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Tax and regulation shouldn't be seen as tools to level the playing field

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Some Conservatives are buttering us up for a new sales tax on major tech firms such as Amazon. Scottish Tory leader Ruth Davidson is the latest politician to throw the kitchen sink at the company, bemoaning uneven treatment in business taxation between the e-commerce firm and retailers.

Whether it's Amazon and high street stores, Airbnb and hotels, or Uber and taxis, lawmakers and commentators regularly wade into debates about disrupters and incumbents to argue for a policy "level playing field".

Yet the idea companies operating vastly different business models should face the same tax burdens and regulatory frameworks is specious. Tax systems should attempt to raise revenues in the least damaging way possible. Regulations should seek to deliver certain objectives.

They should not be thought of as tools of industrial policy. Introducing special taxes on innovative firms that provide desirable consumer services would merely stifle innovation and hit consumers in the pocket.

To see why the level playing field ambition is wrong, take an extreme example outlined by economists Andrew Lilico and Matthew Sinclair. A nuclear power plant and a wind farm are both in the energy market. They are competitors. But should they face the same regulations? Nuclear plants come with huge risks necessitating stringent safety rules. All else given, this is a competitive disadvantage.

Yet proposing compensatory taxes or regulations on wind farms to level out these costs would be daft. The whole point of the regulations is to achieve safety, not to hamper one firm relative to another.

Amazon, likewise, competes with traditional businesses such as book retailers. But, again, it is not delivering the service in the same way. Its website creates new markets which allow people to purchase goods on a user-friendly interface. It has a huge choice of products. Consumers get them delivered to their homes cheaply, without needing to venture into town. All this, and not just the book, is part of the service.

This throws up thorny questions about corporation tax. How much of the business activity or profit really occurs in Britain, given the website and Amazon's intellectual property? In a world of e-commerce, policymakers worldwide are grappling with this question.

But to suggest it's unfair that Amazon's high street competitors pay business rates and so a new sales tax is needed on online firms to even things up goes way too far. Amazon's model explicitly repudiates the need for a high fixed-cost physical presence in expensive inner-city areas.

Indeed, that is one reason why it delivers low prices for consumers. Arguing that this is some kind of unfair advantage in need of correction is as daft as saying that Amazon's cardboard box costs are a disadvantage for it over traditional retailers, requiring correction. Amazon has merely found a business model which delivers services consumers want. There's no "unfair competition" here.

Black cabs in London likewise bemoan that they are more heavily regulated than ride-sharing apps such as Uber, undermining their competitiveness. But the whole justification for statutory taxi regulation through price controls, licensing and training via "the knowledge" was to protect customers from being fleeced. In an age before GPS technology, and when most of our interactions with taxi drivers were one-off encounters, there were big potential consumer concerns about journey routes and prices.

By incorporating rating systems, GPS tracking, a complaints interface, and clear and electronic payments, apps such as Uber circumvented the need for much of this regulation. The regulatory objectives policymakers sought were delivered by its product.

Introducing regulations on Uber to "level the playing field" with cabbies would merely raise costs with no upside. Similar arguments can be made about Airbnb and hotels.

That's not to say new innovations and business models do not highlight the need for revising tax and regulations on incumbents. Though most evidence suggests business rates are borne by landowners, in lower rents, they can discourage investment and use of commercial property too.

Moving to a purer land value tax for plots containing commercial property would help, as would a liberalisation of land use planning laws generally.

Plenty of regulations on taxis and hotels could probably be abolished now given technological advances and a greater range of options as well.

All taxation and regulation, to some extent, lead new or incumbent firms to seek to circumvent or reduce the costs of complying with them. We try, somewhat arbitrarily, to ascertain whether this behaviour represents "good" arbitrage or "bad" arbitrage. The idea of a level playing field sounds appealing, because it plays to our inherent sense of fairness and desire to eliminate bad attempts at "gaming".

Few would demur from the view that major companies should face the same overall tax laws on sales and profits, for example.

But when new firms such as Amazon, Uber and Airbnb innovate to deliver more choice for consumers by adopting new business practices or ways of meeting regulatory objectives, politicians should not seek to protect incumbents.

True competition is a dynamic process of improvement. Up until 1968, when American athlete Dick Fosbury won the Olympic summer gold, high jumpers had previously straddle-jumped the bar. Imagine developing a better model of jumping – the Fosbury flop – only for the Olympic authorities to label it an unfair advantage and demand some compensating restriction on its use.

Firms in a market aren't just all providing a particular good. They are constantly looking for new innovative business models, given prevailing economic conditions and policies. We need this process to be nurtured and encouraged. Too often, our politicians mistakenly conflate being "pro-competition" with being "pro-competitors of a successful company".

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