The New Trans Atlantic Conference Agreement - an evaluation of liner conferences under threat

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THE NEW TRANS ATLANTIC CONFERENCE AGREEMENT – AN EVALUATION OF LINER CONFERENCES UNDER THREAT

Jason Chuah

Times have been challenging for liner conferences. Developments in the EU and the US competition law are very gradually but surely diminishing the effect of any antitrust immunity or exemptions[1] that liner conferences have hitherto enjoyed, especially parties to the Trans Atlantic Conference Agreement.[2]

On 1 May 1999, the US Ocean Shipping Reform Act 1998 came into effect making extensive changes to the antitrust legal framework as applicable to liner shipping operating to and from America. It is already having a fundamental impact on liner conferences and how carriers and cargo interests do business with each other. Research carried out by the US Federal Maritime Commission in September 2001, two years after the reforms came into effect, revealed that in the first two years after passage of OSRA, the proportion of cargo moving under service contracts increased precipitously and the migration of cargo from conference-controlled service contracts to individual service contracts was enormous.[3] For example, the number of conference service contracts entered into by TACA declined from 596 to 3.

Under the old regime, immunity from antitrust law is given to shipping conferences. That immunity, although preserved in the new law, has to some extent been constrained. Under the 1984 Shipping Act prior to the changes, for example, required prices had to be transparent and publicly disclosed. The legislation required that service contracts entered into between carrier and shipper/s be filed with the Federal Maritime Commission (FMC) and the essential terms of the service contracts would then be published and made available to the public, including the price. The new law does away with the requirement to disclose the price. Under section 8(c) of the amended Shipping Act 1984, an individual ocean common carrier or an agreement between ocean common carriers may enter into service contracts with one or more shippers and each contract is to be filed confidentially with the FMC but a concise statement of the essential terms[4] must be published and made available to the

[1] A brief description of the exemption system under EU law: – under Article 81(3) an anti-competitive agreement or arrangement may be exempted from the proscription against anti-competitiveness if it is one which contributes '– to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question'. Such an exemption is known as an 'individual exemption'. 'Block exemption' is the term used where there exists an EU Regulation allowing certain groups of anti-competitive agreements to be exempt from the proscription in Article 81(1) against anti-competitive arrangements. In the context of maritime transport services, the relevant Regulation is Regulation 4056/86. It should however be added that that Regulation is currently under review by the EU. See Commission 'Consultation Paper on the Review of Council Regulation 4056/86 Laying down Detailed Rules for the Application of Articles 81 and 82 EC to Maritime Transport, (http:// europa.eu.int/comm/competition/antitrust/legislation/maritime/en.pdf).

[2] Members of the TACA are: Atlantic Container Line AB, Hapag-Lloyd Container Line GmbH, Mediterranean Shipping Company SA, A.P. Møller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line Ltd and P&O Nedlloyd Ltd.

[3] See Creel (Chairman of the Federal Maritime Commission), Statement submitted to Committee of the Judiciary, US House of Representatives (5 June 2002).

[4] Essential terms include the commodity, volume, duration and origin and destination port ranges.

public in a tariff format. The rate, however, is expressly excluded – it is not an essential term for publication. The intention was that the ability of the parties to keep the rate confidential would foster greater competition resulting in better efficiency.[5] Where pricing was public, conferences had enormous power when it came to setting prices as there was no advantage in negotiating separate contracts with shippers. Group contracts are losing their appeal because shippers can now cut deals with individual carriers.[6] Indeed, as a matter of economics, it would be more sound for carriers to move from focusing on price setting to managing supply.

As far as the Trans Atlantic Conference is concerned, the impact of the US deregulatory Act was made even more intense with the refusal of the Commission to grant them block exemption in 1998 for arrangements under the Conference Agreement to provide for inland price fixing in the EU, collective fixing of brokerage and freight forwarder remuneration and the fixing of terms on which conference members might enter into service contracts with shippers.[7] The Commission also concluded that the members of the TACA had abused their collective dominant position, contrary to Article 86 EC,[8] by changing the competitive structure of the market and placing restrictions on the availability and contents of service contracts. Fines in aggregate amount of ECU273 million were imposed. That Decision by the Commission is being appealed against by the Conference.[9]

At around the same time the US law was being brought into force, the TACA members notified a new agreement ('the revised TACA' or 'the Agreement') to the Commission for block and individual exemptions from EU competition law provisions.[10] The Agreement applies generally to transatlantic routes[11] and covers six principal areas:

(a) tariff rates
(b) service contracts
(c) through inter-modal freight rates[12]
(d) technical agreements
(e) operation of scheduled shipping services
(f) regulation of carrying capacity offered by members
(g) consultation and administration of the agreement.

As is readily observed, the Agreement deals with a wide range of issues, some falling within maritime transport services rules and others within more general competition law provisions. The Agreement is interesting in two respects – first, it demonstrates that there is life yet for conferences and, secondly, it seeks to prove that some conference arrangements not only fall within existing exceptions to antitrust in EU law but also deserve to be exempt.

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[5] See generally Merck, Paper on 'Life after OSRA', Containerisation International. 3rd Annual Conference (22–23 March 2000, London).

[6] In the first year the new law came into effect, of the approximately 700 contracts signed by TACA member carriers, 530 were confidential individual contracts and only 30 were TACA service agreements (the others were made with multi-carrier non-TACA contracts). Source: TACA.

[7] Commission Decision 1999/243/EC – Case No IV/35.134 (OJ L95 9 April 1999, p. 1).

[8] Now Article 82, EC following the Treaty of Amsterdam.

[9] Joined Cases T-191/98, T-212/98, T-213/98 and T-214/98 *Atlantic Container Line and Ors v Commission* (Court of First Instance, judgment pending).

[10] Commission Decision of 14 November 2002 (OJ L26/53, 31 January 2003) – Case COMP/37.396/D2 – Revised TACA notified under document number C(2002) 4349. It should be noted that with recent changes to EU competition law procedures, the notification system has now been abolished. The new legal exemption scheme means that there will be automatic exemption for agreements meeting the criteria in Article 81(3). The block exemption system remains unchanged.

[11] It covers 'eastbound and westbound shipping routes between (i) ports in the 48 contiguous States of the USA, and interior and coastal points in the USA via the said ports and (ii) ports in Europe situated in latitudes from Bayonne, France to the North Cape, Norway (excluding non-Baltic ports in Russia, Mediterranean ports and ports in Spain and Portugal) and, except for inland transport services within the EEA, points in Europe via said non-excluded European ports, other than points in Spain or Portugal'.

[12] This is a provision which impacts on inland transport removing itself from the block exemption for *maritime* transport services (Regulation 4056/86). Under the new TACA, the parties are not authorised to discuss or agree prices with each other for inland transport services supplied wholly or partly within the EEA to shippers in combination of other services on offer.

Service contracts[13]

Under the 1998 application, the original agreement was found to be void and unenforceable under Article 85[14] because the agreement made it more difficult for TACA members to enter into individual service contracts ('ISCs') with shippers, or prevented them from doing so, and restricted the terms which could be included in an individual service contracts. The object was to preserve the cartel nature of the conference. However, as is obvious under US law such restrictions would be unlawful under the OSRA and following the Commission Decision that it did not fall within the block exemption contained in Article 3, Regulation 4056/86 and that it did not qualify for individual exemption under Article 81(3), the fight to resist individual service contracts (and confidential pricing) seems entirely lost.

The revised Agreement seems to accept the new reality: it takes onboard the legal requirement that no restrictions may be placed on the availability of individual service contracts. The new carrier agreement provides that parties are authorised to negotiate and enter into service contracts[15] with any one or more shippers (conference service contracts or 'agreement service contracts' ('ASCs')) relating to services provided between ports within the EEA and ports and inland points outside the EEA. As regards multi-carrier service contracts, two or more but not all TACA members may freely negotiate and enter into multi-carrier service contracts (MSCs) with any shipper relating to services provided between ports within the EEA and ports and inland points outside the EEA. Both categories of contracts may include a price for all services closely related to the activity of maritime transport, provided between the vessel and the port gate. Such contracts (ASCs and MSCs) are to include certain essential terms including, *inter alia*, the minimum volume or portion, the line-haul rate, the duration, service commitments and the liquidated damages payable in the event of non-performance. There are also to be no restrictions on the parties to TACA to negotiate and enter into ISCs with any shipper on any terms. Confidentiality of pricing is to be maintained, in compliance with the OSRA 1998. The new Agreement states expressly that the terms are to remain confidential unless the shipper has consented to their disclosure. In the event where a shipper requests an ASC, any member of the new TACA who is a party to an ISC and/or MSC with that shipper may disclose the existence, but not the terms, of such a contract.

A significant provision in the new Agreement is that ASCs and MSCs must not include carriers other than the parties to the TACA and must not contain rate structures differentiated on the basis of which carrier party transports the cargo. This element of imposed co-operation is an important pillar to the new Agreement.

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[13] Most liner companies build their pricing policy around the dual principles of price stability (that is to say, demand and supply) and price discrimination (see Stopford, *Maritime Economics* (Routledge, London, 1997, p. 359). Service contracts or agreements are central to the policy of price discrimination. Large customers with whom it is worth negotiating, can be offered special discounts and other benefits (i.e. a service contract) while smaller customers continue to pay the regular tariff. However, without the ability to make confidential individual service contracts for members of, say, the TACA, any service contract involving members of TACA would clearly not be customised, only standardised.

[14] Now Article 81 – Paragraph (1) of the Article reads 'The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations or undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.'

[15] It should be noted that the term 'service contract' as adopted in the TACA Agreement bears the same meaning as that set out in section 3(19) of the OSRA 1998. Under that Act, 'service contract' means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of non-performance on the part of any party.

The Commission's role was to assess whether the TACA was first, in breach of competition law and secondly, whether it qualified for individual exemption under Article 81(3) and/or exemption under Regulation 4056/86.

Shipper groups have argued that the fact the lines are free to enter into ASCs and MSCs could very well result in the restricting of the lines' freedom to negotiate and enter into ISCs. Although this contention has some validity in economics theory, the current state of affairs does not reflect the likelihood of such an outcome. The majority of cargo is carried on ISCs, not ASCs and/or MSCs. The position of the individual service contract as the preferred form of agreement between carrier and shipper, in practice, would therefore not be challenged.

Another contentious issue was the provision in the new TACA that the parties to the TACA may adopt a standard but non-binding ASC form. Those engaged in ISC and MSC activities may refer to and adopt the standard ASC form and refer to and adopt published ASC rates and/or tariff terms. Although the Conference submitted that this provision would enable parties to customise any service contract, shipper groups are not entirely convinced that lines negotiating ISCs would not use the standard form almost as a template, thereby leading to a concerted practice which is anti-competitive. The Commission also found that that provision is no more than a statement of what in practice would be an obvious starting point for many such negotiations and if an ISC entered into in reliance on the standard ASC reveals evidence of anti-competitive concerted practice, such behaviour would clearly not be covered by the exemption. A distinction is made by the Commission between a non anti-competitive agreement (the provision to use the ASP standard form) and the use of a non anti-competitive agreement to practise anti-competitive acts (using that provision to enter into some concerted practice in breach of Article 81(1)). The fact that the parties agree to consider using the ASP standard form when negotiating ISCs *per se* is not indicative of a concerted practice. The use of such standards is consistent with the new strategy of the conference to adopt similar 'benchmarks' to retain some form of control over the business *modus operandi* of conference members. Implicit in this new strategy is the role of information sharing between the parties.[16] There is some concern that the exchange of information might lead to the parties' discussing the terms and conditions of ISCs. As far as the Commission is concerned, the new TACA does not remove the confidential nature of ISCs (or MSCs) despite the agreement to share information because neither the TACA secretariat nor the parties will have access to carrier-specific information relating to cargoes transported under ISCs and MSCs. The parties will exchange information only on a general conference-wide basis – the information is not contract or carrier specific; only general information is exchanged.

As to whether the revised TACA qualified for exemption under Article 3[17] of Regulation 4056/86, the Commission decided that the block exemption in Regulation 4056/86 covered only provisions of a conference agreement which relate to the operation of and the fixing of a tariff for scheduled maritime transport services. The Regulation does not however extend to provisions relating to agreement service contracts and to multicarrier service contracts. This coincides with the strict approach laid down by the Court of First Instance in the TAA Decision[18] which stated that the block exemption provided for by Article 3 of Regulation 4056/86 should not be interpreted 'broadly and progressively'[19] so as to cover all the agreements which shipping companies deem it useful or even necessary to adopt in order to function efficiently under existing market conditions. However, the Commission considered that they did qualify for individual exemption – that is to say, although these

[16] This is generally called 'rationalisation'.

[17] Article 3 provides for exemption from the prohibition under Article 81(1), EC to members of a liner conference in respect of the fixing of uniform or common freight rates and any other agreed conditions with respect of the fixing of uniform and common freight rates and any other agreed conditions with respect to the provision of scheduled maritime transport services. Exemption is also granted to a limited number of other activities if one or more of them is carried on by members of a liner conference in addition to fixing prices and conditions of carriage.

[18] Case T-395/94 *Atlantic Container Line and Ors v Commission* [2002] ECR II-875; see also Commission Decision 94/980/EC; Case No IV/34.446 – Trans-Atlantic Agreement OJ L376 (31 December 1994, p. 1).

[19] *ibid*., at para. 146.

provisions relating to service contracts were anti-competitive, they met the criteria for exemption under Article 81(3). The reasons given were:

(a) the provision that lines may enter into ASCs or MSCs, and adopt a standard form of ASC offered three specific benefits which the exception in Article 81(3) would recognise – first, the provision of special services which improve the supply chain; secondly, the contribution they would make to price stability; and thirdly, service contracts can reduce search costs and administrative costs;
(b) given the fact that ISCs are no longer restricted, it would be sufficient that there are at least some cases where joint service contracts could offer distinct benefits for shippers. The setting of a joint contract price is an essential and non-severable element of a joint service contract and is hence indispensable to the achievement of those benefits.

The Decision on these matters was generally well received, not only by EU policy makers but also by shippers.[20] The revised TACA had clearly taken cognisance of the displeasure of the EU as regards the conference system. The question is: how will such drastic, albeit inevitable, changes affect the way conferences have operated until now? To what extent do these measures ensure that the liner conference system remains a credible force in maritime transport economics? This issue is particularly significant in recent times not least in the light of continued 'state aid' to national shipping lines by some countries. For example, in the context of the transpacific market, following the passing of a new law international maritime transportation by the Chinese Ministry of Communications, concerns have arisen as to whether the law may create or perpetuate differing requirements for, and treatment of, Chinese and non-Chinese carriers and intermediaries, or creates or perpetuates unreasonable barriers to those who provide transportation services to and from China. The emergence of large Chinese state-owned carriers, China Shipping Container Lines,[21] COSCO and Sinotrans, has clearly also added to the concerns of liner conferences. Although efforts to seek clarification as to full impact of the new law are being undertaken, the future seems quite uncertain.

Voluntary service agreement guidelines

Another aspect under consideration by the new TACA is voluntary service agreement guidelines. These are guidelines which the parties to an Agreement would promise to consider when negotiating service contracts but they are not obliged to adhere to them. The fact that they are voluntary means that they cannot be legally enforced. However, as Antony Merck, a US Federal Maritime Commissioner, commented:

> '. . . voluntary guidelines may pass the word test if sprinkled liberally throughout with the term "voluntary" but the more significant measure, the economic test, where the inquiry is anti-competitive brought about by lock step adherence to voluntary guidelines is more likely to be where the battle is fought.'[22]

The question is whether such a high level of co-operation would run foul of antitrust law is particularly pertinent as some existing conferences are considering relying on voluntary service contract guidelines to bind their members closer. Under Regulation 4056/86 exemption would be granted for voluntary agreements in technical matters. Article 2(1) allows liner conferences voluntarily to co-operate by means of:

(a) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations;

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[20] See European Shippers Council press release of 15 November 2002 at www.europeanshippers.commission.

[21] China Shipping Container Lines entered the US market in 1999 with only six vessels but, with the backing of the Chinese government, has now emerged as one of the top ten Transpacific carriers.

[22] Note 4 above.

(b) the exchange or pooling, for the purpose of operating transport services, of vessels, space in vessels or slots and other means of transport, staff, equipment or fixed installations;[23]
(c) the organisation and execution of successive or supplementary maritime transport operations and the establishment or application of inclusive rates and conditions for such operations;
(d) the co-ordination of transport timetables for connecting routes;
(e) the consolidation of individual consignments, and;
(f) the establishment or application of uniform rules concerning the structure and the condition governing the application of transport tariffs.

As may be readily seen, the exemption in Regulation 4056/86 is principally applicable only to co-operation in technical matters. Co-operation in commercial matters could well result in a breach of Article 81 EC. It might be noted that this distinction is not always conveniently made. Much depends on the net effect of the guidelines. If the result is that the member concerned having adhered to the voluntary guidelines would in effect be inhibited from making service contracts or setting prices or making an individual decision on commercial matters, those guidelines would probably be in breach of competition law. For example, where the voluntary guidelines discourage members from entering into service contracts by stating that they will not actively seek service contracts and if a shipper asks for a service contract, the carrier will endeavour to bring the shipper to the discussion agreement office, it seems quite clear that such guidelines would be in breach. However, as regards the new TACA which expressly states that the parties may not 'adopt any form of guidelines for individual service contracts, save purely technical, non-commercial, guidelines', the Commission was convinced that there was no material likelihood of anti-competitive effects. Additionally, if the voluntary service contract guidelines are subsequently abused by the conference, any exemption given would be promptly revoked.

Most voluntary service contract guidelines tend to be generated from 'discussion agreements'. These are agreements where carriers commit themselves to co-operate as regards the carriers' approach to service contracts and other related matters, *where appropriate*. They agree to refer to certain guidelines, normally on technical and other non-commercial matters but there is no compulsion to apply those guidelines.

Discussion agreements are different from conferences in that they do not set fixed common prices for the many different individually defined commodities. They also do not negotiate contracts or intervene in relations between carriers. They have the advantage of being able to help carriers carry out trade-wide economic analyses so as better to manage the supply of shipping space. Additionally, they constitute a forum for carriers to co-ordinate the process of implementing rate increases or curbing sharp declines in rates. [24] The attractiveness of discussion agreements in the current climate[25] is that they do not interfere with the individual carrier's right to negotiate with shippers, and they afford carriers more flexibility to customise the rates and services to meet the needs of specific shippers. It is not beyond the reasonable to anticipate that conferences as we understand them could well develop along the lines of the discussion agreement.

Cargo-handling services in a port

Under the new TACA, parties will no longer agree prices for inland transport in the EEA. The Agreement provides that the parties 'are not authorised to discuss or agree prices with each other for inland transport services supplied wholly or partly within the EEA to shippers in combination with other services as part of a multimodal transport operation for the carriage of containerised

[23] As far as the new TACA is concerned, co-operation has only been agreed in respect of para. (b).
[24] Provided, of course, that it does not become anti-competitive or abusive of any dominance in the market. See Creel, Statement before the Committee of the Judiciary, US House of Representatives (22 March 2000).
[25] See Division of Transport of the Directorate for Science, Technology and Industry, Organisation for Economic Co-operation and Development, 'Final Report on Competition Policy in Liner Shipping' ('OECD Report'), 16 April 2002.

cargo in the trade or any tariff or other matter pertaining to inland transport within the EEA'.[26] It however enables parties to fix charges applicable to cargo handling services in ports.

It is clear from the Court of First Instance's jurisprudence that Regulation 4056/86 will not apply to agreements relating to matters on inland transport services; that Regulation applies only to maritime transport services and the court has defined maritime transport as transport by sea from port to port and that maritime transport service ends on arrival at the gateway port. The question was thus whether the provision might be exempt under Article 81(3).[27] On this, the Commission decided that those parts of the revised TACA tariff which covered cargo handling services are not repugnant to EU competition law. The Commission stated that the cargo handling services in question provided in ports are economically and physically closely connected to the maritime transport as such. The evidence was that ever since the advent of containerisation, these services have been contracted for by carriers and invoiced directly to the latter by the cargo handler.[28] Preserving the role of the carriers in contracting with the cargo handler should be beneficial for the small cargo interest. The presumption is that small cargo interests or shippers would not normally have the optimal bargaining strength to negotiate individually with cargo handlers. The carrier (or conference) would be far better placed to secure good rates from the cargo handlers and should necessarily be able to pass on this saving to the cargo interest.

The Commission's approach here is one based primarily on arguments of economic efficiency and consumer interests. The question one might raise, however, is to what extent could and should the Commission consider factors not related to economic efficiency. In the Commission's White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty,[29] the application of Article 81(3) is broad. It admits policies other than economic efficiency to be taken into account when deciding whether to allow agreements that are restrictive of competition. Policies on the environment, energy, industry, employment, the regions etc. have all been relied on, in the past, by the Commission in assessing whether the agreement is justifiable under Article 81(3). It seems clear that the Commission could look beyond economic efficiency issues in deciding whether or not to grant exemption under Article 81(3).

This broader approach as a general principle however has been criticised for failing to lay down a clear guidance for national competition authorities and national courts when dealing with cases within their jurisdiction. Whish states:

> 'It is clear . . . that a number of factors have been influential in decisions under Article 81(3), not all of which can be considered to be "narrow" improvements in efficiency. There are significant proponents of the view that Article 81(3) does admit broad, non-competition considerations. This discussion suggests that there is uncertainty – even confusion – as to the proper application of Article 81(3). . . . These institutions [national competition authorities and national courts] must know the limits of their discretion under Article 81(3); furthermore, they seem ill-placed to balance the restriction of competition that an agreement might entail against a broad range of Community policies; they would have less difficulty, however, in applying a "narrow" interpretation of Article 81(3), limited to a consideration of economic efficiencies.'[30]

The question is clearly an important one given the recently proposed changes to EU competition law calling for greater national jurisdiction and EU-Member State co-operation. As regards maritime transport services where there are clearly non-competition issues at stake, the problem is especially noteworthy. The Commission has frequently claimed that the principal aim of the exemptions in maritime transport services is to ensure an adequate and efficient supply (including chain of supply)

[26] See para. 26 of the Decision, note 9 above.
[27] Using the procedure set out in Regulation 17, OJ Sp. Ed. 1962, No 204/62, p. 87. Note though that Regulation 17 has now been replaced by Council Regulation 1/2003 (16 December 2002) OJ L1/1 (4 January 2003).
[28] The terminal operator or the stevedoring firm.
[29] Comm Programme 99/027.
[30] Whish, Competition Law (Butterworths, London, 2001), at 125–128.

of marine transportation services for EU exports and trade. However, given the importance of other EU policy concerns, how should non-economic efficiency factors, such as issues on industrial relations, regional and international development, the environment, employment needs in the maritime sector etc. be considered when applying Article 81(3)?

Conclusion

It is clear that conferences are resigned to the fact that the sort of antitrust immunity they had enjoyed until recently has largely been diluted. It may be deduced from the Commission's approach to the new TACA that some antitrust immunity will be preserved for conferences but without their biggest strategic advantage, price fixing, conferences need to redirect their resources to managing supply (for example, taking some ships out of the trade) instead of setting rates and carriage conditions. That shift is particularly difficult for liners because of five variables, most of which they have little control over: the size of the world fleet, productivity, shipbuilding production, scrapping and freight/liner rates. Despite these difficulties, conferences remain upbeat, putting their faith in the EU (and the United States) to ensure that they are at least protected from unfair competition from foreign government-controlled vessels and restrictive foreign laws.