

Regulatory Hotline

March 15, 2018

INNOVATION FALTERS WHEN REGULATION DOESN'T LEAD TECH BUT FOLLOWS IT

This article was originally published in the 11th March 2018 edition of

Business Standard

The last few decades of human civilisation have been the most significant in terms of technological progress. The rapid advances of sciences is resulting in a snow-balling effect on innovation across disciplines. The advent of new technologies — gene-editing, artificial intelligence, block-chain, to name just a few — are revolutionising human-technology interaction. Further, innovative business models centred around the sharing economy (for instance, ride-hailing services, short-term apartment-renting etc.) are on course to make established business models redundant.

In the backdrop of the shifts across industries, a recurring question before regulators is, how should they respond to innovation? The answer to that question and the consequent approach may have lasting impact on the socio-economic trajectory of an economy.

Regulators have traditionally been technology-laggards, that is, regulations tend to follow advances in technology rather than lead them. There is typically a time-lag of a couple of years before advances are formally recognised and provided for in a regulatory framework. This lag has at least two consequences that adversely affect innovation — the prospect of initial regulatory uncertainty may disincentivise innovation in the first place from a perspective of potential regulatory- acceptance of innovation; second, by the time an innovation receives regulatory recognition it might already be past its 'innovative prime' and hence the full-potential of an innovation could not be optimally harnessed resulting in potential inefficiency. These externalities have the potential to inhibit innovation in the first instance by enhancing transaction costs that ultimately decrease their social utility.

It is important for policy makers to recognise the role legal systems may play in enabling and fostering innovation.

For example, by virtue of the legal authority vested in them, regulators have the potential to internalise the above conditions by providing timely and appropriate recognition to new technologies in the regulatory framework. An early-recognition triggers a series of positive effects for an economy, for instance, academic curriculum incorporates such advances leading to trained manpower who in turn engage in high-value activities leading to enhanced productivity which ultimately results in economic development.

An accommodative approach of the regulator signals two messages — first, it provides due recognition to an otherwise new technology which might lack a legal recognition within the existing regulatory framework; second, it creates the right environment for technologists to keep innovating as they will find a new partner in the regulator who will enable new technologies to come to life.

The next logical question is, how can regulators develop the capacity to fulfill this role? Regulators need to tap into the talent pool of the private sector to build initial in-house capabilities. For the long term, they should focus to remain current and build capacity through training and exposure to cutting-edge technologies.

Regulatory inertia to the 'new' or the 'next' requires a rethink. This becomes even more important in a connected global economy where increased mobility of factors of production means greater competition among regulators in different geographies to attract them.

The fluidity of innovation makes it all the more escapable to a jurisdiction which harbors and promotes it. In a rapidly evolving world, regulatory agility is not only a need but also a competitive advantage. An innovation-biased regulatory approach might in some instances lead to race to the bottom, and in some cases it might not work out in the manner it was supposed to, but it is still worth the risk for an economy to hop on the innovation bus for otherwise it might just become obsolete.

Aditya Shukla

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Fintech

January 28, 2025

Private Equity and Private Debt Investments in India

January 27, 2025

Horizon Technologies

January 21, 2025

Research Articles

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

The Revolution Realized: Bitcoin's Triumph

December 05, 2024

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper

not substitute the need to refer to the original pronouncements.

**on Simplification of registration for
FPIs**

September 26, 2024

**Scope of judicial interference and
inquiry in an application for
appointment of arbitrator under the
(Indian) Arbitration and Conciliation
Act, 1996**

September 22, 2024