Summaries

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Lessons for supervision in the 21st century; recent insights of Braithwaite and Sparrow
J.G. van Erp

Modern corporations can be characterised as dynamic global networks, in contrast to the locally based, hierarchical corporation of the twentieth century. This development has far-reaching consequences for supervision and control of corporations by public authorities. Supervision is taking place in global horizontal constellations in which various public, private and hybrid organisations interact. This development constitutes a major challenge for Dutch supervising authorities. How can they achieve effective supervision in globalising markets; how can they make use of existing mechanisms of market self-regulation; and how can they show the public that they produce meaningful results? This article discusses the recent contributions to these questions of the two most influential authors in the field of regulation and governance of this moment: criminologist John Braithwaite and public management scholar Malcolm Sparrow. Both authors have profoundly influenced Dutch regulatory practice with their previous work. Both, also, have published a new book dealing with the subject of supervision of markets in spring 2008. On the basis of these works the author tries to formulate answers to the challenges that supervising authorities currently face. One of the most important recommendations for public supervising agencies is to network and seek alliances with other influential actors. Supervision in the 21st century is better perceived as a horizontal, than as a vertical activity. Second, supervising authorities should concentrate on real life, urgent problems instead of formulating
broad ambitions such as ‘increasing safety’. The more specific they formulate their goals and problem definitions, the more effective and persuasive their performance will be.

The dismantling of cartel paradise The Netherlands; ten years of competition law and NMa

P. Amador Sanchez, M.N. Dijkman, E. Lamboo and R. Smits

At the end of the twentieth century, awareness was growing that the Netherlands should abandon its position as a ‘cartel paradise’ and move towards effectively functioning markets. Competition legislation was revamped and a new authority established, the Netherlands Competition Authority (NMa). This contribution by four authors who work at NMa sketches the main concepts of antitrust law. It discusses the developments in the past decade against the backdrop of EC competition law, which had been in force already for a long time. It discusses subsequent changes in Dutch law, notably increased powers for NMa, developments in case law and the adoption of guidelines on fining and on leniency. The Dutch move towards open and well-functioning markets in the context of European and international tendencies in competition law and its enforcement, notably a more economic approach.

Choices in conduct of business supervision: the case of credit lending

T. Brosens, W.O. Bijkerk and J. Gevaert

The Authority for the Financial Markets (AFM) is the supervisor of business conduct on the financial markets. The AFM executes its task by making choices on strategic balances: laisser faire and consumer protection, rule-based and principle-based supervision, supervision by the AFM or through self regulation by market participants and prevention and repression. The Wfd law is implemented to prevent consumers from excessive credit lending. Shortly after the law came into force an investigation showed worrysome results which forced the AFM to take several enforcement measures. After the investigation the AFM started an intensive dialogue with the branche organisations. A new business conduct code was developed which states clearly the criteria for complying with the principle of responsible credit lending. The AFM considers the code as a minimum standard.
The Consumer Authority: newcomer in a crowded playing field

E.L.M. Vos and S.W. Ammerlaan

Until recently the Netherlands lacked a public enforcement authority in the field of general consumer protection. The consumer landscape was populated by private consumer organisations, arbitration boards, judicial support, and self-regulating bodies. Since the end of 2006 the Consumer Authority has become a player in this crowded field, while cooperating closely with the other organizations. The authors give an overview of the investigation and enforcement powers of the Consumer Authority. The Consumer Authority isn’t capable to act against every infringement. On the basis of priority criteria and the yearly Agenda the Consumer Authority decides which case will be dealt with. The authors give an overview of the cases in which the Consumer Authority filed a report that was followed by a fine, a penalty executed on a daily basis in the case of non compliance or a pledge.

Supervision without boundaries?

M.G. Faure

In this article key issues in supervision are discussed by using insights from law economics and supervision experiences outside The Netherlands. Although supervision by public authorities isn’t necessary in all circumstances, it is indispensable, especially if the enforcement of regulations requires public sanctioning. Several types of public sanctioning and enforcement styles are discussed, like cooperation and deterrence. Naming and shaming is a modern type of sanction which public supervision authorities should use with great caution. In this sense it might be wise to hold these supervisors legally responsible for their actions, although not in all cases and all circumstances: fear of high ‘error costs’ might lead to excessive supervision. Although instruments measuring the effects of various supervision methods are still lacking, we do know that risk differentiation, a transparent enforcement policy and a proper information service are strategic elements contributing largely to the effectiveness of supervision. The international dimension of supervision is of growing importance but this certainly doesn’t mean that supervision is without boundaries.