Adjusting to new technologies and business models

Changing business models represent a substantial challenge to regulators. Similarly, technological changes that encourage change in professional practices, or that might even facilitate the demise of a particular profession, raise existential questions about the role of professional and other regulators.

Challenges of this kind are common across regulated sectors. Technologies change the nature of the job of a regulator as they call for a different set of regulatory capacities. At the same time, there is also the concern that regulators might impede innovation in sectors or appear incapable of 'catching up' with the ways that regulated professions and businesses are changing in the light of technological developments. Furthermore, there are also likely implications for the underlying statutory basis on which regulators are supposed to act: new problems may arise that are not addressed by existing legal powers.

Change in technology leads to the emergence of new uses of particular services and products; there are changes in delivery models (which raise questions about jurisdictional reach), and it raises questions as to what kind of skills and competencies regulators are required to have in the future. For example, automation may reduce risks that arise from individuals making mistakes. At the same time, automation might be increasing systemic risks in that it introduces errors on a much wider basis. The challenge for regulators then is to become a regulator of algorithms, while also ensuring that humans do not become over-reliant on the use of machines.

Similarly, changing delivery models mean that goods and services are no longer solely provided through access to physical outlets. Online delivery services mean that goods can be procured from operators that are outside the jurisdictional reach of the regulator. Changing technologies leading to different delivery models also affect different businesses in a sector in varying ways, thereby raising further regulatory concerns about the impact of change on different types of businesses (especially in terms of size).

There is also a challenge to detect change. Usually, change happens in various dispersed locations and it is important to understand the broader pattern that is emerging. In some sectors, detection was possible as regulated businesses sought approval for changing practices. This offered a degree of intelligence. In other cases, one could observe changes in the ways in which contractual arrangements were being enacted.

For some, it was important for regulators to remain 'technology-neutral' and to focus on critical activities that needed regulating. The risks had not changed, but they had moved because of changes in business models. Similar patterns were observable in economic regulation. If technological change brought about changing consumer behaviour, then regulatory structures should be adjusted. One feature of an emphasis on activities in a context of changing relationships was to systemise codes of ethics that had previously remained largely informal. These questions arose partly in the context of the emergence of so-called 'disrupters'. Here the question was

whether 'new entrants' had the same kind of cultural worldviews as established providers and therefore represented a risk to quality and safety. In other areas, new technologies potentially enhanced the competencies of the profession. However, it nevertheless raised issues for regulators when such technological change also meant that the regulator would face difficulties in enforcing standards against extra-jurisdictional actors. In other words, being 'technology-' or 'business-neutral' required regulatory engagement and, at times, high degrees of activity in order not to be just complaint-driven.

A focus on activities would also raise issues about organisational boundaries - with regulators being required to work together, if not merge. Converging business models meant that one needed to learn from regulators with overlapping business models. There were also new issues about the use of technologies for regulatory purposes - in some cases, this would involve tensions with legislative competencies about information handling, in other cases, there was a direct challenge with principles of data protection and also cyber-security.

Critical choices emerge in the context of strategy. The challenge is to act as a regulator for consumer choice, but not to be seen as solely interested in protecting existing privileges of professions. At the same time, difficult questions emerge as to how, as regulators, standards can be developed so as to prepare professions for required competencies in the future.

It was argued that it was not the appropriate role for regulators to assist the role of professions in developing new competencies or boundaries. That was the role of trade associations. Those regulators who combined regulatory and association roles were therefore in a more difficult position. For some, this called for a separation of roles. Nevertheless, there needed to be some concern about the future shape of and demands on the profession when considering educational standards. One could rely on principles - set out clear boundaries for professional judgement and ensure that professionals were aware of what they were competent to do. There was a stress on themes of 'adaptability' in that professionals should not just be trained in narrow technical, but much broader competencies. There were questions in some sectors as to how education should be organised - especially as this might involve forecasting future demands for professionals. Such forecasting might conflict with the emergence of new providers of education that offer additional capacity to train future professionals. For the education of professions, there was a need to introduce more flexibility so as to ensure that those undertaking these careers could move sideways, if necessary, rather than face the need for complete retraining.

Nevertheless, the tension between being a regulator and a representative of the sector remained in some areas. It was argued that too strong an emphasis on supporting the survival of a profession in view of much broader changes would inevitably lead to the extinction of a profession. Separating the role of the regulator from that of a 'trade association' was supporting such a dynamic. In turn, this raised issues about the governance of professional regulators, namely the need to ensure that these bodies were able to speak the 'truth to power'. Professional regulators had encountered these problems in the past and the assertion of regulatory principles over the self-interest of professions had mainly come about as a result of a deep crisis.

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