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Ocean Shipping Alliances: The Wave of the Future?

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Over the last decade, carriers have entered into operational relationships known as alliances to increase their product offerings and to reduce their costs. Carriers have been able to do so because alliances enable partners to rely on and to combine other carriers' operations in addition to their own. Although alliances have drastically improved operational efficiency, larger carriers will not take the logical next step and merge for a variety of reasons. Ironically, regulation through the Federal Maritime Commission is not one of the factors dissuading carriers from consolidating. This paper explains, from the carriers' point of view, the advantages and disadvantages of entering into alliances and explores the history of the US regulatory regime of cooperative agreements, including alliances. Thereafter, this paper analyses the factors that potentially will influence the future of alliances and predicts the effect of each of these factors. Overall, this paper concludes that carriers would prefer to enjoy the benefits of alliances without having to ally or to merge with another carrier; therefore, the real long-term goal of large carriers is the improvement of their services without the aid of another large carrier, regardless of whether the improvement is through an alliance or a merger.
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INTRODUCTION

Carriers created alliances in reaction to the demands of the global economy. Only global economies of scale will meet the ever-present demand to move goods at the

lowest possible prices, and instant global communications necessitate global networks. Therefore, the ocean shipping industry has evolved to provide the wide range of services that today's global shippers demand. To do so, carriers have entered into constructive agreements commonly referred to as alliances.

However, alliances are not a new phenomenon and were used to a lesser extent before economic globalisation. They are hybrid relationships that allow for the benefits generated by limited forms of cooperation without requiring a total integration of operations. As the latest type of cooperative agreement, alliances serve as a middle ground, enabling carriers to expand service offerings and to cut costs.

This article analyses the alliance system within two contexts. First, this article examines alliances within the ocean shipping industry and explains why they currently are the predominant form of cooperative agreement. Alliances derive substantial economic benefits for carriers, such as aggregation of cargo volumes and more efficient asset utilisation, without the sharing of key information. In addition, to provide a complete picture of alliances, this article examines why alliances may not achieve their desired outcomes.

Second, this article analyses the regulatory effect on alliances. Because the conference system dominated the industry until recent times, this section focuses on US regulation of conferences. Generally, since 1916, Congress has sought to obtain the advantages of cooperative arrangements while also combating their abuses through regulation by an independent agency that strives to promote competition among carriers. For much of this time, regulators have reacted to cooperation in the industry; however, Congress's most recent legislation, the Ocean Shipping Reform Act of 1998 (OSRA), encourages the Federal Maritime Commission (FMC) to be more proactive when approving and monitoring prospective agreements.

Finally, this article looks to the future and asks whether alliances are a precursor to industry consolidation, a short-term trend that will confirm the superiority of conferences, or a form of cooperation that will survive indefinitely. Further, this section analyses external factors that alliances must consider when formulating their plans for the future.

WHAT IS AN ALLIANCE?

Historically, carriers have not needed to cooperate with one another to reach new markets because shippers did not expect comprehensive worldwide service. Therefore, cooperative efforts among carriers typically consisted of establishing rates through the conference system. However, worldwide legal changes have begun to limit the effectiveness of this kind of cooperation, and ocean carriers have turned increasingly to alliances designed to increase operating efficiencies.

In addition, cooperation has increased because few carriers can afford to operate on trade lanes that are experiencing imbalanced trade flows, and even fewer carriers can afford unilaterally to expand their networks. With these constraints on their individual capabilities, carriers have realised that they must cooperate despite their desires to operate independently.

Moreover, foreign carriers that want to provide adequate service in the US coastwise trade must team up with US carriers. Because the Jones Act mandates that only US-built, US-citizen manned, and US-flag vessels operate in the US coastwise trade, a primary way for foreign carriers to extend their reach into the United States is through alliances.[1]

In the ocean shipping context, alliances are defined as cooperative operational arrangements between two or more carriers that lie anywhere between a traditional arms-length relationship and an integrated strategic relationship that amounts to a virtual merger. Essentially, allied carriers combine their assets to implement a mutually beneficial strategy. However, sensitive information, such as trade secrets, is not shared because the allied carriers remain separate corporate entities that compete against one another.

As part of an alliance, carriers enter into a wide range of cooperative agreements for both ocean and land operations. Oceanborne agreements usually contain space sharing, slot charter, and sailing arrangements. Space sharing and slot charter agreements operate under the same concept – a carrier reserves a certain amount of room on its vessels for alliance members. This type of arrangement provides two main benefits. First, it allows carriers to aggregate their cargoes to reduce the number of vessels that are needed to serve a particular port. Therefore, the alliance can dedicate the freed vessels to serve other routes, thereby generating revenues that otherwise would have been unavailable. Second, it increases the number of service options carriers can offer their customers at little or no cost because their partners are actually operating the service.

Scheduling arrangements, another benefit of alliances, also generate greater efficiency in a different manner. By coordinating schedules, carriers reduce total transit times because each vessel makes fewer port calls. With all of the vessels in the alliance combined serving a greater total number of ports than any carrier could individually, alliances tailor the number of port calls made by each vessel to serve the greatest number of ports with optimal frequency. In many cases, this means ships are deployed for direct transoceanic port-to-port calls for heavily used routes. In contrast, before the advent of alliances, individual carriers had to make several intercontinental port calls to provide the greatest range of services to its customers; however, this arrangement was accomplished at relatively higher expense, creating longer transit times and causing vessels to serve ports with a minimal amount of cargo.

For carriers that are interested in closer relationships with their alliance partners, joint service agreements are used. A joint service agreement is essentially a joint venture between carriers to establish a new and separate service that is managed independently from the individual carrier's operations.[2] The basic characteristics of a joint service agreement are: holding out in a separate operating name; independently making strategic decisions, such as setting rates and schedules; having the opportunity to publish independently a tariff; and issuing its own bills of lading. Notably, the joint venturers do not compete for traffic in the joint service agreement trade, although they remain competitors for all other services.

Alliance partners do more than share and shift capacity; they also cooperate on land operations through the joint use of ports, terminals, equipment and other facilities, which account for a substantial percentage of a carrier's total costs. Such agreements are known as 'marine terminal agreements.'[3] The consolidation of these facilities help carriers achieve significant savings by improving their ability to load and unload, to transship, or to transload containers in the most efficient manner. At some ports, these efficiencies are created by the alliance's operating a single, large marine terminal facility rather than several smaller, separate facilities run by each carrier. Other land-based intermodal efficiencies that have significantly reduced costs and transit times are: virtual elimination of intraport trucking of containers between terminals by jointly operating warehouses and other storage facilities; dedication of these jointly operated storage facilities to specific trade routes or breakbulk items; and on-dock joint multimodal terminals where alliance members have their combined land-based needs met at one facility.

In total, the benefits offered to carriers by alliances are as follows:

1 provision of a seamless, hassle-free service that is attractive to shippers because it is functionally equivalent to service on a single carrier;
2 expansion of services to more markets in the least expensive way;
3 more efficient operations – increased revenues and reduced costs through productivity improvements and scale economies thereby increasing profit margin;
4 reduction of exposure to risk by offsetting rate reductions in one market with rate increases in another market;
5 gaining of market share by stimulating new cargo, and diverting traffic from competitors; and
6 improving the quality of service each individual alliance member offers.

At present, four major alliances – the Grand Alliance, the New World Alliance, the United Alliance, and Cosco/K-line/Yang Ming – enjoy the vast majority of these benefits. The importance of these alliances cannot be underestimated. These four

alliances account for between 60% – 65% of slots deployed on the major East-West lanes (Drewry Reports: *Box Ship Strength*, 2000). In fact, with the prevalence of inter-carrier cooperation, 'even the alliances are forming alliances' (Dupin, 2001).

It is important to note that alliances deliver these benefits even though their members remain competitors. Although alliance members work together on a variety of issues, including marketing, advertising, commonality of service, and scheduling, an individual carrier's strategic goals are separate from those of the alliance. Therefore, the carriers, not the alliances, work directly with their customers to handle issues such as unique transportation needs, delivery, and payment arrangements.

Regardless, the partners must truly commit to making their multilateral relationship work effectively or else the alliance will fail. Even loosely allied carriers must share the same level of enthusiasm or the alliance likely will be unsuccessful. Failure may be caused by any number of reasons. First and foremost, there is often a lack of trust between partner companies. Because members still compete against one another, they often are unwilling to compromise on issues that must be resolved at the expense of the strategic goals of the alliance. Even worse, partner companies may abuse the benefits of the alliance to the detriment of their partners. Therefore, it is often difficult for each partner to believe that it is benefiting from the alliance and that no other partner is receiving greater benefits. If a partner believes its needs are not being met, the partner may abandon the alliance because carriers are usually not formally bound to the alliance. Similarly, members may leave one alliance to join another if promised greater benefits from the new alliance.

In the shipping industry, carriers fear that they are strengthening current and future competitors. As one commentator has explained (Davies, 1998): *'To remain competitive, each alliance partner must be able to track a customer's cargo, including moves on another member's ship. Beyond that essential sharing of information, however, individual shipping lines tend to closely guard details about their customers. Understandably, the lines are not eager to advertise to competitors the key factors shippers use to select a line, nor the key individuals who decide which shipping line to use.'*

As an example, this commentator noted that American President Lines (APL), which has since merged with Neptune Orient Lines (NOL), provided its partners with cargo tracking but did not share information with alliance partners on other related issues.

Additional examples of carriers working to undermine their own partners might include cases in which alliance members have obtained space on their partners' vessels at severely discounted rates and then re-sold the space at prices high enough to generate a profit for the reseller, but well below the market rate for

such services. When this reselling happens, the carrier actually operating the vessel loses a substantial amount of money. To recoup the money, the carrier reciprocates in kind, causing both partners to lose both money and trust in one another.

Another common problem has been that carriers – especially those from different countries – often expend substantial amounts of time and money on the alliance only to realise that they have incompatible operating cultures.

Nonetheless, carriers have decided that the benefits of alliances outweigh the drawbacks. Alliances generate operational efficiencies and expand services in ways that could be reproduced only by merging, buying or building – options that are unavailable to most carriers. Conversely, failure to enter into an alliance could transform a major carrier into a niche carrier because it cannot offer the wide range of services provided by other carriers that have entered into global alliances.

A HISTORY OF US REGULATION OF INTER-CARRIER AGREEMENTS

The first modern inter-carrier agreement – the conference – was formed to end rate wars that were raging in the mid to late 19th century. This round of rate wars was no different than most others faced in the history of ocean shipping, in that capacity surpassed demand. To prevent future rate wars that would drive many carriers out of business, carriers developed the multilateral conference system under which associations of carriers operating in specific trades cooperated to minimise competition in order to ensure their individual survival. Conferences set common tariffs to control prices, limited the tonnage available in their respective trade route, shared revenue, and offered rebates to loyal shippers. Thus, carriers entrenched themselves in their respective market positions at the expense of non-conference members and shippers who usually had no real choice but to use a conference carrier.

Because conferences prevented effective competition among carriers, a US House of Representatives committee launched an investigation into the efficacy of the practice. The Alexander Committee, which was named after its chairman Joshua W. Alexander, studied the international ocean shipping industry and debated whether the industry should be subject to US antitrust laws. The Alexander Committee concluded that conferences were undeniably anticompetitive but that they also produced substantial benefits because the general stability provided by conferences resulted in: improved service and fewer rate fluctuations for shippers; cost reductions; and an improved investment climate for carriers. Moreover, the Alexander Committee determined that the capital-intensive nature of the ocean carrier shipping industry limited the amount of healthy competition

the industry could bear. However, the monopolistic nature of conferences also resulted in carrier indifference to shippers' needs, particularly those of smaller shippers, and anticompetitive behaviour toward non-conference, or independent, carriers.

Faced with the mixed results of the conference system, the Alexander Committee concluded that the advantages of the conferences outweighed the disadvantages, but that some form of federal regulation of conferences was needed to protect shippers. This finding served as the basis for the Shipping Act of 1916 (the 1916 Act). The 1916 Act created an independent agency, the US Shipping Board (later known as the Federal Maritime Board, or 'FMB'), to oversee the industry. Among the pro-competitive provisions in the 1916 Act was the requirement that carriers file their agreements with the FMB, which determined whether an agreement should be approved. The three-part standard for approval asked: is the agreement '*unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or [does the agreement] operate to the detriment of the commerce of the United States or . . . in violation of this chapter?*'[4] FMB approval was important because it conferred antitrust immunity on the filed agreement. Without antitrust immunity, conferences would have been dismantled for being in violation of the antitrust laws.[5]

Despite the safeguards of the 1916 Act, the FMB had a pro-conference bias that gave conferences the opportunity to maintain their dominant market positions. One of the commonly used methods was the dual-rate contract, under which shippers received less-than-tariff prices for entering into loyalty contracts with the conference. Although the Supreme Court ruled in 1958 that dual-rate contracts were unlawful because they were used to drive competitors out of business,[6] Congress subsequently legislatively overrode the Supreme Court's decision and breathed life back into the dual-rate contracting system.

Even so, the Supreme Court's decision directed the spotlight on the industry, leading to significant changes to the laws governing ocean shipping in 1961. Known as the 1961 Amendments, this legislation was the result of two US House of Representatives investigations into competition in the industry: one investigation was conducted by a subcommittee of the House Merchant Marine and Fisheries Committee (Bonner Committee); and another one by the Antitrust Subcommittee of the House Judiciary Committee (Celler Committee). Notably, both committees found that traditional antitrust principles should not be applied to the ocean shipping industry; however, the Celler Committee was far more critical. The Celler Committee found a direct relationship between the power of conferences and their competitive abuses. Therefore, the Celler Committee expressed a need for healthy competition between conference and non-conference carriers. Moreover, the Celler Committee stressed that

conferences tended to be run by foreign carriers that disregarded US economic interests.

The critical nature of the Celler Committee's report led to greater regulation of the industry by a new independent agency, the Federal Maritime Commission (FMC), which was created with the sole responsibility to regulate the maritime industry. To this day, the FMC maintains basic international trade and oversight responsibilities that affect the regulation of intercarrier agreements, including conferences and alliances. The FMC is expected to be expert on all industry practices; to protect all parties from unfair discrimination, preference or other unfair actions; and to be judicious and effective in its enforcement of laws prohibiting malpractices.

The most significant change in the law made by the 1961 Amendments for purposes of this paper was the addition of a fourth standard for a proposed intercarrier agreement to meet: is the agreement contrary to the public interest? Likewise, Congress granted the FMC authority to disapprove rates that were so 'unreasonably high or low as to be detrimental to the commerce of the United States.' The FMC could regulate rates because the 1961 Amendments required all carriers to file their tariffs with the Commission. Despite the increased regulation, conferences retained a cherished legal asset – antitrust immunity.

Unfortunately, the newly formed FMC was welcomed with complaints from both carriers and shippers. Carriers complained that the FMC took too long to approve all inter-carrier agreements and that the vague 'public interest' standard made FMC rulings unpredictable. The carriers' complaint concerning the public interest standard was rejected by the Supreme Court in *FMC v. Aktiebolaget Svenska Amerika Linien* in 1968.[7]

In this case, the Supreme Court affirmed that the FMC's '*antitrust standard, involving an assessment of the necessity for this restraint in terms of legitimate commercial objectives, simply gives understandable content to the broad statutory concept of 'the public interest'*. The Supreme Court also affirmed the FMC's decision to place the burden of proof on the applicant for antitrust immunity. On the other hand, the shippers' complaint that conferences retained their antitrust immunity never was formally heard by the FMC or the courts. Therefore, both carriers and shippers were dissatisfied with the regulatory regime.

Dissatisfaction grew in the 1970s and led to various proposals to increase competition and to provide stability in FMC decision making. Eventually, Congress passed the Shipping Act of 1984 (the 1984 Act), which contained sweeping reforms to ensure that carriers do not abuse their antitrust immunity or impose unreasonable rate hikes on shippers; however, an analysis of the 1984 Act shows that it reversed the trend towards greater antitrust scrutiny.

The 1984 Act reaffirmed the need for shipping conferences and granted them broad antitrust immunity; however, its language covers other agreements 'by or

among' carriers including alliances.[8] Under the 1984 Act, all intercarrier agreements, including conference and interconference agreements, that are filed with the FMC and become effective receive antitrust immunity. Unfiled agreements are also immunised so long as the carriers had a 'reasonable basis to conclude' that they acted pursuant to an agreement already filed with the FMC.

To counter the wide latitude granted to carriers to structure their agreements, Congress empowered the FMC to seek an injunction to prevent the implementation of agreements that are likely to be 'substantially anitcompetitive.' This provision replaces the 'public interest' standard, stating: *'If, at any time after the filing or effective date of an agreement, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h) of this section.'*[9]

The 'substantially anticompetitive' standard responded to the carriers' complaints that the 'public interest' standard was overbroad and vague, but also granted both carriers and the FMC flexibility to keep up with 'new and evolving forms of cooperative conduct' in the industry (H.R. Conf. Rep. No. 98-600, at 32, 1984). To streamline the FMC's review of agreements, Congress mandated that an agreement automatically becomes effective within 45 days after its application unless the FMC seeks more information from the proponents or moves for an injunction to block the agreement. Further, the FMC bears the burden of proving that a proposed agreement is likely to be substantially anticompetitive.

Unfortunately, the more liberalised regime of the 1984 Act led to another round of overcapacity and hyper-competitive behaviour. Plus, the oversight intended by Congress failed to materialise; the Commission never has sought an injunction under section 6(g) despite the growing number of discussion agreements and alliances. These trends prompted Congress to enact the Ocean Shipping Reform Act (OSRA) in 1998. Most importantly, OSRA introduced a new type of agreement – the confidential service contract. For these contracts, key provisions – such as rates, intermodal origin and destination points – will no longer be public information. Instead, service contract filings will be held confidentially by the FMC and only certain sections will be available to third parties.

OSRA has weakened the conference system and spurred competition, because the carriers cannot police each other as they did before. Without this security blanket, carriers have had to identify means of maximising efficiencies to compete more effectively. As a result, carriers are entering into alliances to improve asset utilisation through the sharing of vessels, terminals, equipment and containers and to employ their collective financial strength for long-term asset procurement and replacement. Even better, the carriers gain all of these benefits without having to divulge the terms of their contracts.

With the emphasis on confidentiality and the greater operational cooperation resulting from alliances, Congress expressed concerns about industry consolidation. To address these concerns, Congress empowered the FMC to play a more proactive role when approving intercarrier agreements under section 6(g) of the 1984 Act. Although the FMC still bears the burden of proof, Congress wants it to act '*prospectively to block anti-competitive carrier plans before they result in adverse effects on shippers and foreign trade*' (S. Rep. 105-61 at 14, 1997). Factors the FMC will consider include: the nature of the proposed agreement; the resulting market share; market concentration; historical rate and utilisation models; and the promotion of comity with US trading partners. Therefore, Congress now expects the FMC to be more vigilant in its role of ensuring the competitive nature of the ocean shipping industry.

PREDICTIONS

Due to the complexity of the ocean shipping industry, this paper focuses on four of the factors that potentially could have the greatest impact on alliances in the 21st century: 1. consolidation; 2. vessel efficiency and transshipment; 3. US regulatory priorities; and 4. on-line exchanges. Each of these factors could lead to either the continued rise or ultimate fall of alliances.

Consolidation

As carriers realise the benefits of rationalising their services through alliances, they will consider taking the next step and merge their operations to create a single entity. In so doing, carriers believe they can fulfil their integrative promise by consolidating their operations and by sharing previously confidential strategic assets. Even greater synergies are created for consolidated carriers who combine their ocean and land operations because they are controlled by a single carrier that is solely concerned with the carrier's performance. Therefore, the consolidated carrier reaps all the benefits of greater product diversification, greater breadth of income sources, wider geographic reach, and more efficient asset utilisation.

On the management side, the consolidated carrier no longer has to worry about the alliance's unstable relationship. Nor does the merged carrier concern itself with balancing the interests of former partners. Even better, the merged carrier does not fear that another carrier is trying to steal its customers. As a result, the newly consolidated carrier can concentrate its efforts exclusively on improving its own operations to obtain the benefits of its larger scale. When this occurs, the sum of the consolidated carrier is greater than its previously separate parts. That is why the last decade has seen several notable mergers between major carriers.

It is no surprise that mergers or acquisitions typically occur in situations where the carriers' relationship has already produced significant results and the carriers have worked well with one another. Otherwise, the carriers would never consider permanently combining their operations. However, most alliances do not spark relationships that make consolidation a realistic possibility. Although the allied carriers work together to provide sophisticated transportation services, their cooperation remains at a certain distance. Carriers tend to be individualists that are not amenable to consolidating into an entity that they cannot control. Clashing managerial personalities and greater dedication to the carrier than to the alliance tend to keep allied carriers apart. Indeed, these are the very reasons why carriers enter into alliances in the first place – each carrier gains the benefits of their carrier-to-carrier collaboration without forfeiting managerial control.

Moreover, other issues can make merging with an alliance partner impossible. For example, countries will not want to sell their government-owned and operated carriers that employ thousands of citizens in their home countries in both the operational and shipbuilding sectors. Similar legal concerns – tax, ownership, antitrust – also serve as countervailing factors that preclude the possibility of consolidation for many carriers.

Therefore, alliances will not result in another round of 'mergermania' that will consolidate the industry into an oligopoly of a few large carriers in the near future. If anything, alliances are more likely to influence large carriers to purchase niche carriers whose operations can be integrated easily without any managerial discomfort. In so doing, individual carriers can gradually build their individual global networks while they enjoy the benefits of global alliances in the interim. Once a carrier grows large enough to operate a comprehensive global network, it will abandon its alliance partners.

The irony of this situation is that both the advantages and disadvantages of alliances will result in future consolidation. Clearly, every carrier wants the economies and efficiencies of scale enjoyed by alliances. But carriers want to enjoy these benefits on their own terms to the exclusion of their competitors.

Vessel Efficiency and Transshipment

It is impossible to discuss these two developments individually because they are so closely related. One main reason why global alliances operating over multiple trade lanes are able to reduce consistently their port calls is the use of bigger container vessels. Today's jumbo container vessels dwarf their Panamax predecessors, carrying a substantially greater number of containers. And the size of future vessels continues to grow at a rapid rate. Further, technological advances such as vessel automation and Global Positioning Systems have made operation of these jumbo vessels less expensive than older vessels. In addition, vessels capable of crossing the ocean at twice the speed of conventional ships that can

provide trans-Atlantic service in approximately four days are closer to being a reality.

The other main reason why alliances are able to reduce substantially the number of port calls made by a vessel is the transshipment of containers at megaports. At megaports, containers are unloaded for transfer to other vessels or land-based transportation and then leave shortly afterwards to their ultimate destinations. Thus, megaports are switching centres that handle intermediate flows between multiple origins and multiple destinations and commonly contribute trade flows of their own. Essentially, the megaport system mimics the hub-and-spoke system developed by airlines to transport both cargo and passengers.

Under the megaport system, only alliances or carriers with the greatest economies of scale can transport containers between megaports, to reap the rewards of the more profitable portion of the ocean transportation. For containers travelling between megaports and feeder ports and exclusively between feeder ports, alliances will enter into agreements with niche or small regional carriers for the provision of these short-haul and medium-haul services. Under these agreements, niche carriers and alliances will have reciprocal responsibilities to feed their traffic on to the other's vessels. So long as the FMC does not consider such an agreement 'substantially anticompetitive,' they will receive antitrust immunity.

However, alliances looking for Jones Act carriers for feeder services in the coastwise US trade will not have many options from which to choose due to the small number of US-flag vessels. However, there are industry groups actively working to promote the development of that fleet. Until such a fleet develops, wholly foreign alliances will continue to rely on land transportation. To do so, ocean shipping alliances will either enter into alliances or consolidate with motor or rail carriers to create intermodal alliances. These intermodal relationships will extend the rationalisation of operations throughout the entire transportation process. In so doing, these intermodal alliances will provide the same integrated service as freight forwarders and express shipping companies like Federal Express.

In the United States, intermodal relationships would not be immunised by the Shipping Act; instead, the Antitrust Division of the Department of Justice would be responsible for ensuring that an intermodal alliance does not restrain trade under the Sherman Antitrust Act. Assuming that the parties did not enter into an intermodal alliance with an improper motive, the Antitrust Division would review the alliance to ensure that it would not have an anticompetitive effect.

In addition, it is important to note that ports will be forced to compete against one another to lure carriers to use their facilities as a megaport. Port authorities fear being bypassed and turned into feeder ports for large load centres. Even worse, port authorities fear losing much of their business because port-to-rail

transshipment will in many cases be faster than port-to-port transshipment. Therefore, alliances have been able to extract attractive arrangements from port authorities that include improved multimodal access, deeper ports, and inland infrastructure that were previously unavailable.

Port authorities have entered these arrangements reluctantly because alliances tend to be unstable. But port authorities have little choice because without having a global alliance call at their port, the port's very existence will be jeopardised.

US regulatory priorities

Since Congress enacted OSRA in October 1998, only one serious call for a substantial change in the regulatory scheme governing carriers has been introduced. This bill was entitled the Free Market Antitrust Immunity Reform (FAIR) Act of 1999 and was introduced by Rep. Henry Hyde, then Chairman of the House Judiciary Committee. As Rep. Hyde has long advocated, the FAIR bill sought to repeal the current antitrust immunity for ocean carriers. Rep. Hyde opposes antitrust immunity because it '*now almost exclusively benefits foreign-owned carriers at the expense of Americans*' who are mostly shippers' associations and NVOCCs.[10] A primary example of the unfairness to NVOCCs is that OSRA allows carriers, but not NVOCCs, to enter into confidential service contracts.

The FAIR bill did not get very far in Congress. Rep. Hyde's Judiciary Committee held a few hearings on the subject, but neither the bill nor the issue received serious consideration by Congress. Congress appears to be taking a wait-and-see approach to determine the success of OSRA before tinkering with it. Although the FAIR Act was reintroduced in the 107th Congress by Rep. Hyde and the new chairman of the House Judiciary Committee, Rep. James Sensenbrenner, carriers will not alter their alliance-related decision making based on congressional action over the next two years.

Therefore, the governmental body that will have the greatest effect will be the FMC. As discussed earlier, the legislative history of OSRA shows that Congress wants the FMC to take a more proactive role in policing the shipping industry. To perform its activist role, the FMC published an Interim Status Report in June, 2000 to analyse how OSRA has affected the industry thus far (Ocean Shipping Reform Act: An Interim Status Report, 2000). The report notes that alliances have become 'prominent' but offers little guidance as to how FMC post-OSRA regulation of alliances will differ from pre-OSRA regulation. To date, the FMC has not publicly questioned any proposed alliance agreements under its section 6(g) authority.

But carriers should expect the FMC to become more active. Public comments by several Commissioners illustrate that they are interested in playing the more active role that Congress intended. Further, the FMC showed that it understands

the importance of alliances in its September, 2001 report explaining the impact of OSRA on the shipping industry. In this report, the FMC expressly states that it is ''acutely aware'' of the operational agreements that comprise alliance relationships (*The Impact of the Ocean Shipping Reform Act of 1998*; 2001). The FMC recognises that alliances carry 60-65% of all slots in the main east-west trades; however, it also considers alliances a competitive alternative to the super-carriers that may result from increased mergers and acquisitions. Because the FMC is closely scrutinizing alliances, carriers should expect the agency to follow Congress's orders and closely scrutinise proposed alliances.

On-line exchanges

The Internet may either transform the competitive landscape of the industry or have little effect whatsoever. The key determinant will be whether carriers decide to use the Internet as a competitive or facilitating tool. For a web portal to have a pro-competitive effect, it must serve as an auction where carriers bid for the right to carry a shipper's goods. Of the three major web portals currently in existence or existed, only GoCargo.com serves as an on-line auction that includes major carriers. As of April 25, 2001, GoCargo.com ceased operations, leaving only two major web portals.

To avoid another round of rate wars, most major carriers are shying away from competing with the use of the Internet. The two non-auction major web portals under construction do not offer any competitive benefits for shippers; instead, they merely facilitate contracting. Nevertheless, there are significant differences between these two projects. Several carriers first combined to create 'Inttra', a web site that operates like a traditional alliance in that it is purely an operational relationship. As such, this web site will provide a shipper's basic needs: tracking and tracing of containers; container booking requests; proactive event notification; exception management; activity plans; bill of lading information; and various reports and statistics.

Next, rival carriers announced the formation of the 'Global Transportation Network' project. In contrast to Inttra, the Global Transportation Network will allow one-on-one rate negotiations between shippers and carriers and offer rate quotations to shippers. Because all interaction is with the carrier of the shipper's choice, the carriers do not directly compete with each other for business.

It is interesting to note that the two major web portals do not generally cut across existing alliances. For example, the New World Alliance carriers (APL and Mitsui) were members of GoCargo.com and are members of the Global Transportation Network, but were not invited to join Inttra. Likewise, United Alliance carriers Hanjin and Senator both belong to the Global Transportation Network. However, cross-alliance web alliances existed, eg Senator belonged to both GoCargo.com and the Global Transportation Network.

The tangled web of Internet relationships, though, cannot produce any competitive benefits for customers, if the carriers refuse to compete. Thus, the effect of the e-alliances will probably be minimal. Web portals serving only as sources of information or points of communication merely provide a duplicate means of communication that already exists on each individual carrier's web site or by e-mail correspondence.

CONCLUSION

Alliances are rational responses to both the historical problems faced by the ocean shipping industry and the new issues presented by today's global marketplace. Moreover, alliances address the problems presented by the panoply of legal environments in which carriers operate. With all of the benefits flowing from the alliance system, the success of alliances may depend, in large measure, on the likelihood that they will lead to mergers – the ultimate alliance – where smaller carriers are acquired by the larger.

At the same time, the instability of many alliances results in the unwillingness of carriers to make long-term investments in shared facilities or marketing strategies. The fluidity of these relationships provides another reason for allied carriers to consolidate, because they may never work closely enough together to attain the long-term benefits of economies of scale.

Yet, the instability of alliances illustrates why large carriers will tend not to merge with one another. As large corporate entities with a distinct corporate and national cultures, large carriers are confident that their operations are superior and are often unwilling to compromise in their beliefs. Although these traits can be the very reason why a carrier is successful, ironically, it can also be the reason why a carrier should not merge with a carrier of the same size.

Regardless, to ensure that the benefits offered by alliances are enjoyed by shippers, regulators must pay close attention to these agreements. In the United States, this means that the FMC must follow its mandate to pay closer attention to the formation and operation of alliances. Carriers should expect the FMC to take this responsibility very seriously, now that it has acquired the requisite background information. Therefore, in total, the greatest fear alliances should have is the carriers' own behaviour.

ENDNOTES

[1] The other way has been through mergers. The most notable mergers have been between: 1) AP Moller's Maersk Line and Sea-Land Services to form 'Maersk-SeaLand'; and 2) Neptune Orient Lines, Ltd. and American President Lines, whereby APL became a wholly owned private subsidiary of NOL.

[2] 46 C.F.R. § 535.104(o).
[3] 46 C.F.R. § 535.307(a).
[4] Section 15 of the 1916 Act, 39 Stat. 728, 733, (former 46 U.S.C. 814).
[5] The Supreme Court noted: *At least by 1913 it was recognised that such agreements might run counter to the policy of the anti-trust laws; several cases were pending against foreign and domestic water carriers for alleged violations of the Sherman Act.' FMB vs. Isbrandtsen Co.,* 356 U.S. 481, 487-88 (1958).
[6] *Id.* at 481.
[7] 390 US 238 (1968).
[8] Section 4 of the Shipping Act of 1984.
[9] Section 6(*g*) of the Shipping Act of 1984.
[10] Statement of Chairman Henry Hyde at a Hearing on the FAIR Act of 1999, March 22, 2000. http://commdocs,house.gov/committees/judiciary/hju67304.000/hju67304_0.HTM < visited February 21, 2001 >

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