Competition Enforcement and Private Actions in Oceanic Trade Governance

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ABSTRACT

Competition Enforcement and Private Actions in Oceanic Trade Governance is an analytical piece that describes competition enforcement within the ocean trade industry and the need to pursue private action rights as a complementary mechanism to government intervention. Over 80% of Regional Trade Agreements (RTAs) now contain clauses on competition, including those on competition law enforcement, specialized agencies, and principles such as transparency and non-discrimination. They address anticompetitive especially within developing countries with limited means of enforcement.

The private actions enable stakeholders—shippers, carriers, and consignees—to obtain redress for anti-competitive behaviors such as price-fixing, discrimination, and denial of service. For example, a shipper could initiate action against a carrier for such unfair pricing, whereas a carrier could sue for collusion or conduct that unfairly impacts its operation. A consignee may also utilize private law to bring claims for delayed delivery or the price of goods in question. Such actions further provide access to justice in the market while complementing public efforts of enforcement.

The discussion further demonstrates that RTAs majorly arbitrate competition concerns with respect to maritime trade governance. With respect to competition law, RTAs provide

cooperation between Member States' competition authorities, align competition laws across Member States, and operate cross-border anti-competitive practices dispute settlement. The RTAs also help developing countries, providing technical assistance and transitional provisions.

This work argues that stimulating private enforcement mechanisms and using RTAs would create an even chance in international trade. This could easily be undermined by implementation gaps and disparities in institutional capacities that need to be addressed to ensure sustainability for competition governance in oceanic trade.

KEYWORDS: - Anti-competitive practices, Regional Trade Agreements, Private Actions, Maritime Industry, Stakeholders, Agreements.

RESEARCH OBJECTIVE

1. To assess the significance of private action rights in the ocean trade sector in addressing anti-competitive practices and supplementing governmental enforcement efforts.
2. To analyze and examine the extent to which RTAs incorporate competition clauses, promote fair trade, and facilitate cooperation among nations.

METHODOLOGY

Doctrinal and analytical methods are being used to investigate the complex interactions that exist in the marine sector between regional trade agreements, private activities, and competition enforcement. It highlights how they affect different marine commerce parties. The study conducts a legal examination of the rules, laws, and clauses pertaining to competition found in Regional Trade Agreements (RTAs) that control private activities and competition in the marine industry.

In order to provide a basis for comprehending how private activities and competition laws affect fair trade and stakeholder interests, this research aims to analyze the regulatory environment, enforcement tools, and difficulties. The process includes gathering and

examining specifics from policy papers, competition cases, and RTA regulations. To find patterns and connections between competition enforcement, private actions, RTA provisions, and their influence on fostering a more fair international trade environment in the marine sector, it conducts a thorough examination of qualitative data. Examination and analysis of the legal and policy frameworks governing competition in the maritime industry, including national competition laws, regional trade agreements, and international conventions has been performed.

INTRODUCTION

The global maritime sector is the essential facilitator of worldwide trade, with oceanic transportation as the widest-used element of the global supply chain.[1] According to statistics, the volume of seaborne trade meticulously reached almost 12.3 billion metric tons in 2024.[2] Maintaining equal competition in this industry is crucial for efficient and fair-trading practices beneficial for both industry stakeholders and final consumers. Enforcement of competition at both public and private levels, is essential for deterring abusive practices by bigger shipping alliances that might distort markets and adversely affect consumers.[3] Thus, enforcing competition by evaluating and exhibiting the right of private parties involved in oceanic trade especially those of shippers, carriers, and consignees, is the need of an hour to dissect genuine price surges of shipping costs and charges.

Competition enforcement in international shipping regimes can be ensured by both public and private actions. Public actions are typically carried out by regulatory agencies and competition

[1] World Trade Organization, Maritime Trade and Transport (2020), https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm

[2] United Nations Conference on Trade and Development, International Maritime Trade, in Review of Maritime Transport 2024: Navigating Maritime Chokepoints 1 (2024).

[3] Hassan Qaqaya & George Lipimile, *The effects of anti-competitive business practices on developing countries and their development prospects*, UN Trade and Development (UNCTAD) (July 3, 2008), https://unctad.org/system/files/official-document/ditcclp20082_en.pdf.

commissions by setting up public policies.[4] These regulatory bodies keep an eye of compliance, examine and punish anti-competitive behavior, and impose sanctions and fines to discourage future infractions.[5] However, due to the high level of cooperation and partnerships needed to facilitate bulk trade through ships, the maritime industry has been under less scrutiny by such public competition regulators. Thus, governmental enforcement alone can be inadequate to tackle the intricacies and anti-competitive conduct in ocean shipping.[6] This is where awareness and implementation of private rights become essential.

Private actions indicate legal claims commenced by people or entities that have incurred damages as a result of anti-competitive conduct. These actions may be classified as follow-on, stand-alone, or group claims.[7] Follow-on claims depend on previous conclusions from regulatory authorities, but stand-alone claims do not need such assessments.[8] Collective proceedings, similar to class actions, allow several plaintiffs to pursue remedy collectively, therefore improving market access to justice and pricing mechanisms for all stakeholders at once.

In the shipping industry, private actions are the need of the hour owing to the industry's global character and the possibility of cross-border anti-competitive behaviors, the best example of which is the existence of three major alliances in ship lining industry, i.e., 2M (Maersk, MSC), the Ocean Alliance (CMA CGM, COSCO, Evergreen), and THE Alliance (Hapag Lloyd, HMM, ONE, Yang Ming). Three major alliances in 2021 accounted for 91% of transpacific

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[4] Michael A Khouri, *Performance and Accountability Report 2020*, Federal Maritime Commission (FMC) (Nov. 16, 2020), https://www.fmc.gov/wp-content/uploads/2020/12/FMCFY2020PAR.pdf.
[5] *Id.*
[6] Eunice O Olaniyi, *Smart Regulations in Maritime Governance: Efficacy, Gaps, and Stakeholder Perspectives*, 202 Marine Pollution Bulletin 1 (2024), https://www.sciencedirect.com/science/article/pii/S0025326X24003187
[7] Michael D Hausfeld, *Competition enforcement*, Concurrences, (2024) https://www.concurrences.com/en/dictionary/private-enforcement.
[8] CLIFFORD CHANCE LLP, *Private anti-trust litigation 2024* (July 18, 2023) available at https://www.concurrences.com/en/dictionary/private-enforcement (last visited Nov. 05, 2024).

trade and 89% of transatlantic trade collectively.[9] Due to such unscrutinized practices, shippers, carriers, and consignees often encounter issues, including price fixing, discriminatory tactics, and unjust service denial by intermediaries like shipowners, terminal operators, etc.[10] Thus, private actions can empower stakeholders to directly confront these concerns in order to establish a sustainable level playing field in maritime commerce.

Regional Trade Agreements (RTAs) have gained significance in influencing global trade policy and competition enforcement. More than 80% of RTAs have competition-related clauses, indicating increasing acknowledgment of such steps as fundamental to promoting fair trade in the sea.[11] These clauses generally include obligations to develop a comprehensive competition law framework, may fabricate industry-specific competition enforcement institutions at the global level, and may also aid the fabrication of public policies for the same at the national level.

Shippers depend on carriers for goods transportation and may suffer from anti-competitive activities, such as discriminatory pricing or arbitrary service denial.[12] Carriers may encounter difficulties associated with exploitative pricing or collusion among rivals.[13] Consignees acting on behalf of shippers may face challenges about delivery and price discrepancies.[14]

Private action rights enable these stakeholders to pursue legal remedies for anti-competitive conduct. Shippers may file lawsuits against carriers for unjust acts, while carriers may contest

[9]AMERICAN ANTI-TRUST INSTITUTE, *Competition Enforcement, Private Actions and the Shipping Act* (May 2, 2023) available at https://www.antitrustinstitute.org/wp-content/uploads/2023/05/AAI-Shipping-Paper-Summary_05.02.03.pdf (Last visited Nov. 05, 2024)
[10] *Id.*
[11] UNCTAD, Trade and Competition Issues: Experiences at the Regional Level, UNCTAD/DITC/CLP/2005/1 (2005).
[12] *Supra.,* note 6, Eunice O Olaniyi, at 4.
[13] ECONOMIC HISTORY ASSOCIATION, *International Shipping Cartels* (August 14, 2001) available at https://eh.net/encyclopedia/international-shipping-cartels/ (last visited Nov. 05, 2024).
[14] ERASMUS UNIVERSITY ROTTERDAM, *Remedies for the Carrier When the Consignee Fails to Take Delivery* (2002) available at https://repub.eur.nl/pub/6943/10.pdf, ch.7, at 248 (last visited Nov. 06, 2024)

anti-competitive behaviors impacting their operations.[15] Consignees may also resolve delivery and price problems by private proceedings.

Thus, private lawsuits enable shippers, carriers, and consignees to pursue remedies for anti-competitive activities, therefore augmenting official enforcement efforts and improving the overall efficacy of competition regulation in maritime commerce. This study will examine the particulars of the exercise of private action rights, the obstacles encountered by stakeholders, and the wider ramifications for competition enforcement in the marine industry.

COMPETITION POLICY IN REGIONAL TRADE AGREEMENTS

A regional trade agreement (RTA) is a treaty between two or more governments that define the rules of trade for all signatories, like the North American Free Trade Agreement (NAFTA), the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR), the European Union (EU) and Asia-Pacific Economic Cooperation (APEC).[16] Elements of such agreements constitute public goods and can ensure fair trade if designed and implemented precisely. Specific clauses inside these agreements address the precise competition issues, benefit all trading partners, and provide favourable welfare outcomes via enhanced commerce and a refined policy landscape.[17] However, its effective design necessitates a reconciliation of interests among various members and between member and non-member nations.

As oceanic trade is subjected to international landscapes with no common legal code to govern it, anti-competitive conduct is high and behind the veil in the name of cooperation. Some actions that are commonly found to be in violation of competition rules are like, an ocean

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[15] TRADLINX, *How Will Carriers React to FMCS Class Action Rule? What Shippers Need to Know* (Mar. 29, 2024) available at https://blogs.tradlinx.com/how-will-carriers-react-to-fmcs-class-action-rule-what-shippers-need-to-know/ (last visited Nov. 06, 2024)

[16] WORLD BANK GROUP, *Regional Trade Agreements* (May 4, 2018), available at https://www.worldbank.org/en/topic/regional-integration/brief/regional-trade-agreements (last visited Nov. 06, 2024)

[17] Id.

carrier conference rule that made "transshipment" services follow too many rules;[18] The port owner puts too many restrictions and fees on the lease of a marine terminal company;[19] and a conspiracy to fix prices for moving roll-on/roll-off vehicle shipping.[20]Thus, the flourishment of maritime competition policies found in a regional trade agreement could propound to be the best interim solution.

Oceanic/Maritime trade, though international in nature, highly draws a connection with regional influence. Regional centres, such as important ports in Europe, North America, and East Asia, are mostly responsible for facilitating international trade.[21] These centres enable international trade dynamics and are essential for intra-regional commerce. Geographical closeness significantly influences trade intensity, with principal marine routes prevailing in worldwide containerized commerce.[22] Regional economic integration, exemplified by entities like the EU or USMCA, facilitates intra-bloc commerce by standardizing rules and reducing obstacles.[23] Thus, RTAs may foster competition and collaboration among regional entities, therefore improving the efficiency and competitiveness of marine commerce.

The influence of competition law enforcement on maritime commerce through regional trade agreements (RTAs) is multidimensional, affecting a variety of stakeholders and regions in a unique manner. Through regional trade agreements (RTAs), competition law enforcement may have a major influence on many marine trade players including, shippers, ship lines, consumers, goods forwarders, port authorities, terminal operators, marine regulators, and environmental organisations. Reduced anti-competitive tactics help shippers pay less for

[18] Distribution Services Ltd. v. Transpacific Freight Conference of Japan, 24 S.R.R. 714, 722, 1988 WL 340659 (FMC 1988)
[19] Maher Terminals v. The Port Authority of New York and New Jersey, 34 S.R.R. 35 (FMC 2015)
[20] In re Vehicle Carrier Services, 1 F.M.C. 2d 45, 94 (ALJ 2018), af 'd in part 1 F.M.C. 2d 175 (FMC 2019)
[21] Theo Notteboom et al., PORT ECONOMICS, MANAGEMENT AND POLICY (2022) available at https://porteconomicsmanagement.org/pemp/contents/part1/maritime-shipping-and-international-trade/ (Last visited Nov. 06, 2024)
[22] *Id.*
[23] *Supra.,* note 2, UNCTAD, at 3.

transportation; liners gain from more innovation and market share. Reduced rates and better services help consumers; goods forwarders may provide more competitive services. While marine authorities may have more work, port officials and terminal operators might gain from higher efficiency. Sustainable methods help environmental organizations by lowering pollution and supporting green shipping. Maximising these advantages, therefore, depends on efficient execution and coordination among the parties.

By facilitating cooperation among nations, reducing anti-competitive practices, and promoting equitable competition, RTAs can enhance maritime trade. For example, the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Maritime Transport Agreement is anticipated to significantly improve maritime connectivity across the Bay of Bengal, thereby enhancing India's trade with neighboring countries, with the objective of simplifying logistics in order to facilitate regional trade, enable transshipment of cargo using the terminals of other countries, and provide concessional port dues.[24]

RTAs are agreements between countries to prevent anti-competitive practices, such as market-sharing or price-fixing agreements among shipping companies. These provisions can range from "best endeavors" to legally binding obligations, ensuring effective enforcement of competition laws. RTAs can facilitate cooperation among national competition authorities, facilitating better coordination in investigating cross-border anti-competitive practices.[25] Harmonization of competition laws among member states can create a consistent regulatory environment discouraged by shipping companies exploiting differences in national laws.[26]

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[24] STIMSON CENTRE, *Why BIMSTEC's Maritime Transport Agreement is Essential for India* (Aug 23, 2024) available at https://www.stimson.org/2024/why-bimstecs-maritime-transport-agreement-is-essential-for-india/ (last visited Nov. 06, 2024)
[25] UNCTAD, Competition Provisions in Regional Trade Agreements: How to Assure Development Gains, UNCTAD/DITC/CLP/2005/1 (2005).
[26] *Id.*

RTAs often include dispute resolution mechanisms, such as arbitration or consultation processes, to address anti-competitive agreements between terminals and ship liners. RTAs may also offer special and differential treatment to developing countries, providing technical assistance and transitional periods to effectively implement competition provisions.[27] This support is crucial for developing countries, which may lack the capacity to enforce competition laws against large shipping companies.

Regional Trade Agreements (RTAs) can serve as vital for resolving competition concerns in the maritime trade sector, including the exploitation of dominance by shipping companies and anti-competitive agreements between terminals and ship vessels. Provisions are incorporated into RTAs to prevent anti-competitive practices, thereby preventing shipping companies from utilising their market power to impede competition or impose unjust terms on smaller competitors.

They can enable improved coordination in the investigation of cross-border anti-competitive practices by facilitating cooperation among national competition authorities. As some of the RTAs between African countries (e.g. the West African Economic and Monetary Union - WAEMU) establish a Competition Council in order to facilitate the application of the requirements related to competition policy in addition to setting out a general prohibition of competition issues.[28] RTAs can also establish a consistent regulatory environment that discourages anti-competitive agreements by harmonising competition laws among member states. RTAs can also prevent monopolies or dominant positions in maritime commerce by addressing cross-border mergers and acquisitions.

[27] *Supra* note *24.*

[28] WTO, ERSD, Competition Policy, Trade and the Global Economy: Existing WTO Elements, Commitments in Regional Trade Agreements, Current Challenges and Issues for Reflection, Staff Working Paper ERSD-2018-12 (Oct. 31, 2018).

They frequently incorporate dispute resolution mechanisms for resolving competition issues, such as arbitration or consultation processes. Sectoral accords that are well-designed within RTAs have the potential to enhance efficiency and competition rather than to impede them. Ultimately, competition in maritime commerce can be improved by encouraging member states to review and align their national exemptions with regional competition standards despite the challenges RTAs face.

Case Studies of Regional Trade Agreements (RTAs) Showcasing That Have Effectively Proven Their Capability to Address Issues of Competition Generated in Maritime Trade:

- Regional Partnership Agreements in the European Union

Colloquially, the European Union RTAs are ratified with significant provisions that are competition-oriented-that is, a high level of trade integration. These agreements tend to substitute old-fashioned instruments of trade remedy such as anti-dumping with competition principles, so ensuring fair practice in maritime trade. Such anti-competitive behaviors, such as price-fixing and market monopolies, were limited by the EU RTAs in establishing a more open and, thus, competitive environment for maritime transport services.[29]

- Regional Comprehensive Economic Partnership

This includes ASEAN countries and their trading partners. The agreement has rushed maritime transport connectivity and improved its logistics performance. Facilitation of intra-regional trade along a liner shipping and reduced barriers to maritime transport service is among the determinants of this agreement ascribing the myth of efficacy to intra-regional trade networks

[29] United Nations Conference on Trade and Development, Competition Provisions in Regional Trade Agreements: How to Assure Development Gains (2005), available at https://www.tralac.org/images/docs/4673/competition-provisions-in-regional-trade-agreements-how-to-assure-development-gains-unctad-october-2005.pdf.

created by RCEP as effectively curing competitive distortions in maritime logistics unlike in any other RTAs (like the EU agreements).[30]

- NAFTA

Imbued with a negative list paradigm, NAFTA in maritime competition turns towards assuring transparency as well as non-discrimination in the commitments of services. This infrastructure has sparked investments in port infrastructure and improved maritime transport services across member countries. Harmonization of regulations and cooperation among competition authorities has benefited effectively in abating anti-competitive practices.[31]

The above cases serve to exemplify how RTAs can successfully address competition issues with respect to maritime trade governance by means of special provisions and closer ties at the regional level.

However, inculcating the shipping industry into the realm of competition enforcement through RTAs could be challenging if not backed by governmental support. This is because, due to the involvement and need for cooperation of various participants to facilitate trade through shipping, the shipping industry has been exempted from the scrutiny of competition regimes of many nations. While some states like the USA have already revoked these exemptions in light of prevailing competition issues, some nations are still stuck in a battle of cooperation and competition.[32]

Provisions to foster competition and prevent anti-competitive practices are frequently incorporated into RTAs. Nevertheless, these RTA provisions may not be completely applicable

[30] Zheng Lei, Qingbin Meng & Laike Yang, *Regional Trade Agreement and Maritime Transport Connectivity: Evidence from ASEAN* 33 Maritime Bus. Rev. 347 (2020).
[31] Oliver Solano & Andreas Sennekamp, *Competition Provisions in Regional Trade Agreements* (OECD Trade Policy Papers, No. 31, 2006).
[32] OECD, Int'l Transport Forum, *Reviewing Competition Exemptions for Liner Shipping*, available at https://www.itf-oecd.org/reviewing-competition-exemptions-liner-shipping (last visited Nov. 08, 2024)

within the jurisdiction of a country that has exemptions for its shipping industry. By fostering cooperation among member states and fostering the harmonisation of competition laws, RTAs could continue to impact competition enforcement. The interaction between national exemptions and RTAs can impact maritime commerce by influencing the level of cooperation and competition among shipping companies. Although exemptions can promote efficiency and collaboration, RTAs can guarantee that these advantages do not result in diminished consumer welfare or competition.

In general, national exemptions are not automatically overridden by RTAs unless they are explicitly addressed. Nevertheless, RTAs have the potential to motivate member states to evaluate and potentially harmonize their national exemptions with regional competition standards. This alignment has the potential to result in a more uniform regulatory environment. The Liner Shipping Consortia Block Exemption Regulation (CBER) of the European Union is an example of a regulation that exempts cooperation among liner shipping companies from competition law.[33] Nevertheless, this exemption is scheduled to expire, and comparable exemptions in other jurisdictions are currently under review.[34] These evaluations may be influenced by RTAs, which may foster a more competitive environment among member states.

Thus, RTAs can influence competition enforcement in maritime trade by promoting cooperation and harmonization among member states. However, they generally do not override national exemptions unless explicitly stated. The impact of RTAs on national exemptions depends on the specific provisions of the agreement and the willingness of member states to align their laws with regional standards.

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[33] CMA, *CMA will not recommend renewal of shipping competition exemption* (Feb. 9, 2024) available at https://www.gov.uk/government/news/cma-will-not-recommend-renewal-of-shipping-competition-exemption (last visited Nov. 08, 2024)

[34] *Supra.*, note 8, Clifford Chance LLP, at 4.

PRIVATE RIGHTS AND ENFORCEMENT MECHANISMS

Competition enforcement in any industry is always of task of national competition agencies of the states. Although many states have given their competition agencies extra-territorial jurisdiction powers, the agencies exercising such powers are merely limited to their statutory papers. In such a scenario, the competition enforcement authorities taking up cognizance of anti-competitive behavior in the oceanic trade sector through the shipping industry, seems to be an unfetched need until stakeholders of the industry decides to exercise their rights.

Private action rights are essential tools that enable individual marine sector participants to confront anti-competitive behaviour. Private proceedings allow shippers, carriers, consignees, and other parties directly impacted by unfair conduct to pursue legal remedies, in contrast to public enforcement, which depends on regulatory bodies.[35] These actions might be group activities similar to class action lawsuits, stand-alone claims undertaken individually, or follow-on claims based on previous regulatory conclusions.[36] This mechanism serves as a crucial addition to governmental control, fostering a more fair and competitive environment in oceanic commerce, given that the global marine industry enables international trade with over 12.3 billion metric tonnes in 2024.[37]

Different approaches to competition enforcement in the marine industry are reflected in the wide variations in private action rights across countries. Although it has significant restrictions, in the U.S., the Shipping Act of 1984 has long offered a framework for private enforcement. The Act for long permitted private parties to file administrative complaints with the Federal Maritime Commission (FMC) for specific infractions, even while it precludes federal and state

[35] Jonathan B. Baker, THE ANTITRUST PARADIGM: RESTORING A COMPETITIVE ECONOMY 197 (2019).
[36] *Supra*., note 7, Michael D Hausfeld, at 4.
[37] *Supra.,* note 2, UNCTAD, at 3.

antitrust claims.[38] In contrast to the triple damages permitted by general antitrust rules, successful complainants are entitled to damages and injunctive remedies; nevertheless, damages are limited to twice the harm inflicted.[39] However, the range of actionable behaviour was limited since agreements among ocean carriers that were filed with the FMC and found to be effective under the Shipping Act were customarily protected from private antitrust proceedings.[40] Additionally, courts in cases like Shipper's Association v. Dry Cargo, 2011 have often ruled that the Shipping Act supersedes claims under state law, which further restricts private parties' access to remedies outside of its purview.[41]

By improving the FMC's ability to look into and punish unfair practices by ocean carriers, increasing contract and pricing transparency, and shifting the burden of proof in some situations, the Ocean Shipping Reform Act of 2022 (OSRA 2022) has brought about significant changes that indirectly support private actions by giving shippers and other stakeholders a stronger foundation on which to pursue claims.[42]

The Act gives the FMC authority to probe and punish unfair or discriminating policies by ocean carriers, including arbitrary denial of service or equipment.[43] OSRA 2022 requires more openness in ocean carrier agreements and pricing, therefore facilitating shipper identification and challenge of any infractions.[44] Under some circumstances, the Act also changes the burden of evidence; ocean carriers must prove that their operations are logical and legal compliance.

Thus, amended U.S laws indirectly supports private actions by enhancing the FMC's enforcement authority and raising transparency, therefore giving shippers and other

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[38] 46 U.S.C. § 40101 et seq. (Shipping Act of 1984)
[39] Federal Maritime Commission, 62ND ANNUAL REPORT FISCAL YEAR 2023 (2024) available at https://www.fmc.gov/wp-content/uploads/2024/04/FY2023ARfinal.pdf (last visited Nov. 10, 2024)
[40] 46 U.S.C. § 40307 (Shipping Act of 1984)
[41] *Shipper's Association v. Dry Cargo*, 2011 AMC 2481 (9th Cir. 2011)
[42] 46 U.S.C. § 41101 (Shipping Act of 1984)
[43] *Id.*
[44] 46 U.S.C. § 40501 (Shipping Act of 1984)

stakeholders a greater foundation to bring claims. These changes show a rising awareness among people that the shipping sector had to follow the same competitive policies as other spheres of the economy.

Private actions are more prevalent in the European Union when it comes to competition enforcement. Anti-competitive agreements and the abuse of dominating positions are forbidden under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), respectively.[45] According to Directive 2014/104/EU, the EU permits private lawsuits for damages and injunctive relief to be filed in national courts by people and companies who have been damaged by such infractions. Thus, it is simpler for private parties to contest anti-competitive behaviour in the marine industry since, unlike the US system, the EU has not traditionally granted extensive exclusions for shipping agreements.

By eliminating a sizable exemption for liner shipping consortia, the European Union's decision to not renew its Consortia Block Exemption Regulation (CBER) in 2024 further strengthens private action rights and signals a tougher stance against potential anti-competitive effects.[46] In order to provide a foundation for further private proceedings, the European Commission also aggressively looks into and prosecutes antitrust crimes in the maritime sector.[47]

Different strategies for private enforcement of marine antitrust are available in other countries. Private parties may pursue damages for breaches of Canada's Competition Act, which forbids anti-competitive behavior.[48] Similar to this, private proceedings for antitrust breaches are permitted under Australia's Competition and Consumer Act, which provides for injunctions and

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[45] EUROPEAN COMMISSION, *Antitrust, and cartels*, available at https://competition-policy.ec.europa.eu/antitrust-and-cartels_en (last visited Nov. 10, 2024).
[46] EUROPEAN COMMISSION, *Commission decides not to renew the Consortia Block Exemption Regulation for liner shipping* (Oct. 10, 2023) available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4742 (last visited Nov. 11, 2024)
[47] EUROPEAN COMMISSION, *Antitrust: Commission accepts commitments by container liner shipping companies to increase transparency* (July 07, 2016) available at https://ec.europa.eu/commission/presscorner/detail/en/ip_16_2446 (last visited Nov. 11, 2024)
[48] *Competition Act*, R.S.C. 1985, c. C-34, s. 36.

damages as possible remedies. However, the availability of private actions in the shipping industry is impacted by sector-specific exclusions or limits in several nations, similar to those in the United States, India, etc. Therefore, private activities are less practical in developing nations because they often lack strong legal frameworks and enforcement capacities.[49]

Bringing private actions is still difficult in many jurisdictions. Access to sensitive data, such as contracts between carriers or terminal operators, is often necessary to demonstrate anti-competitive behaviour.[50] Without strong discovery techniques, this might be challenging. Obstacles can arise from jurisdictional complexity, such as figuring out which courts have jurisdiction over cross-border conflicts.[51] Furthermore, different jurisdictions may have different remedies available, with some restricting the kinds of remedy that may be obtained or capping damages. Notwithstanding these obstacles, private initiatives continue to be a crucial instrument for fostering competition in the marine industry, supporting government enforcement initiatives, and enabling interested parties to defend their rights.

Major ocean carriers, including NYK, "K" Line, Nissan Motor Car Carrier Co., and WWL, were accused of price-fixing and capacity reduction in the In Re Vehicle Carrier Services Antitrust Litigation case.[52] The defendants were charged with conspiring to control prices and distribute clients for vehicle carrier services, in violation of both federal and state antitrust statutes. The plaintiffs claimed that intentionally increased prices caused antitrust harm to both direct and indirect buyers. Because federal and state antitrust charges were pre-empted by the Shipping Act of 1984, the action was dismissed. This case underscores the necessity for stakeholders to traverse specialized legal frameworks and exemptions when pursuing claims

[49] Mitali Jain and Nimesh Singh, *Private Enforcement of Competition Law: Revisiting the legal framework in India,* 17 NUJS 1, 16 (2024).
[50] Brenda Sufrin et al., JONES & SUFRIN'S EU COMPETITION LAW TEXT, CASES & MATERIALS, (2019).
[51] K. Lipstein, CONFLICT OF LAWS, 77 (2020).
[52] I*n Re Vehicle Carrier Services Antitrust Litigation*, 2011 AMC 2481 (9th Cir. 2011)

against anti-competitive behavior, as well as the intricacies and limits of private action rights in the marine industry, especially in the U.S. setting.

Thus, the ongoing revocation considerations to uplift the exemptions provided for oceanic trade can be seen as a ray of positive justice. Stakeholders will be able to bring their concerns before competition authorities, thus ensuring fair trade on the high seas and economic benefits to the customers. A renewed emphasis on competition enforcement and private action rights is shown by recent changes in maritime rules, especially OSRA 2022 and the EU's CBER ruling. These modifications provide stakeholders the ability to successfully combat anti-competitive behavior, which promotes a significantly equitable and competitive marine industry. Therefore, it is essential to keep an eye on these developments and how they affect private enforcement mechanisms as the regulatory environment changes.

In 2025, the marine sector will see a significant regulatory change that will affect important parties such as carriers, shipowners, and insurers.[53] These modifications, like the introduction of EEDI Phase 3 for ships above 400 GT,[54] demonstrate how the regulatory landscape is changing and how it may affect the dynamics of competition and the right to private action .

Even with these improvements, problems still exist. Access to sensitive data, such as contracts between carriers or terminal operators, is often necessary to demonstrate anti-competitive behaviour.[55] Obstacles include jurisdictional difficulties and unequal remedies in different jurisdictions.[56] Nonetheless, shippers, carriers, and consignees may have the chance to more successfully pursue private actions with such significant steps towards the improved legal frameworks and more transparency, which encourages a more competitive marine sector.

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[53] LinkedIn, Marlin Blue @Marin Blue, Dec. 30, 2024, available at - https://www.linkedin.com/pulse/10-incoming-regulations-2025-marlinblue-claimshandling-sz3ff (last visited Mar. 6, 2025).
[54] INTERNATIONAL INSTITUTE OF MARINE SURVEYING, *The Report Magazine March 2025* available at https://www.iims.org.uk/report-magazines/the-report-magazine-march-2025/ (last visited Mar. 01, 2025).
[55] *Supra.,* note 6, Eunice O Olaniyi, at 4.
[56] *Id.*

Under the current legal remedy, private entities—including consignees and shippers—can file administrative complaints addressing anti-competitive behaviour. For breaches include coordinated refusals to trade or irrational uses of market power,[57] they may pursue injunctive remedy and damages. By letting many parties jointly pursue claims against anti-competitive activities, increasing the availability of class actions may also help to improve private enforcement. Private parties, at least, might demand more openness in the regulatory body examination of agreed-upon policies. Understanding how agreements are assessed and confronting may be anti-competitive behavior depends on this openness.[58]

Thus, a legislative ban on private enforcement of agreements involving rates and production shall be removed if their impact is to lower competitiveness. Agreements to limit production and increase prices are improbable, much less by common carriers who almost always maintain the capacity to wield unbridled market power, as was before discussed. Especially if policymakers decide that some cooperation among regulated businesses is required; so, enabling private enforcers to challenge these agreements would enable the Commission to separate beneficial agreements from detrimental ones, thereby relieving the already taxed enforcement division from strain.[59]

THE ROLE OF INTERNATIONAL COOPERATION

Maritime competition enforcement depends much on international cooperation, which helps national competition agencies to solve cross-border anti-competitive behaviors by means of coordination. With transactions often spanning many countries, the marine sector is naturally global. This complexity calls for international collaboration to properly probe and punish anti-

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[57] *Supra.,* note 9, American Antitrust Institute, at 5.
[58] *Id.*
[59] *Supra.,* note 1, Economic History Association, at 3.

competitive behavior.[60] Although there is no one worldwide competition law, international collaboration helps to harmonize norms and enforcement methods. Ensuring that businesses encounter uniform regulatory environments across several economies depends on this harmonization.[61]

In the maritime sector, general principles of cooperation among national competition authorities apply RTAs including provisions for cooperation among national competition authorities, facilitating better coordination in investigating cross-border anti-competitive practices.[62] In 2018, the European Commission fined four maritime car carriers EUR 395 million for a price-fixing cartel called the "ro-ro cartel". The cartel involved Chilean CSAV, Japanese MOL, "K" Line and NYK, and Norwegian-Swedish carrier WWL-EUKOR. The EC began investigating after MOL applied for leniency and received full immunity. The cartel affected various European and other continent routes and was investigated by competition authorities in the United States, Japan, Korea, China, Chile, South Africa, Australia, Brazil, and Mexico. Therefore, during the investigation, the EC cooperated with several competition authorities around the world.[63]

There are some cooperation examples the principles of which can be applied to maritime sector to regulate abuse of dominance and other related practices by stakeholders of sector. Long-standing cooperation between the Mexican Federal Economic Commission (COFECE) and U.S. antitrust authorities involves consideration of cross-border mergers is one such example.

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[60] UNCTAD, Guiding Policies and Procedures Under Section F of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, UNCTAD/DITC/CPLP/MISC/2021/2 (Feb. 18, 2021)
[61] OECD, *International Co-operation on Competition Investigations and Proceedings: Progress in Implementing the 2014 OECD Recommendation* at 31 (Mar. 2022) available at - https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/03/international-co-operation-on-competition-investigations-and-proceedings-progress-in-implementing-the-2014-oecd-recommendation_a7127d3a/73e64333-en.pdf. (last visited Nov. 11, 2024)
[62] *Supra.,* note 29, UNCTAD, at 10.
[63] OECD, *OECD Competition Trends 2020* (March 2020) available at - https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/02/oecd-competition-trends-2020_498661b6/3dd79899-en.pdf (last visited Nov. 15, 2024)

Cases like the ChemChina/Syngenta merger and the Continental/Veyance operation as well as others have benefited much from this collaboration.[64] Administrative agreements between COFECE and the Directorate-General for Competition (DG Competition) of the European Commission coordinate enforcement actions. As evidenced by the Dow/DuPont merger[65], this involves collaboration on worldwide mergers and acquisitions. Under the UN Set on Competition, UNCTAD supports international collaboration by means of its Guiding Policies and Procedures (GPP). These rules assist developing nations in handling cross-border competitiveness concerns including mergers and acquisitions.[66]

Despite the progress made in promoting competition through RTAs, significant challenges remain, particularly in developing countries. These nations often face implementation gaps due to varying levels of technical competence and institutional capacity, hindering their ability to effectively enforce competition provisions. To address these challenges, enhanced coordination among jurisdictions is crucial to avoid inefficient enforcement and ensure that competition laws are consistently and effectively applied across borders.

By means of cooperative efforts between countries, including the integration of competition regulations within regional bodies like the European Union, market inefficiencies may be greatly minimised and economic integration encouraged. International cooperation guarantees that competition rules are properly enforced across borders, therefore promoting a fairer and more competitive global trade environment by means of best practices and coordination of enforcement activities.

[64] CONCURRENCES, *Cooperation between competition authorities* (2018) available at - https://www.concurrences.com/en/dictionary/cooperation-between-competition-authorities-en (last visited Nov. 15, 2024)
[65] *Id.*
[66] *Supra.,* note 57, UNCTAD, at 17.

Given the specialised character of oceanic trade issues, certain legal rules should be developed to make clear that special courts should handle them. The legislation applicable in these courts have to be consolidated and aimed at judicial efficiency as well.[67] China has established eleven maritime courts to exercise jurisdiction over marine administrative cases, marine commercial cases, and marine special procedure cases—that is, courts of first instance over these matters. Judicial practice reveals that this is rather favourable for the resolution of maritime conflicts and may always sum up maritime judicial expertise to provide judicial counsel for international commerce and marine transportation.[68]

Comparatively to general jurisdiction system, maritime special jurisdiction system offers great benefits.[69] By means of specific exercise of marine jurisdiction and consistent implementation of international norms and practices, countries should actively modify their own maritime jurisdiction systems, thereby improving the quality and efficiency of marine adjudication.[70]

CHALLENGES TO STAKEHOLDERS

While the potential benefits of private actions in fostering competition within the maritime sector are significant, several challenges can impede the ability of shippers, consignees, carriers, and other stakeholders to effectively exercise these rights.

1. Information Asymmetry and Investigative Load

In the marine industry, obtaining enough proof of anti-competitive behaviour is a great difficulty. Often complicated, shipping contracts have opaque and challenging access to specifics of price agreements or collusive activities. Particularly for smaller companies, this

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[67] Mark Jia, *Special Courts, Global China,* 62 VJIL 560, 565-571 (2024)
[68] FRONTIERS, *Unification and Coordination of Maritime Jurisdiction: Providing a Judicial Guarantee for International Trade and Marine Transport* (Mar. 24, 2022) available at https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2022.848942/full
[69] Q. Li, *The Particularity and Regulation Path of Chinese and Foreign Laws in China's Maritime Trials*, 3 J. Hainan Inst. Trop. Oceanography. 54 (2021).
[70] *Supra* note 65.

knowledge asymmetry forms a significant obstacle as they might find it difficult to fulfil the evidential load needed to bring a successful private action.

2. Litigation Expenses

Legal procedures may be costly and time-consuming, with discouragement of possible plaintiffs from seeking just claims. For many stakeholders—especially small and medium-sized businesses (SMEs)—the expenses related to obtaining legal counsel, doing research, and providing expert evidence may be prohibitive. The great expense of litigation helps to essentially hide anti-competitive actions from examination.

3. Jurisdictional and Choice of Law Concerns

Many times involving many countries, maritime trade makes it difficult to decide which venue would be suitable for launching a private action (Authors' own emphasis). Choice of law provisions in shipping agreements might complicate things even further and even force plaintiffs to negotiate foreign legal systems. For stakeholders trying to defend their private action rights, jurisdictional complexity and negative choice of law provisions might provide major challenges.

4. Commercial pressure and reprisals

If shippers and consignees take private activities, they might be afraid of reprisals from strong carriers or terminal owners. For companies that mostly depend on these service providers for their transportation requirements, this worry is especially acute. Even in cases where stakeholders have sufficient proof of anti-competitive behaviour, the danger of reprisal might deter them from using their private action rights.

5. Insufficient Knowledge and Awareness

Many stakeholders may not know about their private action rights or lack the knowledge to negotiate the legal and regulatory terrain. When anti-competitive actions affect them, this lack of knowledge might prevent them from acting in the necessary manner. Lack of enough understanding and knowledge could cause stakeholders to unintentionally accept unfair terms or practices, therefore sustaining anti-competitive circumstances in the market.

6. Restraints in RTA Dispute Resolution Mechanisms

Although RTAs may have conflict resolution systems, their efficacy might vary. Bilateral agreements might be less able to properly handle anti-competitive behaviour than multilateral agreements as they lack the strong enforcement tools included in such accord. Weak dispute resolution systems within RTAs might compromise stakeholders' capacity to get substantial compensation for anti-competitive damages.

7. Different Institutional Capacity

Countries differ greatly in their institutional capabilities to implement rules on competition. Limited resources, knowledge, and political will in poor countries might impede efficient enforcement, therefore making it challenging for stakeholders to get redress via private action. Inequalities in institutional capability may lead to an unfair playing field wherein some nations' stakeholders have easier access to justice than others.

DISPUTE SETTLEMENT MECHANISMS

Resolving competition issues in the marine commerce industry, including the abuse of dominance by shipping corporations and anti-competitive agreements between ports and ship vessels, might depend much on regional trade agreements (RTAs). Provisions are included into RTAs to discourage anti-competitive behaviour, therefore barring shipping corporations from using their market position to stifle competition or impose unfair conditions on less powerful rivals.[71] By means of their collaboration among national competition agencies, they may help to allow better coordination in the research of cross-border anti-competitive behaviours.

Some of the RTAs between African nations (such as the West African Economic and Monetary Union - WAEMU) create a Competition Council to help to apply the criteria pertaining to competition policy in addition to imposing a general ban on competition problems.[72] By harmonising competition rules across members states, RTAs may also create a uniform regulatory framework that discourages anti-competitive agreements. Through cross-border mergers and acquisitions, RTAs may also help to avoid monopolies or dominating positions in marine trade.

They often include arbitration or consultation procedures as means of dispute resolution for conflicts involving competitiveness.[73] Well-designed sectoral agreements within RTAs have the ability to improve efficiency and competitiveness rather than to hinder them. Despite the difficulties RTAs encounter, member states should be encouraged to assess and match their national exemption with regional competition criteria, therefore improving the competitiveness in marine trade.

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[71] HINRICH FOUNDATION, *Competition provisions in trade agreements: A brief introduction*, (Jan. 18, 2019) available at - https://www.hinrichfoundation.com/research/tradevistas/ftas/competition-provisions-in-trade-agreements/. (last visited Dec. 02, 2024)
[72] *Supra.*, note 7, Michael D Hausfeld. at 4.
[73] *Supra,* note 68.

Thus, resolving problems resulting from anti-competitive behaviors in maritime commerce controlled by Regional commerce Agreements (RTAs) depends on efficient dispute resolution processes. Usually, one may classify these systems into private dispute settlement and state-to-state conflict resolution.

Many RTAs have sections pertaining to member states bringing disputes against one another over the interpretation or execution of the agreement, particularly those pertaining to its competition-related articles. Usually including arbitration, consultations, mediation, and—if needed—a panel of expert judgment, these systems consist of Political concerns, diplomatic sensitivity, and nations' unwillingness to question one another's policies, may, however, restrict the efficacy of state-to-state dispute resolution.[74]

Apart from state-to- state systems, certain RTAs allow private parties—e.g., shippers, carriers, consignees—to start conflict resolution processes against other private parties or even against governments, claiming breaches of competition policies. These systems could call for arbitration, mediation, or court cases run in national courts. Though its efficacy relies on the availability of legal remedies, the impartiality of the adjudicators, and the execution of rulings, private dispute resolution may be more accessible and adaptable than state-to--state processes.

In Comparison of Multilateral and Bilateral Agreements, it is generally noticed that multilateral agreements tend to include more strong enforcing provisions than bilateral ones. More established institutional structures, clearer guidelines, and stronger member state pledges help multilateral accords most of all. By contrast, bilateral agreements could lack efficient enforcement systems and be more vulnerable to political influence. Consequently, conflicts

[74] WORLD TRADE ORGANIZATION, Regional Trade Agreement Section, RTA Provisions: Glossary (2011) available at - https://rtais.wto.org/USERGUIDE/Glossary_MT_Eng.pdf (last visited Dec. 02, 2024)

developing under bilateral RTAs might be more difficult to settle and less likely to result in significant remedies.

Examining the success of conflict resolution systems in RTAs calls for an all-encompassing evaluation of its design, execution, and influence. Among the elements to take into account are the extent of the covered clauses, the availability of the systems to many stakeholders, the openness of the procedures, the speed and cost of settlement, and the enforceability of rulings. Analyzing these elements helps us to better appreciate how to trade conflicts in the marine industry are resolved and how to dispute-settling systems support competitiveness.

CONCLUSION & SUGGESTIONS

Looking into this aspect of oceanic trade has become need of the hour because of unnecessary practices taking place behind veil of cooperation. Enforcement of competition reforms in the maritime sector is necessary so as to ensure that common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

Emphasizing the interaction between public regulatory measures and private rights in guaranteeing fair and efficient trade practices, this research article has investigated the critical function of competition enforcement in the worldwide marine industry. The necessity to solve anti-competitive practices in the maritime transport sector has grown critical given the volume of seaborne commerce approaching hitherto unheard-of heights.

Therefore, the paper emphasises that while government enforcement via regulatory agencies and competition commissions is crucial, it is usually unable to address the complexity and covert anti-competitive behaviour common in ocean shipping. Here is where individual

actions—started by shippers, transporters, and consignees—become absolutely essential. Private actions enable these organisations to directly address problems such price fixing, discriminatory policies, and unfair service rejections, therefore creating a more fair playing field in oceanic trade. Shippers may take legal action against carriers engaged in unfair pricing, for instance, carriers can fight anti-competitive actions affecting their business, consignees can seek remedy for delivery problems and price disagreements.

Regional Trade Agreements (RTAs) increasingly include terms pertaining to competitiveness, indicating a worldwide acceptance of the need of competition enforcement in advancing fair trade. RTAs may help countries cooperate, lower anti-competitive behaviours, and advance fair competition. They also provide means of settling conflicts and harmonising national competition laws. Aiming at enhancing marine connectivity across the Bay of Bengal and simplifying logistics for regional commerce, the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) marine Transport Agreement exhibits this potential. Nevertheless, the success of RTAs in the marine industry depends on government backing and the match of national exemption with regional competitiveness criteria. Despite the difficulties RTAs encounter, member states should examine and match their national exemption with regional competitiveness criteria to promote competition.

As was already said, obstacles still exist notwithstanding the possible advantages of private actions and RTAs. Policymakers, regulatory authorities, and industry players working together will help to overcome these challenges and advance openness, collaboration, and efficient application of competition regulations.

Recommendations

The following ideas and working models are meant to improve private action rights in oceanic trade governance as well as competition enforcement:

Strengthening RTA Provisions: RTAs should include legally enforceable duties connected to competition legislation, therefore guaranteeing efficient enforcement and discouraging anti-competitive behaviors such as market-sharing or price-fixing agreements among shipping firms.

Improving Cooperation Among Competition Agencies: RTAs could help national competition agencies to coordinate effectively by means of cross-border anti-competitive behavior investigation. For instance, the Competition Council formed by the West African Economic and Monetary Union (WAEMU) aims to help apply criteria for competition policies. Member states should work to harmonise their competition laws in order to provide a similar regulatory environment and discourage shipping businesses from taking advantage of national legal variances.

Supporting Developing Nations: RTAs should provide technical support and transitional periods to properly apply competition rules, therefore offering particular and distinctive treatment to these nations.

To handle anti-competitive agreements between terminals and ship lines, Robust Dispute Resolution Mechanisms should be included in RTAs under either arbitration or consultative procedures. Future studies should concentrate on the changing dynamics of trade and competition enforcement in the marine sector, especially in view of developing technology, shifting geopolitics, and the growing relevance of sustainable shipping practices. To ensure that the advantages of maritime trade are shared by all stakeholders, including ultimate consumers, and to understand how to get more harmonisation of global competition regulations, create a more fair international trading environment, and thus guarantee that, By tackling these issues and following these lines of inquiry, we may work towards a more competitive, sustainable, and efficient future for the worldwide marine industry.