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CONTENTS

226 COMMENT

Complementary provisions of the EC Treaty

227 PRICE FIXING (SORBATES)

The Sorbates Cartel Case

229 ABUSE OF DOMINANT POSITION (TYRES)

The Michelin Case

231 NATIONAL LAW (MATCHES)

The CIF / AGCM Case

233 COMPLAINTS (PUBLISHING)

The Moser Case

237 AGRICULTURE (MILK)

The Milk Marque Case

242 DISTRIBUTION (MOTOR VEHICLES)

The VW Case

MISCELLANEOUS

Cross-Channel Ferry Services *241*
Motor Vehicle Distribution *250*

Complementary provisions of the EC Treaty

Cases reported in the present issue fortuitously illustrate the way in which a number of provisions of the EC Treaty help, among their other functions, to complement the impact of the rules on competition. In other words, while these provisions are not specifically or exclusively deigned with the application of the competition policy in mind, they may play an important part in the determination of competition cases.

For example, Article 10 of the EC Treaty provides that Member States should not introduce or maintain laws running counter to the implementation of the Treaty's objectives. This Article applies across the board, from agriculture to transport and from competition to social policy. In the *CIF* case, on page 231 of this issue, the Article was called in aid in support of the proposition that an Italian law, which in effect encouraged certain firms to commit what would normally be infringements of the rules on competition, should be disregarded. The proposition succeeded, on the basis that, taken in conjunction with the EC Treaty rules on competition, Article 10 provided the necessary justification.

In another case in this issue, the *Milk Marque* case on page 237, Article 234 serves the interests of the European Community's competition policy. This is the provision enabling national courts to refer questions of Community law to the Court of Justice of the European Communities for a "preliminary ruling". It applies to almost any sector of European Community law; and it is sometimes used when litigants in the national courts raise matters involving, or threatening to involve, the rules on competition.

One of the cases reported in this issue, the *Moser* case on page 233, combines two strands of European Community law: the provisions in competition law governing the making of complaints and the provisions of Article 232 of the EC Treaty enabling aggrieved parties to take legal action against certain Institutions of the Community for their "failure to act". Complaints in competition matters may be pursued by the administrative methods prescribed in procedural regulations; but it is sometime necessary, as the reported case shows, for the general rule on "failure to act" to reinforce the particular rules on complaints.

More rarely, it may be possible in a competition case to rely on Articles 235 and 288 of the EC Treaty in support of legal action against the Commission. This Article allows aggrieved parties to claim damages for injuries sustained as a result of action by the Community. It was held in the *Philip Morris* case earlier this year (Case T-377/00, not a competition case) that claims for non-contractual liability may be made under the two Articles in question. In principle, this ruling applies to wrongful actions by the Commission in the course of its conduct of a competition case, where those actions cause actual damage to a party. ■