Competition Law and Environmental Protection in Europe; Towards Sustainability?
Vedder, H.H.B.

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 Introductory Remarks
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The examination of the relationship between competition law and environmental concerns in the preceding part of this book started in chapter one on an abstract and theoretical level. Gradually the research transformed from this theoretical exercise to the level of the practical implications of this relation. With the help of the model of integration developed around Article 6 EC in Part One, we will now turn to the role of environmental concerns in the practice of EC competition law. First we shall look at EC competition law and policy in general. With regard to the specific areas of law and policy we shall examine if there has been a role for environmental concerns and, if so, what this role has been. This will involve an overview of literature, case law and decision-making practice. Furthermore, we will be paying attention to the question of whether a role for environmental concerns is possible taking into account the model of integration referred to above and legal constraints. In this respect we shall investigate whether certain provisions could be used to let environmental considerations play a role in the application of competition law. Furthermore, this will involve answering the question of whether the role for environmental concerns thus described conforms to the model of integration developed in chapter 4 of Part One. In short, the objective of this second part of the book is to chart the role that environmental considerations currently play in Community competition law and what that role could and should be.

To do this we shall examine all the instruments of EC competition law. Community competition law exists of a number of different instruments that are all designed to tackle a specific type of restriction or distortion of free competition. Firstly, the Treaty contains a number of rules directed at 'undertakings' or firms. These are Article 81 that concerns co-operative behaviour among firms ('the cartel prohibition') and Article 82 that governs abuse of a dominant position. A later addition to these two was the Merger Regulation that should prevent competition problems from arising due to mergers by firms. Community competition law is also concerned with the influences that member states may have on competition. Essentially, three sets of rules govern member state interference with competition. The first and broadest set of rules was invented by the Court and cannot as such be found in the Treaty. This is the useful effect doctrine according to which member states may do nothing that detracts from the useful effect of the competition rules directed to undertakings. The second set of rules can be found in the Treaty and is strongly linked to the useful effect doctrine but is confined to a special group of companies that shall be referred
to as public undertakings. These rules can be found in Article 86 EC. Finally, member states may distort competition by granting aid to one or more companies. Articles 87 and 88 of the Treaty govern such practices.

With regard to EC competition law one of the first things to spring to mind is the considerable body of law and literature devoted to nearly every nook and cranny of it. Studying the role of environmental concerns in EC competition law is therefore likely to result in yet another rather voluminous addition to an already well-stocked library. Despite this obvious drawback, the best approach would nevertheless seem to first start with a description of the whole of EC competition law as a basis and to consequently focus the attention on those areas where environmental concerns may play their role. Firstly we shall look at the so-called fundamentals of EC competition law. These involve, *inter alia*, the scope of application, some fundamental concepts common to all provisions and the place of the competition provisions in the Treaty. Secondly the specific substantive provisions will be examined (*i.e.* the instruments referred to above). Finally we will come to some interim conclusions.