without authorisation.

Deferred rebates were made unlawful in the United States in 1916. In Europe, specific rules laid down in 1986 governing the use of loyalty agreements required a choice to be offered between immediate and deferred rebates. With the general weakening of the loyalty concept and increase in service contracts, loyalty arrangements became rare, existing only in the smaller trades.

Time/Volume Agreements and Service Contracts

The 1970s and 1980s saw the emergence in the US trades and then elsewhere of time/volume agreements and of liner service contracts—to the extent that these are now the principal forms of loyalty or regular service arrangement that apply. In 1984, the Shipping Act of the US was amended to mark the beginning of the deregulation process. Shipping lines were permitted to offer rates based on time and volume of cargo so that the rates varied with cargo volume tendered over a specified period.

Service contracts were a deliberate endeavour to get away from the severe, traditional loyalty ties. In response to customer pressure, conferences offered discounts to exporters who shipped a certain volume of cargo within a specified period and they varied in proportion to the volumes involved. By using service contracts, it was envisaged that the shipper would secure preferential freight rates as well as a host of other positive returns such as shipboard guarantee of space, orderly sailings and over-all reliability of service. Often these contracts would provide coverage of service extending to shore side transportation; in other words, the entire logistical chain could be rendered undivided in so far as billing was concerned. Liquidated damages provisions in the contract were permissible under the legislation for failure of performance of obligations.

The Shipping Act of 1984 in the US also permitted a departure from the published conference rates through "independent action." Tariffs published under independent action averaged 11–25 % below standard conference tariffs with respect to a specified commodity. These independently generated rates could force conference carriers to bring down their own published rates in order to compete. Thus the Act engendered a system whereby shippers could freely negotiate rates to their advantage but the necessary terms of a contract had to be made public without discrimination. The hallmarks of common carriage were thus preserved in conjunction with a considerable degree of deregulation of economic transactions between carriers and shippers such as discrimination in relation to volume of cargo. Although the Shipping Act of 1984 permitted service contracts, the effect of that permission was very limited, because of the requirement in the statute that the terms and conditions of the contract had to be publicly available and could be demanded by other similarly-situated shippers. But, it was often not clear what attributes constituted a "similarly-situated" shipper. Of course, the market forces reacted; when a shipping line offered a rate reduction from the conference rate, several small volume shippers wanted to jump on the bandwagon with the

so-called “me too” contracts causing carriers to recoil so that only large volume shippers who quickly moved in on the action succeeded. Thus, the 1984 Shipping Act by legitimizing rate discrimination was viewed as favouring large shippers against the interests of their smaller counterparts. It would appear that technically the service contract concept endorsed and supported by legislation largely benefitted the major shippers who had considerably more bargaining clout. However, the conditions under which such discrimination took place was conceivably narrow which made the possibility of such discrimination not widely practical. In fact, it is argued that the “me too” provision in the statute really re-established with the left hand the antirate discrimination policy which the service contract provision in the Shipping Act tried to give with the right hand.

Finally, the Ocean Shipping Reform Act enacted in 1998 allowed confidentiality of rates in service contracts and abolished the requirement for carriers to cater to small shippers who wanted similar rates. The new Act by removing the “me-too” requirement and providing for confidentiality fulfilled the formal promise that was in the Shipping Act of 1984 but which was never actualized by the restrictions in that Act. As a result, service contracts came into more frequent use and virtually became the norm through which rates were set. These contracts could cover even a unit as low as a single container. Removal of all of the regulatory strictures made possible by this Act, including the legitimization of confidentiality and elimination of the compulsion to offer similar terms to similar shippers, became most advantageous for the mega shippers who had negotiating power far in excess of small shippers.

The reduction in barriers to world trade and the emergence of international production centres in Asia impacted the flow of global trade and strategic approaches to international maritime transport. The reforms in 1998 enabled globalized manufacturers and retailers to gain advantageous contractual arrangements which were based on market reference points. While the cost to the shipping line was the base for these arrangements, they were essentially according to market reference points. In other words, the price set was the cost to the manufacturer as the floor, but the actual price established was often well above this level; as high as the market would bear. This shift in philosophy was largely seen as benefitting the major players among the shippers simply because they were the ones who could on a temporal basis supply large volumes of commodities. This, in turn, enabled carriers to benefit from lower costs. A relevant question in this regard was whether the arrangements engendered by the service contract concept, strongly endorsed by legislation, exemplified a balance of bargaining power between carriers and shippers or whether it manifested itself as an enhancement of the commercial powers of large shippers. Information itself became a valuable commodity for both parties concerned since rates were no longer required to be published and confidentiality became the rule of the day. Again, it was the larger shippers who were better equipped to access information pertaining to the market better than their smaller counterparts. The information in turn became a formidable bargaining tool.

While it is recognized that the service contract concept has benefited large shippers, there has been a strong complementary trend that has benefited smaller shippers through the growth of large consolidators such as FedEx, UPS and DHL as well as others, on the international scene. Some of these consolidators have evolved from small entities operating out of a basement or small office to large and sophisticated shipping, logistics management and supply chain management service providers with operations and offices all across the globe. There is considerable competition among these consolidators which has given them every incentive to negotiate major discounts with asset-based ocean carriers and to pass a good portion of those savings on to their own customers. These have enabled many smaller shippers to get at least part of the benefit of the volume discounts experienced by large shippers. Moreover, as indicated earlier, these large consolidators often offer supply-chain management services as well, to the benefit of smaller shippers.

Surcharges and Adjustment Factors

Over the years, conferences have sought to maintain their revenue by putting surcharges, often known as "adjustment factors", on rates in various special circumstances. These include currency movements (currency adjustment factors—CAFs); or sudden and unexpected increases in the price of fuel oil (bunker adjustment factors—BAFs); or periods of port congestion when, through no fault of the shipowner, or indeed the shipper, a vessel is expensively held in a port.

Often, the imposition of such surcharges has taken place in response to corresponding developments in the world economy. For example, CAFs largely date from the late 1960s when the fixed exchange rate system collapsed. Essentially, with most liner earnings in US dollars and with costs arising in several different currencies, CAFs were established to avoid unforeseen gains or losses to both carriers and shippers, when there were significant fluctuations in the tariff currency compared to the basket of other currencies in which the costs were incurred. The currency adjustment—which could go up or down—would be triggered by a given percentage change in the value of the tariff currency.

BAFs were introduced after the first world oil crisis in 1973, in response to fluctuations in the price of bunker fuel. They operate in broadly the same way. There may, also, be a need when port or terminal facilities are under strain during busy periods to impose a port congestion surcharge. Such costs have been justified by shipowners on the basis that the events that have given rise to them are sudden and unexpected; often they are not imposed until long after the losses have been occurring for a sustained period. Shippers on the other hand have been critical, seeing them as an unjustified attempt by the lines to cushion themselves against events to which all in business are subject.

Pools

These are only found in the most sophisticated conferences. Where cargoes are pooled, a balance is struck at the end of a given period between those in the conference who have overcarried their agreed share of the trade and those who have undercarried. In a revenue pool the same principle is applied, but the working out of agreed shares of the revenue pool means precise record-keeping and much work for the conference secretariat.

Pooling in this way is well known in liner shipping and was formerly permitted under European legislation, but it has been criticised as protecting the less efficient carrier at the expense of the more efficient and putting a damper on competition in quality of service, which has always been one of the advantages of the conference system. However, fierce competition between conference member lines, coupled with the growth of individual service contracts and the use of slot-chartering and similar arrangements under the Consortia regulation (see below), has probably reduced the effective extent of pooling arrangements.

The Change to Containerisation and Liner Consortia

This was a revolutionary change, which was to affect not just methods of transport, but the whole way in which much of world trade was carried.

The invention of the container ranks with the invention of such objects as scissors and cats' eyes. It is universally credited to Malcolm McLean, an American trucker, who recognised in the late 1930s that the then system of moving goods from their point of origin to their destination involved several different transport movements and that the interface between each of these entailed the risk of damage, pilferage and loss of time. Carrying cargo between Pittsburgh and Paris required at least eight operations:

- Truck from factory to railhead,
- Rail to port town,
- Truck to dockside,
- Handling on to the ship and into the hold, mostly by sling, and
- All four in reverse at the other end of the trade.

His revolutionary thought was simple: the risk of loss at every stage of the movement would be drastically reduced and efficiency hugely increased if the initial trailer drawn by the truck could be lifted directly on to the ship and carried all the way to the cargo's destination—without its contents being disturbed.

It took more than 20 years to put the idea into practice. The technology of the container was developed from the basic road transport trailer into a unit which was reinforced with steel cornerposts, underpinning and twist-lock fasteners at the corners. The first movement of containers by sea took place in April 1956 when a

converted tanker with specially installed decks carried 58 containers on a coastal voyage from Newark to Houston. This was followed by other experimental voyages in the US domestic trades, including from the West Coast to Hawaii.

Initially, loading and unloading was effected by a gantry crane on board the ship itself (normal on general cargo ships of that time), but very soon the advantage of using specialised container cranes and terminals ashore was recognised. The first dedicated container facility was established at Port Elisabeth in the port of New York and New Jersey and the first terminal occupied by Sea-Land in 1962. The first acclaimed international containership voyage was by Sea-Land's *Fairland* on 23 April 1966, carrying 236 containers from Port Elisabeth to Rotterdam.

From the start, it was recognised that the savings—over traditional break-bulk operations—would be huge. Time in port was cut from a week or more (with traditional cargo-handling methods) to less than a day, with a consequent reduction in labour costs. Transit times across the Atlantic were halved. There was a 90 % drop in damaged cargoes and pilferage was almost eliminated, leading to lower insurance costs. By the late 1960s, it was clear to all that containers were the direction of the future in the liner trades. Door-to-door transport had taken off, allied increasingly to the "just in time" concept of distribution.

It did, however, require enormous amounts in new investment—the ships themselves, containers, land and equipment in the shore-side terminal, and increasingly sophisticated logistical planning.

While containerisation was a US creation, it was four leading British shipowners (P&O, Ocean, British & Commonwealth and Furness Withy) who introduced it in a big way into European shipping, closely followed by others in Europe and Japan. These owners took the unprecedented step in 1965 of pooling the liner interests of their four groups—originally in the Europe/Australia and New Zealand trade only, but later in other trades as well—through the formation of a new company named Overseas Containers Ltd (OCL). Although not itself a consortium (since it was a company with a separate identity from its shareholder lines, in which their liner interests were merged), OCL set the trend for other mergers and looser groupings. In the same year, five of the remaining six major British liner companies—Ben Line, Blue Star, Cunard, Ellerman and T & J Harrison—followed with the establishment of Associated Container Transport (ACT). Other mergers and groupings soon appeared on the Continent, in Scandinavia, in Japan, the US and elsewhere.

Within a period of few years, the large liner groupings began to take over the many individual liner companies whose titles went back many years as household names. Moreover, the new container groups began to work together, mainly internationally but not always, as even bigger groupings or consortia in their particular trades.

Consortia

The standard dictionary definition of a consortium is “an association of companies for a particular purpose”. In liner shipping, that purpose is essentially operational, bringing together the fleets of the companies concerned within a single fleet for purposes of providing the service. In the knowledge of the broader scale of operation which would be achieved as a result, the individual lines would be in a better position to commit a share of the investment required to run the service. Mostly, consortia have traded within conferences, combining the operating activities of two or more of the conference lines. Historically, their role has complemented that of the conference, which had a broader perspective regarding such matters as sailing schedules and rationalisation, and of course which had the rate-making authority.

However, consortia arrangements are of a practical nature and quite distinct from conference arrangements. Consortia may have differing degrees of integration, covering the full spectrum from loose operational arrangements to tightly knit commercial combinations. While the ships in many consortia are still owned or chartered in by the constituents, it is the consortium that deals with the liner operations in the trade or trades in which they are involved. While the lines within a conference remain clearly separate entities, the closer operational relationship of lines within a consortium could extend into more commercial activities such as joint marketing, the issue of joint bills of lading and the pooling of revenues. In a few cases, the size of the consortium in a particular trade could be such that its membership mirrors that of the conference.

Prior to the EU regulation on consortia, adopted in 1992, the term was used freely. Indeed, consortia had not been regulated explicitly under any international or national legislation, presumably on the basis that the objectionable elements of a liner operation were already covered under the conference legislation.

Other Co-operative Arrangements

Various other forms of co-operation have emerged at different stages of evolution of the modern-day liner shipping sector. Some are akin to conferences or consortia under other names or guises. Others are genuinely new developments, where liner companies are responding to changing global trends and customer demands. Some, such as container slot-exchange or slot-charter arrangements, are straightforward commercial arrangements which should give rise to little interest or concern from a competition policy viewpoint, but which nevertheless may come under scrutiny because of the wider antitrust concern which attaches to liner shipping activities.

Discussion Agreements and Trade-Lane Agreements

After the milestones of the 1984 Shipping Act in the US and the European Union's competition regulation in 1986 (and faced with a continuing and alarming decline in freight rates, not just in real terms, but frequently in terms of the monetary value of the day), lines in some of the biggest trades combined in groupings often wider than the conferences to discuss rate-setting and capacity management. These arrangements were given different names, such as, discussion agreements, trade-lane agreements, stabilisation agreements and tolerated outsider agreements; and all had different nuances which some competition authorities argued distinguished them from conferences or consortia.

The so-called *discussion agreements*, Eurocorde 1 and the Eurocorde Discussion Agreement, emerged on the trans-Atlantic route in 1985, shortly to be followed by at least one other. They enabled the lines in the eastbound or westbound (or both) conferences across the North Atlantic to engage in discussions with non-conference lines and to agree on rates and capacity. While these were initially accepted by the Federal Maritime Commission (FMC), the European Commission soon made it clear that it did not regard them as valid.

In the other major liner trades—the trans-Pacific and Europe–Far East—there was also an endeavour to reverse the decline in rates through what became known as *stabilisation agreements*. However, these did not involve rate-setting and could not be construed as extensions of conference activity. Arrangements emerged in both these trades, whose emphasis was on tonnage rationalisation alone. The first of these was the Trans-Pacific Stabilisation Agreement (TSA), which began in 1988 and provided a straight 10 % capacity reduction on eastbound routes. It was required to be terminated in 1995, because conditions had changed. A subsequent application to re-introduce a capacity management programme, submitted to the FMC towards the end of 1996, was also withdrawn.

Alliances/Global Partnerships

The containerisation of liner services was only the beginning of a further, continuing process in the evolution of scheduled liner services. As well as bringing together individual lines in consortia, since the 1970s, there has been a continuous shaking out of lines in the traditional maritime countries. These structural changes have proceeded against the background of a rapidly changing world in political, economic and trading terms. They have intensified over the last 10 years and continue today.

In the mid-1990s, companies began once again to feel their way, both individually and in new groupings, towards yet further cost rationalisation and economies of scale in order to ensure their survival. These pressures were driven by the examples of the largest carriers whose vision had become multi-trade, whether in the form of

round-the-world services or of a presence in all or most of the major trades around the world. A number of groupings or "alliances" emerged with very definite global ambitions. The first examples included the "Global Alliance", which brought together American President Lines, Mitsui OSK Line, Orient Overseas Container Line and Nedlloyd, in some trades with Malaysian International Shipping Company; and the "Grand Alliance", which comprised Nippon Yusen Kaisha, Neptune Orient Line, Hapag-Lloyd and P&O Containers (the successor to OCL, after P&O bought out the shares of the other partners).

In 1996 the "Global Alliance" was renamed "New World Alliance" consisting of three major participants: American President Lines/Neptune Orient Line of United States/Singapore, Mitsui OSK Line of Japan and Hyundai of South Korea. The "CKYH Alliance" comprised the Sino Japanese Alliance and what was formerly known as TRICON. The Sino-Japanese Alliance comprised COSCO of China, K-Line of Japan and Yang-Ming of Taiwan of which COSCO was the lead carrier ranking fifth in the world. K-Line and Yang-Ming were also among the leading container carriers. TRICON was formed out of a strategic partnership combining Hanjin Shipping of South Korea, Cho-Yang of Kuwait and UASC of South Korea. A number of permutations and combinations followed, at the end of which the CKYH emerged as the leading alliance consisting of Hanjin, COSCO, K-Line and Yang-Ming.

Others also appeared, some of which proved to be developing relationships which would soon lead to takeovers or mergers: e.g., Maersk/Sea-Land and Hanjin/DSR Senator. Many lines now co-operate on a multi-trade rather than single-trade basis. The huge increase in the numbers of ships available to the alliances enables individual lines to introduce ships of larger size and thereby gain economies of scale while at the same time improving the service offered.

In 1998, P&O Containers established a jointly owned company with Netherlands-based Nedlloyd to become P&O Nedlloyd, retaining its headquarters and commercial base in London, and the fleet and technical management function in Rotterdam. Following a number of intervening acquisitions, the company was the subject of a reverse-listing on the Dutch stock exchange, using the vehicle of Royal Nedlloyd, with P&O retaining a 25 % shareholding and positions on the board. This created the third-largest container company in the world. However, the new company was the subject of an uncontested takeover by the Maersk Line of Denmark in 2005 and totally absorbed into that company in February 2006, giving Maersk (which was already the largest, following its acquisition of Sea-Land) a substantial lead in terms of capacity over its closest rivals (Mediterranean Shipping Company and Evergreen). Elsewhere, the French liner company CMA-CGM bought out Delmas and Hapag Lloyd of Germany bought out CP Ships.

With the consolidation of the container trade through various mergers, acquisitions and alliances across the world, the flow of containerised cargo in world trade is now controlled by a few major entities. As of 21 October 2009, the cargo flow worldwide puts the AP Moller Maersk Group in the lead with 11.6 % followed by MSC at 9.8 % as individual shipping conglomerates. Among the alliances, CKYH controls 12.2 % and New World Alliance 6.5 %. A considerable

portion of the market is held by other relatively small container lines (see Containerisation International Yearbook 2010).

Contemporary Perspectives

Growth and Opportunity

From the first container movement in 1956, volumes have grown beyond all expectations. By 1973, the annual carryings were about four million TEUs. Ten years later, with most of the world beginning to be containerised, carryings were 12 million TEUs. By 2004, total trade was recorded at 96 million TEUs. By end 2010 it was about 140 million TEUs and in 2011 it rose to an estimated 154 million TEUs which illustrates the continuing growth of this phenomenon.

Containership operators are sometimes accused of irresponsible overcapacity, which merely perpetuates the prospect of low freight rates and overall returns. However, as we have seen, there has been extensive real growth over the years in the number of boxes shipped, supported by positive projections for the future. The rewards for lines and groupings which are successful in anticipating and meeting future demand are likely to be great.

The container is without doubt key to the transport, and therefore also expansion, of world trade in manufactured goods. Over 90 % of general (i.e. non-bulk or non-specialised) cargoes are moved by containers. It is essential that the world's regulators bear these facts in mind when considering and reviewing this crucial sector.

Investment

Liner shipping has always been capital-intensive and this has been a major factor in the reasoning of governments in granting antitrust immunity. For example, a 56-day round trip from Europe to the Far East, calling at 11 or 12 ports during the voyage, requires eight or nine ships to maintain a weekly service.

But this is in the container era. Depending on the size of the ship, each container ship in today's world has replaced between 7 and 25 earlier general cargo or break-bulk ships. In pre-container times, the transit time would have been at least double and, with smaller ships, many more were needed.

The technological revolution of containerisation was also expensive to introduce and continues to be expensive to refine and extend. The hardware costs alone can exceed well over US$ 100 million. In addition an amount equivalent to at least US$ 50 million would constitute a substantial investment on the containers themselves. That amounts to an investment of almost US$ 1.5 billion for the fleet required to

operate a single weekly run from Europe to the Far East. To that has to be added the cost of operating the ship (bunker fuel, repairs and maintenance, insurance, port and other charges, crew wages and victualling, and so on), the cost of investment in and use of specialist equipment in container terminals and of the practical land-side operation, namely, interface with the importers and exporters and with the different linking transport modes, and increasingly the cost of logistical systems support for tracking each individual container, securing its return, maintaining it; and general rationalisation of the complex land-side relationships.

Profitability

Yet historically, and despite occasional periods of better than average profitability, returns in the deep-sea liner sector have been lower than would normally be acceptable in industry or service businesses ashore. This probably has a lot to do with the sector's capital intensity. Nevertheless, it is not necessarily attractive to the often short-term approach taken by investors. The average rate of return on net assets of nine of the major container companies over the period 1988–1995 was reportedly less than 4 %. With the increasing focus in all business on ensuring that each element of a business operation is economically viable in the short as well as the long term, there is pressure on some containership operators to achieve a rate of return of say 15 %, which would be comparable with expected returns from shore-based activities. All lines have therefore continued to review their cost structures fundamentally, paring costs to the bone while either seeking the maximum cost advantages of large-scale operations, and therefore, increasingly, mergers, or specialising in particular markets (geographical or cargo). Even in 2004, which was an exceptionally good year, average returns for the top 29 major liner companies were only 11 %, well below the 25-year average for the S&P 500.

Single-Trade/Multi-Trade/"Round-the-World"

Conferences and consortia are mechanisms that have traditionally operated within individual trades. Although inherently international, they do not have a global dimension, by definition.

An important development in the early 1980s was that of the round-the-world service which introduced the multi-trade concept for the first time. This mode of operation suits only non-conference lines of sufficient size, which swoop around the world picking up cargo in the main loading/discharging areas, but having no commitment to cover a particular trade let alone the way-ports they pass en route. They can thus afford to carry such cargo at marginal costings at the expense of those conference lines whose tariff structure is based on serving the total trade on a

particular route. This to an extent has had a destabilising effect on the major conference trades. But it has been accepted as part of competition.

It has however fed another tendency which has grown up in recent years for conferences/lines to concentrate on a few hub ports, with an increased number of feeder services. It is self-evidently an integral element of any round-the-world service.

Another response to the new global requirements of world trade has tended to be favoured by the more conference-oriented groupings and the new alliances. Their services are a more complex interweave of separate "strings" or "loops" across the three inter-continental ocean trades. They blend the advantages of genuinely global co-operation with the ability to serve more ports directly, since each string will, like a normal conference operation, serve several ports at each end. However, by focusing energies very strongly on the three East–West, round-the-world legs and by interconnecting their operations where necessary, they achieve global coverage.

The lines involved often maintain their involvement in the North–South trades outside the groupings or alliances. Here, they continue to compete with those lines which concentrate on such niche trades. The "long thin" trades to Australia and New Zealand and to the South Pacific are examples of this.

Competition External and Internal

Competition in liner trades is as strong today as ever. Despite accusations from some regulators and shippers that the conference system is harmful to business and outmoded, the self-regulatory approach and the flexibility allowed within the system itself has not in any way inhibited the evolution of other co-operative mechanisms or mergers. Indeed, in many ways, it has laid the ground for that evolution and provided a relatively stable framework within which it could happen. Equally, whatever may have happened in earlier days, it is not justifiable to suggest that in recent years shipping costs have been unduly high. As we have seen, for the most part, profitability is far lower than in land-based businesses and the share of the total cost of the end-product represented by shipping costs is very small; indeed the land transport component is frequently much higher proportionately.