

Annetje Ottow, *Market and Competition Authorities-Good Agency Principles* (OUP 2015)

This book, written by an academic with substantial practical experience, focuses on the operation of one of the most crucial actors in the modern regulatory space, the market and competition authorities. Starting from the assumption that good regulators can have an impact on the effectiveness of substantive rules, its principal aim is to provide a normative framework for the operation of these bodies based upon the following five key principles: Legality (L), Independence (I), Transparency (T), Effectiveness (E), and Responsibility (R) - jointly referred to as LITER principles. These principles, the author argues, could contribute to both the agencies' operations ('internal perspective') and inform the way other actors (i.e. courts, evaluation committees, parliament) evaluate and control the behaviour, interventions and decisions of the agencies ('external perspective'). Throughout the book, the author draws on case studies mainly from the Netherlands and the UK so as to illustrate issues that need to be addressed worldwide.

The book is organised in 7 chapters. Chapters 1 to 3 introduce the debate and develop the highly original set of 'good agency principles', whereas Chapters 4 to 6 examine the application of these principles in three specific key processes: the choice of institutional design (Chapter 4), enforcement (Chapter 5) and the evaluation of independent agencies and review by the courts (Chapter 6). Chapter 7 offers a set of useful recommendations. Each chapter will be examined in turn.

Chapter 1 introduces the good agency principles against the background of crucial dilemmas facing modern agencies (i.e. regulatory dilemma, efficiency versus carefulness, transparency versus confidentiality). Chapter 2 provides an overview of the different types of independent agencies around the world and discusses their functions, tasks and roles. The author, however, explains that while LITER principles are applied mainly to market, competition and consumer authorities they may still function as common denominators for all types of independent agencies. Chapter 3 explores the different sources from which the key good agency principles emanate: i) the Relevant Legal Framework, including National Administrative Law, European Law and Fundamental Rights; ii) Governmental Reports Identifying Core Agency Principles (e.g. IMF paper, OECD principles) and iii) Core Values of Market and Competition Authorities, found in the statements that agencies themselves have made on core values. Having considered these different sources, the author analyses the main elements of the LITER principles. The author concedes that 'the principles conflict in practice, with the independent agency then having to balance them against each other and make justified choices' (p.71). 'Trade offs will have to be made as there is no single overriding principle and applying one principle may conflict with another in practice. This makes the life of an independent agency one great balancing act in which difficult choices have to be made' (p. 94). One would, therefore, expect the author to provide examples from the decisional practice of independent agencies where trade-offs had to be made, and examine whether, and if so how, any of the principles discussed informed the agencies' final choices. This, however, should not otherwise distract from the overall high quality of the chapter and its analytical strength.

Chapter 4 discusses how the LITER principles influence the choices made with respect to institutional design and what is the optimal design for adhering to the LITER principles. In doing so, the author considers two cases of institution-building, one deriving from the Netherlands, where the Competition Authority merged with the Independent Post and Telecommunications Authority (OPTA) and the Consumer Authority (CA) into the new Authority for Consumers and Markets (ACM) and the other from the UK, where the Office of Fair Trading (OFT) and the Competition Commission (CC) merged to form the Competition and Markets Authority (CMA). The author discusses in a comprehensive manner the problems raised by the combination of investigation, prosecution and sanctioning functions under the same agency, with a focus on fair trial, and considers in depth the application of the LITER principles in relation to two possible models: the separation model and the single-tier model. The author argues that the separation model is not the preferred option for the promotion of the LITER principles. She then considers the design options of single or multiple agencies with respect to the combinations of functions in relation to competition and regulatory work.

Chapter 5 considers how the LITER principles could inform the agencies' enforcement task, whereas Chapter 6 considers the evaluation of independent agencies and judicial review. The author vigorously argues that in the latter case, the LITER principles do not only influence the way evaluation committees and courts judge the decisions and behavior of these agencies, but also offer a frame of reference and control. With respect to review by the courts, the author considers the crucial link between the choice of institutional design and the standard of review as well as the instances whereby liability of independent agencies may be established on the basis of tort law. Finally, Chapter 7 offers a useful set of recommendations for legislators, governments and policymakers.

Annetje Ottow's monograph represents one of the leading contributions in the field. Although its message is primarily addressed to policy-makers and regulators, it constitutes a thought-provoking read to anyone interested broadly in regulation. The book is also of particular relevance to policymakers in those countries that are currently introducing competition laws, consumer protection legislation or reforming the utilities sector. The principles-based approach to the operation of independent agencies offered by the author will undoubtedly enable regulatory bodies of all kinds to apply the LITER principles in their own specific environment.

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