Shipping pools are a common form of cooperation in the shipping industry. In a shipping pool independent shipowners bring together similar vessels to be operated under a single administration. The primary task of a shipping pool is to optimise the utilisation of the ships both commercially and technically. The commercial management of the ships is undertaken by the pool manager, who markets the ships jointly. The manager concludes contracts with the customers, and is responsible for the fulfilment of the contracts. Normally the manager acts under the supervision of the vessel owners.

If shipowners in a shipping pool own similar vessels, i.e. vessels which can be used to offer the same kinds of maritime transport, the owners are competing suppliers of maritime transport services. A pool agreement will, if
it restricts competition between competing suppliers, be contrary to the
prohibition in Article 81.
A shipping pool may constitute a concentration falling within the Merger
Regulation (MR). It follows from Article 1 of the MR that it applies to all
concentrations with a Community dimension. Further, Article 3(4) states that
“The creation of a joint venture performing on a lasting basis all the functions
of an autonomous economic entity shall constitute a concentration within the
meaning of paragraph 1(b)”.
Thus, if a shipping pool constitutes a full-function joint venture with a
community dimension the creation of the pool falls within the scope of the
MR. This is because the pool will have a lasting impact on the structure of the
market in question and become notifiable as a concentration.
The regulation of conduct in Article 81 and the regulation of changes in the
market structure in the MR differ in many respects. This will be elaborated on
in Part II. These differences in treatment under Article 81 and the MR must
be taken into consideration when shipping companies plan to establish a pool,
and will answer the following question when they set up the pool: cooperate
or merge? Further, there may be pools which have existed for several years
which qualify as full-function shipping pools, even if the parties to the pool
primarily look at the pool as a contractual arrangement. If that is the case, the
fact that Article 81 can be applied to pools in all maritime transport services
sectors from 18 October 2006 will not influence the competition law assess-
ment of such pools.
In what follows I will, based on the analysis of when a pool falls within
the MR as a full-function joint venture, identify when a pool is regulated
under the rules in the MR rather than under the rules on cooperation in
Article 81.

II. The Differences in Treatment of Joint Ventures under
Article 81 and the MR

The assessment of the effect on the market of the establishment of a shipping
pool will be different, and in certain aspects more advantageous, under the
MR from under Article 81.

1 Council Regulation 139/2004 of 20 January 2004 on the control of concentrations
2 The question whether such pools should have been notified to the Commission under the
MR is not dealt with here.