Regulation in an age of technological disruption: 'Anticipatory Regulation'
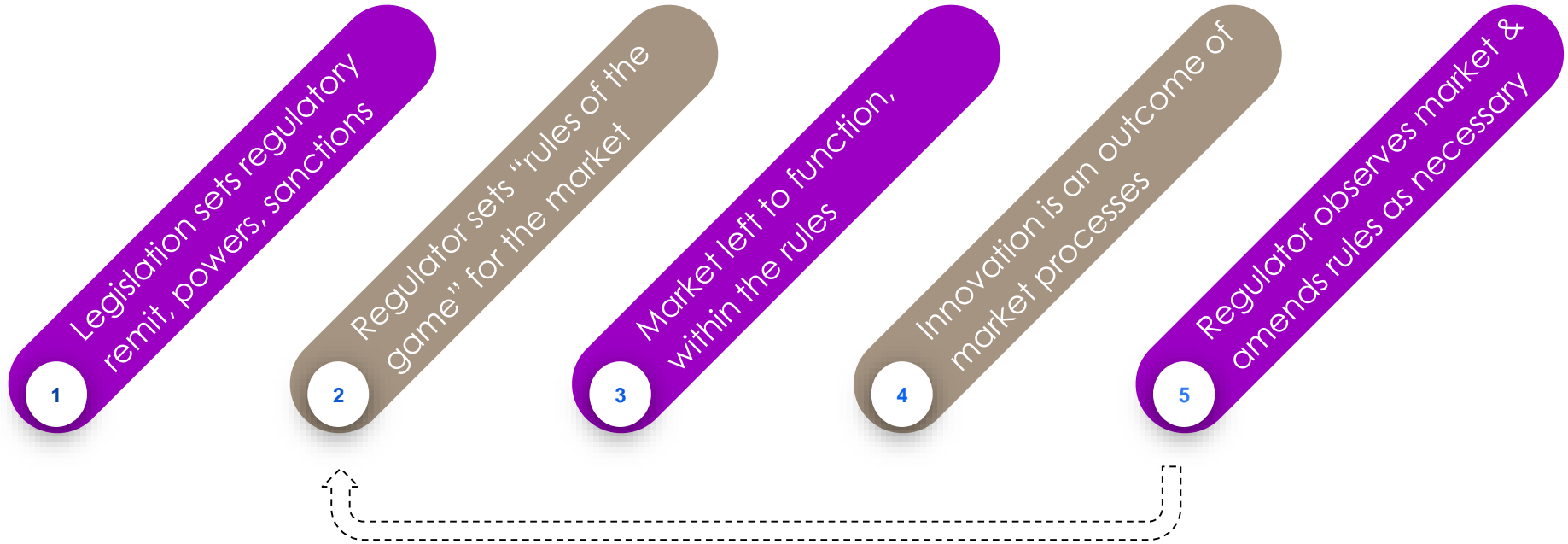
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Nesta

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What we'll cover

1. **Why is a new approach needed?**; narratives, problems and pressures

1. **Anticipatory regulation?** can regulation be more anticipatory?

1. **The role of regulators**: two big questions

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Uncertainty and the need to act early

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Standard playbook

1. Legislation sets regulatory remit, powers, sanctions
2. Regulator sets "rules of the game" for the market
3. Market left to function, within the rules
4. Innovation is an outcome of market processes
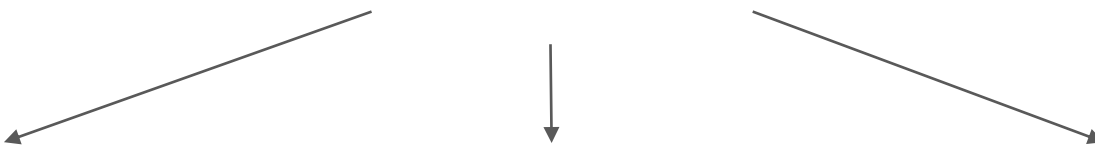5. Regulator observes market & amends rules as necessary

- Competition => efficiency/innovation => consumer benefit
- Stay neutral and correct clear market failures

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1. **Regulate to early = Innovation stifled**

1. **Regulate to late = Innovation could lead to lasting harms**

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"**wait and see**" approach is not necessarily good for innovation and is inadequate in tackling global challenges

"Regulatory drag" and path dependence- potential regulatory tax on innovation

Missing regulatory frameworks creates uncertainty, cedes ground to potentially harmful innovation

Innovation not emerging where needed- critical for global challenges like climate change, COVID, inequality etc
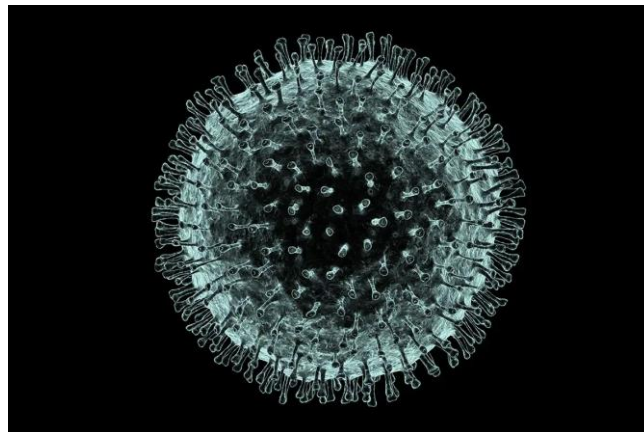
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New technologies and business models

DeepMind

Quantum Computing

amazon

≋libra

UBER

Tencent 腾讯
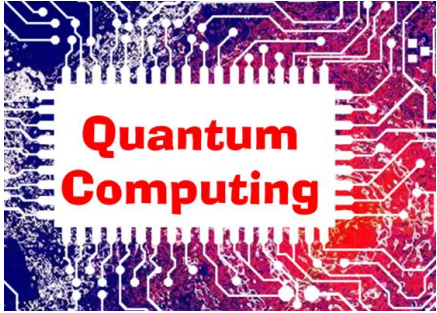
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Global challenges

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1. **Regulate to early** = Greater *uncertainty* on what/how to regulate + less pressure

1. **Regulate to late** = Clear what needs to be regulated in short term + lots of pressure to regulate

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A new way?

Need approaches and processes that:

- Provide better mechanisms for resolving uncertainty

- Help regulators to act earlier

- Reflect the situation regulators now operate in (erosion of sector boundaries, decentred and sometimes fragmented regulatory systems etc)

- Are flexible to respond to a rapidly changing environment

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Anticipation and uncertainty

One way in which regulators can support innovation without compromising safety in a context of uncertainty is to use processes that can better **anticipate** issues and opportunities.

Established area of **anticipatory governance** and Nesta's work on **anticipatory regulation** outline ways in which governments or regulators can build knowledge and capacity in key areas (e.g. foresight, engagement, data collection etc).

This is *not to predict* what will happen but to resolve uncertainties, better understand what *might* happen and how to respond in more resilient ways.

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Anticipatory Regulation

We have developed a set of 6 six principles which we believe can help regulators to:

- Avoid some of the issues associated with acting early,

- Develop intelligence around marketplace innovation and its potential impacts,

- Leverage wider stakeholder input through more participatory processes, and

- Assess the effectiveness of different interventions.

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Inclusive and collaborative

Why?

Democracy, legitimacy and accountability

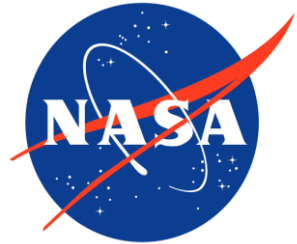New types of knowledge, expertise and skills are needed

What?

Better engagement with a **wider set of stakeholders**; citizens, companies, innovators, NGOs, city authorities, local government and other regulators

Leverage capabilities of outside actors; including other regulators, companies, government agencies, cities, civil society, universities and citizens

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ImageNet competition results

Important challenge - what's just hype and where are the real challenges/opportunities?
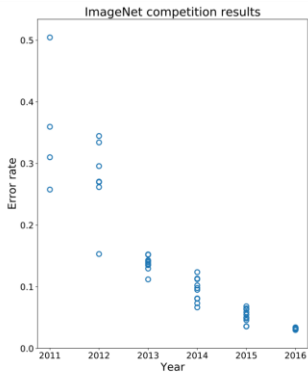

QUANTUM COMPUTER

Future-facing

Why?

Identify where and how systems are changing
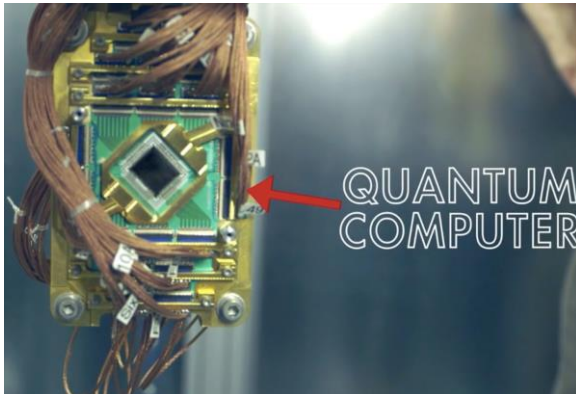
Create resilient strategies, policies, regulations

What?

Horizon scanning- identify developments that could fundamentally change or disrupt existing markets or regulatory systems in unexpected ways

Future scenarios- concrete, tangible way to explore what the future may look like and how tech developments (or other changes) and regulation may interact in that future

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Proactive

Why?

Understand what is going on at the frontier

Ability to respond quickly to emerging threats and opportunities

Use regulation to create innovation where challenges persist

What?

Continually **engage meaningfully with innovators** and innovations

Creative use of regulatory power to support innovation

Look beyond inherited boundaries

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Iterative mindset

Why?

Uncertainty around how markets or innovation will develop considering the pace of change

Need to be able to test solutions, especially when new types of problems appear

What?

Provide as much **clarity as possible**, lay out scope of uncertainty where clarity not yet possible

Explain **how future decisions will be taken**, based on what evidence

Sunset clauses, need to include well resourced reviews considering future developments and engaging a inclusive set of stakeholders

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Outcomes-based

Why?

Reduce the scope for firms to game set rules

Outcomes are more resilient to change

Innovation in the way regulated firms respond to deliver these outcomes

What?

Define what regulator **wants to see**

Define actions in event of outcomes (not) being achieved

Needs to be matched by **the right supervisory and compliance processes,** it requires a different relationship between regulators and regulated firms and new skills for both actors

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Experimental

Why?

Need to facilitate and test diverse responses, innovations or regulatory interventions to build knowledge around possible impacts
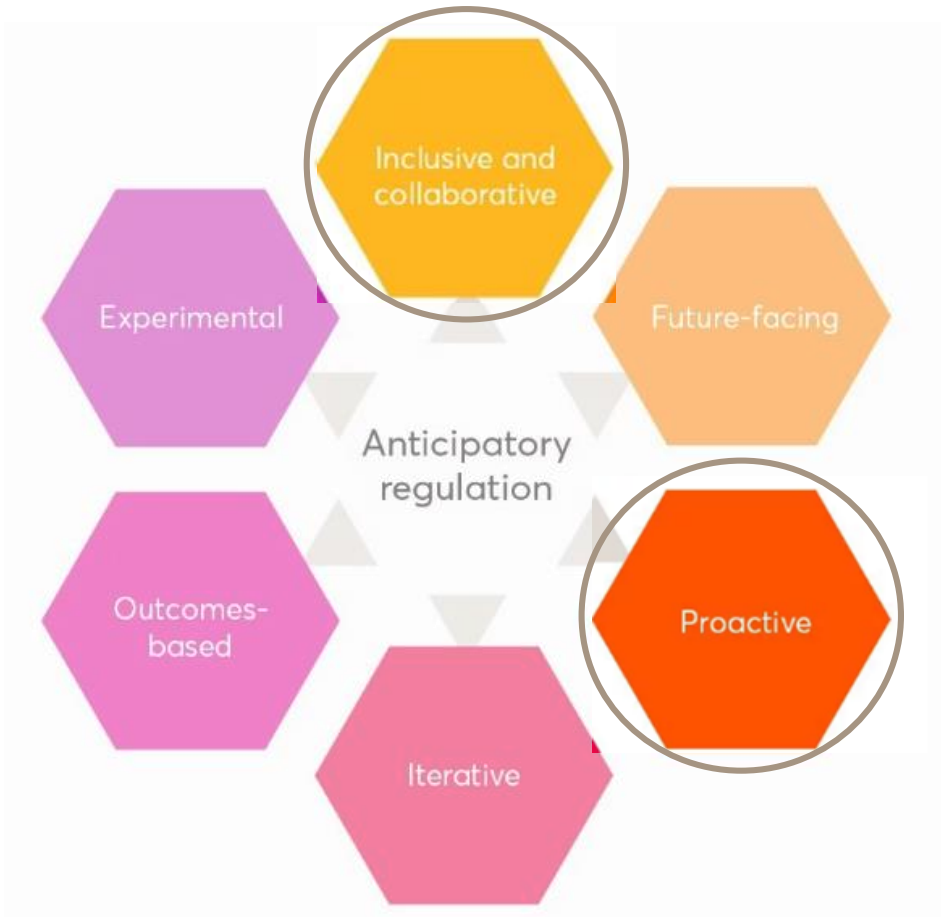
Cities play critical role in convening stakeholders and as real world testbeds

What?

Partner or support cities, innovators and other organisations to create spaces for experimentation

Evaluate and learn, speeding up discovery of threats, opportunities and regulatory needs

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The role of regulators: two big questions

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How can regulators be **proactive**, and should they be?

The Green FinTech Challenge is a pilot approach for FCA Innovate and involves them taking a more **active role in driving innovation**.

9 firms have been accepted. Eligibility criteria:

1. assisting in the transition to a greener economy
2. benefit to UK markets and consumers
3. need for Innovate services

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How can tech improve access to legal help?

If you've got a great idea, take part in our challenge.

legalaccesschallenge.org

nesta. Challenges

Solicitors Regulation Authority

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Values based decisions- where and how?

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Public dialogue, engagement and inclusion

Should regulators talk, listen and engage with the public more?

Where is the right place for democratic engagement, Government, parliament and regulators?

How do you involve the public on values based decisions when those values and perceptions of innovations are still evolving?

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