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**Marta Michałek, *Right to Defence in EU Competition Law:
The Case of Inspections*,
University of Warsaw Faculty of Management Press, Warsaw 2015, 431 p.**

Marta Michałek, the Author of the book *Right to Defence in EU Competition Law: The Case of Inspections*, provides an interesting depiction of the interdependence of fundamental rights and competition law. She thoroughly analyses the jurisprudence of the European Court of Human Rights (hereafter, ECtHR) and the Court of Justice of the European Union (hereafter, CJEU). The analysis is supported by national examples from EU Member States as well as Switzerland. The Author focuses on issues stemming from the European Commission's (hereafter, EC) powers of inspection in EU competition law, and examines the positions of undertakings in the light of such an event. Considering its formal aspects, the book contains an introduction, followed by eleven chapters and conclusions, an impressive, noteworthy bibliography, as well as lists of relevant legislation and jurisprudence.

Chapter I is devoted to the elusive concept of the right to defence, which the Author unravels by researching its history, various applicable terminology, its nature, relevant case-law and doctrine. This study is completed by a presentation of a proper definition of the right to defence, which sees it as a complex fundamental legal principle that provides each natural or legal person, whose legal situation has been influenced by an authority, with unilateral decision-making power with a justifiable entitlement to protect his legitimate interest by supporting or challenging the claim made by or against him. The Author distinguishes this right from several related notions such as the rule of law, procedural justice and the right to good administration. Chapter II presents the complex landscape characterising the protection of the right to defence in Europe with its multitude of legal regimes deriving from: universal international law (UN Universal Declaration of Human Rights, International Covenant on Civil and Political Rights), regional international law (European Convention on Human Rights) and EU law (Charter of Fundamental Rights). The Author describes subsequently the EC's powers of inspection granted to the Commission by Regulation 1/2003. These powers are means to safeguarding the effectiveness of the EC's investigations, leaving the inspected undertaking with little hope for success in invoking its right to defence. This standpoint is strengthened in Chapter III where the Author argues that procedural fines and periodic penalty payments (for any lesser obstructions during inspections) deprive the inspected undertaking of an effective, not illusory, right to oppose. This is so especially taking into consideration the stringent jurisprudence of the CJEU

on the burden of proof and the zero-tolerance policy regarding excuses given by undertakings.

The Author highlights in Chapter V the EC's practice known as 'fishing expeditions'. These are inspections conducted without a factual or legal basis, driven merely by an unsubstantiated suspicion of a potential infringement. The Author, relying on recent case law, stresses the illegality of this practice and emphasises that the ban thereof is a crucial safeguard of the right to defence of undertakings. Nevertheless, the Author notes that there is scope for improvement, strongly criticising in Chapter VI the EC's practices of seizing and copying the entirety of digital storage mediums, which gives inspectors insights into all documents of the inspected undertaking, regardless of their relevance to the case at hand or whether or not the documents were granted confidentiality under legal profession privilege (hereafter, LPP). This practice is hugely controversial regarding the jurisprudence of the ECHR as it is extremely intrusive and not in line with the principle of proportionality, hence a clear position of the CJEU in this regard is needed.

The five subsequent chapters discuss limitations of the EC's powers by, respectively, the right to privacy (Chapter VII), the principle of proportionality (Chapter VIII), the privilege against self-incrimination (Chapter IX), and, finally, the principle of effective judicial protection (Chapter X). It is noteworthy that the Author examines these issues with regard to both ECtHR and CJEU jurisprudence, noting discrepancies and aspects that need enhancements. The right to privacy, in the opinion of the Author, is fully observed in the EU legal order. This is so because of the EC's obligation to state its reasons and the right of the inspected undertakings to challenge the inspection decision by bringing an action for annulment in light of *Delta Pekarny* (ECtHR) and *Deutsche Bahn* (CJEU), which together sufficiently safeguard undertakings from an unjustified and disproportionate intervention. The Author stresses the importance of the principle of proportionality as a supreme guideline limiting the powers of inspections. Yet she notes also the ever surfacing tendency to shift the focus of the CJEU more towards ensuring the effectiveness of inspections and away from an in-depth examination of the proportionality of the use of intrusive investigative means. This line of argumentation is followed by the Author's criticism of the practice of not granting protection under LPP to documents produced by in-house lawyers, or found in their offices, which is considered contrary to the Strasbourg's approach. Nonetheless, the Author holds the view that with the legally binding status of the Charter of Fundamental Rights (hereafter, CFR) and the future accession to ECHR, guarantees for undertakings relating to LPP should be developed and extended. The penultimate chapter analyses the privilege against self-incrimination. It states that its very restricted nature raises serious doubts as to its conformity with the jurisprudence of the ECHR. Not acknowledging the right to absolute silence is considered particularly problematic. Chapter XI examines remedies and the right to judicial review granted to undertakings and rises questions on their power to ensure the observance of the right to defence. The Author concludes that judicial review of inspection decisions of the EC may, in general, be regarded as complete, albeit some improvements have to be introduced, for example due to the rare use of interim measures.

Marta Michalek's study constitutes a comprehensive and complementary analysis of the undefined and non-codified right to defence of undertakings in EU competition law proceedings as well as its efficiency. The Author thoroughly examined the jurisprudence of the ECtHR and CJEU, pointing to their differences and postulating *de lege ferenda* changes. The Author is of the firm opinion that the future development of the right to defence in competition law proceedings should follow into the footsteps of the Strasbourg's approach. However, one may ponder the correctness of this standpoint when taking into account the *Melloni doctrine* on the principle of the effectiveness of EU law. It might also be worth considering the role of the Charter of Fundamental Rights of the EU in more detail seeing that the CJEU emphasises that the Charter has to be applied over and above the ECHR to cases falling within the scope of EU law. Moreover, according to some researchers, the legal basis of the right to defence in EU competition law proceedings pending before the European Commission is to be found jointly in Articles 41 CFR and 48(2) CFR. [pls provide acronyms]

Those minor comments do not, however, compromise the excellence of the presented study, which is followed by a meticulous examination of abounding Polish, Franco- and Anglophone literature and relevant jurisprudence. In fact, this book is also to be recommended to practising lawyers interested in national and EU competition law since it is written in a comprehensive and clear manner. It is close to a manual on how to behave (or not to behave) in case of an inspection, listing important potential charges facilitating the use of the right to defence in practice.

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