

SUPERMARKET POWER

Serving Consumers or Harming Competition?

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Competition along the Food Chain

OECD Food Chain Analysis Network

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 - Conventional – Evolutionary- Modern?
- Supermarkets: vertically integrated competitive bottlenecks
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EU Current Status: DG Comp

- Food Task Force Presentation to HLF (3.07.2012)



Findings on "unfair commercial practices"

NCA's found in most cases that there were no violations of competition rules (because there was usually no harm to consumer welfare) but work is still ongoing

Some NCA's have been/are assessing the impact on innovation and consumer choice (*Finnish, Spanish, Italian and German NCA's*)

NCA's have been advocating the adoption or implementation of legislation or codes on unfair commercial practices (UK, Portuguese, Bulgarian, French, and Spanish NCA's)

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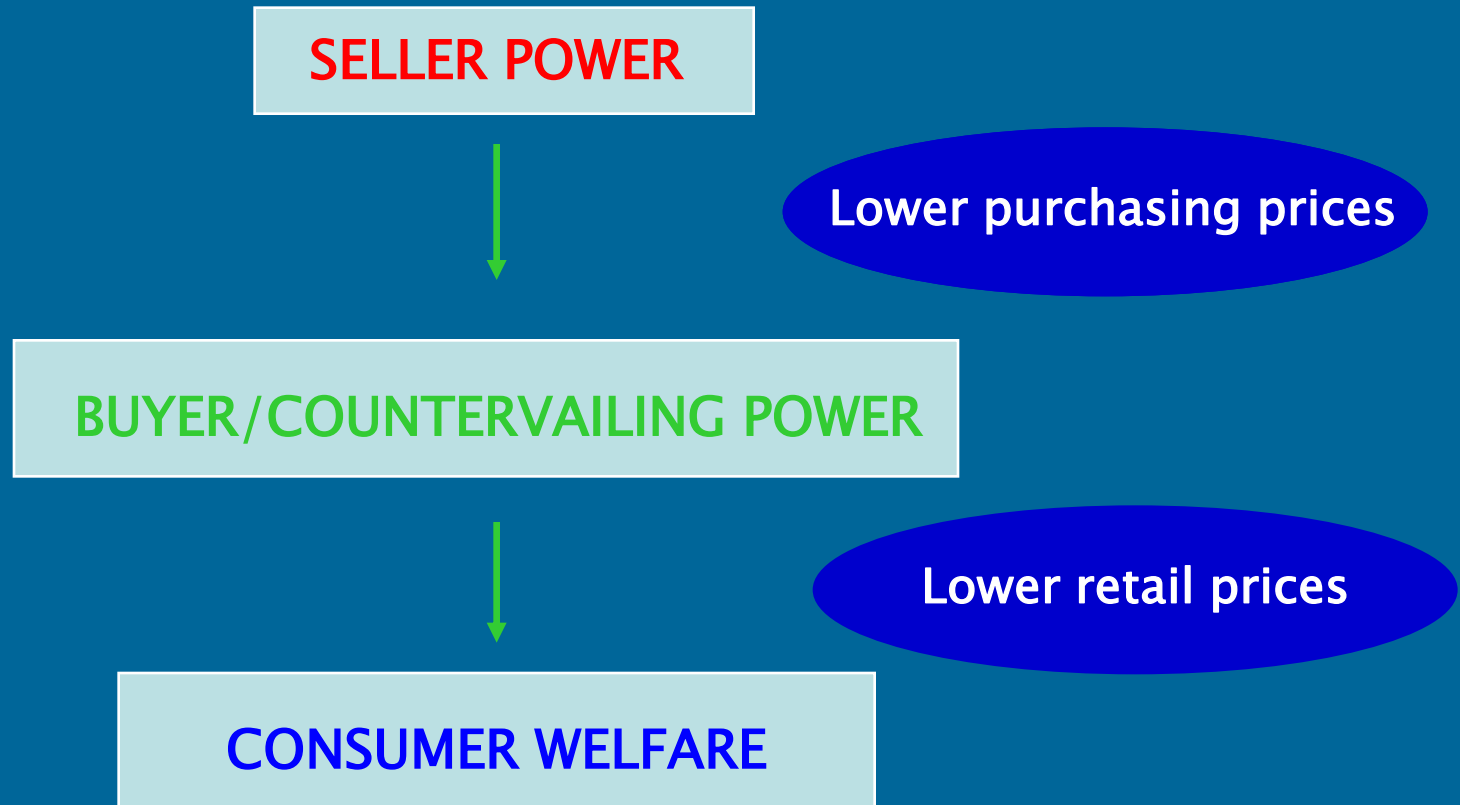
- Launch of independent report on innovation and consumer choice (12.12.2012)

EU Current Status: DG Internal Market

- Green Paper on UTPs in the B2B supply chain (31.1.2013)

4.	TYPES OF UNFAIR TRADING PRACTICES. PRINCIPLES OF GOOD PRACTICE	9
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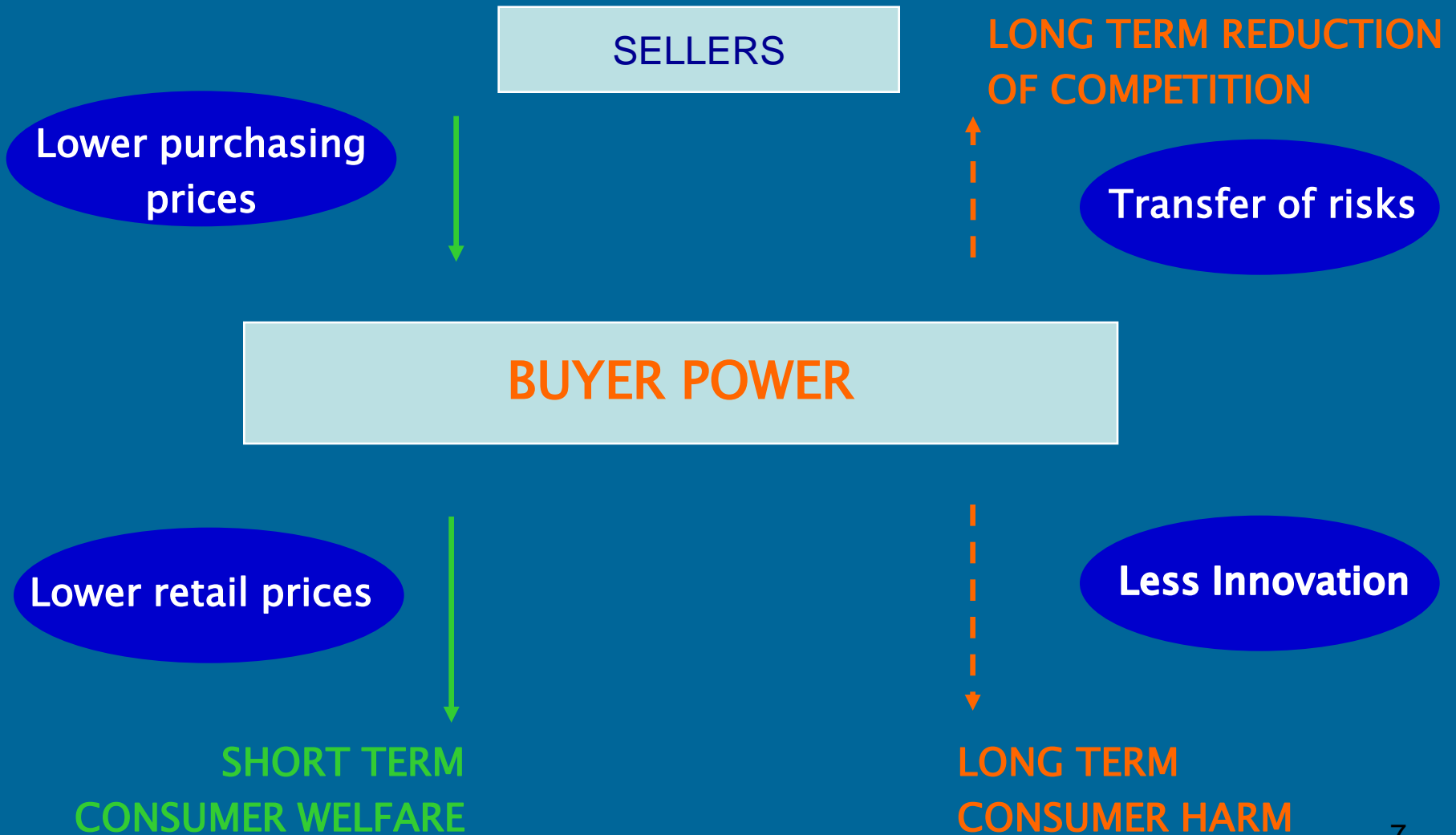
Competition Analysis: Conventional



Competition Analysis: Conventional

- Competition policy falls behind business reality
 - Supermarkets sell services and transfer risks to suppliers
 - Supermarkets controls in-store competition (“prescribers”)
 - Consumer loyalty to the store and shopping decisions in-store
- Competition policy favours supermarkets over independent brands
 - Seller power based on formalistic market definition-market share
 - Simplistic price analysis at the expense of the dynamic innovation/quality analysis
 - Per se prohibitions irrespective of market share (e.g., pricing cooperation)
 - Vertical restraints (intra-brand) policy limits supplier freedom (bargaining power)
 - Retailer procuring its own branded goods is not considered a manufacturer (competitor)

Competition Analysis: Evolutionary



Competition Analysis: modern?

SUPERMARKETS: TWO-SIDED PLATFORMS

CONSUMER GROUP 2:
GROCERY BRANDS
(multi-homing)

STORE
ACCESS

IN-STORE
COMPETITION

CONSUMER GROUP 1:
GROCERY SHOPPERS
(single-homing)

CRSs, Credit card networks, Google,
Media advertising, Car parts/services, Mobile
telecom networks, Internet Neutrality, etc.

Theories of Harm

Vertical foreclosure

Anti-competitive access fees

Competitive-bottleneck model

Neo-classic output/price model

Going up the economic analysis ladder...

Competitive Bottlenecks

Mark Armstrong, "Competition in two-sided markets", RAND (2006)

A model of "competitive bottlenecks, while group 1 continues to deal with a single platform (to single-home), group 2 wishes to deal with each platform (to multi-home). In this sense, there is no competition between platforms to attract group-2 customers. There are several examples of markets where this framework seems a stylized representation (competing mobile telecommunications networks, newspaper advertising, supermarkets, computerized airline reservation systems).

A commonly held view about the supermarket sector is that, provided competition for consumers is vigorous, consumers are treated well by supermarkets but supermarkets deal too aggressively with their suppliers. As with all the competitive bottleneck models, in equilibrium the joint surplus of supermarkets and consumers is maximized and the interests of the the suppliers are ignored. The low level of compensation **will exclude some relatively high-cost suppliers whose presence in the supermarkets is nevertheless efficient**. In other words, **payments to suppliers are too low from a social point of view and there are too few products on the shelves**. How well consumers are treated depends on competitive conditions on their side.

Stefano Vannini, "Bargaining and two-sided markets: the case of Global Distribution Systems (GDS) in Travelport's acquisition of World", CPN 2008

Competitive Bottlenecks

“Armstrong points out that even if the platforms do not make excessive profits overall, the multi-homing side faces too high a charge from the point of view of social welfare. Bolt and Tieman (2006) in a comparatively simple two-sided platform model, obtain a similar result. They show that in the social optimum, platform pricing leads to an inherent cost recovery problem... It follows that even adequate competition policy enforcement alone may not always lead to best outcomes. This suggests, at least in some instances regulation may be pertinent.”

Source?...

Competitive Bottlenecks

“Armstrong points out that even if the platforms do not make excessive profits overall, the multi-homing side faces too high a charge from the point of view of social welfare. Bolt and Tieman (2006) in a comparatively simple two-sided platform model, obtain a similar result. They show that in the social optimum, platform pricing leads to an inherent cost recovery problem... It follows that even adequate competition policy enforcement alone may not always lead to best outcomes. This suggests, at least in some instances regulation may be pertinent.”

European Commission note for the “Roundtable on two-sided markets”, OECD Competition Committee, DAF/COMP/WD(2009)69, 28.05.2009

Competitive Bottleneck

Supermarket Substitutability Test (*Rewe/Meinl*)

 5-10% “*significant loss of sales*”

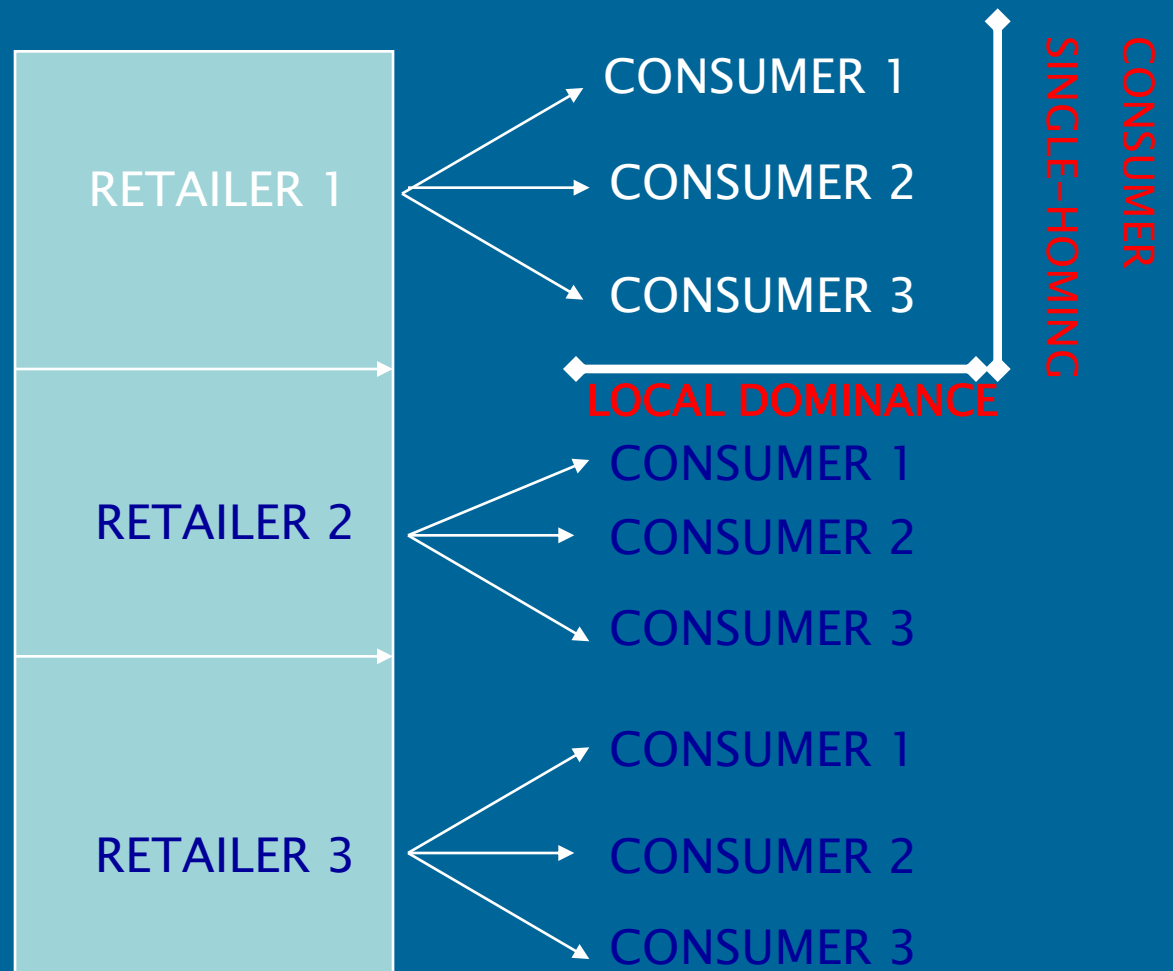
 20% “*irreparable loss of sales*”

The effect on profit of a change in sales

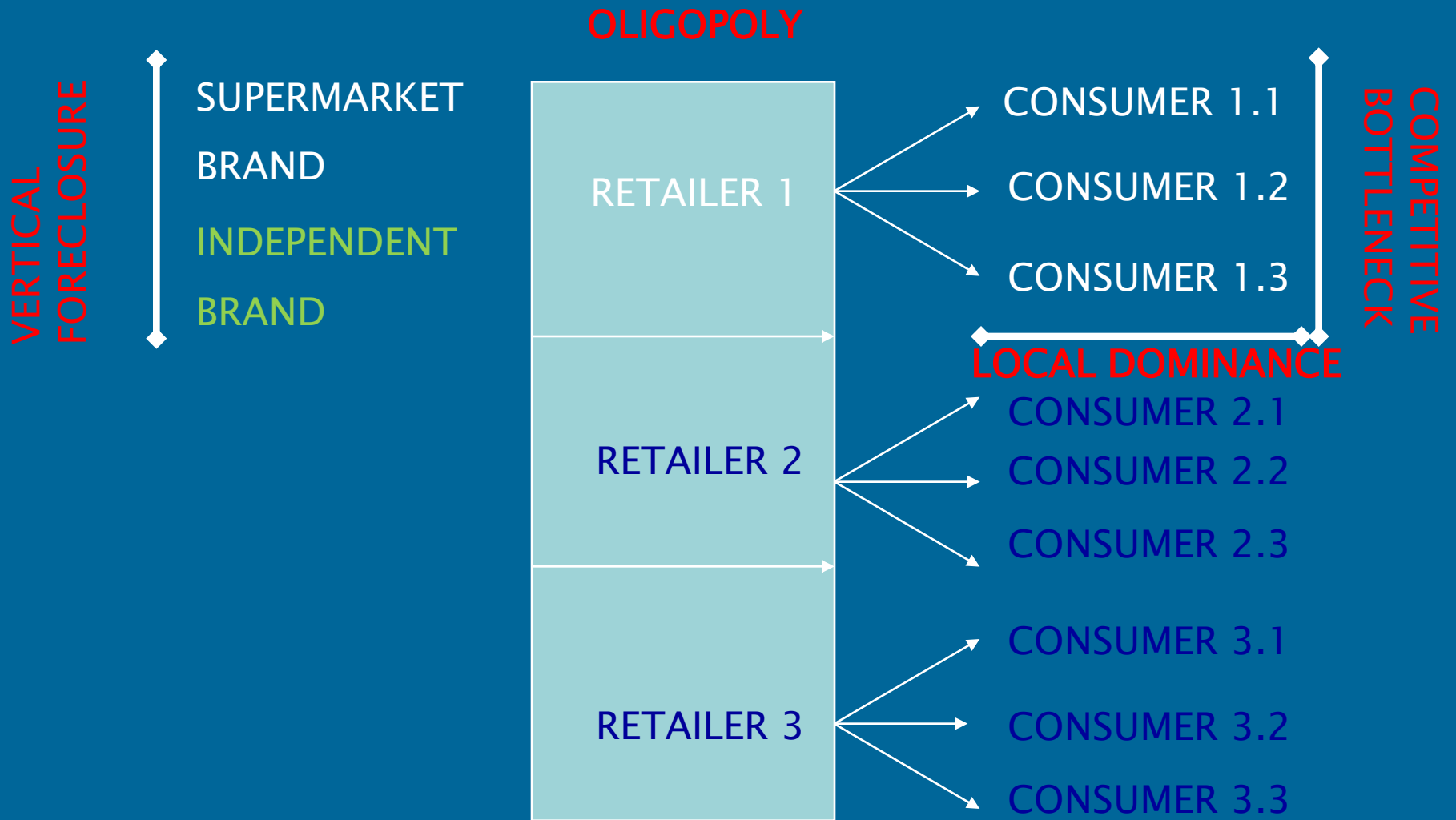
Financial structure	Predicted sales	10% fall in sales	Difference %
Sales value	100	90	-10
Variable cost	50	45	-10
Advertising	12	12	0
Fixed costs	38	38	0
Net margins	10	5	-50

Supermarket Power: Nationwide oligopoly, Local dominance, Consumer loyalty/switching barriers

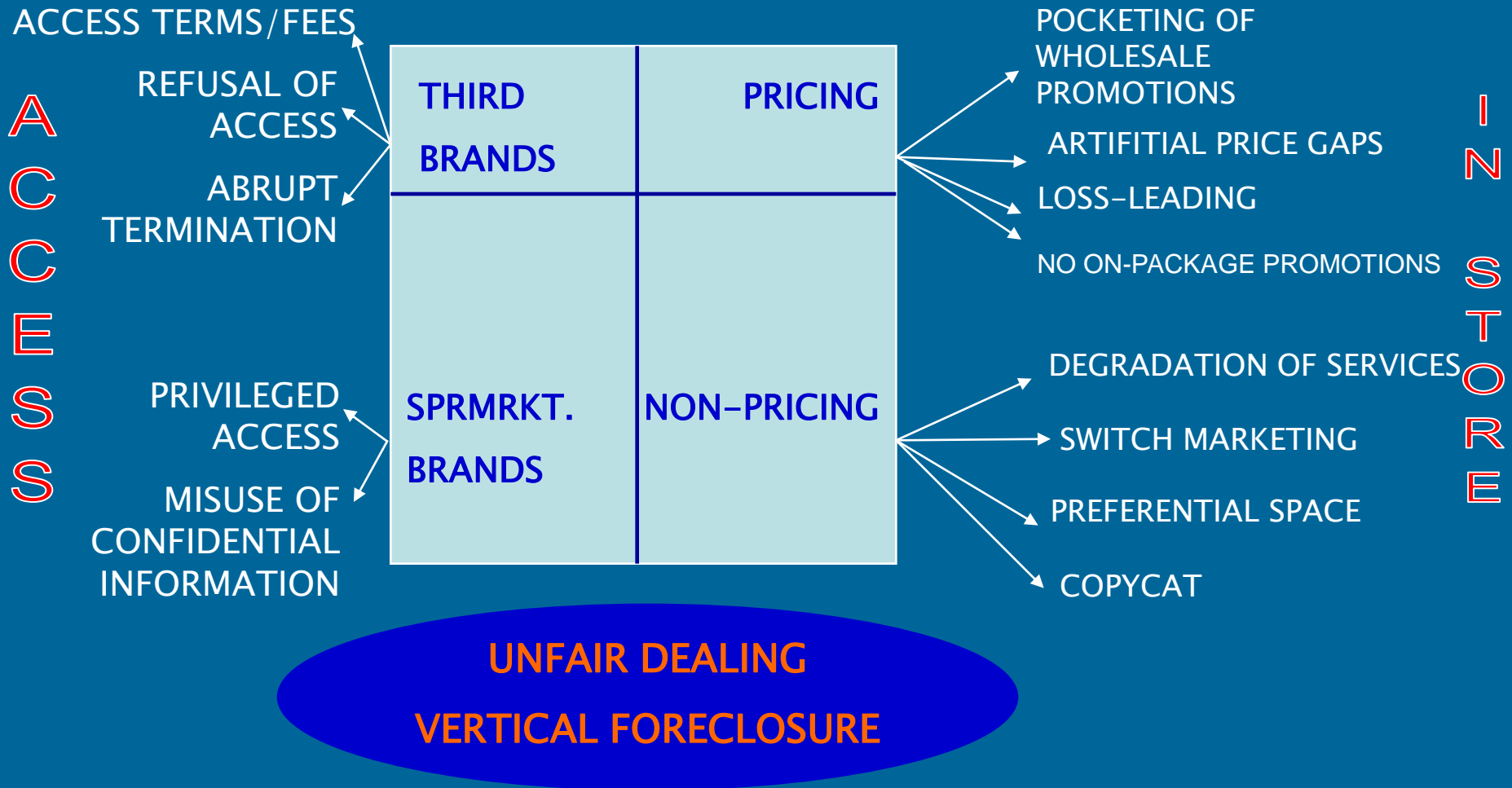
OLIGOPOLY



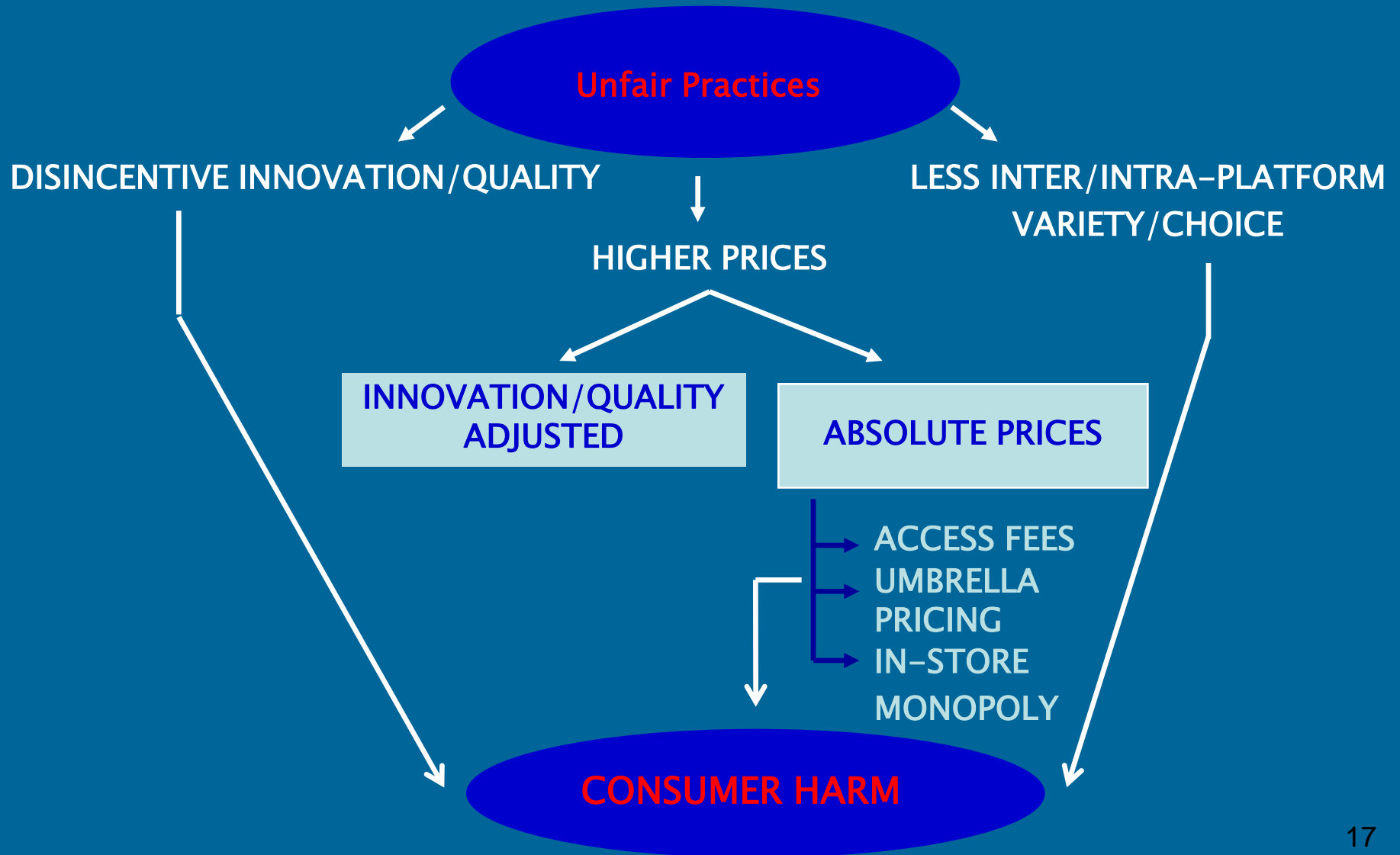
Supermarket Brands: Vertical Foreclosure



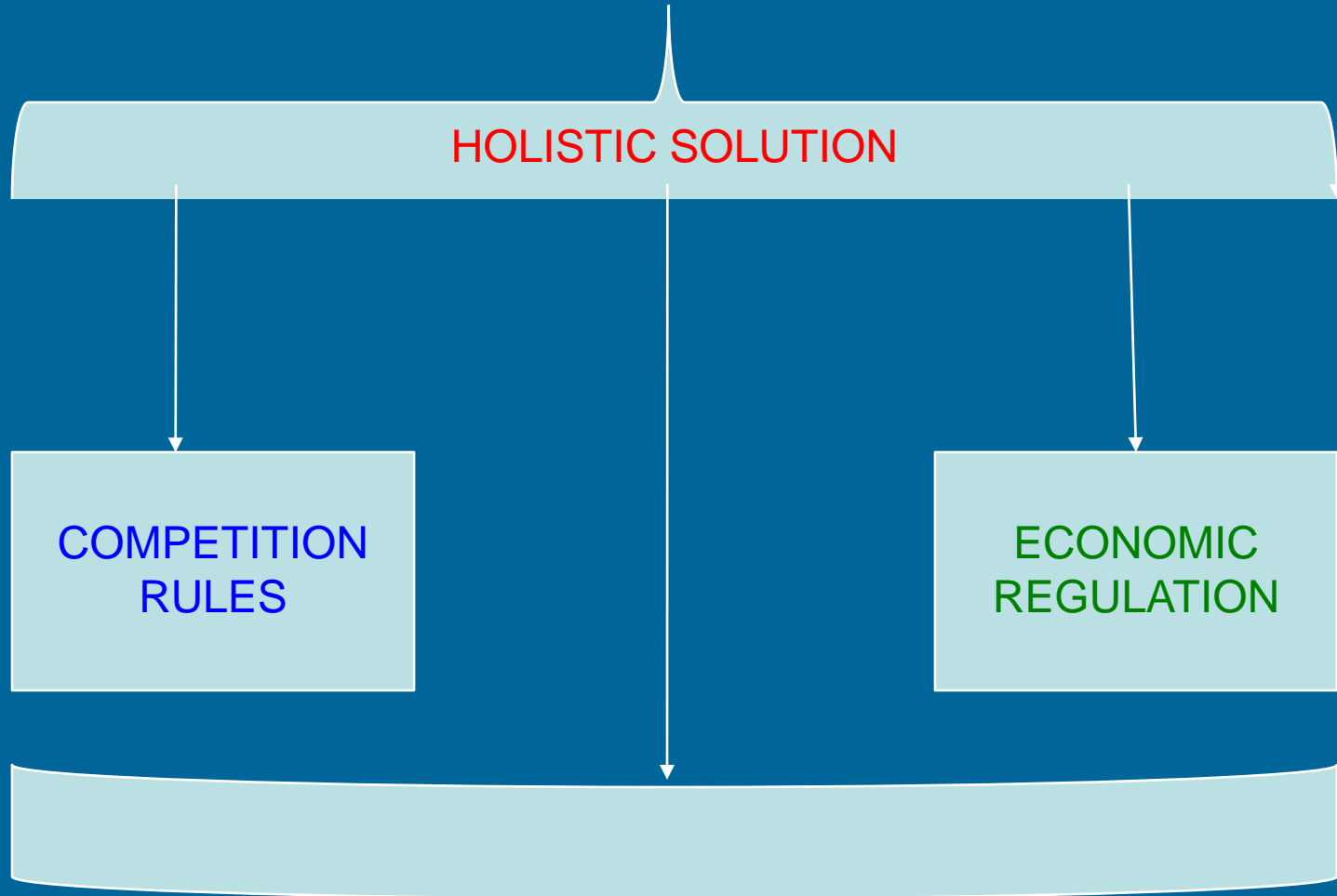
Supermarket Practices: Unfair/Exclusionary



Unfair competition undermines consumer welfare



Competitive bottlenecks: remedies




Economic Regulation


- ACCESS TERMS/IN STORE COMPETITION: “FRAND” + OPEN ACCESS
- ACCESS FEES:
 - IF RETAILER: NO ACCESS FEES
 - IF MARKET-PLACE: ONLY ACCESS FEES
 - DUAL MODEL: FRAND ACCESS FEES
“non discriminatory, reasonably structured and related to service provided”
- PRICES OF IND. BRANDS:
 - RETAILER/DUAL MODEL:
 - No discrimination?
 - Retail price maintenance?
 - MARKET-PLACE: Ind. brand fixes its retail price
- SUPERMARKET BRAND: LEGAL AND FUNCTIONAL SEPARATION
- ENFORCEMENT
 - AUTHORITY WITH FINING & GUIDANCE POWERS
 - INDEPENDENT COMPLIANCE AUDIT

REVOLUTION ?

Economic Regulation

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 - INDEPENDENT COMPLIANCE AUDIT 

NOT REALLY!



REGULATION 2299/89 CRS

EU Competition: 102 TFEU



- The oligopoly/competitive bottleneck gap: 102 TFEU covers unfair/exclusionary practices but collective dominance is dead-letter and single-dominance requires high market share.
- Creative thinking?
 - (1) Revive collective dominance
 - (2) Narrow market definition: each platform (access network monopoly or intra-platform competition)
 - (3) Local retail dominance abused upstream

EU Competition: 101 TFEU



- Vertical Guidelines wrong focus (par. 27, category management, access fees).
- Shift policy focus: vertical integration-horizontal competition?
 - If Section 6 Horizontal Guidelines (non-reciprocal) commercialisation agreements between competitors deals with risk of collusion, why not risk of exclusion as well? Both reduce dynamic competition (e.g., misuse of sensitive commercial information)
- Sector-specific BER/Guidelines or new section/content in Horizontal Guidelines may fix a competition problem and stop the tide of regulation

Conclusion

- Supermarket power and unfair/exclusionary practices is a FACT
- Conventional competition policy distorts free competition in favour of supermarkets
- Supermarket abuses and erroneous competition policy are shifting the balance towards supermarket regulation at the EU and Member States
- CAP reform and producer-centric measures will fail if supermarkets escape regulatory/competition control
- Vertical integration-horizontal competition offers new ground for modern competition analysis of supermarkets: vertically integrated competitive bottlenecks (e.g., CRS)