The anti-competitive effects of a globally concentrated, oligopolistic maritime market: from explicit to tacit collusion – an analysis based on the P3 network

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Does the P3 network compel the European Commission to extend Community law jurisdiction? This article argues that such will inevitably be the case. As a consequence, the Commission must adopt new guidelines in order to assist the liner shipping industry in its self-assessment of possible infringements of Articles 101 TFEU and 53 EEA within their newly established scope. In other jurisdictions, regulatory bodies face similar challenges. As a first step, this globalisation of anti-trust jurisdiction will lead to an intensified application of comity.

The P3 network

On 18 June 2013, the three biggest shipping lines in the world, A P Möller-Maersk, MSC Mediterranean Shipping and CMA CGM, announced their intention to investigate the possibilities of close cooperation in the form of an alliance, under the name of the P3 Network. The P3 Network will make the activities of the three members more efficient and more competitive. It is their answer to the disappointing developments in world trade and the resulting overcapacity in the container industry. The alliance is scheduled to take effect in the 2nd quarter of 2014, subject to the approval of the relevant competition and regulatory authorities.

The P3 Network will operate a capacity of 2.6m TEU, initially 255 vessels on 29 loops, on three trade routes: Asia-Europe, Trans-Atlantic and Trans-Pacific. While the network vessels will be operated independently by a joint operating centre, the three lines will continue to have fully independent sales, marketing and customers services.

The market share of the Network will be considerable: on a global level the three lines will have a combined 37.6 per cent in April 2013 across the Asia-Europe, Trans-Atlantic and Trans-Pacific routes. The market share of the Network on each of these routes will be:

- Asia/Mediterranean: 55%
- Asia/Northern Europe: 46%
- Trans-Atlantic: 35%
- Trans-Pacific: 29%.[1]

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[1] www.portcalls.com / P3-network-good-for-industry-if-not-abused-drewry//.

In total, there are 100 container lines with a global market share of 97 per cent.[2] Should the Network be approved by the regulatory authorities, it will mean that there are still more than 15 competing carriers on most trade routes, with 13 of the top 20 lines being in a structured alliance on the main East-West trade routes, leaving UASC, Evergreen, CSLC and Zim out on a limb.[3]

	Total TEU deployed	*Trade share*	*No. of services*	*No. of vessels*
Asia–N Europe				
Maersk	590,769	23.3%	5	60
CMA CGM	268,860	10.6%	3	22
MSC	293,552	11.6%	2	22
Totals	**1,153,181**	**45.6%**	**10**	**104**
Asia–Med				
Maersk	215,893	17.0%	4	23
CMA CGM	163,302	12.8%	4	19
MSC	315,354	24.8%	2	23
Totals	**694,549**	**54.6%**	**10**	**65**
Transpacific				
Maersk	420,541	14.3%	6	55
CMA CGM	216,650	7.4%	5	30
MSC	200,365	6.8%	5	23
Totals	**837,556**	**28.5%**	**16**	**108**
N Europe–America				
Maersk	48,696	11.7%	3	15
CMA CGM	14,676	3.5%	1	14
MSC	80,653	19.4%	3	14
Totals	**144,025**	**34.6%**	**7**	**43**
GRAND TOTALS			**42**	**305**

Collective shares across all East–West trades

	Total TEU deployed	*Trade share*
Maersk	1,137,945	15.9%
CMA CGM	663,488	9.3%
MSC	889,924	12.4%
Total	**2,691,357**	**37.6%**

Notes: Snapshot as at 1 April 2013, and does not include vessels not attached to loops for temporary idling or if vessels are being phased in or out of a service. Basis vessels operated by Maersk, CMA CGM and MSC only in all services and does not include slot charter agreements. Maersk AE6/TP6 is a pendulum service which incorporates both the Asia-N Europe and transpacific trades and is not counted twice in this analysis.

Source: Drewry Maritime Research.

The members of the P3 Network have allocated roughly 50 per cent of their vessels to the Asia-Europe route and 50 per cent to the Trans-Pacific and Trans-Atlantic routes:

	Asia-Europe	*Trans-Pacific/Trans-Atlantic*
Maersk	83	70
CMA CMG	41	44
MSC	55	37[4]

[2] Dynamar BV Liner Shipping Links.

[3] See *Drewry Container Insight* 2013-WK 40.

[4] See table p 420.

On the Trans-Pacific and the Trans-Atlantic routes, there are 65 conference and discussion agreements. The members of the P3 Network participate collectively in 4 and, alone or together with one other member, in 25 of these agreements.[5]

There can be little doubt that the attitude the members of the P3 Network will take within the conference and discussion agreements in which they participate will be the result of previous consultations amongst them. In view of the market position of the Network on the Trans-Atlantic and on the Trans-Pacific trade routes, this collective attitude will have an impact on the room to manoeuvre of the other participants, not only on these trade routes but, as a result, also on the Asia-Europe trade route. The gravity of this impact will be an important element in the assessment whether or not the P3 Network may be exempted from the prohibition of Article 101(1) TFEU by virtue of Article 101(3) TFEU.

In the EU, the legal framework for assessing the evidence that must be brought forward by companies in order for their cooperation to be free from the prohibition of Article 101(1) TFEU has recently changed. On 19 February 2013, the Commission decided not to prolong the Maritime transport anti-trust Guideline[6] and these so-called Maritime Guidelines lapsed on 26 September 2013.[7] As a result, the members of the P3 Network will have to rely on the general legal framework that is provided by the Horizontal Guidelines[8] and the block exemption for consortia agreements.[9]

The EU has adopted a strict attitude against exchanges of information that may have disadvantageous effects on the conditions of competition on EU markets. However, there are other jurisdictions under which the P3 network will have to be assessed that have adopted a more lenient attitude and allow for exchanges of sensitive information and even price fixing, which are prohibited under EU law. Usually, this conduct takes place within the framework of conference and discussion agreements, which are also allowed.

The main concern of the European Commission and the other competition and regulatory authorities regarding the effects the P3 Network will have on the conditions of competition is whether there will be a flow of information between the members' commercial departments and the independent operating centre that will be established to manage vessels' schedules, allocations and utilisation. The three members seem confident that they will be able to guarantee that this will not be the case and that each member will retain fully independent sales, marketing and customer services.[10]

The Commission will pay special attention to the evidence the members will provide to this effect. There is a growing concern that information exchange facilitates tacit collusion by reducing strategic uncertainty of competitors' behaviour without constituting explicit agreements. Multimarket contact[11] and frequent exchange of individual, disaggregated price and quantity information, as well as the sharing of strategic, future plans between competitors but not the public has the highest collusive potential.[12]

This article addresses two questions:

[5] These agreements are listed in the Appendix.
[6] European Commission IP/13/122 (10 February 2013).
[7] OJ C245/2 of 26 September 2013.
[8] OJ C11/1 of 14 January 2011.
[9] Commission Regulation (EC) No 906/2009 OJ L256 of 29 September 2009 at 31.
[10] See Vincent Clerk, Chief Trade and Marketing Officer of Maersk Line, quoted in *Drewry Archive Edition* 2013-WK 25 (23 June 2013).
[11] F Ciliberto, J Williams 'Does multimarket contact facilitate tacit collusion? Inference on conduct parameters in the airline industry' (2012) *Munich Personal RePEc Archive*.
[12] Reena das Nair, Liberty Mncube 'The role of information exchange in facilitating collusion-insights from selected cases' www.compcom.co.za/Uploads/events/10-year-review/parallel-3a.

- Does anti-competitive conduct between the P3 Network and other participants to one or more conference and/or discussion agreements, when directed at foreign markets and allowed under foreign jurisdictions such as the Singapore Competition Law, possibly lead to tacit collusion on the EU market?
- Are companies capable of answering this question themselves without specific guidance from the European Commission?

Singapore competition rules on containerised liner shipping services

Exchange of information on the market of containerised shipping services under Singapore Competition Law

The port of Singapore is a very important hub in the Far East and is being considered as the main hub for the P3 Network:

> 200 of the world's shipping lines call at PSA Singapore Terminals, offering connections to 600 ports in 123 countries. This includes daily sailings to every main major port in the world.[13]
>
> Singapore's location on the South China Sea affords it access to some of the main shipping routes to major Asian markets such as China and Japan. The country's position between the Indian and Pacific Oceans allows it access to shipping routes to and from the US. Singapore's ports feature as ports of call for the Maersk Line and CMA CGM services.[14]

Singapore has extended its block exemption for liner shipping conferences until 31 December 2015. Under this block exemption, liner shipping companies are allowed to cooperate on: (i) technical, operational or commercial arrangements; (ii) price; and (iii) remuneration terms. Such cooperation is exempted from the prohibitions contained in Article 34 of the Singapore Competition Act, on condition that the participating lines are allowed:

- to enter into individual confidential contracts, to offer their own service arrangements and to withdraw from the collective agreement on giving any agreed period of notice without financial or other penalty
- to deviate from the agreed tariffs, it being understood that the parties, and not the regulatory authorities, decide what the appropriate notice period should be
- to keep secret confidential information concerning individual service agreements.

When the aggregate market share of the parties exceeds 50 per cent (calculated by reference to the volume of goods carried, or the aggregate cargo capacity of the vessels operating in the market by freight tonnes or 20-foot equivalent units), the parties are required to file their agreement and any variation or amendment of it with the Competition Commission of Singapore (CCS).

Although not collectively, the three members of the P3 Network are party to conference and discussion agreements that are allowed under Singapore Competition Law, specifically the following agreements: ACTA (Asia to Caribbean Agreement); AWATA (Asia-West Africa Trade Agreement); AWCSA (Asia-West Coast America Freight Conference) and TSA (Trans-Pacific Stabilization Agreement).

Within these agreements, exchanges of sensitive information and the fixing of prices are permissible and frequently occur. An example can be found in the AWATA press notice of 1 April 2013, which announces an agreement between the participants to increase their rates with US$250/TEU as at 1 May, 1 June and 1 September 2013.[15]

[13] www.portnet.com/WWPPublic/pdt_shippers_corner.html.
[14] Business Monitor International Ltd, Singapore Shipping Report Q4 2009, including 5-year industry forecast.
[15] http://www.scaga.net/pn/africa/awata/130401.html.

The anti-competitive effects of the P3 Network on EU markets as a result of permitted anti-competitive conduct under Singapore Competition Law

The P3 Network will be active on the Asia-Europe, the Trans-Pacific and the Trans-Atlantic trade routes. On these trade routes, agreements will be concluded that are allowed under the jurisdictions that apply. This means that on trade routes where the Singapore Competition Law applies, the member(s) of the P3 Network and the other participants to the conference and discussion agreements which are allowed under that law will continue, directly or indirectly, in isolation or in combination with other factors under their control, to fix their prices and exchange sensitive strategic information when selling liner shipping services to third parties.

The price advocated by the member(s) of the P3 Network will no doubt have been set in advance by them collectively, and not by the member(s) individually. The market share of the P3 Network on the Trans-Atlantic and the Trans-Pacific trade routes, respectively 35 per cent and 29 per cent, is such that in the price-fixing consultations the other participants to the conference and discussion agreements will have no option but to follow this price or, at least, regard this price as a very important indicator. Furthermore, in these consultations each participant will have to explain its strategic reasons for agreeing or not agreeing with the price advocated by the member(s) of the P3 Network.

All of this demonstrates that when selling liner shipping services to third parties under the jurisdiction of Singapore, the creation of the P3 Network even further reduces uncertainty in the market by making the strategic variables of the other participants more transparent and their room to manoeuvre more restrictive.

The question then arises whether this explicit collusion on trade routes that fall within the jurisdiction of Singapore, forms 'a sufficient basis for the participating undertakings to concert their market conduct (on EU markets) and thus substitute practical cooperation between them for competition and the risks that that entail'[16] in that it makes it possible for lines to foresee with a sufficient degree of probability future developments that 'may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States'.[17]

The answer to this question is determining whether the European Commission has jurisdiction over anti-competitive conduct that is directed at foreign markets. In the event that the Commission does indeed have jurisdiction, this is an important yardstick for companies to decide whether or not to continue their participation in conference and discussion agreements that are allowed under foreign jurisdictions, such as that of Singapore.

In the following it will be argued that the Commission does have jurisdiction and that the shipping lines, following their obligation of self-assessment, cannot be expected to decide on the continuance of their participation in conference and discussion agreements that are allowed under the Singapore Competition Law without specific guidance from the Commission.

Jurisdiction

The starting point for determining Community law jurisdiction in the shipping industry is the definition of the relevant market.

For the vast majority of categories of goods and users of containerised goods, break bulk does not offer a reasonable alternative to containerised shipping.[18] Therefore, the relevant

[16] Case C–8/08 *T-Mobile Netherlands* [2009] ECR I–4529 para 59.
[17] Case 42/84 *Remia and Others v Commission* [1985] ECR 2545 para 22.
[18] Maritime Guidelines OJ C245/2 of 26 September 2008 point 19.

market is the market of containerised liner shipping services. This market can be further broken down into the market of services in the deep sea trade and other markets.[19] The relevant geographic markets are: (i) a range of ports in Northern Europe; and (ii) a range of ports in the Mediterranean:[20]

> For the purpose of establishing Community law jurisdiction, it is sufficient that an agreement or practice involving third countries or undertakings located in third countries, is capable of affecting cross-border economic activity in the Community.[21] When the object of the agreement is to restrict competition inside the Community, the requisite effect on trade between Member States is more readily established than when the object is predominantly to regulate competition outside the Community.[22]

In determining whether Article 101(1) TFEU applies, account must be taken of the effect of the anti-competitive conduct and not of the location of that conduct:[23]

> In the case of agreements and practices whose object is not to restrict competition inside the Community, it is normally necessary to proceed with a more detailed analysis of whether or not cross-border economic activity inside the Community, and thus patterns of trade between Member states, are capable of being affected.[24]

Special regard must be had to the question of whether the agreement or practice affects the activities of other undertakings inside the Community.[25]

In the US, the case law which determines the jurisdiction of US courts on anti-competitive conduct directed at foreign markets has developed somewhat more clearly than in the EU. Under US law, Section 6a of the Foreign Trade Antitrust Improvements Act (FTAIA) follows the same concept as EU law and provides that the Sherman Act 'shall not apply to conduct involving trade or commerce ... with foreign nations unless such conduct has a direct, substantial and reasonably foreseeable effect on trade or commerce which is not trade or commerce with foreign nations and such effect gives rise to a claim' under the Sherman Act.[26]

The U.S. Court of Appeals for the Second Circuit has interpreted this rule to mean that: 'anti-competitive conduct directed at foreign markets is only regulated by the Sherman Act if it has the "effect" of causing injury to domestic commerce by (1) reducing the competitiveness of the domestic market, or (2) making possible anti-competitive conduct directed at domestic commerce'.[27] The 'effect' of the conduct must be 'direct, substantial and foreseeable'.[28]

It is important to note that the Court of Appeals held that the domestic effect of the conduct need not be the same effect that causes the injury on the foreign market. This means that the anti-competitive effect on the domestic market need not give rise to a specific claim.[29]

The case law of the US courts falls within the general concept of Community law jurisdiction that has been provided by the ECJ. It seems likely that the ECJ, in refining its concept, will

[19] Joined Cases T–191/98, T–212/98, T–213/98 and T–214/98 *Atlantic Container Line AB and Others v Commission* [2003] ECR II–3275 paras 781–883.
[20] Revised *TACA* Decision 2003/68/EC OJ L26 (31 January 2003) 53 at para 39.
[21] Commission Notice 'Guidelines on the effect on trade concept in Articles 81 and 82 of the Treaty' OJ C101/81 para 101.
[22] ibid para 103.
[23] See eg Case 89/85 *A Ahlström Osakeyhtiö and Others v Commission (Woodpulp 1)* [1988] ECR 5193, judgment of 27 September 1988 and Case T–102/96 *Gencor v Commission* [1999] ECR II–753.
[24] Note 21 para 106.
[25] ibid para 107.
[26] Foreign Trade Antitrust Improvements Act 15 USC para 6a.
[27] *National Bank of Canada v Interbank Card Association*, 666 F.2d 6, 8 (2d Cir. 1981) and *Kruman v Christies International plc*, 284 F.3d 384.
[28] Note 26.
[29] *Kruman v Christies International plc* (n 27) 400.

follow the line of thinking of the US courts. Therefore, in discussing the question of whether the explicit collusion between the P3 Network and the other participants in conference and discussion agreements that are allowed under Singapore law may lead to tacit collusion on the EU markets that falls within Community law jurisdiction, account must also be taken of the US case law.

Conflict of laws

The European Commission is of the opinion that the fact that price fixing and explicit collusion are permitted by (for example) the Singapore Competition Law, does not lead to a conflict of laws. This would only be the case if the Singapore Competition Law were to require carriers to participate in conferences: 'In such a situation, the restriction of competition is not attributable, as Article 101 implicitly requires, to the autonomous conduct of the companies and they are shielded from all the consequences of an infringement of that article'.[30] This remains the case, at least until a decision to disapply the national legislation has been adopted and that decision has become effective.[31]

The Singapore Competition Law does not contain an obligation for liner shipping companies to fix prices or to consult on sensitive competition issues. Therefore, the Commission standpoint entails that the question of whether price fixing and explicit collusion, which are allowed under this jurisdiction, and are caught by Article 101(1) TFEU, must be dealt with on the basis of the general principles of EU law.

In order to assist undertakings and associations of undertakings to assess whether their agreements are compatible with Article 101 TFEU, on 26 September 2008 the Commission published the Maritime Guidelines,[32] which were applicable for a period of five years, ie until 26 September 2013.

As mentioned above,[33] the Commission then decided to withdraw the Maritime Guidelines as from 26 September 2013 and not to replace them.[34] The Maritime Guidelines having been withdrawn, there will be no longer a legal vehicle for providing the maritime industry with specific guidance on whether the price fixing and explicit collusion that are allowed under the Singapore Competition Law will or may lead to tacit collusion on EU markets and, therefore, come within the scope of Article 101(1) TFEU.

The question now is whether the general Horizontal Guidelines and the consortia block exemption offer sufficient guidance to companies in this respect.

EU competition rules on containerised liner shipping services

Historic overview

The governments of the EU Member States have always conducted a liberal approach towards international carriage by sea in general, and liner shipping in particular. This enabled shipowners to attempt to control their often murderous competition by entering into liner conferences, whereby they established a uniform tariff that was advertised well in advance,[35] secured reasonable profits and allotted sailings for each vessel. No public law was adopted to undo the anti-competitive effects of conferences. Outside competition from independent carriers and the common law actions taken by shippers were considered to be

[30] Horizontal Guidelines (n 8) para 22.
[31] Case C–198/01 *Consorzio Industrie Fiammiferi (CIF) v Autorità Garante della Concorrenza e del Mercato* [2003] ECR I–8055, [2003] 5 CMLR 829 paras 54 ff (CFI).
[32] Note 18.
[33] Note 6.
[34] ibid.
[35] J O Jansson, D O Shneerson *Liner Shipping Economics* (Chapman & Hall London 1987) 16.

sufficient guarantees to prevent the conferences from abusing their powers in an unreasonable manner.

The liberal approach towards liner conferences came partly to an end with Commission Regulation No 4056/86.[36] This regulation enabled the Commission to apply the EU competition rules to the maritime sector, whilst simultaneously safeguarding the ubiquitous arrangements on the fixing of rates and conditions of carriage in conference agreements.

This was the predominant feature of the regulation: it allowed for horizontal price-fixing arrangements in conference agreements which from the outset are not tolerated in any other industry,[37] where they are considered to create serious disadvantages for the unity of the single EU market and the abolishment of obsolete market structures.[38]

On 25 September 2006, the Commission repealed Regulation (EEC) No 4056/86,[39] which took effect on 18 October 2006 but allowed for a transitional period of two years for liner conferences that met the conditions of Regulation 4056/86, ie until 18 October 2008.

The decision to repeal was the result of a thorough review of the regulation based on the experience gained from its public enforcement.[40] This review demonstrated that:

(i) the anti-trust immunity of conference price-setting has become increasingly irrelevant, since nowadays 80–90 per cent of general cargo traffic is carried under service contracts[41]

(ii) it is very unlikely that the repeal of the block exemption will result in a significant increase in concentration on a global scale

(iii) the effects of the repeal appear to correlate with the size of the trade: it will have considerable pro-competitive effects on the major East-West trades while the minor North-South trades are much less affected by a regulatory change[42]

(iv) price fixing leads to the proliferation of inefficient operators, high profits for the most efficient ones and the lack of a need to innovate[43] and

(v) the application of the EU competition rules to the maritime industry in the ordinary fashion 'will automatically remove the ... differences between this and the other industries'.[44]

The repeal of Regulation (EEC) No 4056/86 implies that as from 18 October 2008 liner carriers operating services to and/or from one or more ports in the European Union had to cease all liner conference activity contrary to Article 101 TFEU:

[36] OJ L378/4 of 31 December 1986.

[37] See eg Commission Decisions: *Wall and Floor Tiles* OJ 1971 L10/15; *Vereeniging van Cementhandelaren* OJ 1972 L13/34; *NCH* OJ 1972 L22/16; *Gas Water-heaters* OJ 1973 L217/34; *Papier Peints de Belgique* OJ 1974 L237/3.

[38] See August J Braakman (co-author and editor) 'The application of Articles 85 and 86 of the EC Treaty by national courts in the Member States' (European Commission 1997) para 150 http://europa.eu.int/comm/competition/publications/art8586_en.pdf.

[39] Regulation (EC) No 1419/2006, OJ L269 (28 September 2006) 1–3.

[40] See in particular the decisions and judgments in *Trans-Atlantic Agreement* OJ 1994 L376/4 decision of 19 October 1994 followed by the judgment of the Court of First Instance of 28 February 2002; Case T–395/94 *Atlantic Container Line and Others v Commission* [2002] ECR II 875; *Far Eastern Freight Conference (FEFC)* decision of 21 December 1994 OJ 1994 L378/17 followed by the judgment of the Court of First Instance of 28 February 2002; Case T–86/95 *Compagnie générale maritime v Commission* [2002] ECR II–1011; Case No IV/35.134–*Trans-Atlantic Conference Agreement (TACA)* decision of 16 December 1998 OJ 1999 L95/1 followed by the judgment of the Court of First Instance of 30 September 2003; Joined Cases T–191/98, T–212/98, T–213/98 and T–214/98 *Atlantic Container Line AB and Others v Commission* (n 19).

[41] Final Report of 12 November 2003 on public submissions received in response to the consultation paper by Prof Haralambides of Erasmus University, Rotterdam at 67.

[42] Discussion Paper on the Review of Regulation 4056/86 applying EC competition rules to Maritime Transport, ad hoc Advisory Committee Meeting (13 July 2005) 3.

[43] Note 41 at 2.

[44] White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of EC Treaty Commission Programme No 99/027 Brussels (28 April 1999) paras 133, 134.

This is the case regardless of whether other jurisdictions allow, explicitly or tacitly, rate fixing by liner conferences or discussion agreements. Moreover, conference members should ensure that any agreement taken under the conference system, complies with Article 101 TFEU as of October 18, 2008.[45]

The Horizontal Guidelines

General

Each economic operator must determine independently the policy which it intends to adopt on the market. The requirement of independence precludes any direct or indirect contact between economic operators whereby an undertaking influences the conduct on the market of its competitors or discloses to them its decisions or deliberations concerning its own conduct on the market, if as a result conditions of competition may apply which do not correspond to the normal conditions of the market in question.[46] This rule has been laid down in Article 101(1) TFEU, which contains a prohibition of all agreements that restrict competition. The notion 'presupposes a common intention on the part of the companies involved to engage in a certain competitive activity'.[47] The companies involved must be legally distinct but do not necessarily have to be economically independent of each other. Agreements between companies belonging to the same group are therefore agreements. Whether they restrict competition is another matter which needs to be answered separately.[48]

Article 101(1) TFEU is not limited merely to direct exchanges between competitors but also applies to exchanges facilitated by third parties. Agreements do not have to take any particular form. They may be concluded orally or in writing[49] or may arise from the actual behaviour of the parties.[50] Settlements also constitute agreements.[51] The time at which an agreement takes effect is irrelevant. Contracts in the liner shipping service that were concluded before 18 October 2008, are caught by Article 101(1) TFEU if they have persisted beyond that date as a result of the deliberate coordination of the competitive behaviour of the companies concerned.[52]

Article 101(2) TFEU provides that agreements which fall within Article 101(1) TFEU are null and void. This means that the agreement is not binding nor can it be asserted in relation to third parties.[53] By the same token, it cannot be asserted before the courts either. Nullity for the purposes of Article 101(2) TFEU means complete invalidity. It is absolute in nature, especially as anyone can invoke it,[54] and unlimited in time, thereby catching all the past and future effects of the arrangement concerned.[55]

Once the existence of an agreement that restricts competition has been established, it has to be decided whether the part of the agreement that is null and void forms an indissoluble unit with the other parts of the agreement. If this is the case, the nullity of that part of the agreement entails the nullity of the entire agreement.[56]

[45] Guidelines on the application of Article 81 of the EC Treaty to maritime transport services, OJ C245/2 of 26 September 2008.

[46] Joined Cases 40–48/73, 50/73, 54–56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others v Commission* [1975] ECR 1663 paras 173, 174.

[47] Case 41/69 *ACF Chemiefarma v Commission* [1970] ECR 661 at 696.

[48] Note 38 para 64 with citation. See also Horizontal Guidelines (n 8) point 11.

[49] Case 28/77 *Tepea v Commission* [1978] ECR 1391 at 1412.

[50] Case 107/82 *AEG-Telefunken AG v Commission* [1983] ECR 3151 at 3195.

[51] Case 258/78 *Nungesser v Commission* [1982] ECR 2015 at 2080.

[52] Case 40/70 *Sirena v Eda* [1971] ECR 69 at 81.

[53] Case 22/71 *Béguelin Import Co v GL Import Export SA* [1971] ECR 949 at 962 para 29.

[54] Case 319/82 *Société de Vente de Ciments et Bétons de l'Est SA v Kerpen & Kerpen GmbH* [1983] ECR 4173, 4183f para 11.

[55] Case 48/72 *Brasserie de Haecht v Wilkin-Janssen (Haecht II)* [1973] ECR 77 at 89.

[56] Case 56/65 *Société Technique Minière v Maschinenbau Ulm GmbH* [1966] ECR 235.

Agreements which fall within the scope of Article 101 (1) and (2) TFEU may benefit from an exemption from the prohibition on cartels. The criteria have been laid down in Article 101(3) TFEU:

- they must contribute to improving the production or distribution of goods or to promoting technical or economic progress
- consumers must be allowed a fair share of the resulting benefits
- the restrictions of competition must be indispensable to the attainment of the objectives
- the participants may not have the possibility of eliminating competition in respect of a substantial part of the products in question.

Companies have a duty of self-assessment, ie they have to examine themselves whether they may benefit from the exemption from Article 101(3) TFEU:

> An agreement that fulfils the conditions of the exemption rule ... is legal from the outset and enforceable by national courts. Conversely, a restrictive agreement which does not fulfil the conditions of the exemption rule under article 101 (3) of the Treaty, will be void and unenforceable from the beginning.[57]

The Commission has published a number of guidelines of which the following are relevant for the maritime industry:

- guidelines on the application of Article 81 of the EC Treaty (now Article 101 TFEU) to maritime services (the Maritime Guidelines)[58]
- guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements (the Horizontal Guidelines)[59]
- guidelines on the application of Article 81(3) of the Treaty (now Article 101(3) TFEU)[60]
- guidelines on the effect on the trade concept in Articles 81 and 82 of the Treaty[61]
- Commission Notice on the definition of the relevant market[62]
- Commission Notice on agreements of minor importance.[63]

For the maritime industry, two block exemptions are of particular importance. The first is the block exemption for consortia;[64] the other is the block exemption for specialisation agreements.[65]

The Guidelines and the block exemptions provide that the following restrictions of competition do not fall within a block exemption and are not likely to benefit from an individual exemption of the prohibition on cartels:

- discussing or fixing prices, surcharges, discounts and rebates
- agreeing levels of capacity and utilisation
- rationalisation of capacity
- allocating customers or regions
- discussing relations with particular customers or suppliers

[57] Cf. Consultation Paper on the Review of Council Regulation (EEC) No. 4056/86 laying down detailed rules for the application of Articles 81 and 82 of the Treaty to Maritime Transport, Commission Services Document, (28 May 2004, p 9.
[58] Now extinct, see above text at n 7.
[59] OJ C11/1 14 January 2011.
[60] OJ C101 27 April 2004 p 97.
[61] OJ C101/81 para 101.
[62] OJ C372 9 December 1997 p 5.
[63] OJ C368 22 December 2001 p 13.
[64] OJ L256 29 September 2009 p 31.
[65] OJ 2000 L304/3.

- planned service launches and service characteristics
- exchanging confidential information that might be of influence on the competition position of the participants or third parties.

These are hard core restrictions of competition that, as a matter of principle, are null and void.

Exchange of information

The Horizontal Guidelines address information exchanges in excruciating detail. Exchange of information comes within the scope of Article 101(1) TFEU in case it leads to tacit collusion. Tacit collusion is likely to be achieved in markets which are sufficiently transparent, non-complex, stable and symmetric: 'Information exchange can facilitate tacit collusion by reducing uncertainty in the market and making the strategic variables of the various parties more transparent so that it makes it easier for them to tacitly collude'.[66]

There is no precise formula that indicates which role information exchange plays in determining whether a market is competitive or tacitly collusive.[67] This means that there is not a clear demarcation indicating whether price fixing and explicit collusion insofar as they are directed at foreign markets and are allowed under the Singapore Competition Law may lead to tacit collusion on EU markets and therefore come within the scope of Article 101(1) TFEU. In the absence of an economic theory, 'each case must be assessed on its own facts according to the general principles set out in these ... (Horizontal) guidelines'.[68]

Exchange of information that is most likely to be caught by Article 101 TFEU relates to strategic information concerning future commercial policy that reduces strategic uncertainty as to the future operation on the market for all the competitors involved and increases the risk of limiting competition and of collusive behaviour:

> For example, mere attendance to a meeting where a company discloses its pricing plan to its competitors, is likely to be caught by Article 101, even in the absence of an explicit agreement to raise prices. When a company receives strategic data from a competitor (be it in a meeting, by mail or electronically), it will be presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data.[69]

It must be assumed that undertakings take account of the information exchanged with their competitors in determining their conduct on the market. That is all the more the case where the undertakings act together on a regular basis over a long period. The ECJ has held that, subject to proof to the contrary, which the economic operators must adduce, such a concerted practice is caught by Article 101(1) TFEU, even in the absence of anti-competitive effects on the market.[70] In case the economic operators cannot adduce evidence to the contrary, it will be assumed that there exists a form of coordination between undertakings by which, without having been taken to the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition.[71]

Community law jurisdiction is limited to agreements and practices that are capable of having effects of a certain magnitude: the effects must be appreciable. Appreciability can be appraised in particular by reference to the position and the importance of the relevant undertakings on the market for the products concerned.[72]

[66] Horizontal Guidelines (n 8) para 77.
[67] Mike Walker in EMLO Roundtable Discussion (19 June 2012) 13 http://www.emlo.org/.
[68] Horizontal Guidelines (n 8) para 22.
[69] ibid para 62, with references to jurisprudence.
[70] Case C–199/92 *Hüls AG v Commission* [1999] ECR I–4287 paras 161–63.
[71] *Suiker Unie and Others v Commission* (n 47) para 26 and Joined Cases C–89/85, C–104/85, C–114/85, C–116/85, C–117/85 and C–125/85 to C–129/85 *A Ahlström Osakeyhtiö and Others v Commission (Wood Pulp)* [1993] ECR I–1307 para 63.
[72] Note 21 para 44.

The block exemption for consortia agreements

The block exemption for liner shipping services applies to consortia agreements relating to international liner shipping services from or to an EU port, exclusively for the carriage of cargo, on condition that the combined market share of the participants does not exceed 30 per cent. The block exemption allows the coordination of sailing timetables, the cross-chartering of space or slots on vessels, the pooling of services or port installations, the use of joint operation offices and the provision of containers etc. It also allows capacity adjustments in response to fluctuations in supply and demand, the joint operation or use of port terminals and related services, and other ancillary restrictions. However, it prohibits specifically 'hard core' restrictions, such as fixing prices with third parties, limitation of capacity or sales (other than temporary adjustments to deal with fluctuations in supply and demand) and allocation of customers.[73]

Self-assessment of price fixing and explicit collusion directed at foreign markets and allowed under Singapore competition law

It has been demonstrated above[74] that the market of containerised shipping services is a globally concentrated, oligopolistic market where each shipping line takes its strategic decisions by considering the prospective conduct of its competitors from a global perspective. Hence, the question of whether price fixing and the exchange of sensitive information which is directed at foreign markets and permitted under the Singapore Competition Law is the only plausible explanation for parallel behaviour on the EU markets falling within Article 101(1) TFEU, must be answered from a global perspective.[75]

When it comes to establishing whether the anti-competitive effects of exchanges of information when directed at foreign markets leads to parallel behaviour that falls within the scope of Article 101(1) TFEU, the structure of the market must be analysed, even in the absence of structural links between the participants.[76] However, the structure of the market as such is not sufficient to conclude that parallel behaviour falls within the scope of the EU competition rules.[77] Possible facilitating practices such as exchange of information systems[78] and the effects thereof on past and present movements in market shares and prices[79] should also be taken into account.

The ECJ has made it clear that cooperative strategic interaction between shipping lines as such does not constitute a concerted practice under Article 101 TFEU[80] and that such parallel behaviour can be regarded as proving the existence of an agreement or a concerted practice only in cases where concertation constitutes the only plausible explanation for such parallel behaviour.[81] This is a difficult task since '... firms need not even communicate with each other to fix prices'.[82]

[73] McDermott, Will & Emory 'Maritime transport subject to EU general competition law guidelines from 26 September 2013' (25 February 2013) www.mwe.com.

[74] See above p 419.

[75] Francesco Munari 'Competition in liner shipping' in J Basedow and others *The Hamburg Lectures on Maritime Affairs 2009 & 2010* (Springer-Verlag Berlin Heidelberg 2012) 7.

[76] OECD Policy Round Tables 'Oligopoly' (1999) 215.

[77] See Commission Decision in *Peroxygen Products* OJ 1985 L35/1. See also R Whish *Competition Law* (6th edn OUP Oxford 2009) 553.

[78] Note 21 at 214.

[79] ibid 219.

[80] H Haupt 'Collective dominance under Article 82 EC and EC merger control in the light of the *Airtours* judgment' (2002) 23(9) *ECLR* 434.

[81] *A Ahlström Osakeyhtiö and Others (Woodpulp)* (n 71).

[82] G Monti *EC Competition Law* (1st edn Cambridge University Press Cambridge 2007) 309.

The Horizontal Guidelines recognise that information exchanges may have pro-competitive benefits.[83] The assessment of whether this conduct has pro-competitive effects that justify the application of Article 101(3) TFEU must also take account of the market structure and the market situation of non-EU markets.[84] In addition, as FMC Commissioner Thomas Rosch has pointed out, the Horizontal Guidelines 'cut too broad a swath', in that they are so detailed that 'the Guidelines nor the consumers may be able to realize the pro-competitive benefits of such exchanges. This is not the kind of outcome that public law enforcement officers should want to achieve'.[85]

Conclusion

With regard to the question whether anti-competitive conduct between the P3 Network and other participants to one or more conference and/or discussion agreements, when directed at foreign markets and allowed under foreign jurisdictions such as the Singapore Competition Law, may possibly lead to tacit collusion on the EU market, on the basis of the analysis discussed above, I am of the opinion that this question must be answered in the affirmative. The global perspective from which lines take their strategic decisions, together with the fact that these decisions are being discussed and adopted in 65 conference and discussion agreements which relate to the Trans-Atlantic and the Trans-Pacific routes, ie to approximately 50 per cent of world trade, and are legally allowed under foreign jurisdictions such as the Singapore Competition Law, necessarily leads to a form of concertation between these lines on EU markets by which, without having been taken to the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition. This holds true in particular in case the ECJ accepts that the effect of anti-competitive conduct that is directed at foreign markets, does not have to give rise to a specific claim under EU law.

The second question is whether lines are capable of assessing themselves, without specific guidance from the European Commission, whether anti-competitive conduct that is directed at foreign markets, falls within the ambit of Article 101(1) TFEU.

I am of the opinion that this second question must be answered in the negative. The fact that companies must make their self-assessment on a case-by-case basis and have to refer to conditions of competition on foreign markets together with the risk of absolute nullity of the agreements concerned and private claims for damages under EU law in the event of a wrong assessment, necessitate specific guidance. This is the more so since the Horizontal Guidelines are so detailed that lines may not be able to realise and/or demonstrate the pro-competitive benefits of price fixing and the exchange of sensitive information directed at foreign markets, on EU markets.

In view of the above, it is all the more likely that lines who are party to conference or discussion agreements that are allowed under foreign jurisdictions, such as the Singapore Competition Law, will reconsider their position in case specific guidance from the European Commission remains absent, and will eventually decide to withdraw from these agreements. The risk that these agreements are caught by Article 101(1) TFEU, the obligation of self-assessment and the consequences of a wrong self-assessment in the form of absolute nullity of the agreement under EU law and of claims for private damages under that law, may prove to be too much of a deterrent.

[83] Paragraph 57.

[84] For an excellent report on the various markets and market structures see 'Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law' FMC Bureau of Trade Analysis (Washington DC, January 2012).

[85] J Thomas Rosch 'Antitrust issues related to benchmarking on other information exchanges' ABA Section of Antitrust Law and ABA Center for Continuing Legal Education's Teleseminar on Benchmarking and Other Information Exchanges Among Competitors (3 May 2001) 14.

Although this risk already exists it will be seriously aggravated by the P3 Network, once it has been approved in its present form by the European Commission and/or other regulatory bodies.

Postscript

This text was presented at the 19th Annual Conference of the European Maritime Law Organisation which took place in London on 25 October 2013. In November and December 2013, there were some important developments with regard to the assessment of the P3 agreement which are worthy of mention.

In its press release of 22 November 2013,[86] the European Commission announced it had opened formal proceedings against several container liner shipping companies, including the members of the P3 Network, to investigate whether they had engaged in concerted practices in breach of EU anti-trust rules.

The proceedings relate to the public announcements liner shipping companies make, on a regular basis, of price increase intentions, through press releases on their websites. The price increases are generally similar for all announcing companies and their announcements 'are usually made by the companies successively a few weeks before the announced implementation date'. However, clearly the Commission 'has concerns that this practice may allow the companies to signal future price intentions to each other and may harm competition and customers by raising prices on the market for container liner shipping transport services on routes to and from Europe'.

For the purpose of the above proceedings, the Commission defines container liner shipping as 'the transport of containers by ship at a fixed time schedule on a specific route between a range of ports at one end (eg Shanghai–Hong Kong–Singapore) and another range of ports at the other end (eg Rotterdam–Hamburg–Southampton)'. This definition demonstrates that the investigation does not go beyond the scope of EU anti-trust law as it is presently defined.[87]

On the non-Asia–Europe routes, ie on the Trans-Atlantic and Trans-Pacific routes, which together represent approximately 50 per cent of world trade, there are 65 conference and discussion agreements.[88] Within these agreements, exchanges of sensitive information and the fixing of prices are permissible and frequently occur. Price increases are announced by the administrators of the agreements on behalf of all the participants collectively.

All of the liner shipping companies against whom the proceedings have been initiated, and more particularly the members of the P3 Network, operate on a global scale and participate in one or more conference and discussion agreements that apply on the non-Asia–Europe routes. This implies that the price policy that is agreed upon for the non-Asia–Europe routes within the framework of these conference and discussion agreements, and which is widely advertised, necessarily has an impact on the price increase intentions for the Asia–Europe routes that are announced by the individual companies 'successively a few weeks before the announced implementation date'.

The question then is whether the Commission, by investigating the announcements of future price increases for Asia–Europe routes under EU anti-trust law, can disregard agreements on price increases for non-Asia–Europe routes. I am of the opinion that this question must be answered in the negative.

[86] IP/13/1144.
[87] See above pp 423 ff under 'Jurisdiction'.
[88] See above p 419.

The fact that the liner companies that are under investigation, operate on a global scale necessarily implies that prices for Asia–Europe routes and for non-Asia–Europe routes are strongly interdependent. Therefore, agreements on prices for non-Asia–Europe routes are, if not the basis then in any case important indicators for the prices for Asia–Europe routes. As a consequence, in assessing whether the announcements of price increase intentions for Asia–Europe routes amount to concerted practices in breach of Article 101 TFEU and of Article 53 EEA, the Commission cannot disregard the price-fixing agreements for non-Asia–Europe routes.

In case the Commission accepts, or is forced to accept this conclusion, it implies that the Commission assumes jurisdiction over anti-competitive conduct directed at foreign markets and permitted under foreign jurisdictions. This extension of Community law jurisdiction may have important consequences, both on an economic and on a political level.

On an economic level, it means that the self-assessment lines are bound to make under Article 101(1) TFEU must include an assessment of the conditions of competition on foreign markets and also from an EU law perspective. Since the only guidelines available are the Horizontal Guidelines[89] and the block exemption for consortia agreements,[90] this is a very difficult if not impossible task.

On a political level, the major problems in making a trustworthy and reliable self-assessment and the consequences of this assessment being faulty may be such that liner companies will eventually decide to withdraw from conference and discussion agreements which fall within other jurisdictions and allow for price fixing and the exchange of sensitive information. This may lead to differences of opinion on a political level between the EU and countries that favour these distortions of competition.

Within this context, it is important to note that on 17 December 2013 the US Federal Maritime Commission organised a conference to consider the evolving international maritime landscape. The conference was attended by maritime regulatory bodies from the Unites States, the People's Republic of China and the European Commission. Although no firm statements to that effect were made, it seems likely that an important part of the discussions were devoted to comity, ie to the possibilities of the courts in one jurisdiction to accede or give effect to the laws and decisions of another.

It is interesting to note that the Competition Commission of Singapore did not participate in the conference.

Appendix

Abbreviation	*Conference or Discussion Agreements*	*Members (abbreviated)*
AADA	Asia Australia Discussion Agreement	ANL, China Shipping, Coscon, Gold Star Line, Hamburg Sud, Hanjin, Hapag-Lloyd, Hyundai, 'K' Line, Maersk Line, MOL, MSC, NYK, OOCL
ABC	ABC Discussion Agreement	Hamburg Sud, King Ocean, SeaFreight
ACTA	Asia to Caribbean Trade Agreement	CMA CGM, CSAV, Evergreen, Hamburg Sud, Maersk Line, MSC, ZIM
AEATA	Asia East Africa Trade Agreement	Delmas, Maersk Line, MOL, PIL
AFDA	Australia Fiji Discussion Agreement	CNCo, Hamburg Sud, Neptune Pacific Line, Pacific Line
AFDG	Asian Feeder Discussion Group	AvCL, Bengal Tiger Line, RCL, Samudera, Sea Consortium

[89] See above pp 427 ff.
[90] See above pp 430 ff.

Abbreviation	*Conference or Discussion Agreements*	*Members (abbreviated)*
ANSCON	Australia Northbound Shipping Conference	ANL, 'K' Line, MOL, NYK, OOCL, ZIM
ANZDA	Asia New Zealand Discussion Agreement	CNCo, Coscon, Hamburg Sud, Maersk Line, MISC, NYK, OOCL, PIL
ANZECS	Australian and New Zealand/ Eastern Shipping Conference	ANL, 'K' Line, MOL,NYK, OOCL, ZIM
ANZUSDA	Australia/New Zealand Discussion Agreement	ANL, CMA CGM, Hamburg Sud, Hapag-Lloyd, Maersk Line
AWATA	Asia-West Africa Trade Agreement	China Shipping, CMA CGM, Delmas, Gold Star, Maersk Line, MSC, MOL, NileDutch, PIL, Safmarine
AWCSA	Asia-West Coast South America Freight Conference	APL, CCNI, CSAV, CMA CGM, Evergreen, Hamburg Sud, Hanjin, Hapag-Lloyd, Hyundai, 'K' Line, Maersk Line, Maruba, MOL, MSC, NYK
BOBCON	Bay of Bengal/Japan/Bay of Bengal Conference	NYK, Everet Shipping, Bangladesh Shipping, Myanmar Five Star
BRAZIL	Brazil/Far East/Brazil Freight Conference	CSAV, NYK
CADA	Central American Discussion Agreement	APL, Crowley, Dole, Great White Fleet, King Ocean, Seaboard Marine
CALFO	Calcutta Feeder Operators	AvCL, Bengal Tiger Line, Orient Express Line, Megastar Shipping, PACC, Samudera, Sea Consortium
CANZDA	Canada Australia New Zealand Discussion Agreement	Hamburg Sud, Hapag-Lloyd
CFO	Chennai Feeder Operators	AvCL, Bengal Tiger Line, Orient Express Line, Samudera, Sea Consortium, Sea Services
CFTC	Chittagong Feeder Trade Committee	AvCL, APL, Orient Express Line, QC Container Line, Sea Consortium
CPWCSA	Canada Pacific West Coast South America Agreement	CCNI, CSAV, Hamburg Sud, Hapag-Lloyd
CSA	Caribbean Shipowners Association	Bernuth, CMA CGM, Crowley, Seaboard Marine, SeaFreight, ZIM
CTSA	Canada Trans-Pacific Stabilization Agreement	APL, Coscon, Evergreen, Hapag-Lloyd, Hyundai, 'K' Line, NYK, OOCL, Yang Ming, ZIM
CWTSA	Canada Westbound Transpacific Stabilization Agreement	APL, Coscon, Evergreen, Hapag-Lloyd, Hyundai, 'K' Line, NYK, OOCL
EMDA	East Mediterranean Discussion Agreement	China shipping, Coscon, ZIM
FEEA	Far East/East Africa Freight Conference	MOL (breakbulk only), NYK
FESAMEC	Far East/South Asia-Middle East Conference	IRISL, 'K' Line, Maersk Line, MOL, NYK, PNSC, SCI, UASC, WWL
FBSOA	Florida-Bahamas Shipowners and Operators Association	Bernuth, Crowley, Seaboard Marine, SeaFreight
HDA	Hispaniola Discussion Agreement	Crowley, Seaboard Marine
IADA	Intra-Asia Discussion Agreement	ANL, APL, Biendong, Cheng Lie, China Shipping, CMA CGM, Coscon, Emirates, Evergreen, Gold Star, Gemadept, Hanjin, Hapag-Lloyd, Heung-A, Hyundai, Interasia, 'K' Line, KMTC, MCC Transport, NYK, OOCL, PIL,RCL, Samudera, Sinokor, SITC, UASC, Wan Hai, Yang Ming

Abbreviation	*Conference or Discussion Agreements*	*Members (abbreviated)*
IRA	Informal Rate Agreement	APL, CMA CGM, Coscon, CSAV Norasia, Evergreen, Hapag-Lloyd, Hyundai, IRISL, Maersk Line, MOL, NYK, OOCL, PIL, UASC, Wan Hai, Yang Miing
IRSA	Informal Red Sea Agreement	ANL,APL, CMA CGM, Coscon, CSAV Norasia, Evergreen, Hapag-Lloyd, Maersk Line, PIL, UASC, Wan Ha
ISAA	Informal South Asia Agreement	APL, CMA CGM, Coscon, CSAV Norasia, Evergreen, Hapag-Lloyd, Hyundai, Maersk Line, MOL, NYK, OOCL, PIL, SCI, Samudera, TSK Line, UASC, Wan Hai, Yang Ming
ITC	Israel Trade Conference	APL, Maersk Line, ZIM
JAHOSAS	Japan & Hong Kong/South Africa Shipping Conference	'K' Line, MISC, MOL (breakbulk only), NYK
JCFC	Japan/Ceylon Freight Conference	'K' Line, MOL (Breakbulk only), NYK
JGARSPC	Japan/Gulf of Aden & Red Sea Ports Conference	ANL, CMA CGM, Egyptian International Shipping Co, Hapag-Lloyd, 'K' Line, MOL, NYK
JHSFA	Japan/Hong Kong & Japan/Straits Freight Agreement	Daiichi Chuo, Eastern Car Liner, 'K' Line, MISC, MOL, NYK
JLA	Japan-Latin America Eastbound Freight Conference	'K' Line, MOL (breakbulk only), NYK
JMEX	Japan-Mexico Freight Conference	'K' Line, MOL (breakbulk only), NYK
JPFC	Japan/Philippines Freight Conference	Daiichi Chuo, Easter Shipping, Everet Orient Line, 'K' Line, Kansai Steamship, NYK, Philippines President Lines, Tokyo Senpaku, Westwind Shipping
JSPFC	Japan/South Pacific Freight Conference	China Navigation Co, Kyowa Shipping, NYK
JTFC	Japan/Thailand Freight Conference	Jutha Maritime, Kansai Steamship, 'K' Line, NYK, Siam Paetra, Thai Maritime, T. J. Marine
JTJCFC	Japan/Taiwan/Japan Container Freight Conference	'K' Line, NYK
JWAAC	Japan/West Africa (Angola/Cameroon Range) Freight Conference	Coscon, 'K' Line, MOL (breakbulk only), NYK
JWANS	Japan/West Africa (Nigeria/Senegal Range) Freight Conference	Coscon, Gold Star, 'K' Line, MOL (breakbulk only), NYK
JWCSA	Japan-West Coast South America Freight Conference (breakbulk)	CCNI, CSAV, 'K' Line, MOL, NYK
KNFC	Korea Nearsea Freight Conference	Coscon, CK Line, Dong Young, Dongjin, Hanjin, Heung-A, KMTC, Namsung, Pan Continental, Pan Star, Sinokor, Sinotrans, STX Pan Ocean, Taiyoung
LAA	Latin America Agreement	APL, Bernuth, CMA CGM, CCNI, CSAV, Dole, Frontier Liner, Great White Fleet, Hamburg Sud, King Ocean, Libra, MSC, Seaboard Marine, Ecuadorian Line, ZIM
MIDA	The Middle East Indian Subcontinent Discussion Agreement	APL, CMA CGM, Hapag Lloyd, Maersk Line, Swire Shipping, NSCSA, UASC
NANZDA	North Asia/New Zealand Discussion Agreement	Coscon, Hamburg Sud, MOL, NYK, Tasman Orient Line
PDA	Pacific Islands Discussion Agreement	CMA CGM, Hamburg Sud, Hapag-Lloyd, Marfret, Polynesia Line
River Plate	Far East/River Plate/Far East Freight Conference	CSAV, NYK

Abbreviation	*Conference or Discussion Agreements*	*Members (abbreviated)*
SEASA/ ATFA	South East Asia and South Asia/ Australia Trade Facilitation Agreement	ANL, APL, Gold Star, Hanjin, Hyundai, Maersk Line, MISC, NYK, OOCL, MSC, PIL, RCL
SNZDA	Straits/New Zealand Discussion Agreement	CNCo, Maersk Line, MISC, NYK, PIL
TFA	Australia/North and East Asia Trade Facilitation Agreement	ANL, China Shipping, Coscon, Gold Star, Hamburg Sud, Hyundai, 'K' Line, MOL, MSC, NYK, OOCL
TFG	Australia/South East Asia and South Asia Trade Facilitation Agreement	ANL, APL, 'K' Line, Maersk Line, MISC, MOL, NYK, OOCL, PIL, RCL
TSA	Trans-Pacific Stabilization Agreement	APL, China Shipping, CMA CGM, Coscon, Evergreen, Hanjin, Hapag-Lloyd, Hyundai, 'K' Line, Maersk Line, MSC, NYK, OOCL, Yang Ming, ZIM
USADA	United States Australasia Discussion Agreement	ANL, CMA CGM, Hamburg Sud, Hapag-Lloyd, Maersk Line, Marfret
VDA	Venezuela Discussion Agreement	Hamburg Sud, King Ocean, MSC, Seaboard Marine, Seafreight Line
WAFEAC	West Africa (Angola/Cameroon Range)/ Far East Freight Conference	Coscon, 'K' Line, NYK
WAFENS	West Africa (Nigeria/Senegal Range)/ Far East Freight Conference	Coscon, Gold Star, 'K' Line, NYK
WCSADA	West Coast of South America Discussion Agreement	APL, CCNI, CSAV, Ecuadorian Line, Frontier Liner Services, Hamburg Sud, King Ocean Services, Maersk Line, MSC, Seaboard Marine, Trinity Shipping
WCSAFC	West Coast of South America/ Far East Freight Conference	CCNI, CSAV, 'K' Line, NYK
WTSA	Westbound Trans-Pacific Stabilization Agreement	Coscon, Evergreen, Hanjin, Hapag-Lloyd, Hyundai, 'K' Line, OOCL, Yang Ming
YLSC	Yellow Sea Liners' Committee	China Shipping, CK Line, Co-Heung, Coscon, CQH Line, CSC Line, DDCL, Dong Young, EAS Datong, Hanjin, Han Sung, Heung-A, Hyundai, KMTC, Namsung, NBOS Line, New Orient Lines, Pan Continental, STX Pan Ocean, Sinokor, Sinotrans