

The regulations of shipping conferences in Taiwan referring to the EU to repeal the block exemption for liner conferences

Liner
conferences

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Abstract

Purpose – The first well-known liner shipping conference was created for the UK/Calcutta trade in 1875. However, the European Union (EU) decided to abolish repeal the liner conferences system with effect from October 18 2008. This paper aims to study the governing regulations on shipping conferences in Taiwan along with investigating the impact on the EU to repeal conferences. The regulation on liner conferences in the USA is also briefly referred.

Design/methodology/approach – Literature review and questionnaire survey are used to conduct the study. This paper reviews important literature relating to the EU to repeal the conferences system and its impact on liner market competition to/from European trade routes, with discussions on the US and Taiwan regulations on shipping conferences. Questionnaire survey data, collected from published report and this research present shippers' and carriers' responses on the changes of regulations on liner conferences.

Findings – Shippers are strongly supporting the repeal of the conferences system. Academic research results basically reveal that the liner market will be more competitive in the trades to/from the USA and the EU after the repeal of the conferences. For Taiwan, its regulations are rather simple and loosely control over the liner conferences; therefore, if the shipping administration intends to enhance the inspection of the agreements of conferences and strategic alliances, more detailed regulations should be prepared, and the provisions of the EU or USA would be a good reference.

Practical implications – Through the discussions on the legal treatments of shipping conferences from the USA, the EU and Taiwan perspectives, this paper provides shipping researchers with not only a clear evolution of the liner conferences but also a deep understanding of the impact to repeal the conferences on liner market competition.

Originality/value – This paper reviews important literature and related legislations on liner conferences including the USA, the EU and Taiwan. The different responses on the EU to repeal the conferences system from shippers and carriers are discussed. The impact on liner market competition is presented.

Keywords European union, EU, Taiwan, Regulation 4056/86, Liner conferences, Block exemption

Paper type Research paper

1. Introduction

Coalition operation strategies have been common in the liner shipping industry. The cooperative mechanism has been evolved over the past centuries. Many types of mechanisms have been used by ocean transport industry to do business cooperatively or to limit competition. The traditional organization is liner conference. The others are



consortium and strategic alliances that encompass many different arrangements (Chiu, 1996; Yap and Zahraei, 2018). Sturmeiy (1962) defined a conference as:

An association of competing liner owners engaged in a particular trade who have agreed to limit the competition existing among themselves. As a minimum, they will have agreed to charge freight rates or passenger fares for each class of traffic according to an agreed schedule of charges and to show no discrimination between shippers. To the agreement foreswearing all forms of price competition may be, and usually is, added an agreement to regulate sailings according to a predetermined pattern and to recognise the berth rights of other members. A further step may be to add a full pooling agreement under which profits and losses on the trade covered by the conference are shared between the member lines.

It is well known that the first successful shipping conference was the “Calcutta Conference,” which was created for the UK/Calcutta trade in 1875 (Blanco, 2007). A consortia can be defined as “specialized joint ventures encompassing many different arrangements.” The organizational structures and commercial scope of consortia are many and varied. As shown in Table I, consortia agreements range from joint scheduling to equity joint venture. The consortium originated from the UK in the mid-1960s, and only conference members joined its operation. Latterly, consortia operation took place in both conference and independent camps in the 1990s. At the end of 1980s, a kind of new-cooperative mechanism in liner shipping, stabilization (or discussion) agreement emerged; after that, strategic alliances were born and mushroomed subsequently.

The reason for creating liner conferences was to restore profitability and control predatory and cut-throat competition in liner shipping. In the latter half of the 1800s, the widespread introduction of steam propulsion greatly increased the effective supply of shipping services; then, fierce competition took place out of excess capacity. Many factors jointly determine how a conference operates, such as the amount of tonnage on the route and the relative strength of each company, quantity and type of cargo on the route, variety of nationalities involved, length of the route and government’s intervention (Herman, 1983). A consortium is a means to help carriers to raise capital and to operate on a larger scale than before. In other words, through consortia arrangements, an individual carrier may enjoy increasing service frequency and extending port coverage while requiring no more investment on ships. Besides, consortia measures can help maximize asset utilization and help spread the risks of having to add/reduce capacity in line with changing market conditions. Regarding stabilization agreements, most of them positioned themselves as a bridge for both conference and non-conference carriers to discuss common issues of liner business environment, and then try to reach some kind of agreement in view of overcoming liner services operation difficulties (Midoro and Pitto, 2000). Shipping alliances, which can

Types of agreements	Main characteristics
Joint scheduling	Minimal cooperation
Deck chartering	Container/bulk combination
Slot chartering	Piggy-backing
Vessel sharing	Space sharing
Equipment-/chassis-sharing	Equipment sharing
Cost pooling	Cost equalization
Joint venture	Single marketing

Table I.
Types of consortia
agreements

Source: Chiu (1996)

be loosely referred to a cooperative operational agreement between two or more liner carriers, are another rational responses to practical problems faced by the ocean shipping industry (Tang and Sun, 2018)

Because of the European Union (EU) officially repealed the block exemption for liner shipping conference on October 18, 2008, it marks a big change of regulatory body's thinking and attitude toward to cooperation mechanism of liner shipping. Thus, this paper aims to study the governing regulations on shipping conferences in Taiwan along with investigating the evolution of EU competition block exemption for shipping and the impact on the EU to repeal conference system; in addition, an empirical study is conducted to present carriers' opinions responding to the EU repealing the conference system. The organization of this paper is as follows. First, a short introduction of the shipping conferences is presented. Then, the reasons why the shipping conference is existed for more than 130 years are reviewed. Section 3 of this paper will discuss the shipping conference under EU antitrust law. Fourth, we investigate the responses from the industries, including those opinions from shippers and carriers. Fifth, the regulations and carriers' opinions on shipping conference are explored. Finally, a conclusion and discussion are presented.

2. The opinions to support and oppose liner conferences

The existence of shipping conferences, which are among the earliest cartels in international trade (Marx, 1953), has always been a controversial issue. However, there has been no consensus in theory and practice, despite a pile of literature discussing on this topic. Table II presents those opinions that are for and against the conference system. Indeed, liner conference was scrutinized by political entities in Europe and North America in 1900s. The most often quoted official investigations are: the 1906 Royal Commission on Shipping Rings (RCSR) of the UK, the 1912 Alexander Committee of the USA and the 1967 Committee of Inquiry into Shipping (which is often called "the Rochdale Committee") of the UK. All the official investigations did not immediately decide to eliminate the conference system from the liner shipping market, although there were some different opinions between them (Chiu, 1996).

The majority report of the RCSR made the following recommendations: the advantages of the conference system, including deferred rebates, were great; and the conferences did not enjoy excessive power in their markets; if such a situation was to arise, it could and must be prevented to avoid abuses. The report also cited in particular three limits on the

Support	Oppose
1. It provides a stable, regular and coordinated services	1. It artificially raise freight rates by restricting competition and overriding market forces
2. It controls capacity efficiently and, thus, minimizes costs	2. It induces commercial inertia by protecting the most inefficient members
3. It covers the whole trade, including uneconomic cargoes and locations	3. It is bureaucratic, costly and unresponsive to change
4. It maximizes trade potential by cross-subsidization of cargo	
5. It offers stable freight rates which permit shippers to make forward sales with confidence	
6. It offers security to carriers for capital investment	

Source: Drewry Shipping Consultants (1991), pp. 17-18

Table II.
The opinions to support and oppose liner conferences

monopolistic power of the conferences: first, the outside competition of tramps and independents; secondly, the inside competition between conference members in the provision of facilities and service, and sometimes even the quoting of rates; and thirdly, the common action taken by shippers (Marx, 1953, p. 62). The majority report continued recommending the publication of tariff and provision for collective bargaining with recognized shippers' council. The minority report, however, favored more rigorous scrutiny on conferences from the Board of Trade and Parliament (Great Britain, 1909, pp. 114-6).

The Alexander Committee, in general, supported conferences as a necessary means of regulating competition to avoid the wastefulness of the price wars; however, the committee also acknowledged that conference system was an organization with some monopoly power and was convinced that "all monopolies are liable to abuse" (United States, 1914, p. 108). With respect to foreign trade of the USA, the committee proposed the following measures for eliminating the abuses and disadvantages which were inherent in conferences through effective government control:

- agreements between shipowners, and all matters relating to the control of freight rates, should be subject to supervision by the Interstate Commerce Commission (ICC);
- all agreements, understandings or conferences, and modifications thereof, should be registered and filed with the ICC, which should be empowered to order their cancellation in whole or in part whenever they were found to be discriminatory or unfair or detrimental to the commerce of the USA;
- rebates on freight rates and other discrimination between shippers should be made illegal;
- the ICC should be empowered to investigate complaints regarding, inter alia, the unreasonableness of rates and discriminatory practices and to commence proceedings on its own initiative in such cases;
- the use of "fighting ships" and deferred rebates should be prohibited in both the export and the import trade of the USA, and carriers should be prohibited from retaliating against shippers for any reason; and
- adequate penalties should be established to correct and prevent the abovementioned abuse (Alexander Report, 1914, pp. 419-21), cited by Marx (1953, pp. 65-66).

These suggestions were enacted into law in the Shipping Act of 1916, which allowed the formation of open conference, but outlawed the malpractices in the conference system such as fighting ships, deferred rebates, retaliation against a shipper for any reason by refusing or threatening to refuse shipping space and unfair or discriminatory contracts with shippers.

Compared to the above two enquires, the Rochdale Committee was more strongly in favor of the conference system. It concluded that "the 'closed' conference with fully rationalized sailings therefore appears to us most likely to serve the best interests of both shippers and shipowners." (Great Britain, 1970, p. 132) At that time, those British gentlemen were also convinced that:

[...] the 'open' conference appears least likely to serve the interests of shippers. It is also least likely to serve that of shipowners; in their evidence to us they agreed that such a conference agreement typically resulted in low factors, low profits, and rising freight rates (Great Britain, 1970).

According to a recent study, Tang and Sun (2018) pointed out that shipping conferences and alliances are a kind of anti-competition conducts in liner shipping.

3. Shipping conferences under European Union competition law

Under normal circumstances, a liner conference is a kind of business cartel and should be regulated by antitrust laws (in the USA) or competition rules (in the EU). However, liner conferences have enjoyed the so-called block exemption from competition regulation in considering the special characteristics of liner shipping services. Because of the amendment of the EU competition law, the previous Articles of 85 and 86 of the Treaty of Rome were replaced by Articles 81 and 82 treaty establishing the European community (TEC); again, with effect from December 1, 2009, Articles 81 and 82 TEC have become, respectively, Articles 101 and 102 treaty on the functioning of the EU (TFEU) (European Commission, 2012). For the convenience of writing, this paper will cite these articles interchangeably as they then were used.

3.1 European Union competition rulings on liner conferences

Articles 81 and 82 TEC laid down the EU competition rules for all business sectors; Article 81 details the prohibition of agreements to restrict competition, and Article 82 is about prohibition of abuse of a dominant position.

Article 81 TEC provides as follows:

- (1) *The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of 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:*
 - *directly or indirectly fix purchase or selling prices or any other trading conditions;*
 - *limit or control production, market, technical development, or investment;*
 - *share markets or sources of supply;*
 - *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantages; and*
 - *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.*
- (2) *Any agreements or decisions prohibited pursuant to this article shall be automatically void.*
- (3) *The provisions of paragraph 1 may, however, be declares inapplicable in the case of:*
 - *Any agreements or category of agreements between undertakings;*
 - *Any decision or category decisions by associations of undertakings; and*
 - *Any concerted practice or category of concerted practices.*

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:

- impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objects; and
- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the production in question.

This Article therefore lays down: a principle of prohibition (Article 81(1)), subject to possible exceptions (Article 81(3)) and rendering automatically void certain agreements and restrictive practices (Article 81(2)) (Blanco, 2007, pp. 119-120).

Article 82 TEC provides as follows.

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- *directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- *limiting production, markets or technical development to the prejudice of consumers;*
- *applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and*
- *making 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.*

Article 82 TEC does not provide a possibility of exemption as Article 81(3) does. The elements that must be established in order for the prohibition of Article 82 to be deemed to apply are:

- *the existence of one or more undertakings;*
- *the existence of a dominant position within the Common Market or a substantial part of it;*
- *an abuse of the dominant position; and*
- *an effect on trade between Member States* (Stamatiou and Panayiotis, 2009).

The ruling prohibits an enterprise or enterprises to abuse its or their dominant position within the market of European Community (EC). A dominant position stems from market power held by liner shipping companies on the relevant market. Market power is defined as an ability to raise tariff rate levels and affect the range and quality of shipping services supplied to shippers, the process of innovation or other parameters of competition on the market for a significant period. For liner shipping, market power is presented with high fixed costs, relatively high concentration and tariff rate levels significantly above the marginal cost of production (Pozdnakova, 2008, p. 251). In addition, the market power of a liner shipping company consists in its ability to deviate profitably from marginal cost pricing, so that marginal cost level would be the most appropriate base from which to measure the market power of a given company. Considering the marginal cost and firm's elasticity of demand are practically impossible to measure directly as well as the positive correlation of market power and market share, it is appropriate to apply market share as a proxy for market power (Hovenkamp, 2005, p. 81). Article 82 EC does not lay down any express criteria to determine that a company's market power has reached the degree of dominance. The previous cases decided by European Court of Justice indicated that whether a liner carrier or a group of carriers holds a dominant position on the market can be measured by two factors: size of market share and degree of competition faced by the company (Pozdnakova, 2008, pp. 252-53).

Article 81 and 82 TEC, together with Regulation 139/2004 (the EC Merger Regulation), form an integral part of the EC legal system directed at ensuring that competition on the common market is not distorted. The treaty does not lay down any hierarchy between these

rules. Although they are independent provisions, in principle aimed at regulating different situations, they are also complementary, and have the same objective, namely, the maintenance of effective competition on the common market at different levels (Blanco, 2007, p. 412).

3.2 Block exemption for liner shipping conferences

According to Blanco (2007), maritime policy of the EC started to develop in 1974 and was shaped by three main objectives: the promotion of safety at sea, the protection of community fleets against unfair practices by shipowners of third countries and acceptance of the system of shipping conferences in liner trades as a way of organizing the market. As regards Regulation 4056/86, the greatest impetus for reaching an agreement which permitted the application of competition rules to maritime transport came from outside the EU. The most important event for the adoption of provisions implementing ex Articles 85 and 86 of the Treaty of Rome in maritime transport was the approval in Geneva, on April 6, 1974, of the United Nations Convention on a Code of Conduct for Liner Conferences (UN Liner Code). Considering not to infringe upon member states' right to ratify Liner Code, the EU passed the Council Regulation 4056/86. Except for the influence of Liner Code, the success story of liner conferences also had its basis in economic theory. It was argued and accepted that liner conferences were necessary to secure stability of trade. Due to price competition that would have undermined the stability of maritime trades, liner shipping companies must not be subjected to cartel prohibitions (Munari, 2009).

Council Regulation (EC) No 4056/86 (the so-called "block exemption for liner shipping conferences") of December 22, 1986, laid down detailed rules for the application of Articles 85 and 86 (now 81 and 82 TEC) of the Treaty of Rome to maritime transport. According to the study of Bredima-Savopoulou and Tzoannos (1990), the purpose of Regulation 4056/86 as set forth in the preambular paragraphs is to steer a middle course between two evils: undue distortion of competition within the common market by a complete *laissez faire* attitude and excessive regulation of the maritime transport. Some reason and characteristics promoted the adoption of the competition rules. First, it is the misgivings expressed by developing countries in the 1970s about the functioning of the conference system; it is also the result of the Regulation 954/79 concerning ratification or accession by the EC member states to the UN Liner Code. Secondly, the Regulation 4056/86 attempts to steer a middle course between conflicting interests of liner conferences and shippers. The result of this regulation is group exemption to liner conferences couched in the widest possible terms, i.e. a very generous treatment of liner conferences unprecedented in other fields of competition law of the EC. Finally, while its detailed procedural part is a verbatim reproduction of Regulation 1017/68 for applying rules of competition to transport by rail, road and inland waterway, the substantive law of Regulation 4056/86 takes into consideration the particularities of maritime transport.

The Regulation 4056/86 consists of some lengthy preambles and 27 articles. Its major content are as follows:

- scope of application (Article 1);
- technical agreements (Article 2);
- exemptions (Articles 3 and 6);
- condition attaching to exemption (Article 4);
- obligations attaching to exemption – loyalty arrangements (Article 5);
- monitoring of exempted agreements (Article 7);

- effects incompatible with Article 86 (now 82) of the treaty (Article 8);
- conflicts of international law (Article 9);
- procedural rules (Articles 10-27);
- liaison with the authorities of the member states (Article 15);
- requests for information – investigation (Article 16);
- fines – periods penalty payments (Articles 19 and 20); and
- entry into force (Article 27) (Bredima-Savopoulou and Tzoannos, op. cit., pp. 180-192).

The Regulation 4056/86 provides, under certain conditions and obligations, for a so-called “block exemption” for agreements, decisions and concerted practices of all or part of the members of one or more liner conferences, as defined in Article 1(3)(b) of the regulation, that have as their objective the fixing of rates and conditions of carriage, and that, in addition, cover one or more of the following forms of cooperation:

- the co-ordination of shipping timetables, sailing dates or dates of calls;
- the determination of the frequency of sailings or calls;
- the co-ordination or allocation of sailings or calls among members of the conference;
- the regulation of the carrying capacity offered by each member; and
- the allocation of cargo or revenue among members ([Commission of the EC, 2004](#)).

3.3 European Union decision to repeal the block exemption for liner shipping conferences

As happens for many human matters, the antitrust regime for liner shipping cannot last forever. Two massive changes in international liner shipping altered the conditions for opposing the application of competition rules to liner conferences since the second half of the 1980s. The first is the advent of containerization in liner shipping which brought about a substantial concentration in the market through the mergers and acquisitions process and new forms of cooperation among shipowners (such as the so-called consortia or stabilization agreements). The second is the liberalization in international trade which affected liner shipping companies and their claim to carry a portion of their national trade; more generally, it fostered a historical and political context which was quite different from that in which the UN Liner Code had been devised and adopted ([Munari, 2009](#)). These factors jointly promoted the European countries reconsidering whether to eliminate the antitrust exemption for liner conferences.

The EC competition rules are modeled on the presumption that competition provides the best services to the consumer at the most affordable prices. However, the block exemptions for liner conferences from the EC competition rules had been attacked seriously, especially from the shippers’ group (the European Shippers’ Council) ([Van der Jagt, 2010](#)). Another decisive factor in the renewed impetus of transport competition policy was the creation in 1987 of the Transport Division of the Directorate General for Commission (the so called DG IV or DG Comp) of the EC ([Blanco, 2007](#)). In consideration of the liner shipping market has changed since the adoption of Regulation 4056/86 for 18 years, the EC started review process in March 2003 on whether “block exemption” for price fixing and capacity regulation by liner conferences was still justified under Article 81 TEC. The main objective of which was to ascertain whether the policy assumptions supporting the original exemption were still valid. The block exemption was justified on the assumption “that conferences bring

stability, ensuring exporters reliable services which cannot be achieved by less restrictive means.” But, by March 2003, following a number of court cases challenging how the block exemption was to be interpreted, DG Comp’s view was that the liner shipping industry had changed considerably since 1986, and Regulation 4056/86 was overdue for review (Benini and Bermig, 2006).

During the course of its review of the block exemption, DG Comp focused on the four conditions listed in Article 101(3) TFEU that were required for any exemption from competition law:

- *Condition one – efficiency gains:* The exemption must contribute to improving the production or distribution of goods or to promoting technical or economic progress (in this case, stability of freight rates and reliability of service) in ways that flow from (i.e. have a direct causal link to) a conference’s price setting and capacity regulation.
- *Condition two – fair share for consumers:* Any economic benefits achieved by the restriction of competition (i.e. a conference’s rate setting or capacity management activities) must be fairly shared with consumers.
- *Condition three – restrictions are indispensable:* The exempted conduct must be *indispensable* to achieving the presumed benefits (stable rates and reliable service) flowing from conference price setting or capacity management. That is, no less restrictive way of achieving the presumed benefits is available.
- *Condition four – no elimination of competition:* Conference lines must remain subject to effective competitive constraint (i.e. competition among carriers cannot be eliminated in a substantial part of the market).

After many years’ consultations and discussions with stakeholders and coupled with many studies done by academics and experts, DG Comp’s findings, listed by the relevant Article 101(3) TFEU conditions, were:

- *Condition one:* The carriers had not provided data showing that actual freight rates had been stable, or that rate setting via the conference tariff or conference capacity management efforts had contributed to rate stability or service reliability. DG Comp, after adopting a definition of price stability as “the maintenance of freight rates at a more or less constant level by liner conferences, in accordance with a set structure over a substantial period of time,” asserted that “with or without conferences there is rate volatility” (Benini and Bermig, 2006, p. 45).
- *Condition two:* DG Comp asserted that, even though member lines did not enforce the conference tariff, the existence of published conference rates provided a “benchmark” for member line’s use in setting individually negotiated contact rates. Such “benchmarks” were said to result “in a reduction of shippers’ negotiating power.” In addition, the listing of surcharges and ancillary charges in a conference’s tariff, charges which were subsequently adopted by non-conference lines as well, resulted in there being no price competition between conference members and non-conference members for this part of the trade.
- *Condition three:* DG Comp noted the growth of operational arrangements such as consortia and alliances that did not involve common pricing and pointed out that such consortia and global alliances supported operational efficiencies. In effect, DG Comp suggested that such non-price setting operational agreements combined with the wide use of service contracts were the real sources of any relative service and

rate stability in EU trades, and consequently represented a less anti-competitive way to accomplish the policy goal of the liner block exemption.

- *Condition four*: DG Comp determined that while it appeared that the fourth condition of Article 101(3) TFEU was being fulfilled – that is, competition was not being eliminated from the market – the review’s previous findings (e.g. no clear benefits, restrictions on shipper negotiating power due to tariffs’ benchmark effects and a lack of competition on surcharges) and the increasing links among carriers via operational agreements made it necessary to evaluate the effectiveness of competition on a case-by-case basis rather than endorse a broader block exemption.

While the first finding alone (i.e. no evidence of benefits from allowing carriers collectively to propose common rates or manage capacity) would, in principle, have been enough to support a recommendation to end the exemption, DG Comp strengthened its argument for repeal by claiming shippers were being harmed and the existence of a less anti-competitive alternative to conferences (FMC, 2012, p. 10). The EU then made decision to pass Regulation 1419/2006 in October 2006 to end the block exemption from competition for liner conferences.

Munari (2009) especially pointed out the importance of the study by the Organization for Economic Co-operation and Development (OECD) and its publication of *Competition policy in liner shipping* in 2002, which created a huge influence on EU’s decision on applying competition policy to liner shipping. One piece of the OECD report concluded that:

It is more difficult to perceive in which manner liner shipping is more “unique” than any other industries, or why it should be treated more favourably or even differently from other transport providers with respect to price-fixing and rate discussion (OECD, 2002).

Regulation 1419/2006 repealed Council Regulation 4056/86 of December 22, 1986, on the application of Articles 81 and 82 TEC to maritime transport containing the liner conference block exemption which allowed shipping lines meeting in liner conferences to fix rates and other conditions of carriage, as the conference system no longer fulfils the criteria of Article 81(3) TEC. The repeal of the block exemption takes effect as of October 18, 2008. Thereafter, liner carriers operating services to and/or from one or more ports in the EU must cease all liner conference activities which are contrary to Article 81 TEC. 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 81 TEC as of October 18, 2008 (Commission of the EC, 2008).

3.4 The possible issues for the European Union action

During the review of Regulation 4056/86, Chuah (2005) pointed out that in the development and provisions of the EC competition law in liner shipping was lack of consistency in approach and would cause some uncertainties on emerging liner practices. For example, inland price fixing by conferences was not permitted. Due to the prevalence of multimodalism in international trade, the effectiveness of EU regulations would be undermined if it held not to apply to multimodal transport services. The US, Canadian and Australian laws allowed conferences to fix prices on inland multimodal transport. Also, the requirement of liner conference being characterized by “uniform or common rates” was outmoded because modern conference practice has moved on to either “independent rate action’ or “service contracts.” In addition, a closer cooperation between the EU and other jurisdictions to discuss how best liner conferences should be regulated was necessary.

Since the EU took radical action to repeal the Regulation 4056/86, the EU Commission also made it clear that, after October 18, 2008, liner conferences operating between trades to and from the member states shall become illegal. Still, people questioned any room would be left for arrangements restricting competition in liner shipping trades. [Munari \(2009\)](#) summarized some important points:

- horizontal agreements among undertakings are always very difficult to justify under the EC competition law; the exception of the block exemption for consortia will fall within the general regime established by Article 81(3) TEC;
- vertical agreements will not raise any concerns as long as they do not touch on issues of dominant position or affect the access to port infrastructures for other shipping lines;
- more uncertain is the evaluation of information exchange. The past cases confirmed that liner shipping companies were not permitted to exchange their pricing or commercial policies and to announce them in public; and
- from the competition law point of view, if non-EU shipping lines operating on European routes claim to be protected by the UN Liner Code, then significant problems may arise.

Unlike the implementation of the US Shipping Act of 1984 which forced the closed conference system should be changed as open conference when engaging in US trades, the European Economic and Social Committee urged for a more complete assessment of the whole matter, instead of only considering the issue from the competition policy perspective.

3.5 Maritime transport services fully apply to European Union competition rules

Following the repeal in 2006 of an antitrust exemption for liner conferences (i.e. agreements between liner shipping companies on common terms and conditions, including fixing prices and other conditions of carriage), the commission adopted the sector-specific maritime guidelines in July 2008 (i.e. Guidelines on the application of Article 81 TEC to maritime transport services (OJ C245/2, 26.9.2008)). The guidelines set out the principles used by the commission when defining markets and assessing cooperation agreements in the maritime transport services sectors, particularly information exchanges between competitors in liner shipping. The initial purpose was to facilitate the transition from a specific to a general competition regime for maritime transport after the nullification of block exemption for liner conferences discussed previously. The commission announced on February 19, 2013, it will not extend or renew its specific guidelines on the application of EU antitrust rules to maritime transport services. The 2008 guidelines expired on September 26, 2013; following their expiry, the commission's general, non-sector specific guidelines will apply to maritime transport services (King and Wood Mallesons, 2013).

A public consultation launched in May 2012 has confirmed to the commission its preliminary view that specific antitrust guidelines in the maritime transport sector are no longer needed. Allowing these specific guidelines for maritime transport services to lapse was in line with the commission's general policy of phasing out sector-specific rules. The commission also noted that the maritime guidelines overlap with other more recent general antitrust guidelines, such as on horizontal cooperation agreements. As a result, from September 26, 2013, maritime transport services will no longer be subject to sector-specific guidelines, but to the general guidelines that are applied to all sectors. These include the following ([Bentley et al., 2013](#)):

- guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements, published in 2011 (OJ C11/1, 14.1.2011).
- guidelines on the application of Article 81(3) TEC, published in 2004 (OJ C101/97, 27.4.2004).
- commission notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) TEC, published in 2001 (OJ C368/13, 22.12.2001).
- Commission notice on the definition of the relevant market for the purposes of (EU) competition law, published in 1997 (OJ C372/5, 9.12.97).

Although in theory, the sector-specific guidelines (on the application of Article 81 TEC to maritime transport services) have ceased to be applicable after September 23, 2013, it could still be useful to consult them after that date because they provide examples of how the general guidelines apply to certain, specific situations that arise in the maritime shipping sector. The important subjects contained in the guidelines are:

- ascertaining an effect on trade between the member states;
- ascertaining the relevant market;
- calculation of market share;
- horizontal technical agreements;
- horizontal information exchanges in the liner shipping sector; and
- pools in tramp shipping (Stamatiou and Panayiotis, 2009).

3.6 European Union block exemption for shipping consortia agreement

Considering the cooperative mechanism for liner carriers has been evolved from conference system into consortia (or strategic alliances), the “consortia block exemption” from EU competition regulation is still maintained after October 18, 2008, when the block exemption for liner shipping conferences was nullified. Article 81(3) TEC expressly provides for the possibility to exempt not only individual agreements, but also categories of agreements from the prohibition rule of 81(1) TEC. Joint ventures in liner shipping that benefit from the block exemption are liner consortia. Joint ventures of liner shipping companies that comply with the terms and conditions of the consortia block exemption do not need to prove applicability of the four criteria of Article 81(3) TEC on an individual basis, but need only conform to the requirements of the block exemption (Pozdnakova, 2008, p. 199). The “consortia block exemption” was first adopted by the EU Commission in 1995 (the code name is: Commission Regulation 870/95 of April 20, 1995, on the application of Article 85(3) TEC to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation 479/92). The commission provided the reason why the “Consortia Block Exemption” was adopted due to:

[...] consortia generally help to improve the productivity and quality of available liner shipping services by reason of the rationalization they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilization of port facilities; they also help to promote technical and economic progress by facilitating and encouraging greater utilization of containers and more efficient use of vessel capacity.

The above rulings were then replaced by Regulation 823/2000, which was subsequently renewed by Regulations 463/2004 and 611/2005. The current law of consortia block exemption is Regulation 906/2009 adopted by the commission on September 28, 2009, which

entered into force on April 26, 2010, and will apply until April 25, 2015, with the possibility of prolongation (Prisker, 2010).

According to the International Transport Forum (2018), the 2009 regulation (i.e. Regulation 906/2009) provides considerably more leeway to consortia than the previous regulation (i.e. Regulation 870/95), in particular on the following elements (Table III):

- *Joint capacity adjustments.* In the revised (2009) regulation, consortia have more freedom to make joint capacity adjustments. In the 1995 regulation, joint capacity planning is only allowed in case of temporary capacity adjustments; in the 2009 regulation, this has changed into “capacity adjustments in response to fluctuations in supply and demand,” which potentially provides for a much broader application. Moreover, the 1995 exemption regulation that prohibits consortia to jointly arrange the non-utilization of existing capacity no longer applies in the 2009 regulation.
- *Price discrimination.* The 1995 regulation stipulates that consortia and consortia members shall not cause detriment to ports, users or carriers by applying different rates and conditions according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified. Such a section is absent from the 2009 regulation.
- *Obligation to consult transport users.* The 1995 regulation stipulates that there be real and effective consultations between transport users (or their representative organizations) and the consortia, for the purpose of seeking solutions on all important matters concerning “conditions and quality of scheduled maritime transport services offered by the consortium or its members.” These consultations shall take place whenever requested by one of the parties. The regulation sets out the procedure of these consultations and also gives the commission the right to request consortia members to demonstrate that conditions and obligations in the regulation are still met. Such an obligation is absent from the 2009 regulation.
- *Possibility of withdrawal of the exemption.* The 1995 regulation mentions the possibility of withdrawal of the block exemption in case of ineffective competition and insufficient consultations with transport users. Such a possibility of withdrawal in individual cases of noncompliance is absent from the 2009 regulation.

Characteristics	1995 Regulation	2009 Regulation
Applied:	1995-2010	2010-2020
Maximum market share	30% for consortia in conference. 35% for non-conference consortia	30%
Joint capacity planning allowed for	“Temporary capacity adjustments”. Joint arrangements of non-utilization of existing capacity are excluded	“Capacity adjustments in response to fluctuations in supply and demand”
Other conditions for consortia/liners	Not “cause detriment to certain ports, users or carriers by applying to the carriage of the same goods . . . , rates and conditions which differ according to country of origin or destination or port of loading or discharge . . .”	No other conditions
Obligations for consortia	To conduct real and effective consultations between transport users (or their representatives) and consortia	No explicit obligations

Table III.
EU consortia block exemption regulation: 1995 and 2009 versions

Source: ITF, 2018

As the Consortia Block Exemption Regulation will expire on April 25, 2020, the EU Commission has launched a consultation seeking to collect views from stakeholders to assist the commission's assessment of the impact and relevance of the Consortia Block Exemption Regulation and to provide evidence for determining whether it should be left to expire or prolonged, and if so, under which conditions (European Commission, 2018). The report indicated that the International Transport Forum (ITF) was seemingly not to prefer the extension of the EU block exemption for shipping consortia agreement after April 2020. ITF (2018) also pointed out some negative impacts caused by shipping alliances, such as: alliances have allowed carriers to acquire and operate mega-ships to reduce unit costs but fuelled overcapacity; alliances have also made the container transport offer more uniform and limited the possibilities of carriers to differentiate themselves; alliances have contributed to lower service frequencies, fewer direct port-to-port connections, declining schedule reliability and longer waiting times, which resulting in the increased total transport times and delivery uncertainty for various shippers, leading to higher inventory and buffer costs; alliances have proved to be inherently instable; considering that all major carriers are in alliances, changes in one alliance can have an impact on the whole sector; and alliances contribute to concentration of port networks and bigger cargo shifts from one port to another when alliances change port networks; within ports, the buying power of the alliance carriers can create destructive competition between terminal operators and between other port service providers such as towage companies. This can lower the rates of return on investment for the port industry, resulting in the decline of smaller container ports and the disappearance of smaller independent terminal operators, as well as towage companies.

4. The influence on shipping industries

From the regulatory viewpoint, the possible conflict of laws mentioned in Section 3.4 should await the cases occur. For this paper, we study how the shipping markets and carriers will be influenced because the EU banned the conference system. The impact was presented by analyzing the opinions collected from shippers and carriers. The shippers' opinions on the abolition of shipping conference's operation by the EU were quoted from the partial results of shippers' survey conducted by Containerization International (CI) in 2008 (before the conference system was banned) and 2009 (after the conferences were formally lifted). The carriers' opinions were collected by this study through a questionnaire survey conducted in 2011.

4.1 Shippers' responses

4.1.1 *Shippers' opinions before liner conference is abolished in European Union trades.* In November 2008, CI published its annual shippers' survey results, where some questions discussing about how shippers' responses to the shipping conferences to be banned by the EU. The first question handles about what things the substitute association of liner shipping conferences will be allowed to do. Facing the EU action to abolish the liner conference, European Liner Affairs Association (ELAA) was set up in 2003 to discuss with the EU's Directorate General for Competition (DG Comp) the replacement of the Liner Conference regime in the EU. ELAA was closed since July 1, 2010, and transferred its responsibilities to the World Shipping Council (WSC). As shown in Table IV, the majority of shippers agreed that shipping trade association can be allowed to:

- consolidate each member' cargo liftings;
- consolidate and publish details of each members' historic vessel capacity adjustment in each tradelane; and

- consolidate members' actual freight rates achieved between the major port pairs and then publish freight indices.

Nevertheless, nearly half of shippers (48.5 per cent) still cast some doubts on the publication of freight index by carriers' association. Regarding the operation of carriers' trade association, shippers were concerned about the following points:

- there is no problem to consolidate carriers' operational data such as liftings, vessel capacity or freight index; however, carriers will not allow to conduct group discussion on these information;
- carriers' trade association should not be permitted anything in addition to what is possible within a free market environment; and
- the collected industrial data should be available to both carriers and shippers.

If possible, the data are better be compiled by independent bodies, such as UNCTAD (United Nations Conference on Trade and Development) or customs, etc.

The issue is whether or not ocean carrier conferences should be banned elsewhere. The answer is positively confirmed. Over two-thirds of bigger shippers (with annual cargo volume over 1,000 TEU) agreed that liner conferences should be banned in the rest of the world (Table V). The small shippers are not so sure about to abolish all liner conferences outside the EU area. Shippers do not like carriers to dominate the market through liner conference system. However, they hope carriers to provide abundant slot for carrying

Question 1: Ocean carrier conferences are due to be banned in the EU on October 18, 2008. Afterward, do you believe that their trade association should be allowed to:

	Yes (%)	No (%)
a) Consolidate each members' cargo liftings so that more accurate cargo flow forecasts can be established?	69.7	30.3
b) Consolidate and then publish details of all members' historic vessel capacity adjustments in each tradelane, enabling them to know how full their vessels are likely to be after taking into account public cargo flow forecasts?	62.7	38.6
c) Consolidate members' actual freight rates achieved between the major port pairs and then publish indices to show overall port-to-port pricing trends?	51.5	48.5

Table IV. Shippers' opinion on what things the carrier's association can do after conferences to be banned in 2008

Source: [Beddow \(2008\)](#)

Question 2: Do you think that ocean carrier conferences should be banned in the rest of the world?

Size of shipper (categorized by import/export per year)	Yes (%)	No (%)
0-500 TEU	54.5	45.5
501-1,000 TEU	42.9	57.1
1001-5,000 TEU	76.9	23.1
5001-10,000 TEU	75.0	25.0
Over 10,000 TEU	88.9	11.1
Total	74.3	25.7

Table V. Shippers' opinion on the carrier conferences should be banned in the rest of the world

Source: [Beddow \(2008\)](#)

imports/exports. [Table VI](#) presents that over 86.3 per cent of shippers concurred with EU to allow the improving operation of shipping consortia after conferences were banned on October 18, 2008. Worried about the shipping consortia to strongly control the market, more than half of shippers (52.1 per cent) were against the maximum trade share for consortia in each tradelane to increase from 35 to 50 per cent.

4.1.2 Shippers' opinions after liner conference is abolished in European Union trades. Around one year after the EU formally nullified the liner conferences, CI published its shippers' survey and revealed some investigation on shipping conferences ([Dixon, 2009](#)). Two questions dealt with the impact of the ban on liner conferences in EU trades and how this might have changed carrier's behavior. The enquiry focuses on exploring that opening up market to greater competition might improve customer service functions and pricing responsiveness. [Table VII](#) shows that less than 16 per cent of shippers indicated that liner carriers were making "noticeable and significant change" to be more customer

Question 3: Once conferences are banned in the EU, ocean carriers want the way that they are allowed to cooperate together in consortia to be improved. Should they be allowed to exchange slots with other consortia in the same tradelane, to provide you with a better market coverage?

Yes	No
86.3 %	13.7 %

Table VI.
Shippers' opinion on can the EU allow the improving operation of shipping consortia after conferences to be banned in 2008

Question 4: Should the maximum trade share of 35% automatically allowed by each consortia in each tradelane be increased to above 50% to enable better economies of scale to be achieved?

Yes	No
47.9 %	52.1 %

Source: [Beddow \(2008\)](#)

Question 1: Liner conferences were banned in the EU in October last year. Since then, have ocean carrier become:

A. More customer-focused?

No change	42 %
Limited change	21 %
Some change	21 %
Noticeable change	7 %
Significant change	9 %

B. More transparent with their pricing?

No change	23 %
Limited change	40 %
Some change	25 %
Noticeable change	12 %
Significant change	0 %

C. More competitive?

No change	13 %
Limited change	19 %
Some change	34 %
Noticeable change	28 %
Significant change	6 %

Table VII.
Shippers' opinion on carriers' behaviors after liner conferences are officially banned

Source: [Dixon \(2009\)](#)

focused. In addition, more than 63 per cent of shippers perceived “limited and no change” on carriers’ practice to be more transparent with their pricing. Regarding the competition between liner carriers after the EU banned the conferences, shippers did perceive more competitive situation occurred in liner market because 68 per cent of them recorded at least some change. There are difficulties to discern shippers remained unimpressed on carriers’ behavioral change and more intensive competition was due to the 2008 financial crisis, resulting in the massive global economic recession in 2009 or the EU abolishing the conference system in October 2008. Despite the ambiguity surrounding the impact of the EU ban on conferences, 74 per cent of shippers felt that they should be abolished in the rest of the world (Table VIII). The results shown in Tables V and VIII indicate that shippers are quite consistent with the opinions to call nullifying liner conferences system all over the world.

4.2 Carriers’ opinions on the conferences issue in Taiwan

To understand how carriers responding to the EU banned the liner conferences system, this study conducted a questionnaire survey in November 2011 in Taiwan after three years the EU invalidated the shipping conferences (Chiu *et al.*, 2012). Due to the limited numbers of international liner carriers operated in Taiwan, totally 31 copies of useable questionnaire were collected. Over two-thirds (67.8 per cent) of the responded companies established more than 20 years, and 38.7 per cent of the respondents have working experience more than ten years in this industry (Table IX). Thus, we believe the respondents are familiar with the

Question 2: Based on this experience, do you think that liner conferences should be banned in the rest of the world?

Yes	No
74 %	26 %

Source: Dixon (2009)

Table VIII.
Shippers’ opinion on liner conferences should be banned in the rest of the world

Profile information	No. of respondents (<i>n</i> = 31)	(%)
<i>Job title</i>		
Director and above	8	25.8
Manager	16	51.6
Non-managerial or specialist	7	22.6
<i>Working experience</i>		
<3 years	8	25.8
3 to approximately 10 years	11	35.5
>10 years	12	38.7
<i>Firm’s age</i>		
<10 years	6	19.3
11 to approximately 20 years	4	12.9
>21 years	21	67.8

Source: Compiled by authors

Table IX.
Profile and respondents and companies

shipping markets and fully understand the conferences system. In addition, the design of questionnaire is more focused on exploring the influence on market side, instead of legal aspect problems.

As shown in [Table X](#), five aspects are discussed, including influence on:

- (1) overall liner conference system;
- (2) European tradelane;
- (3) Far East/North American tradelane;
- (4) shipping services; and
- (5) Taiwan's ruling system.

Carriers' opinions on these five aspects will be detailed in the following. First, regarding the influence on liner conference system, over 60 per cent of carriers agreed that two aspects will be greatly impacted, including the global liner conference system and promoting the use of other cooperative agreements (e.g. consortia arrangements). Around 22.6 per cent of them did not think the carrier's monopoly power in the market will receive more restrictive due to the EU banning the liner conferences.

Second, due to the EU abolishing the conference system, more than two-thirds of carriers agreed that European tradelanes will be influenced on the following points:

- freight rate fluctuation more frequently;
- more competition for container carriers; and
- market share for median to small liner carriers.

Third, discussing the influence on Far East/North American trade routes, over 40 per cent of carriers agreed that the freight rate will fluctuate more frequently and competition between container carriers will be more intensive. Besides, market share for median and small carriers will receive more impact. Fourth, regarding the impact on shipping services, some important points are as follows:

- nearly half of the carriers (48.4 per cent) disagreed that EU to abolish liner conferences would cause negative influence on shipping service reliability; 35.4 per cent of them also disagreed that it would cause positive impact;
- about 38.7 per cent of the carriers agreed that liner service quality and innovation would be positively influenced; nevertheless, still more than one-third (32.3 per cent) of the carriers did not agree that it would cause positive influence; and
- majority of the carriers (61.4 per cent) indicated that removing liner conferences in the EU would cause disadvantages for median and small carriers.

Finally, considering the impact on conference ruling system in Taiwan, majority carriers (70.9 per cent) agreed that government authorities should not intervene in the operation of liner conferences. Interestingly, more than one-third of the carriers disagreed Taiwan government to follow the EU's action to abolish the liner conferences system; more than one-third of them also disagreed the government to change regulations governing the conferences or consortia arrangements.

Due to lack of strong shippers' council, it is difficult to sum up opinions from shippers. The shippers' benefit will be protected by government from proposing a balanced system in the Shipping Act to prevent carriers abusing their market power through cooperative mechanism.

Aspects to be influenced	Degree of agreement (%)				Strongly agree
	Strongly disagree	Disagree	Normal	Agree	
<i>A: Influence on liner conference system</i>					
A1. Causing influence on global liner conferences	0	16.0	22.7	41.9	19.4
A2. Causing influence only on liner conferences in European tradelanes	6.5	19.3	29	29	16.2
A3. Causing restriction on a carrier's monopoly power in market	6.5	22.6	25.8	32.2	12.9
A4. Promoting the other cooperative agreements to be used	0	6.5	32.3	41.9	19.3
A5. Promoting the other countries considering to abolish liner conferences system	3.2	12.9	38.7	32.3	12.9
<i>B: Influence on European tradelanes</i>					
B1. Causing freight rate fluctuation more frequently in European tradelanes	0	6.5	6.5	45.1	41.9
B2. Causing freight rate more stabilized in European tradelanes	0	9.7	19.3	45.2	25.8
B3. Causing more competition for container transport in European tradelanes	6.5	9.7	22.5	35.5	25.8
B4. Influence on market share for median to small liner carriers in European tradelanes	0	6.5	12.9	58.1	22.5
<i>C: Influence on Far East/North American tradelanes</i>					
C1. Causing freight rate fluctuation more frequently in FE/NA tradelanes	0	25.9	29	29	16.1
C2. Causing freight rate more stabilized in FE/NA tradelanes	3.2	45.2	19.3	25.8	6.5
C3. Causing more competition for container transport in FE/NA tradelanes	9.7	19.3	29	38.8	3.2
C4. Influence on market share for median to small liner carriers in FE/NA tradelanes	3.2	25.8	19.3	38.8	12.9
<i>D: Influence on shipping services</i>					
D1. Causing positive influence on service reliability (e.g. reliable schedule)	9.7	25.7	35.5	22.6	6.5
D2. Causing negative influence on service reliability (e.g. reliable schedule)	6.5	41.9	35.5	12.9	3.2
D3. Causing positive influence on service quality and innovation	9.7	22.6	29	35.5	3.2
D4. Causing negative influence on service quality and innovation	0	29	41.9	19.4	9.7
D5. Removing conferences cause disadvantages for median to small shipping carriers					
D6. Removing conferences help carriers get more flexibility in responding to market changes	3.2	16	19.4	35.5	25.9
D7. Causing influence on the volume of international imports and exports	3.3	9.8	29	41.9	16
D7. Causing influence on the volume of international imports and exports	16	29	45.3	9.7	0
<i>E: Influence on Taiwan's regulatory system</i>					

(continued)

Table X.
Carriers' opinion on the influence of EU abolished the liner conferences

Table X.

Aspects to be influenced	Degree of agreement (%)			
	Strongly disagree	Disagree	Normal	Agree
E1. Taiwan government should not intervene in the operation of liner conferences	3.2	22.7	3.2	41.9
E2. Taiwan government should follow EU's action to abolish the liner conferences system	16	19.3	32.3	25.9
E3. Taiwan government should amend regulations to limit the operation of liner conferences	12.9	19.3	32.3	29
E4. Taiwan government should amend regulations to regulate carrier's consortium agreements	16	16	29	32.4

Source: Chiu *et al.* (2012)

4.3 Study on impact conducted by the USA

Considering the importance of the EU to repeal the block exemption for liner shipping conferences, the Federal Maritime Commission (FMC) of the USA also conducted a study to assess what impact the EU repeal might be having on shipping in US liner trades. The major findings for the study are as follows (FMC, 2012, pp. 8-10):

- (1) Based on an analysis of available information from 2006 through 2010, the study's primary finding is that no significant changes in rate levels occurred between EU and US liner trades due to the repeal. During the period examined, the repeal of the block exemption also appears not to have put US shippers at a disadvantage to EU shippers in Far East trades.
- (2) On a pre- and post-repeal comparative basis, differences in the changes in average revenue per 20-ft equivalent unit (TEU) (as a proxy for all-in freight rates) between the eastbound Far East/US trade and the westbound Far East/Europe trade appear to have been trivial. Average revenue per TEU declined by US\$150 in the Far East/US trade, and by US\$141 in the Far East/EU trade, suggesting that the repeal of the block exemption had little or no effect on average revenue or freight rate levels in the largest US and EU import trades. A comparison between the westbound US/Far East trade and the eastbound Europe/Far East trade shows a similar minor difference in the US and EU export trades. On a pre- and post-repeal comparative basis, average revenue per TEU increased by US\$149 in the US/Far East trade, and by US\$125 in the Europe/Far East trade.
- (3) The secondary findings of the study to analyze the two Far East-based trades showed that:
 - *The impact of the repeal on average revenue per TEU appears to have been trivial:* A result that suggests that the repeal likely did not, independent of the global recession's impact, produce a relative decline in average rate levels in EU trades as compared with US trades from October 2008 through 2010.
 - *There appears to have been an increase in rate volatility in the EU trades:* A result that suggests the possibility that the activities of the discussion agreement in the Far East/US trade may have had a dampening effect on rate volatility. However, other factors, such as the prevalence of annual contracts in the Far East/US trade and the difficulty in redeploying very large vessels from the Far East/North Europe trade, may also have contributed to the differences in rate volatility.
 - *Following the repeal, there appears to have been a small increase in market concentration:* A result that suggests that, in the absence of a forum for carrier discussions and information sharing, market concentration may increase slightly more rapidly.
 - *There was a relative decline in market share stability that may be related to rate volatility and market concentration:* Market share stability noticeably declined in the Far East/North Europe trade in the post-repeal period. That was also the trade in which relative rate volatility and market concentration appeared to have increased. By contrast, there was increased market share stability in the Far East/US trade.

4.4 Academic research on the impact of governing rules changes on conferences

The USA changed its shipping industry regulation, i.e. passing Ocean Shipping Reform Act (OSRA) in 1998 and came into effect on May 1999 to replace its Shipping Act of 1984. Although the OSRA maintains antitrust immunity for shipping conferences, its creation also

established confidential service contracts between shippers and individual lines. According to Wang's (2006) study, by examining the volume and freight rates of inbound and outbound trades, he discovered that before the second quarter of 1999 (before OSRA), the transatlantic lane's market structure was non-competitive, but became competitive from the third quarter of 1999 (following the adoption of OSRA). Applying Adam Smith's condition of joint product concept, Wang (2014) again examined the eastbound and westbound freight rates on both Transatlantic and Transpacific trade lanes; this study confirmed that the empirical evidences fulfill Smith's condition of joint product, which, in turn, assures that the US liner market is becoming more competitive after the implementation of OSRA. Su and Wang (2016) conducted a similar research to examine the impact of removing conference system from European liner market. Their analysis results, using available information from 2010 through 2012, reveal that EU's repeal of conference produced a striking difference in how carriers react to deregulation reform in the two major Europe-based trade lanes. Their empirical results confirmed that the North America/Europe trade lane was competitive after the repeal of conference; however, the competition was not completely free in the Far East/Europe trade lane.

5. The influence on the governing rules on conferences in Taiwan

In Taiwan, the general competition rule relating to the conducts of enterprises is governed by "Fair Trade Act" (referred as FTA) and the competent administration agency is Fair Trade Commission (FTC). Considering the competent administration agency of shipping industry is the Ministry of Transportation and Communication (MOTC) instead of FTC, there is a special design for the MOTC to regulate the competition affairs relating to shipping operators. Article 46 of FTA regulates that:

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law (i.e., FTA).

As a consequence, the antitrust matters relating to shipping industry are firstly handled by the MOTC and the rule of law is the "Shipping Act."

The Shipping Act in Taiwan is enacted and initially promulgated on June 3, 1981. Since then, it has been amended six times as of January 22, 2014 (Table XI). Regarding the competition issue on liner conferences, Taiwan's shipping law does not have detailed regulations, but is in progressive improvement manner. As shown in Table XII, during the initial promulgation on June 3, 1981, there is no formal regulation on liner conferences; in Article 29, only cargo tariffs filing matter is mentioned. The first overall amendment promulgated on February 9, 1995, the Shipping Act formally included rulings on liner conferences and defined it as "International Joint Service Organization (IJSO)." Except for the definition, IJSO is required to file the name, agreement, members of the organization and

Table XI.
Legislative history of
shipping act in
Taiwan

1.	Promulgated on June 3, 1981
2.	Amendment to articles promulgated on February 9, 1995
3.	Amendment to Articles 2, 58, and deletion of Article 6, promulgated on February 3, 1999
4.	Amendment to Articles 10, 19, 44, 55, 57, 59 and 61, deletion of Article 63 and addition of Articles 33-1, 49-1, 56-1 promulgated on January 30, 2002
5.	Amendment to whole articles promulgated on January 30, 2013
6.	Amendment to Article 3 and addition of Articles 27-1, 32-1, 50-1 promulgated on June 19, 2013
7.	Amendment to Article 60-1 promulgated on January 22, 2014

Time	Shipping Act's Ruling
June 3, 1981 to February 8, 1995	<p>Article 29: Any vessel carrier engaging in liner service calling ROC ports shall file cargo tariffs with the local shipping administration authority for submitting to the MOTC for filing and inspection. The tariffs of domestic shipping routes should submit to the MOTC for approval. In case of finding the fares, rates or charges mentioned hereinbefore being apparently improper or disadvantageous to the importation and exportation or the development of shipping industry of the ROC, the shipping administration authority may report the situation to the MOTC to order to make corrections and revisions. The authority may also suspend the effect of the whole or part of such tariffs, if it deems necessary. The provisions set forth in the two preceding paragraphs shall also apply to the international joint service organization</p>
August 9, 1995 to January 29, 2013	<p>Article 2 (11): (Definition) "International Joint Service Organization" means the organization set up by vessel carriers under an agreement, wherein the member carriers discuss matters relating to the operation in the international routes, such as sea freight rates, passenger ticket fees, volume of carriage and charter space.</p> <p>Article 39: ROC and foreign vessel carriers engaging in ROC commerce while joining an IJSO shall file the name, agreement and the register of members of the organization with the local shipping administration authority for ratification through submission to the MOTC for filing and inspection. The said filing requirement shall also apply to the alteration or dismissal of such organization. If the organization referred to herein before is organized primarily for discussion of freight rates and charges and ticket fares, the tariffs of member carriers may be filed by the organization instead. Whoever fails to act on the provision in the first paragraph herein may be penalized by the suspension of the whole or part of tariffs as the shipping administration authority deems necessary.</p> <p>Article 40: If the agreement of the organization mentioned in the preceding article impedes the ROC order of shipping or economic development, the shipping administration authority may order to make correction within a definite period. Refusal to correct or failure to improve may cause the shipping administration authority to impose on all or part of its member carriers the punishment of prohibition against or restriction of commercial activities in ROC territory</p>
30 January 2013 to present	<p>Article 3(10): (Definition) "International Joint Service Organization" means the organization set up permanently or with specific purposes under an agreement achieved on matters relating to the operation in the international routes, negotiations of sea freight rates, passenger ticket fees, volume of carriage and charter space and others relating to operation of routes.</p> <p>Article 3 (11): (Definition) "International shipping protocol" means the convention entered into by the international joint associations to regulate such matters as the relationship between the operators, transport operations, costs, intermodal and cargo picking.</p> <p>Article 34: Any vessel carrier operating in ROC, joining or setting up an IJSO shall file the Articles of Association, proposal for joint operations and relevant documents with the shipping administration authority for ratification through submission to the MOTC for approval on discussion with other authorities. The said filing requirements shall also apply to the alteration or dismissal of such organization. If such international organization is organized primarily on the basis of discussing freight charges and ticket fares, the fares of the member carriers may be filed by those member carriers authorized by the said organization with the shipping administration authority for file and further inspection. Provision of Article 22 applies to such international joint organization.</p> <p>Article 35: Any vessel carrier operating in ROC and entering an international shipping agreement shall file name, content and membership list of such</p>

(continued)

Table XII.
Evolution of liner
conference
regulations in
Taiwan

Table XII.

Time	Shipping Act's Ruling
	<p>international shipping agreement with the shipping administration authority for submission to the MOTC for approval. The filing requirements stated as above also apply to the alteration of such international shipping agreement. If such international shipping agreement is manipulated primarily on the basis of discussing freight charges and ticket fares, the fare list shall be filed by one of such party, with signatures given on the agreement stated above, with the shipping administration authority for file and further inspection. The fare list stated above shall permit the vessel carrier to make decisions on the freight charges and ticket fares at his own discretion.</p> <p>Article 49: (Penalties) Any vessel carrier or foreign vessel carrier joining or setting up an IJSO in default in implementation of joint service shall be ordered to improve within a specific period; failure to do so, or if reason for or background of joint service is found to have been extinguished, the MOTC shall coordinate with related authorities to revoke its approval. Failure of performance in the provision set forth in Article 34(2) or 35(2), the shipping administration authority shall, if necessary, suspend the implementation of all or partial fares list.</p> <p>Article 50: (Penalties) If the operation of the said organization aforementioned or implementation of the said agreement aforementioned impedes the ROC order of shipping or economic development, the shipping administration authority may order correction made within a definite period. Failure to improve may cause the shipping administration authority to report to the MOTC through coordination with related authorities to revoke approval</p>

tariffs with the maritime authorities for filing and inspection (written in Article 39). Besides, the conduct of IJSO cannot impede the order of shipping market or economic development in Taiwan (written in Article 40).

Since October 2006, the MOTC launched the second overall amendment of Shipping Act (CNA, 2006). Around eight years later, the parliament finally passed the amended law and promulgated on January 30, 2013. The existing law encompasses more governing rules on liner conferences (Table XII). The major points are as follows:

- Definitions. Two things of shipping cooperative mechanism are under-regulated. The first is similar to liner conference and named the “International Joint Service Organization (IJSO).” It is defined as “the organization set up permanently or with specific purposes under an agreement achieved on matters relating to the operation in the international routes, negotiations of sea freight rates, passenger ticket fees, volume of carriage and charter space and others relating to operation of routes.” The second is agreement concluded by members of IJSO and called the “International shipping protocol,” which means “the convention entered into by the international joint associations to regulate such matters as the relationship between the operators, transport operations, costs, intermodal and cargo picking.”
- Registration and approval. According to Article 34, any vessel carrier operating in Taiwan, joining or setting up an IJSO, shall file the Articles of Association, proposal for joint operations and relevant documents with the shipping administration authority for approval. In addition, carriers entering an international shipping agreement are required to file name, content and membership list of such agreement with the shipping administration authorities for approval. The said filing

requirement shall also apply to the alteration or dismissal of such organization or agreement (written in Article 35).

- Filing tariff. Both IJSO and international shipping agreement are required to file their tariffs with the maritime authorities for file and further inspection. One special point different with the previous regulation is that “international shipping agreement shall permit the vessel carrier to make decisions on the freight charges and ticket fares at his own discretion.” This ruling is similar to the “independent action” prescribed in the US Shipping Act of 1984.
- Penalties. Two kinds of conducts will be punished, including failure of filing tariff and operation with bad practices. In case of filing the tariffs, Article 49 regulates that failure of filing tariffs, the shipping administration authority shall suspend the implementation of all or partial fares list; besides, if the carriers of IJSO violate performing joint services in accordance with the reported agreement, the maritime administration authorities shall coordinate with related authorities to revoke its approval. According to Article 50, if the operation of the IJSO or the implementation of the international shipping agreement impedes the local shipping order or economic development, the shipping administration authority may order correction made within a definite period. Failure to improve may cause the shipping administration authorities to revoke the approval.

Regarding the carriers’ opinions on whether the MOTC needs to change its current administration on liner conferences after the EU lifts the block exemption for shipping conferences. The empirical study results are presented in [Table X](#). One of the mostly strong opinions is that over two-thirds of the respondents (71 per cent) expect the government not to meddle in the shipping market. As to whether government should follow EU’s decision to ban or restrict liner conferences, or tightly control the other cooperative agreements between carriers, the current empirical results do not reveal apparent direction. On questions E2, E3 and E4 ([Table X](#)), the respondents indicating opposition and agreement are both quite close to one-third. The possible reasons for this empirical result could be: Taiwan maritime authorities did not launch any investigation on the violation case of IJSO’s operation over the past few decades; nearly no local liner carriers (such as Evergreen or YangMing Line) joined liner conference’s operation; therefore, carriers did not perceive the importance of whether the governing rules needed to be changed or remained the status quo; and comparing to the regulations of the EU or USA on the liner conferences, Taiwan’s regulations are rather simple and loosely control over the liner conferences aforementioned. Therefore, local carriers in Taiwan are more concerned about urging the MOTC not to intervene in the shipping market but are less interested in suggesting government to change regulations on administering the liner conferences.

6. Conclusion and discussion

6.1 Conclusion

The first well-known liner shipping conference was created for the UK/Calcutta trade in 1875. In 1986, EU Council Regulation 4056/86 allowed liner shipping operators to have an exemption from EU competition rules to organize themselves into conferences with the aim of fixing prices and coordination capacity for the transport of containerized cargo. In September 2006, the council of EU decided to abolish that exemption from EU competition rules, with effect from October 18, 2008. From the EU perspective, it finally concluded its review of ending the block exemption for liner conferences and brought the liner industry under the control of normal competition regime. One issue remained undecided is the

handling of the international repercussion of EU relationships with third countries (Munari, 2009) and deserves further study. Instead of totally repealing the liner conferences system, the USA made some improvement to bring a more competitive mechanism into its OSRA of 1998; that changes have seemingly made the US liner market become more competitive after the implementation of OSRA (Wang, 2014). Regarding the EU to repeal the conferences system, empirical studying results did not conclude consistent impact on European liner market in terms of enhancing the competition level (Su and Wang, 2016).

From shippers' standpoint, the European Shippers' Council always strongly advocated the abolition of special treatment for liner shipping industry from the EU competition law regime (Van der Jagt, 2010). From the CI's survey, the majority of shippers support the annihilation of liner conferences system globally. Besides, global shippers also expect two things to be improved following the EU to repeal the liner conference system:

- (1) carriers should be more customer-focused; and
- (2) the ocean pricing mechanism should be more transparent (Beddow, 2009).

Shippers seemingly perceived that these two intentions have not yet been realized. Because of the global economic recession in 2009, ocean carriers have been forced to focus on financial survival rather than looking at customer care. Although liner conferences no longer exist in European tradelanes, shipping lines are seemingly still following the prices set by the big carriers such as Maersk and Mediterranean Shipping Company (MSC).

The empirical study conducted by this study about the carriers' perception on the influence of the EU repealing the block exemption for liner conferences reveals the following important points. First, majority of carriers (over 60 per cent) agreed that obvious impact will be on the global liner conference system and promoting the use of other cooperative agreements (e.g. consortia arrangements). Second, freight rate fluctuation would be more frequently on all tradelanes. Third, the EU to repeal conferences system will possibly:

- help carriers get more flexibility in responding to market changes;
- cause positive influence on service quality and innovation; and
- cause disadvantages for median to small shipping carriers.

Fourth, as to whether Taiwan's governing rules on liner shipping conferences needed to be changed, responding opinions could not reach a clear direction (i.e. agreement or disagreement). Local carriers in Taiwan seemingly expect the government not to meddle in the shipping market rather than changing the regulation for liner conferences.

Still, it needs further study on some issues, such as:

- the long-term influence of the EU action to abolish the liner conferences in European trades; and
- will the other countries following the EU action to repeal the liner shipping conferences?

Due to the changes of the EU competition ruling on liner conferences, one thing certain is that shipping carriers should fully understand those changes and be vigilant not to violate those newly changed regulations. In addition, "consortia block exemption" is still existed; maritime operators are encouraged to take advantages from the coordination of sailing timetables, the cross-chartering of space or slots on vessels, the pooling of vessels or port installations, the use of joint operations offices, the provision of containers, etc.

6.2 Discussion

6.2.1 The way forward for discussing whether to retain liner shipping conferences. The liner conferences system was originated from European maritime transport markets; it then stretched out across the world. Interestingly, the EU becomes the first party to nullify the liner shipping conferences. The reasons and review processes about why the EU to eradicate

EU	USA	Taiwan
<p>The EU Council Regulation 4056/86 established block exemption to allow carriers to fix prices and regulate capacity jointly in liner conferences. Council Regulation 1419/2006 repealing Council Regulation 4056/1986 on the application of Articles 85 and 86 of the Treaty of Rome to maritime transport and amending Council Regulation 1/2003. The EU Commission also made it clear that, after October 18, 2008, liner conferences operating between trades to and from the member states shall become illegal. Uncertain room left for arrangements restricting competition in liner shipping trades, such as:</p> <p>Horizontal agreements among undertakings are always very difficult to justify under EC competition law; the exception of the block exemption for consortia will fall within the general regime established by Article 81(3) TEC. Vertical agreements will not raise any concerns as long as they do not touch on issues of dominant position or affect the access to port infrastructures for other shipping lines;</p> <p>More uncertain is the evaluation of information exchange. The past cases confirmed that liner shipping companies were not permitted to exchange their pricing or commercial policies and to announce them in public. The EU consortia block exemption regulation (i.e. Regulation 906/2009) would be a good reference if someone would like to propose a regulation to administer the shipping alliances</p>	<p>The US OSRA of 1998, which took effect on May 1, 1999, laid down detailed rules for the liner conferences. OSRA amended the US Shipping Act of 1984, and continued to allow price fixing and supply regulations agreements, although these have been severely restricted in their content following the major revisions introduced by OSRA in 1999. These regulatory restrictions allow for a greater degree of internal competition, which can be seen through the following provisions:</p> <p>Carriers are allowed to use of independent and confidential service contracts when providing services to their shippers. These contracts introduce a greater level of internal competition among the members of these conference type agreements and allow greater level of independent actions on the part of member lines operating in any joint agreement. Carrier discussion agreements (CDA) are allowed, that basically enable the joint sharing of information among carriers so long as the outcome is not in the form of a price commitment among those sharing the information. Operational efficiency agreements are encouraged, such as multinational alliances and container consortia, both of which are designed to enhance utilization of ships deployed without including any element of price fixing within the operation. Intermodal authority that allows intermodal prices at the level of the agreement has been put in place in the USA since the Shipping Act of 1984</p>	<p>The Shipping Act of 2013 laid down rules for the liner conferences. No detailed rules were included; it only mentioned the following points:</p> <ul style="list-style-type: none"> Definitions; Registration and approval procedures; Filing tariffs; Penalty

Sources: Compiled by the author

Table XIII.
Brief summary of liner conference regulations among the EU, USA and Taiwan

the competition block exemption for liner conferences would be the valuable information providing for the other countries' reference. The competition policies relating to shipping is still an important issue. There are serious limitations in the existing system of national filings in terms of understanding and regulating liner shipping alliances; the liner shipping industry has made it difficult for regulators to monitor competitive policies on liner shipping, and therefore, there is a need for a multilateral information-sharing site on vessel-sharing agreements (UNCTAD, 2018). Premti (2016) has undertaken an examination of the state of liner shipping competition policy for UNCTAD and noted the importance of monitoring it, given alliance formation and the instability of alliances at the time.

6.2.2 Implication for Taiwan's regulatory system for shipping cooperative agreements. As discussed in Section 5, there are no detailed governing rules on liner conferences or shipping consortia in Taiwan. The empirical studying results also pointed out that local carriers were seemingly less interested in suggesting government to change regulations on administering the freight conferences. Nevertheless, they also did not strongly oppose maritime authorities to follow EU's action to repeal the liner conferences or to amend the Shipping Act to tightly control the other cooperative agreements between carriers. In the future, Taiwan's maritime authorities may consider to build up a comprehensive legal system to manage the shipping conferences or alliances. As a consequence, EU-related regulations discussed in Section 3 and those governing rules implemented in the USA would become valuable information to be referred, which were shown in Table XIII.

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