This chapter discusses the contractual structure of tramp shipping pools and whether they are likely to be an infringement of Article 81(1) EC by object.

While never formally exempted from the application of the EC competition rules, for a long time since the coming into force of the Treaty of Rome tramp shipping services have been excluded from the scope of the regulations implementing Articles 81 and 82. However, Regulation (EC) No 1419/2006¹

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The problem of the assessment of shipping pools under Article 81 is novel. This chapter focuses on a specific aspect of the application of Article 81(1), namely whether shipping pools are likely to have the object of restricting competition under this provision.

This chapter is structured in the following way. First, it examines the commercial background to tramp shipping pools. Secondly, it analyses the contractual relationships involved in a pool. Thirdly, it highlights the main issues arising in the competitive assessment of shipping pools. Fourthly, it discusses the uncertainty surrounding the objective and enforcement standard to be applied under Article 81 and argues that this provision aims at maximising social welfare through a consumer harm standard. Fifthly, it applies the conclusions reached in the discussion of the objective and enforcement standard under Article 81 to the question whether shipping pools are an infringement of Article 81(1) by object. Finally, it draws general conclusions.

II. **Some Commercial Background to Tramp Shipping pools**

Pooling agreements are a form of commercial co-operation between shipowners clearly aimed at a more efficient, cost effective and lucrative deployment of members’ fleet. In this respect the advantages of pools are clear\(^5\): a small fleet of a few specialized vessels in the spot market may not meet the requirements to tender for big contracts of affreightment without exposing itself to the commercial risks involved in buying second-hand ships, time chartering

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