

SUPERMARKET POWER

Serving Consumers or Harming Competition?

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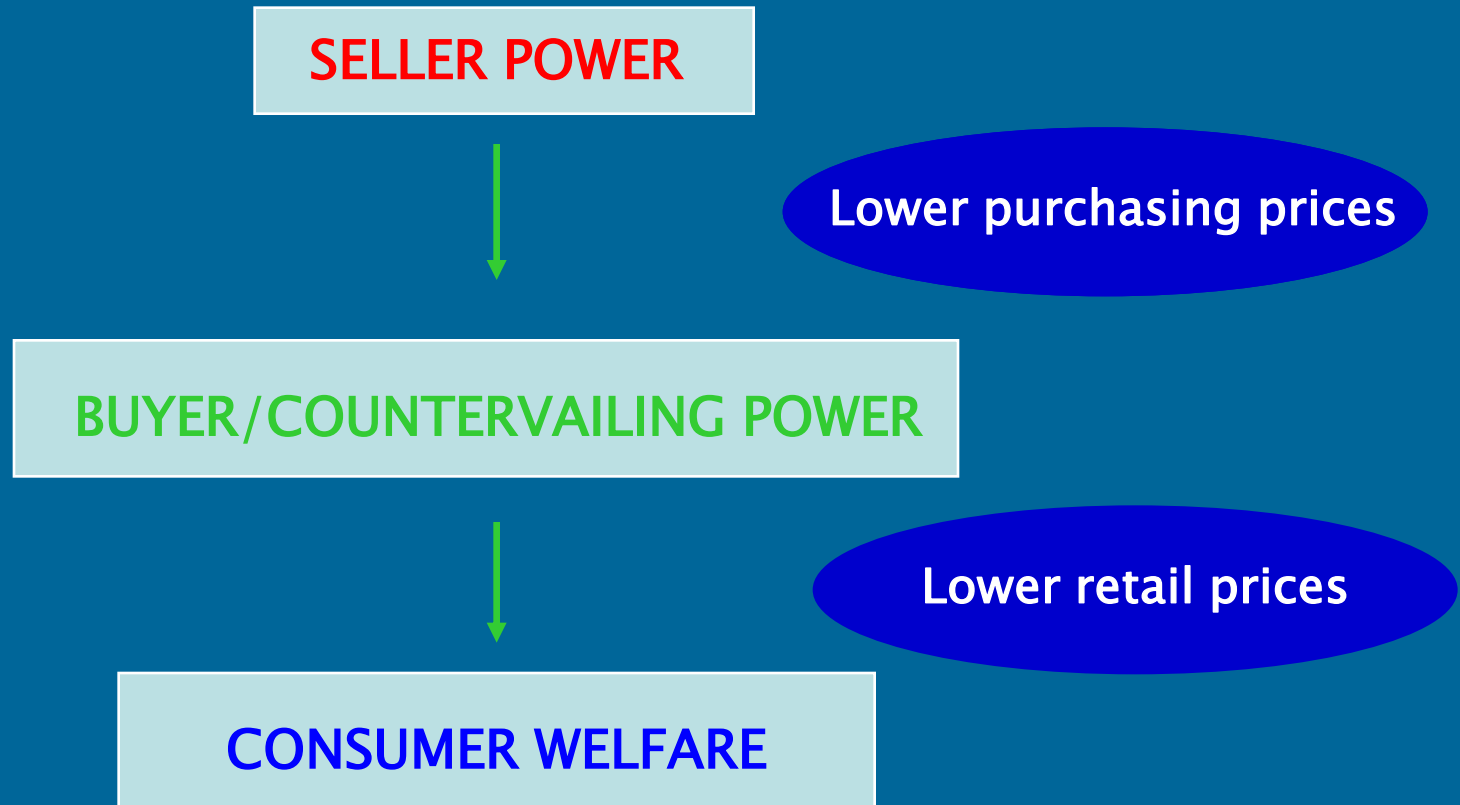
- But: Launch of independent report on innovation and consumer choice ! (12.12.2012)

EU Current Status: DG Internal Market

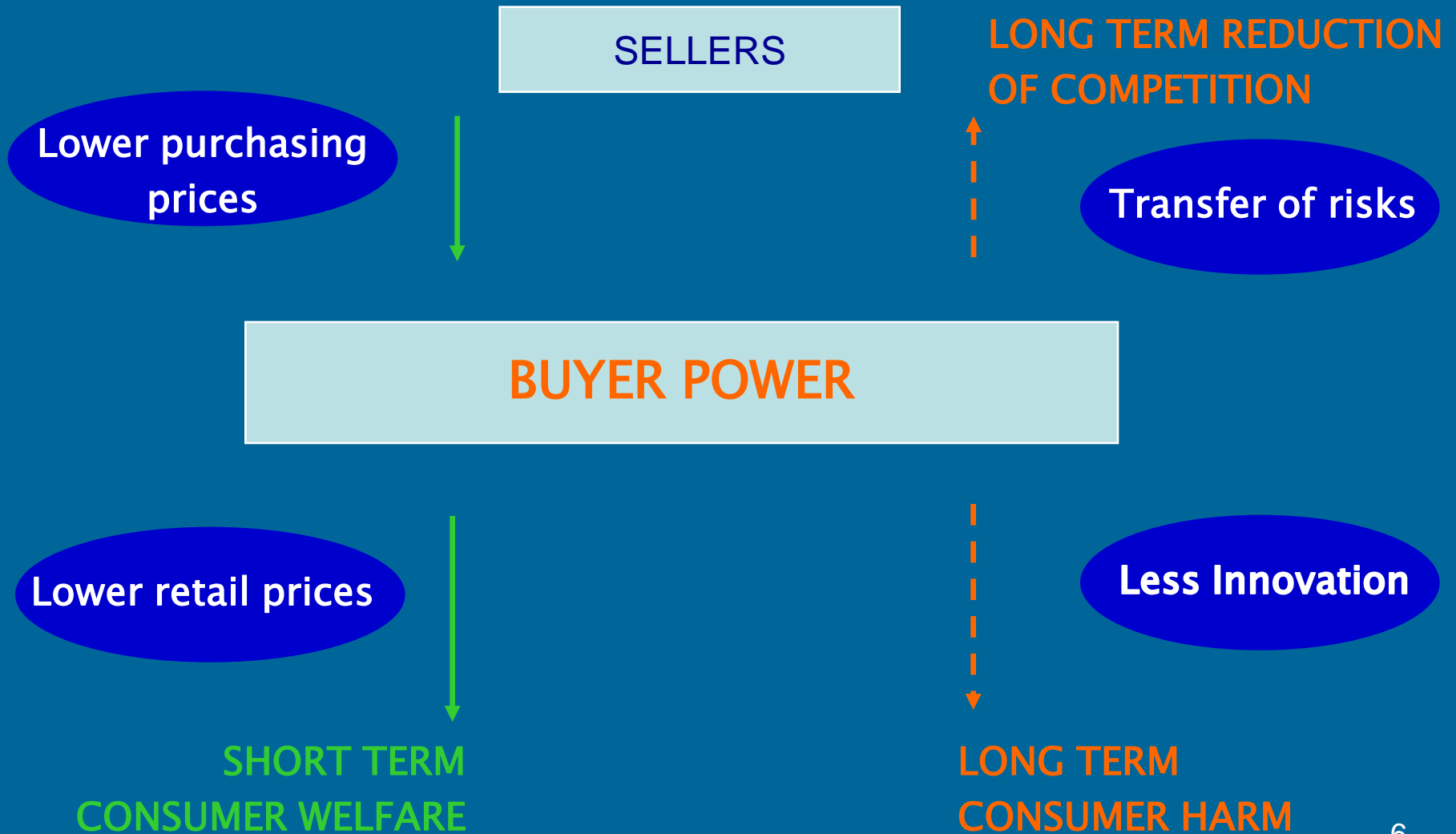
- Green Paper on UTPs in the B2B supply chain (31.1.2013)

4.	TYPES OF UNFAIR TRADING PRACTICES. PRINCIPLES OF GOOD PRACTICE	9
4.1.	<i>Ambiguous Contract Terms</i>	10
4.2.	<i>Lack of Written Contract</i>	10
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Competition Mindset: Conventional



Competition Mindset: Evolutionary



Competition Mindset: modern?

SUPERMARKARKETS: TWO-SIDED PLATFORMS

CONSUMER GROUP 1:
GROCERY BRANDS

STORE
ACCESS

IN-STORE
COMPETITION

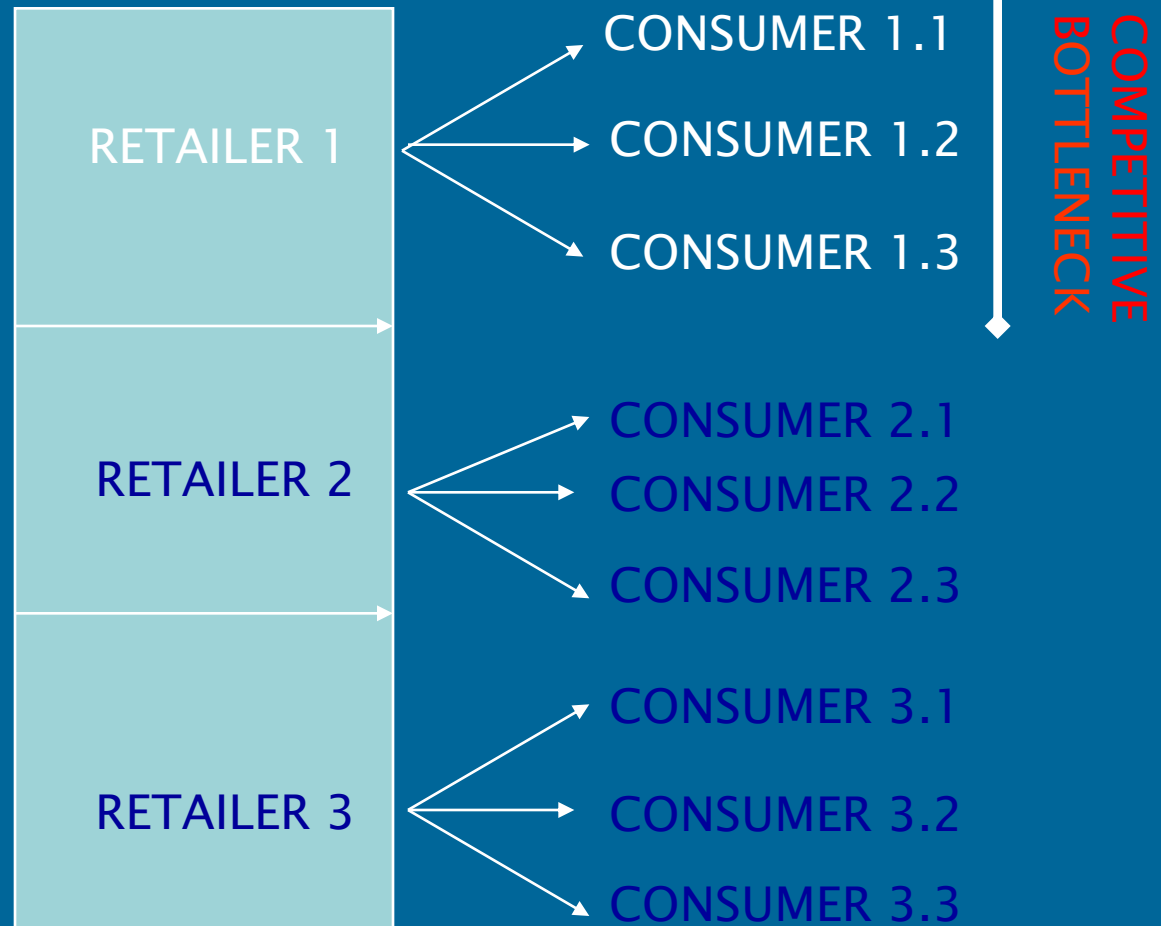
CONSUMER GROUP 2:
GROCERY SHOPPERS

CRSs, Credit card networks, Google,
Media advertising, Car parts/services, etc.

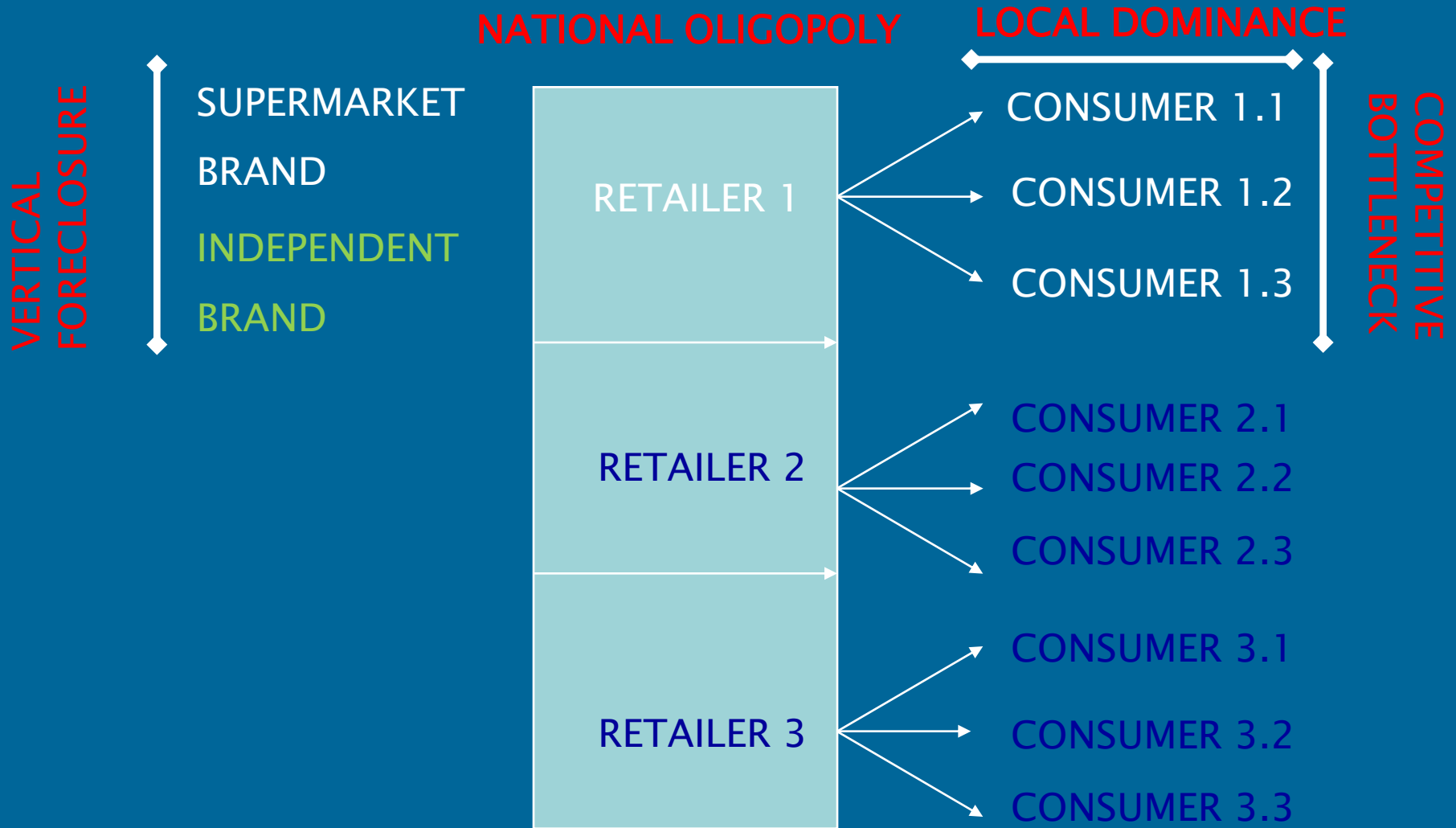
Supermarkets: Competitive Bottlenecks with Market Power

NATIONAL OLIGOPOLY

LOCAL DOMINANCE



Supermarkets: Vertically integrated Competitive Bottlenecks



Competitive Bottleneck

Supermarket Substitutability Test (*Rewe/Meinl*)

 5-10% “*significant loss*”

 20% “*irreparable loss*”

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

Theories of Competition Harm: Evolution

Neo-classic output/price model

Anti-competitive access fees

Competitive-bottleneck model

Vertical collusion/foreclosure

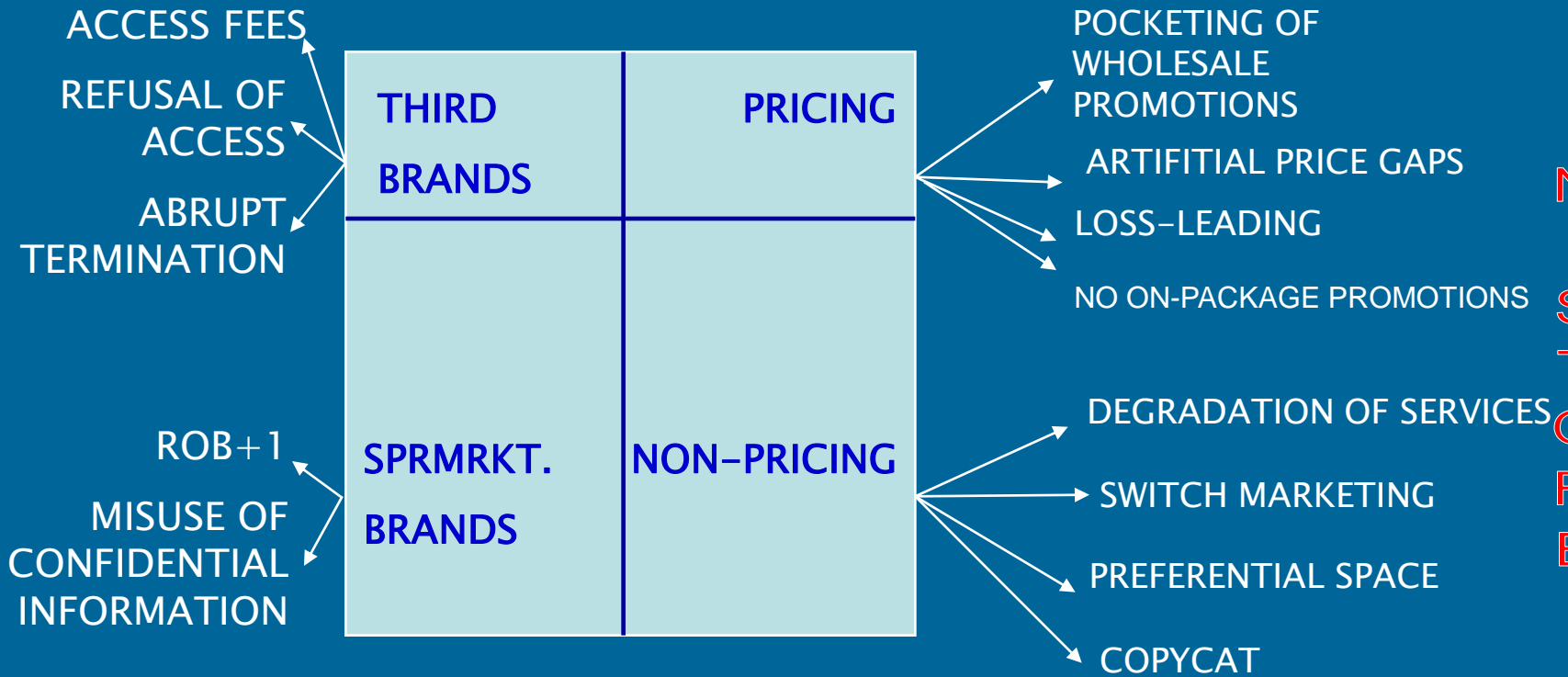
Norway

- Conventional analysis:
Gabrielsen & Sørsgard (2000, 2007)
Gabrielsen & Johansen (2011)
- But see:
Foros & Jarle Kind (2008)

Supermarket Practices: Unfair/Exclusionary

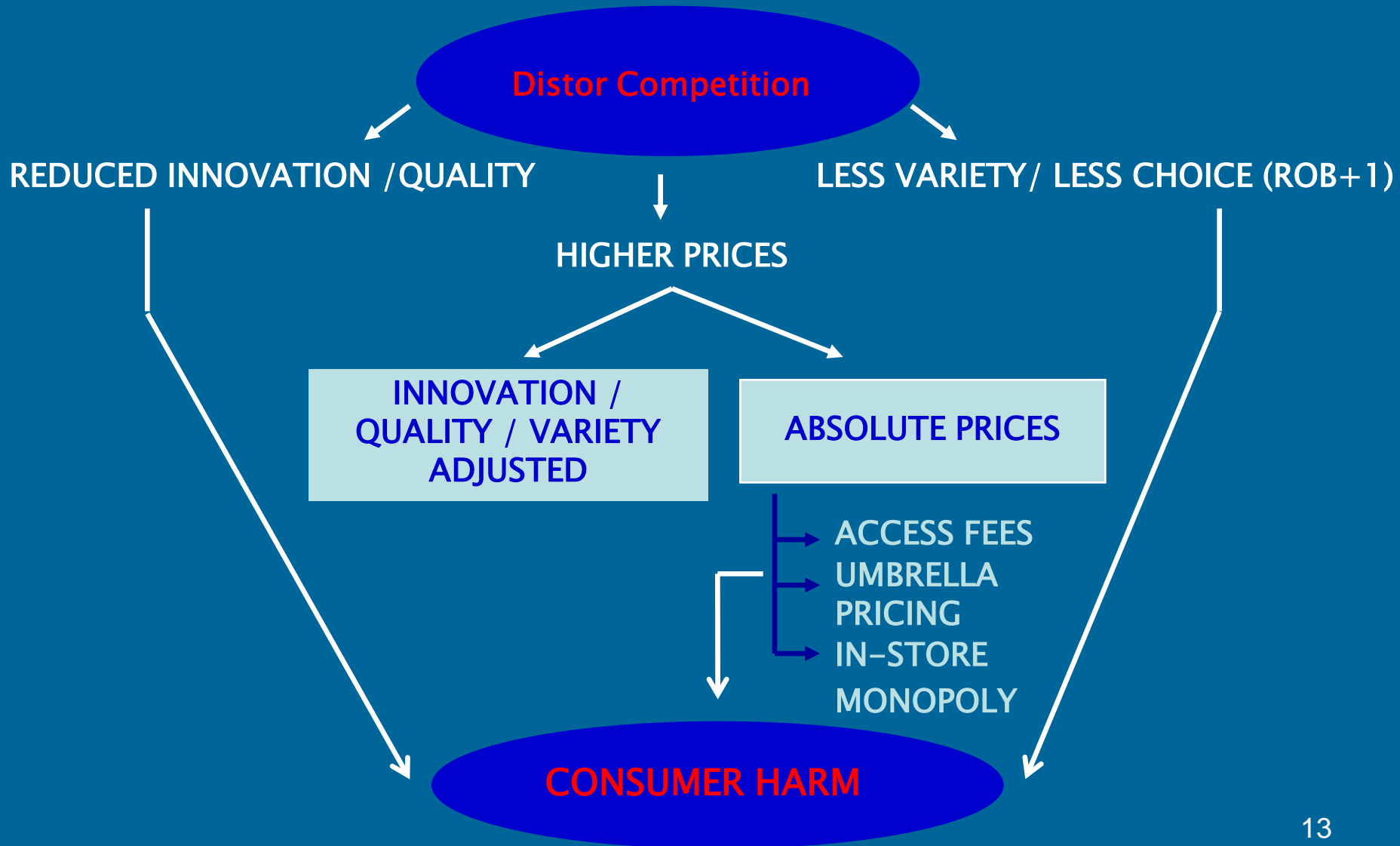
ACCESS

IN STORE



UNFAIR DEALING
VERTICAL FORECLOSURE

Fair Competition Improves Consumer Welfare



Remedies

ECONOMIC
REGULATION



COMPETITION
RULES

HOLISTIC SOLUTION

MS/EU Regulation: Evolution

- UK GSCOP
- Other EU Member States (Bulgaria, Hungary, Slovak Rep.)
- Green Paper
 - Misuse of independent brands' sensitive info
- Spanish Bill on Food Supply Chain
 - Vertical Abuses
 - Discrimination of Independent Brands
 - Copycat
 - Enforcement Authority with ex officio powers

Reconciling Fairness and Competition Policy

- Consumer \neq retailer welfare
- Dynamic efficiency v. static 
- New policy on supermarkets:
Strategic Rivalry 

Figure 5 Goals of Antitrust Policy

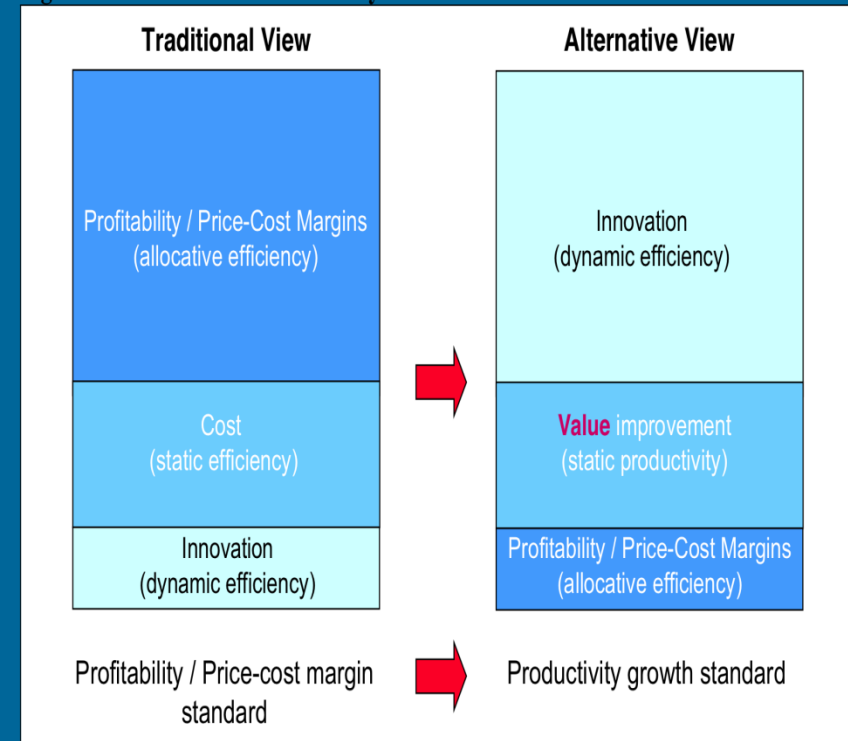
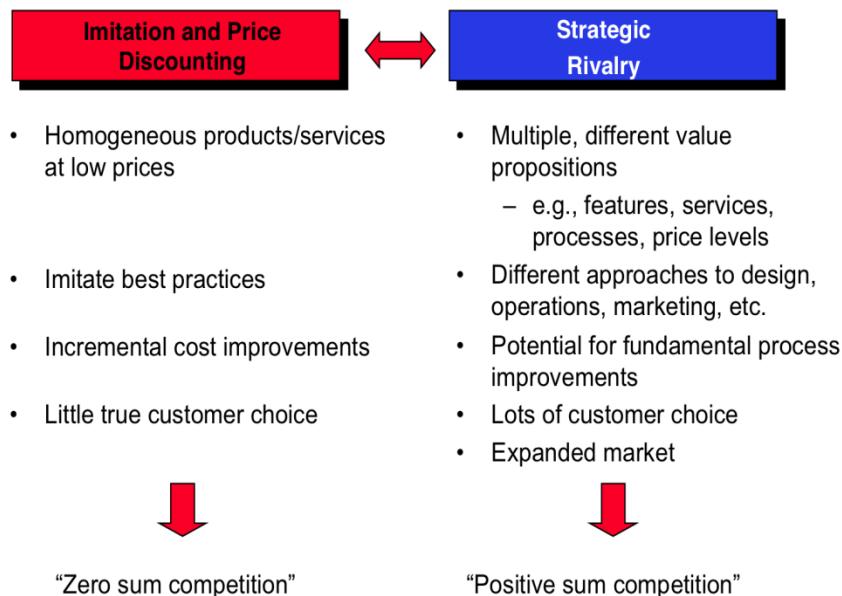


Figure 7 Rivalry and Productivity Growth



By Michael Porter

MS Competition: Evolution

- New competition Laws
 - Latvia (retail dominance)
 - New retail fair dealing provisions enforced by Italian competition authority
 - Bill in Finland (30% retail dominance threshold)
- But has the Competition authority mindset really evolved?

EU Competition: 102 TFEU?

- 102 TFEU covers unfair/exclusionary practices but legal hurdle: dominance in relevant markets?
 - (1) the procurement/distribution service
 - (2) intra-platform competition (access network monopoly)
 - (3) local retail dominance abused upstream

EU Competition: 101 TFEU?

- **Legal instrument:** (food) retail block exemption regulation, a specific (food) retail section in the Horizontal Guidelines or specific (food) retail provisions supplementing section 6 of the current Horizontal Guidelines, devoted to (non-reciprocal) commercialisation agreements between competitors
- **Market-share safe harbours for retailers:** procurement market (10-15%) + each grocery product market (15% combined) + each local market (25-30%)
- **List of hard-core (always prohibited) practices** (e.g., misuse of confidential information)

Food for thought

"We can't solve problems by using the same kind of thinking we used when we created them"
Albert Einstein