The Market Empowerment Framework

A PRIMER FOR DETERMINING APPROPRIATE LEVELS OF REGULATION

Version 1.4

LIBERTAS
INSTITUTE

Permissionless innovation is when entrepreneurs can tinker and experiment and explore new ideas and ways of doing business. Permissionless innovation, as Adam Thierer writes, is about freedom.

America has long been the beneficiary of this freedom to tinker, experiment, and explore, leading to all kinds of huge advancements in technology across numerous industries. These advancements have benefited us with new products, cheaper services, more options, and an increase in overall welfare.

But in recent decades, the rise of the regulatory state has inhibited this market growth and prevented the success or even the creation of certain businesses and industries that faced an inflexible regulatory structure that could not—or would not—adapt to a new business model, good, or service.

The Libertas Institute has created the Market Empowerment Framework to serve as a tool for legislators, regulators, and individuals to utilize a "least-restrictive means" approach to identifying the appropriate level of regulation a particular good or service may need. In doing so, it can help shape the state to be a leader in regulatory reform and an attractive destination for businesses looking to leave less-friendly business environments for greener pastures.

In this paper, we will go over the scorecard, the different components that make up each section, and what the results of the different scores mean.

The Scorecard

The scorecard is built on six core questions to help shape the understanding of how an individual should approach the questions surrounding a particular industry. They are:

1. What is the good or service we want to analyze?

2. Is the use of the good or service for commercial or public (government) purposes?

3. Can the good or service cause harm to consumers? If so, what kind? (Mental, Financial, Physical, etc.)

4. What is the severity of the potential harm done to consumers? (None, Low, Medium, High)

5. What is the probability that the good or service will harm the consumer? (None, Low, Medium, High)

6. What is the permanence of the potential damages done to consumers? (None, Low, Medium, High)

In reviewing the questions 4 through 6, the individual would select the option that best describes their belief. Each answer has a point value assigned to it:

1. None: 0

2. Low: 1

3. Medium: 2

4. High: 3

After the points are tallied, the score dictates what level of regulation should likely be applied on the good or service in question.

Explaining the Questions

Identifying the good or service for analysis

It might sound silly, but this is one of the most important steps in the process. In order to utilize the scorecard, an individual needs to set up the mental framework of what good they are curious about. Otherwise, it is extraordinarily difficult to fill out the scorecard.

Use of the good or service: Private vs Public (Government Use)

Think of this question as refining the lens we want to apply to the question for the identified good or service a person would like to examine. For example, let's say we want to examine Facial Recognition technology. If we want to look at how the technology is used commercially, we can come up with an answer that is radically different than looking at regulatory approaches if the government wants to use it. The intended use of the technology is radically different

depending on the medium of where it is looking to be applied. So, it is important to keep that context in mind when thinking about the questions.

Identifying Harm

It is important to think about the harm a good or service can cause to a consumer. But "harm" is too general; we need to think through the manner of harm a consumer faces when engaging with these new products and services. The kind of harm matters, as not all kinds of harm as equal in how destructive they can be to a consumer. For example, if a good or service's greatest harm is the consumer is at risk of death, that is something that could be more serious than other forms of harm that might be more benign. Identifying harm allows a legislator or regulator to understand the most pressing aspect of the good or service and hone in on that aspect.

The Severity of the Harm

As was briefly discussed above, identifying the type of harm is important, but it is also important to know how severe a harm is to the consumer. In saying that a good or service's harm to consumers is benign, that shifts the framework accordingly, as opposed to an extraordinary circumstance of harm such as death. In understanding the severity of the harm, that can empower the legislator or regulator to embark on a path more tailored than otherwise would be.

The Probability of Harm Occurring

Once the type of harm and the severity of it to consumers has been identified, it is time to turn attention to the probability that the good or service will inflict that harm. For example, drones could potentially cause physical harm to a consumer. Maybe during its flight to deliver much needed toilet paper to a consumer, a bird flies into the drone, causing it to crash, hitting a bystander. Should that event unfold, it would be most unfortunate. But how likely is it that a drone runs into a bird? Maybe it has a high likelihood of happening, maybe it does not. Depending on what available data says, that will influence the score someone might give. The likelihood of harm occurring shapes the potential policy prescriptions as a result.

The Permanence of Harm

The good or service can cause an identifiable harm, the potential severity is known, and the probability of the harm occurring is known. Now, it is important to know how permanent the damage done is. Some things are easier to fix than others. If I use a Peloton bike and pull my hamstring, it is quite an easy fix. As some harms progress in their severity, they may not be as easy to fix. If I were in an autonomous car and got into an accident, the ability to remedy damages is slightly more difficult. In thinking through the permanence of the harm, the focus should be on how difficult it is to make a person whole after they have been harmed.

The Scoring Process

After answering all the questions, tally up all the points earned when thinking about the good or service in question. Whatever the total amount is equates to the least restrictive means of regulation or rules that should be implemented on a particular good or service.

The policy prescription, depending on score is:

0: Permissionless Innovation

Permissionless Innovation is the principle of empowering the process of continuing to tinker and experiment and explore new ideas and ways of doing business. It is the least restrictive approach to regulating companies.

1: Social Norms and Pressure

Under this model, a company adapts to what society expects and consumer behavior as a form of possible regulation. This particular practice is very common for many leading businesses in the United States today. Businesses will almost always want to utilize this strategy because it is in the interest of their company's long-term benefit.

2: Learning/Coping/Experience/Experiments

Sometimes, a business may not know what is right for its market with a new product or service, so they will try new things and adjust accordingly. Because

of the low risk presented by their product or service, allowing them a regulatory environment to experiment within is sufficient.

3: Self Regulation

Under this model, companies are able to establish their own rules and best practices guided by consumer behavior and market pressure. This particular method is fairly malleable, as the company is responsive to a changing environment and can quickly adapt as needed.

4: Education/Media Literacy

This is the preferred method of regulation for companies that have products that are more complicated than a standard consumer good (i.e. food, drinks, banks, etc.). This provides an opportunity for a business to better explain their product. For example, financial technology companies like Robinhood needed to engage in a lot of media literacy so people could understand their product and how it works.

5: Labeling/Transparency

Where consumers might be somewhat harmed and should be particularly informed about a good or service, direct information via labeling or other transparent communications can suffice. As one example, labeling can be helpful in understanding the quality and cut of certain meats and provide contextual information for consumers they may otherwise not have. This process is likewise helpful for pharmaceutical drugs so consumers can make informed choices. This model can be used for low-to-medium risk goods and services where informing the consumer is often adequate to mitigate any possible risk.

6: Industry Guidance

As a particular industry grows, there may be a desire to standardize business practices and best methods within the industry. Under this particular style of regulation, the businesses within an industry would agree to a set of rules that everyone within the industry would abide by. For example, manufacturers of a specific good might want to establish guidelines on everything from production processes to the work environment. In standardizing, the various manufacturers self-police and adhere to a certain set of guiding principles to operate by.

7: Licensing/Permits

Licensing and permits are a top-down style of regulation. They may be needed for goods and services that require an extensive amount of training to understand and master. Restricting the ability to use or operate a particular product could be necessary when consumers may not know how to use said product. For example, you might want to have someone who is responsible for designing a building to be licensed because the building they erect will have numerous people inside, and if someone poorly designed a building, all those people's lives would be needlessly at risk.

8: Administrative Mandate

Similar to licensing and permits, administrative mandates are top-down styles of regulation where the state essentially sets the rules by which a business can operate within the state. From environmental guidelines to requiring certain types of certifications or special insurance, the state will typically not allow a business to operate within the state without checking all the boxes.

9: Precautionary Principle

The precautionary principle is a regulatory lens that was made popular in Europe. It is, by far, the most top-down restrictive style of regulation where the government is extraordinarily protective of consumers. As a result, the government is very heavy-handed in their regulation of certain businesses and industries before even allowing them to participate in their markets, if they are allowed at all.

Going from 0-9, the policy prescription is increasingly precautionary in nature. From zero to two, those particular prescriptions fall under the category of "Adaptability." This is because the focus is on the firm being able to adapt to changing environments and address concerns in a fairly quick manner.

For the scores of three to five, the policy prescription falls under the category of "Resiliency." It relies on more targeted solutions for the particular good or service to address the potential harms it may cause.

Scores in the range of six to eight are in the category of "Anticipatory Regulation." This is because the policy prescriptions in this range are targeted at restricting the ability to utilize the particular good or service in one way or another.

Anything that receives a score of nine falls into the category of "Prohibition." Typically, for these kinds of goods or services, there simply is not enough information to make an informed decision about the necessary level of regulation. Products that are in this category are often banned from the general public and need further research and development to be refined and hopefully answer some of the questions posed to review it again at a later date.

Conclusion

In utilizing this framework and scorecard, legislators, regulators, and individuals can be empowered with a better understanding of how to answer questions posed about goods and services.

In focusing on a least restrictive means approach to regulation across various industries, they become more nimble and responsive to the needs of consumers. Additionally, consumers are then exposed to new goods and services with the potential to increase their welfare.

Have questions about the framework?
Email us at info@libertasutah.org

Market Empowerment Framework Analysis

Industry: _____

Use (circle one):   Public   /   Private

	None	Low	Medium	High
Probability of harm	0	1	2	3
Severity of harm	0	1	2	3
Permanence of harm	0	1	2	3

Total Score: _____

Key

0: Permissionless Innovation
1: Social Norms/Pressure
2: Learning/Coping/Experience/Experiments
3: Self Regulation
4: Education/Media Literacy

5: Labeling/Transparency
6: Industry Guidance
7: Licensing/Permits
8: Administrative Mandates
9: Precautionary Principle

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