Meta-Regulation

--An Innovative and Dynamic Policy Instrument for Platform Economy

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Abstract: The emergence of a variety of digital companies breaks up the competitive landscape of the market, which simultaneously changes people's lifestyles as well. As the main tool to convenient people's lives and to motivate the economic development of society, the progress made by digital technology proposed high requirements for authorities to update and adopt new regulatory approaches to retain the market order. Currently, the policy regulation for online agencies, known as platforms, causes intense academic discussion due to the inapplicability of the traditional regulatory model and the conflicting views of "technical innovation or governmental restriction". This paper will focus on an innovative regulatory doctrine, namely "Meta-regulation" which enables the government to set up the rules for platforms from a unique perspective, and meanwhile, exploring two dimensions including an explanation of the standardized concept of "Meta-regulation" and giving an analysis of its generalization within the context of the digital economy. A conceptually accepted definition of "Meta-Regulation" and a series of reasons produced to demonstrate the applicability of "Meta-Regulation" for platform regulating will be figured out at the end of this paper.

Keywords: Meta-regulation, Platforms, Government Governance, Theoretical Model

1. Introduction

The regulatory model usually considers the question of making a choice between relative freedom or complete control, especially for companies that possess considerable market quotas and motivate societal progress. As the replacement for the conventional regulatory approach, meta-regulation is new a concept that initially puts forward a view of "regulating the regulation" and is currently being practiced in many industries. However, it is still confusing how to define meta-regulation and many scholars have attempted to describe the meta-regulation in an easy-to-understand way. For example, Hutter regarded the meta-regulation as "states' oversight of self-regulatory arrangements", Morgan pointed out that meta-regulation "captures a desire to think reflexively about regulation, such that rather than regulating social and individual action directly, the process of regulation itself becomes regulated." [1-2]. While others broadly explain meta-regulation from the perspective of interaction among different levels of regulation and regulators. This paper will discuss the conceptual imprecision of meta-regulation theoretically, as well as illustrate the applicability of meta-regulation

through a case study in digital platform industries. Hopefully, through this paper, a more precise concept of meta-regulation can be clarified by summarizing and refining the achievements of the representative scholars in this field and moreover, providing a relatively innovative direction for the government to regulate the development of platforms.

2. Conceptual Explanation of Meta-Regulation

2.1. Extraction of Constituent Elements of Meta-Regulation

To clarify the concept of meta-regulation, refining and differentiating it from the conventional regulatory model is a significant way. Basically, the consideration for any regulatory instrument implementation usually contains four factors, including target, regulator, command and consequence.

Compared with the conventional regulatory approach focusing on entities or particular actions among different market participants, meta-regulation is more flexible because it offers a unique angle for regulators to achieve regulatory goals by regulating different targets. Meta-regulation provides a discretion space for market participants to set up the industrial rules that can be imposed on themselves, this indicates that the existence of meta-regulation allows governments to be isolated from the direct relationship between the regulator and the regulated group, which makes governments able to change the regulatory target from specific entities or actions into whether "regulatory right and behavior are well-enforced by appointed regulators in the designated market" [3].

Regulator within the framework of meta-regulation can be varied and multi-level. According to Coglianese and Mandelson "Meta-regulation refers to ways that outside regulators deliberately--rather than unintentionally--seek to induce targets to develop their own internal, self-regulatory responses to public problems", the degree of intervention of a particular market or industry is still based on the decision made by governments and governments implementing meta-regulation play external roles who are outside the industrial regulatory framework, but in a higher level (See Figure 1) [4]. Besides governments, a part of market or industrial participants are also the regulators under meta-regulation, these entities set up the self-regulatory rules which can be applied to themselves to regulate particular action and establish direct regulatory relationships with other entities.
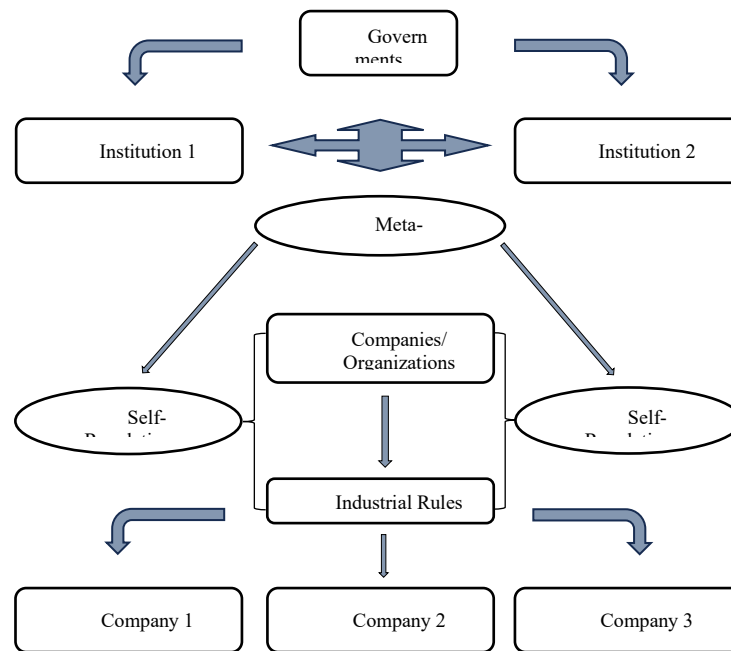
Figure 1: Mechanism of Meta-Regulation

The regulatory command is considered to be the order given by the regulator to mandatorily enforce the regulated group's actions or omissions. The most typical salient form of meta-regulation is the management-based command, as it aims to explicitly encourage the formulation of self-regulatory rules. Braith regarded meta-regulation as the "enforced self-regulation", which emphasized the basis of what is meta-regulation from a generalized angle -- meta-regulation concentrates on the series of actions of self-regulatory formulation, implementation, and evaluation, but no need to be bound to the form of any command, it can be either specific or general, means or ends [5].

Furthermore, the command of conventional regulation is looking for consequences to improve a better social efficiency through different types of adjustment, while it is the regulatory compliance and reflexive strategy from regulation that is sought by meta-regulation. Meanwhile, meta-regulation, to some extent, requires the same institution no matter whether public or private sectors or even state administrative institutions to be morally responsible, as they play dynamic roles, both regulator and the regulated at the same time [6]. Noted on this, another consequence that the meta-regulation expected to achieve is that a part of the private sector with the regulatory power can rationally, independently specify and justify the actions taken by the regulated.

2.2. Structural Analysis of Regulatory Approach

The Space for discretion determines the degree of control and freedom for the regulatory regime. With regard to the obvious characteristic which is called "supporting the regulated autonomy" of meta-regulation, the structure of common regulatory approaches is shaped within a pyramid below (See Figure 2) [7]. From the perspective of entire regulatory approaches, meta-regulation is a part of the second level, which belongs to the interactive regulatory model. Accompanied by the fundamental logic of interdependence broadly asserted and accepted in a digital era, multi-entities jointly engaged in regime establishment are becoming common. As opposed to self-regulation, meta-regulation is a convergent regulatory approach that makes full use of the self-learning capabilities of industry participants and organizations and simultaneously empowers the

enforcement of these groups which is a disguised expansion of the scope of regulation by the state administration. More importantly, meta-regulation not only enables a shift in the roles of the regulator and the regulated but also preserves some discretion for the regulated, thus encouraging the regulated to develop their own internal regulatory systems.
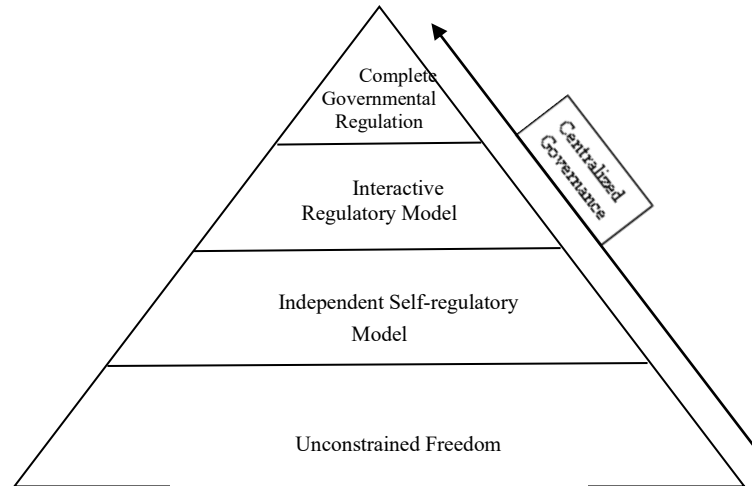

Figure 2: Classification of Regulatory Approach

2.3. Non-Judicial Policy Instrument

Another perspective to understand the concept of meta-regulation is to focus on the process of its development. Different industrial development diversifies the regulatory problem for authorities, this requires more flexible regulatory approaches to adapt to the increasingly complex trend. Browen Morgan in her paper examined the particular aspect of state-market interaction and illustrated the view that the rise of meta-regulation takes more effect on the establishment of accountabilities by which it enables to link social values and economic incentives or disincentives for market entities, and indirectly involve the regulated into the group of stakeholders. Take the Australian National Competition Policy as an example, the Policy clarifies the principle that unless the government or other authorized institutions can empirically evidence the restriction of competition is inevitable for public interest, otherwise, the reduction of intervention to the market is the target. In order to fulfil the role of market self-regulation and maximize market efficiency, decentralizing the regulatory functions and distributing the power to a part of market entities is a practical method that could meet this goal. In this dimension, meta-regulation is a relatively compromised way to adjust the arguments of "freedom or Control", and is considered to be the means of promoting non-judicial accountabilities in the context of regulatory instrument legalization by many scholars.

3. Applicability of Meta-Regulation for Platforms Industries

In the age of platforms, information is highly aggregated, and the diversity of regulatory content makes it necessary to effectively improve the traditional regulatory model. The massive use of data has induced many potential uncontrollable regulatory factors, and it is difficult for the government, as the original direct intervention agency in the market, to go deeper into the platform market to find out the problems due to its non-specialized nature. For platforms, fierce competition to limit the growth of rivals is an incentive for them to attempt to set up the regulatory rules to constrain each other. It is worth noting, however, that since platforms are still commercial organizations, there is still a great deal of uncertainty about the extent to which platforms can regulate each other

[8]. In this regard, meta-regulation is a more appropriate means of regulating platforms at this stage, for several reasons: firstly, when regulators do not have the necessary information or resources to devise sensible rules to restrict the targets of regulation in light of the existing situation. Second, the monitoring of the regulation is costly and unpredictable. Finally, there is an intention of mutual restraint among the regulated.

3.1. Practical Reflections on Online Vehicle Cases

As the main means of travelling for people at this stage, both Uber and Didi platforms provide similar services. One of the most worrying issues is the safety of passengers. Over the past few years, many passengers in China and abroad have been exposed to serious risks to their safety as a result of travelling on the Internet. The government's response to these problems has been external, including requiring platforms to rectify the situation, suspending or removing services, imposing fines, and arranging for regulatory teams to be stationed on the platforms. However, such direct intervention has not been very effective, Busch in his assessment of the effectiveness of government regulation found that the biggest problem posed by digitization to intermediary platforms is that, because direct government regulation is difficult to amend the "unspoken rules" within the platforms, even if the government authorities make mandatory requirements, the platforms may only take responsive actions under the pressure of the regulators [9].

3.2. Theoretical Basis from Easterbrooks' Model

Easterbrook's theoretical model of "cost-error" regulation is a good explanation of why meta-regulation is a relatively superior regulatory tool for platforms [10]. Figure 3 shows the relationship between the intensity of regulation by the government as a direct regulator and the negative effect of limiting firms' innovation as a result of regulation, where the horizontal coordinate represents the intensity of regulation ($X \in [0,1]$), and the vertical coordinate represents the "cost" of regulation when looking at society as a whole. H1 represents the increase in gain loss to society as a whole if the government wrongly restricts the behavior of firms and as a result, firms do not achieve the desired level of development. H2 represents the reduction in the overall gain loss to society from the government's correct regulation of firms. H3 is the result obtained by summing H1 and H2, and it can be seen that the result reflected in the image is that, at X=e, and the intensity of the regulation is e, the society as a whole pays the least price to the government direct regulation.
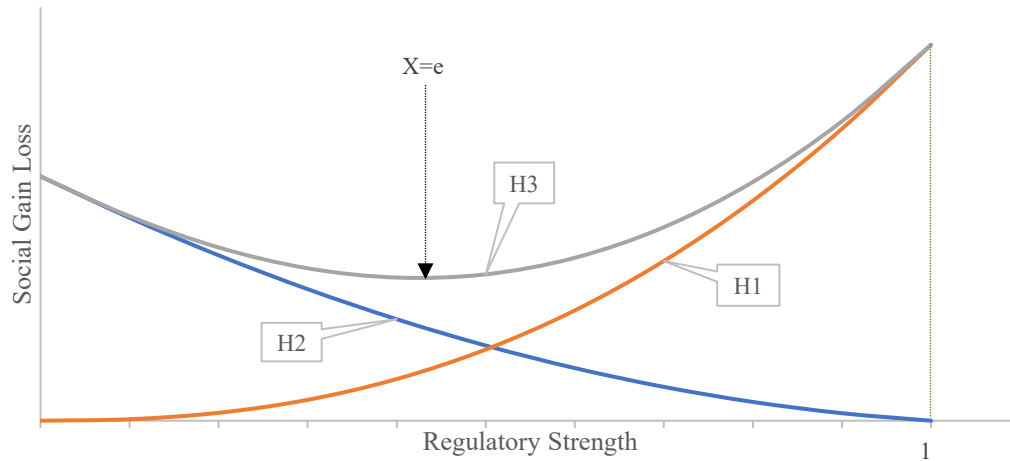
Figure 3: Easterbrook's Model

The main means of realizing the regulatory strength in the above model is whether the government restricts competition or not. The curvature of H1 increases in the context of a digital economy with a large number of platform-based firms, because platform-based firms are the main driving force of social and economic development, capital flow and technological innovation at this stage, and too much restriction of government regulation will lead to an exponential increase in the loss of the overall social gains. Similarly, for H2, the freedom of data as a resource carrier may lead some platforms to establish higher barriers to entry in specific markets and the markets where they can have a significant impact (financial platforms are special, and the consideration of preventing their systemic risk should be prioritized over innovation, so they are not included in the general platform enterprises referred to in this paper). For these innovative platforms (Uber, Tiktok, etc.), there is a need for a dynamic regulatory approach that takes into account the different stages of development of the platforms in the market. Unfortunately, direct government intervention can only regulate the intensity of regulation through a number of means, but it is difficult to achieve the true sense of "dynamic", and the dynamic adjustment depends largely on the industry's internal market self-regulation. Due to the hidden nature of data and the unpredictability of platform development, the cost of regulation is also a key consideration. To summarize, combining the advantages of meta-regulation analyzed above, it is a more feasible choice for platform regulating.

4. Research Findings

First of all, the application of meta-regulation is usually in the scenario that "the regulatory problem to be solved is multilayered, or the industry to be regulated is technically complicated and in dynamic evolution". Secondly, it is conceptually accepted by many scholars that meta-regulation is the monitoring or regulation of regulation itself. Although the study of meta-regulation theory includes both the monitoring of government regulation and self-regulation, however, the existing study of meta-regulation is mostly aimed at the monitoring of self-regulation. In other words, the main purpose of meta-regulation research is to urge the subject of regulation to formulate internal rules through the external guidance of the government. Therefore, the basic framework of platform regulation shaped by meta-regulation theory aims to give full play to the advantages of platform self-regulation, let the market mechanism explore the regulatory path of platform market

organization and management functions, and at the same time, give the state the right to externally supervise the self-regulation of platforms, so as to ultimately form a shared governance pattern.

5.   Conclusion

This paper mainly discusses the definition of meta-regulation given by different scholars and attempts to make it clearer from two perspectives including its typical characteristics and the role that meta-regulation plays. Its practicality can be applied to platform regulating on the other hand. In terms of the analysis above, considering the complexity and uncertainty of regulatory cost due to the digitalized information, meta-regulation is relatively a more flexible approach that is compatible with the dynamically changed market of platforms. Nevertheless, as the result of the basis of this paper is developed theoretically, there is still a large space for other researchers to deepen the application of meta-regulation in reality with empirical evidence. Additionally, researchers should also leave an eye on the weaknesses of meta-regulation in order to make regulators able to select the regulatory model dialectically.

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