Regulating the Undefined
By Wong Ai Kim and Winston Toh Ghee Wei

Disruption is neither unexpected nor unprecedented under free market conditions. What is unique in today's digital economy is how fast the tech companies scale, and bring with them tidal waves of change. Rather than be in constant tussle and tension, how can regulators and innovative businesses work together to create synergies in their respective means and ends?

How do you create a new industry, and an accompanying regulator? What paradigm shifts are required to reform a given industry? Lastly, how future-proof are these reforms? We faced these conundrums when tasked by the Prime Minister's Department of a country to develop transformative policies for a major industry. They remain relevant for policymakers and businesses seeking to assert influence.

Defining an industry is as much an art as it is a science. Governments adopt a range of approaches according to their respective regulatory frameworks, administrative legacies and policies catered to local sensitivities. In other words, the same industry can be defined differently in each jurisdiction. Thus, to speak of categories of industries, such as transport, in the abstract, would be to overlook these contextual nuances all across the world.

The best reform policies are visionary strategies that engage thoroughly taking into account these particularities. A good mix of quantum leaps and steady advancement would posture well for progress. Unfortunately, in most parts of the world, structured and forward-looking plans remain aspirational goals rather than the norm. Most policy measures are reactionary, interim stop gaps adopted chiefly for political mileage. While consistent policies provide stability and direction, overly rigid frameworks plainly impede progress. An effective solution set has to balance a multitude of interests.

Many say that the tension between regulation and innovation is at its peak, but frankly it is hardly a new phenomenon. Disruption often arises in the wake of technological leaps. Recall the need to regulate the rail industry in the 1840s, the auto-industry following the boom of the 1980s, and now the internet. Neither is this the first time that governments had to rethink legislation in light of changing industry demands. The United States (U.S.) government passed the landmark *Airline Deregulation Act* in 1978 after consulting a broad coalition of industry and academic experts, allowing innovative lower-cost domestic carriers to thrive.

There is no better time than now for the meeting of minds to shape the undefined. Regulators are increasingly consultative as governance evolves and matures. The public voice is increasingly heard with the advent of social media, and growing awareness amongst both regulators and industry players of the need to cooperate. This offers a precious window of opportunity for the creation of frameworks that are even more inventive than these past solutions.

Three principles could serve as the basis for public-private sector collaboration:

(I) *Ignore the Noise*.
Market disruption tends to be accompanied by much clutter amidst push-back form more traditional players. Policymakers need to be able to distinguish between core public service objectives and the demands of specific market actors; focus on the former and manage the latter. Successful regulators of the transport industry have honed in on safety and employee protection, which disruptive businesses like Deliveroo also support. They succeed when they are able to build the most consensus around these objectives.

(II) Build Confidence and Bridge Gaps.
Both regulators and businesses operating in undefined zones of growth have to work to promote trust. Businesses are more likely to be open to public sector engagement if they can be assured that the purpose of regulation is not punitive and protectionist. On their part, they can do more to emphasize the compatibility of their solutions with public sector goals. Petroleum companies have traditionally been the most successful at working with regulators on achieving mutual goals such as energy sustainability. Policymakers are likely to be most receptive when they recognize the economic potential of new business models and has winning qualities which align with the regulatory priorities and goals.

(III) *Embrace Open Innovation.*
Governments cannot endlessly restructure in light of fast-changing industry norms. Rather than dismantling long-standing regulatory structures, regulators can foster systems that are nimble and open. Good examples of regulators stretching the usual parameters are the sandboxes that have been rolled out in the space of fintech, healthtech and blockchain. These safe spaces allow for innovation under supervision and are good intersections for regulation and business in its infancy.

Ultimately, disruption while inherently unpredictable, is not an unmanageable task. There are significant areas of overlap in public and private objectives, which can serve as the basis for lasting cooperation.

As for the task we were given by the Prime Minister's Department, it turned out to be one of the largest industry restructuring exercises in the country. It took almost eight years to fully implement our policy recommendations, with the process culminating in the creation of a new super regulator by way of Acts of Parliament. We believed that the transformation exercise was complete… that was until Uber entered the fray a mere few weeks later and it has taken another eight years before legislation is updated to recognize the ridesharing industry.

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