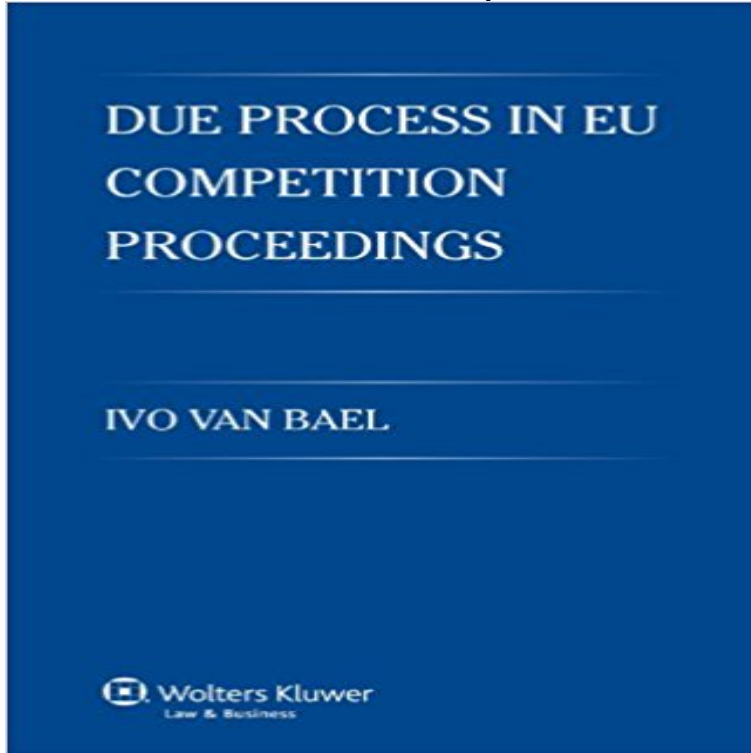


Due Process in EU Competition Proceedings



Numerous parties--from the Organisation for Economic Co-operation and Development (OECD) on down--have criticized the European Commission both for its ex parte decisions and for its dual role as prosecutor and judge in competition enforcement. These fundamental problems of the administrative process are not cured by judicial review on appeal. Except for the fines imposed by the Commission, the appellate review is limited to the legality of the Commission decision, excluding a review on the merits of the case. Furthermore, in matters involving an assessment of complex economic or technical facts, the European courts feel constrained not to interfere with the Commissions appraisal. This double limitation means that Commission decisions are not subject to the kind of judicial scrutiny guaranteed by the European Convention on Human Rights. In view of the projected accession of the European Union (EU) to the European Convention as a result of the coming into force of the Lisbon Treaty, these problems of due process are susceptible to substantial reform. Ivo Van Bael contends that time has come for a radical overhaul in order to bring the institutional structure of the competition enforcement system of the EU in line with the current interpretation of the Convention;s right to a fair trial. The purpose of this book is to describe the rules of due process as they are being applied today and as they have evolved over the years. The book offers an intensive analysis of the more important issues of due process that arise in the quasi-criminal context of infringement proceedings and in the somewhat less adversarial context of merger clearance proceedings. Topics covered in the book include: international and bilateral cooperation agreements; Commissions powers of investigation; attorney-client privilege and privilege against self-incrimination; access

to the Commissions file and relevance of the Transparency Regulation; possible intervention by the European Ombudsman; right to be heard and role of the Hearing Officer; fines, leniency, and settlement procedure; parent/subsidiary and successor liability; double jeopardy; enforcement of EU competition rules by national competition authorities, by national courts and by arbitration; private enforcement and damages; notification of concentrations to Commission; review process of concentrations and acceptance of remedies; judicial review of infringement decisions and of merger clearance decisions. Everyone concerned with the enforcement of competition rules--whether from legal, business, policy, or academic perspectives--will value this book highly. It offers a practical insight into the intricacies of due process and related issues. It reflects Ivo Van Bael's extensive experience as a battle-trained veteran litigator and emeritus professor of the College of Europe (Bruges) where he has been teaching EU laws of procedure for more than twenty-five years.

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