

## Editorial

### Cementing Relationships?

The recent decision by the Commission imposing a total of 248 million Ecu in fines on various cement producers and associates, serves as a yet another warning shot across the bows of those who may be tempted to infringe Community competition law. Of course everyone realises that the decision to engage in anti-competitive conduct is always weighed against a simple question: "How much will it cost if I get caught?" The answer must now be clear. It is understood that various producers and associations intend to appeal. Particularly with this in mind the remarks that follow are general observations. Certainly, the moment lawyers hear businessmen speaking about healthy competition with rules of the game to avoid improper competition, they should conclude that storm clouds are at very least ahead. The cement market has shown a particular tendency to resist cross-border penetration – particularly by independent traders. Thus it might be that a planning application for the construction of a cement silo at a port is resisted by a major domestic producer; it might be that a watch is kept on all lorries leaving an independent importer's premises and pressure is brought to bear on purchasers not to purchase further supplies from that source. Of course not all such pressure might be conduct seeking to affect trade between Member States – the cement concerned might very well be of Polish origin, for example. But the concern about imports in general is all too evident. Now even if the imported cement is of poor quality (certainly far from always the case), and even if the cement is not of Community origin, the legitimate interests of quality assurance do not justify the bully-boy tactics which have on occasions been alleged to have occurred in some Member States.

Information exchange, concerted action to remove products from the market and other price support practices are, of course, the everyday hallmarks of Community action in various agricultural sectors (ensuring the triumph of the interests of agricultural producers over those of consumers), but when they are practised by private companies or associations they become unacceptable expressions of mere self-interest, not to be compared with expressions of Community-level policy-making within a politically accountable framework which can (or claim to) take account of the numerous competing interests.

Provided that the Commission's substantive evaluation is upheld, even procedural irregularities will not result in an effective escape for those concerned, as the Commission is nowadays willing to re-start the procedure, ensuring that any irregularities which were exposed in the original decision are rectified in the new procedure. The disadvantage is that substantive arguments may drag on and on (if there are appeals against the new decision), although it would avoid the "we got away with it" feeling. When the circumstances warrant it, though, an approach similar to that of the "proviso" in relation to criminal appeals in the United Kingdom may be an appropriate course of action which the Court of First Instance (or the

Court of Justice) should perhaps be allowed to take. It could offer a speedier termination of the whole affair and solve the problem of substantively uncongenial appeals relying solely on procedural arguments, although naturally not every procedural argument could or should be dealt with in this way.

*Laurence Gormley*

### Quaere of the Month

Might the recent Commission decisions on State aids to Air France and Bull have fallen differently had the recent political career decision of a well-known individual been made a few months earlier? (Just musing, not suggesting, of course, see Article 157(2) EC.)

### Looking Forward

1994 had its ups and downs both for the journal and on the European scene. We now look forward to 1995 and plan to bring our readers more and better information on legal developments and changes.

As you can see from the Board, we have a list of very distinguished advisers, and we are now adding a list of regular correspondents to the journal.

The main improvement will be the provision of regular reports from many of the countries of the EU and EFTA as well as irregular reports from the Eastern European countries. We have lined up correspondents in Austria, Belgium, Denmark, Finland, Germany, Greece, Italy, Spain, and the United Kingdom. We are also planning to add others to the list.

Of course, we shall continue to publish interesting and informative (and sometimes we hope provocative) major articles. We are always interested in receiving unsolicited material and readers can find the guide to authors on page 299 of this issue. In these days of modern technology, we are, of course, willing to accept material on floppy disc.

We also welcome comments. If you feel the journal is not providing what you, the reader, needs, please write to the Editor – it is nice to know there is someone out there and constructive criticism is very welcome.

Best wishes to all our readers for 1995.

*Susan Nicholas*