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EU Cartel Enforcement Andreas Scordamaglia-Tousis, 2013-08-01 There has a been a long-standing debate on the compatibility of EU competition law with fundamental rights protection, particularly as the latter is enshrined in the due process requirements of the European Convention on Human Rights (ECHR). This book, a signal contribution to that debate, assesses two questions of paramount concern: first, whether the current level of fundamental rights protection in cartel enforcement falls within the accepted ECHR standards; and second, how the often conflicting objectives of effectiveness and adequate protection of fundamental rights could optimally be achieved. Following a detailed survey of relevant EU institutional, substantive, and procedural law rules, the author offers a set of persuasive normative responses to both questions. Proceeding from an in-depth analysis of the pertinent rights and legal nature of competition proceedings under EU and ECHR law, the author goes on to examine such elements of the perceived incompatibility as the following: investigatory powers vested in competition authorities; the privilege against self-incrimination; right to privacy; "fair trial" probatory requirements; degree of use of presumptions in EU practice; Article 6 ECHR guarantees pertaining to the presumption of innocence; proving coordination of competitive behaviour; proving restriction of competition; admissibility of evidence before EU Courts and the Commission; assessment of the attribution of liability rules; EU fining rules; judicial review of cartel decisions by EU Courts; and national sanctioning rules. The author's extraordinarily thorough presentation is rounded off with a remarkably comprehensive bibliography that lists (in addition to books and articles) newspaper articles, EU regulations and directives, soft-law guidelines and "best practices", EU and ECtHR case law, EU Advocate General opinions, European Commission decisions, and European Ombudsman decisions. General conclusions stress the necessity of introducing further reforms to enhance the effectiveness and legitimacy of fundamental rights in the context of competition proceedings. Few books have taken such a thorough and far-reaching approach to the reconciliation of "effective public enforcement" and "fundamental rights", or of "effective deterrence" with the principles of legality, non-retroactivity, presumption of innocence, and ne bis in idem. In the depth of its appraisal of the entire spectrum of enforcement components from a fundamental rights perspective, the book is without peers. It will be warmly welcomed by any parties interested in the intersection of competition law and human rights.

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Table of Contents T 89

- 1. Understanding the eBook T 89
 - ∘ The Rise of Digital Reading T 89
 - Advantages of eBooks Over Traditional Books
- 2. Identifying T 89
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
- 3. Choosing the Right eBook Platform
 - ∘ Popular eBook Platforms
 - ∘ Features to Look for in an T 89
 - ∘ User-Friendly Interface

- 4. Exploring eBook Recommendations from T 89
 - Personalized Recommendations
 - ∘ T 89 User Reviews and Ratings
 - o T 89 and Bestseller Lists
- 5. Accessing T 89 Free and Paid eBooks
 - ∘ T 89 Public Domain eBooks
 - ∘ T 89 eBook Subscription Services
 - ∘ T 89 Budget-Friendly Options
- 6. Navigating T 89 eBook Formats
 - ∘ ePub, PDF, MOBI, and More
 - ∘ T 89 Compatibility with Devices
 - ∘ T 89 Enhanced eBook Features
- 7. Enhancing Your Reading Experience \circ Adjustable Fonts and Text Sizes of T 89

- Highlighting and Note-Taking T 89
- o Interactive Elements T 89
- 8. Staying Engaged with T 89
 - Joining Online Reading Communities
 - o Participating in Virtual Book Clubs
 - ∘ Following Authors and Publishers T 89
- 9. Balancing eBooks and Physical Books T 89
 - ∘ Benefits of a Digital Library
 - Creating a Diverse Reading Collection T 89
- 10. Overcoming Reading Challenges
 - ∘ Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine T 89
 - o Setting Reading Goals T 89
 - o Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of T 89
 - ∘ Fact-Checking eBook Content of T 89
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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