

## Forever lost in the Trees?

Regulators live to regulate. Governments live to govern. The policy, regulatory, and legislative instruments in place today reflect that genetic coding. The machinery of government was for the most part conceived in the pre-internet era, predating today's modern - and mobile - tools of commerce. Consumers have adapted to the pace of technological change, but governments at home and abroad are struggling to reconcile rapidly evolving economic realities with an antiquated oversight toolkit.

Governments have long recognized the effect their decisions can have on individuals, businesses and markets and developed the machinery accordingly.

Take the legislative process as an example. Traditionally, someone would perceive a gap that might need legislative attention. The issue would be brought to the attention of politicians or within the bureaucracy; there would be some preliminary analysis and discussions, maybe among knowledgeable individuals, officials or politicians. Further analysis, formal consultations, and briefings of a Minister might lead to legislation being drafted. If given a Cabinet green light, it would then proceed through Parliament. If regulations were required a similar, albeit abbreviated, process would follow and, ultimately, the law would be live. While we have seen exceptions where issues were either fast tracked or the process was bypassed entirely, getting new laws in place typically takes years. The system was designed to ensure balance and mitigate unintended consequences.

Turning to the regulatory machinery, the situation is similar. Look at how the CRTC, the Competition Bureau, tax authorities and other regulatory institutions work: analysis and action takes years. Given the stakes for individuals and businesses, these institutions and their processes were rightly designed to balance state intervention and the protection of private interests. Public consultations, transparent deliberative processes and clearly communicated findings reassure us all that the right balance is being maintained. Rules around due process and procedural fairness underpin the credibility of decisions and the institutions themselves. But all of that takes time, leaving many Canadians often scratching their heads and

wondering, “Why did that take so long?” Or increasingly, “What were they thinking?”

Economic analysis and regulatory gamesmanship can be hard to explain to your family and friends. For many that toil away within those institutions, leading edge technology files are very attractive – much more interesting than their regular day job. The institutional challenge is to resist the impulse to feed their curiosity (what the official finds interesting and would like to know more about --- looking at the trees) and to focus only on their core responsibilities (what is truly necessary for the job at hand --- managing the forest).

The risks that regulatory decisions will have adverse unintended economic consequences are now higher than ever before. Decades of technological advances and social networks have changed how individuals relate to one another and the world, allowing them to communicate directly with decision makers and policy makers. In response some institutions have tried to change, adopting new process tools to gather information. Having done so once a regulatory process gains speed, it is now almost impossible to manage the flood of data and stakeholder input, or separate fact from strategic behaviour - let alone identify if a real problem even exists. (Having tossed the Google and Netflix submissions because, according to a CRTC spokesman, they were unsubstantiated “anecdotes”, it will be interesting to see how they’ll handle the input of average Canadians).

In today’s digital economy, the market is difficult to model: there are multiple layers of partners, intermediaries and competitors. Products and services can serve overlapping markets. Despite slight process upgrades, regulators continue to segment and analyze markets through decades-old frameworks, even as markets shift under their feet. Their staff economists, lawyers and analysts try to narrow the issues using traditional models. They struggle over a few weeks or months to understand a market that businesses live in every day. They try to outperform those markets at predicting the future, issuing decisions and solutions that are often out-dated as soon as the ink dries. And they continue to focus on individual trees, even as the forest grows thicker.

Things will not get easier. In exercising their authority and enforcement discretion, operators of government machinery today more than ever need to continuously remind themselves of their core responsibilities and always ask “Do I need to go there, or am I being drawn into the trees to the detriment of the forest?”

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