

Presentation on Competition Law: Lay Man's Draft (PART 1 OF 2)

KL MENNS, ESQ.

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COMPETITION LAW AND POLICY CONSULTANCY
TRADE SECTOR SUPPORT PROGRAMME - BH-L1016/OC-B



ToolKit for Analysing Competition Cases Under the Competition Act

Industrial Organisation

Structure-Price-Profit or Game Theory (Structure-Conduct/Relationship-Outcome, Market Definition, Market Structure, Market Shares, Market Concentration, Market Power, Market Dynamics (Entry Barriers/ Buyer Power/etc.), Efficiency (Allocative, Productive, Dynamic)

Competition Legislation/Case Law

Is there Personal and Subject Matter Jurisdiction?
-Proper Parties/Subjects of Competition Law: Legal Definition: Enterprise/Undertakings/Business Person
-Subject Matter: Conduct Prohibited/Governed by Act
-Standard of Assessment: Per Se or Rule of Reason

Fundamental Legal Rules

Conduct of Parties Satisfy Rules of Procedure: Competition Criminal/Civil/Constitutional/ Administrative Law: Rights of the Defense (Natural Justice, Agency Structure, etc.), Evidentiary Standards (e.g. Criminal Penalty-Criminal Evidentiary Burden and Standard of Proof/Defense Allowed?

ToolKit for Analysing Competition Cases: Industrial Organisation



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ToolKit for Analysing Competition Cases: Competition Legislation and Cases

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ToolKit for Analysing Competition Cases: Fundamental Legal Rules



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Evidentiary Standards (e.g. Criminal Penalty-Criminal
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ToolKit of Analysis

- ▶ Case Assessor Relies on the following to assess competition cases:
 - ▶ **Industrial Organisation**: *Microeconomics, Relationships between Market Players*
 - ▶ **Competition Law Rules**: *Prohibitions in Legislation and Case Law*
 - ▶ **Fundamental Legal Rules**: *Constitutional Law, Administrative Law, Criminal and Civil Procedural Rules*

Competition Law in Practice

NATIONAL ← 7

REGIONAL/CARICOM ← 7

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WORLD

M-PESA

- * Creation of New/Innovative Solutions to Developing-World Problems: Finance and Development



- * Elevation of Standard of Living by Creating Access to Essential Goods and Services :Food, Consumer Goods, Housing, Health, Education



- * Correct mistakes made by previous anticompetitive policy-making: Introduce competition in ICT Sectors, physically creating a CSME in which cross-border buying and selling can flourish

- * Access to Over 5 million consumers in CARICOM as opposed to 300, 000 consumers in Belize: Market and Business Growth

- * Activate Belizean consumers' and business' right to be compensated for breaches of competition law nationally and regionally.



- * Activate Belizean consumers' and business' right to be compensated: for breaches of competition law nationally, regionally and globally.

- * Network with competition agencies worldwide to attain the knowledge to build more competitive development, trade and economic policies and to undertake more effective enforcement: Efficiently Run Firms, Curtailed Anti-Competitive Conduct and Elevated Consumer Welfare.

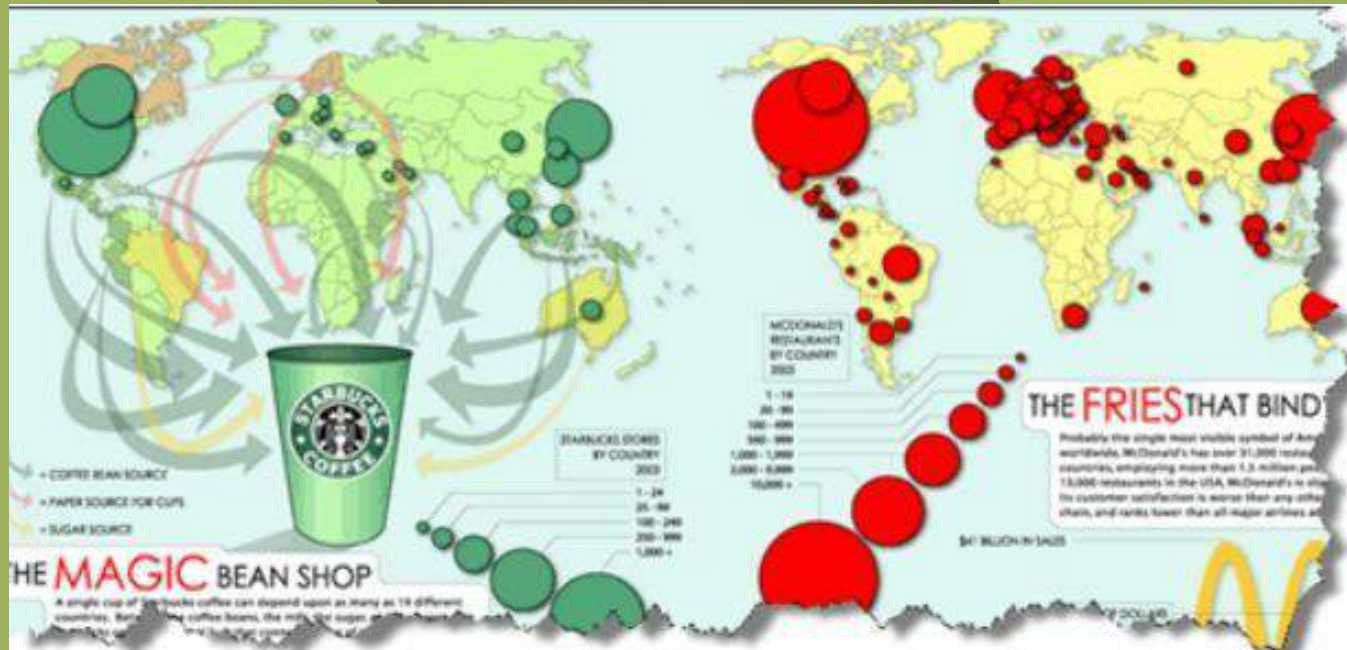
Overview of the Goals of Competition Law

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➤ The aims of Competition Policy and Law are:

- ❑ Elevate Levels of Consumer Welfare:
 - Better Quality Products at Lower Prices; Encouraged R&D to give rise to Innovation and Shorter time to deliver better Technology to the Market
- ❑ Lead to Efficiently Run Firms
 - More firms in the market lead to market players competing on other factors than price: productive, allocative and dynamic efficiency sought out by incumbents/new entrants so they can compete better for consumer dollar
- ❑ Other: To Grow A Single Market, Create opportunities for small and medium sized business to grow, to Enhance/Encourage Development Prospects of a Country

For the true capitalist in the developing world the greatest business innovation of the 20th century is container shipping, globalisation and competition law!



Benefits of a Competition Regime (I): Enhanced Competition and Economic Development

- ❑ Pressure to produce and distribute products/services at lowest possible cost
- ❑ Ensures prices are kept down or reduced in step with cost reductions
- ❑ Facilitates the introduction of new products/processes and entry to new markets

Principal Objectives of Competition Law and Policy:

- To improve economic efficiency
- To contribute to consumer welfare and therefore economic development

Secondary Objectives of Competition Law and Policy:

- Limit further increases in the concentration of economic power,
- Protect small and medium-sized companies,

Benefits of a Competition Regime (II): Free Trade

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Measures towards freer trade have led to:

- New export opportunities for many domestic producers (expansion of horizons/markets)
- Increased competition from imports for local producers mainly dependent on the domestic market

Transitional Problems Resulting From Trade Liberalisation:

- Failure of firms as a result of strong import competition
- Higher levels of concentration in some markets as a result of transnational corporations buying small/medium-sized domestic firms

Structural adjustments can have serious social implications:

- Loss of jobs due to increased competition

Some Other Issues to Note about a Competition Regime

- Doesn't seek to change the structure of the market
- Monopolies may continue to earn monopoly profits
- Applies to domestic markets only, not to overseas markets
- Must apply universally to all domestic activities
- Must not contradict other economic policies affecting competition

Market Structures

Monopoly

A

Single Firm Conduct: Abuse of Monopoly Power/Abuse of Dominance

Oligopoly

A + B + C

Abuse of Dominance; Coordinated Conduct: Anticompetitive Agreements; Anticompeti-

Perfect Competition

A + B + C + D + E +
F.....Z

Anticompetitive Agreements; Anticompetitive Mergers

Competition Policy and Law in Developing Countries : Industrial Org

1. Old/Traditional Thinking: 20th Century –Market Structure Profit

E.g. 1 Firm = Large Market Share = High Profits / High Pri

E.g. Many Firms = Smaller Market Shares = Lower Pro
Yield/Lower Prices

OR

2. NOW: Focus on Unique Features of the Market: Today- Theory

One Market Structure Can Yield Different Outcomes

E.g. Monopoly --> High Prices/High Profit/Inefficient/No

E.g. Monopoly --> Economies of Scale (Cut Costs), R&D,

Competition Legislation: Firms, Consumers and Market Structure

- ***Firms: Sells the Product-fewer firms = fewer substitutes available to consumers**
- ***Consumers: Buys the Product-fewer consumers = fewer firms serving the market = fewer substitute products**
 - ***Product - Input, Raw Material, Technology, Features, Substitutes, Complements, Homogeneity, Differentiated = Differentiated Product gives Producing Firm Power in the Market**
- ***Market: Sellers of Product + Substitute + Geographic Area/Region/Country from which Product is Supplied**
- ***Market Structure: Number of Firms in a Market + Resulting Dynamics**

Why Care About the Goal of Competition P

A goal is in government speak: A policy! Policy is Developed in
to a Need

Policy is Reactive to Domestic Needs and Development G

Rationale of Competition Policy and Law

Regulate Firms' Conduct + Prohibit Market Abuses + Institute R

=

◊ Firm Efficiency (Allocative and Productive, Dynamic: cut cost
more with less input, R+D, improved product quality/technolo
profits)

◊ Consumer Welfare (Lower prices, better quality/choice in pr
aftermarket service)

◊ Growth/Entry of Business (More Competitors, greater
rivalry/competition (on price, technology, product quality, eff

Standards of Analysis/Assessment Criteria

Per Se Assessment

- Strict Legal Scrutiny
- Is there an Agreement? If Yes, there is a violation/infringement of the law!
- Applies to "Naked" Restraints on Trade
- E.g. Price-Fixing, Bid-Rigging
- **Mainly** applies where an Agreement is Made.

Rule of Reason

- Full Legal Analysis where Conduct May/Could have a Redeeming Competitive Value
- E.g. Manufacture Imposed Territorial Restrictions of its Brand of Product
- Also applies in Cases of Unilateral Conduct

Per Se v. Rule of reason Cont'd

The Rule

- Sovereign States not Subject to Competition Law
- Economic Activity used to judge whether entity's actions fits with definition of enterprise
- Solidarity /Social Welfare Activities by Government or Private not Subject to Competition Law
- Professional Associations may/may not be subject

BUT...!!!

- State Agents' ?
- Must look at each type of activity of the enterprise because...
- If the Solidarity/Welfare scheme looks commercial...
- In context of setting prices or other trading terms...

The Exception

- Yes, if they fit the definition of enterprise
- Function A maybe economic and Function B may not be. E.g. Government parking privileges: provision of parking lot for all government workers vs... provision of parking lot at a price after work hours
- Then it is Subject to Competition Law
- PAs subject if trading terms not mandated by government statute or order

Introduction

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How Do the Competition Law Rules Benefit Market Players and Consumers ?



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If You Want Rice: You Have to Buy Butter Too!



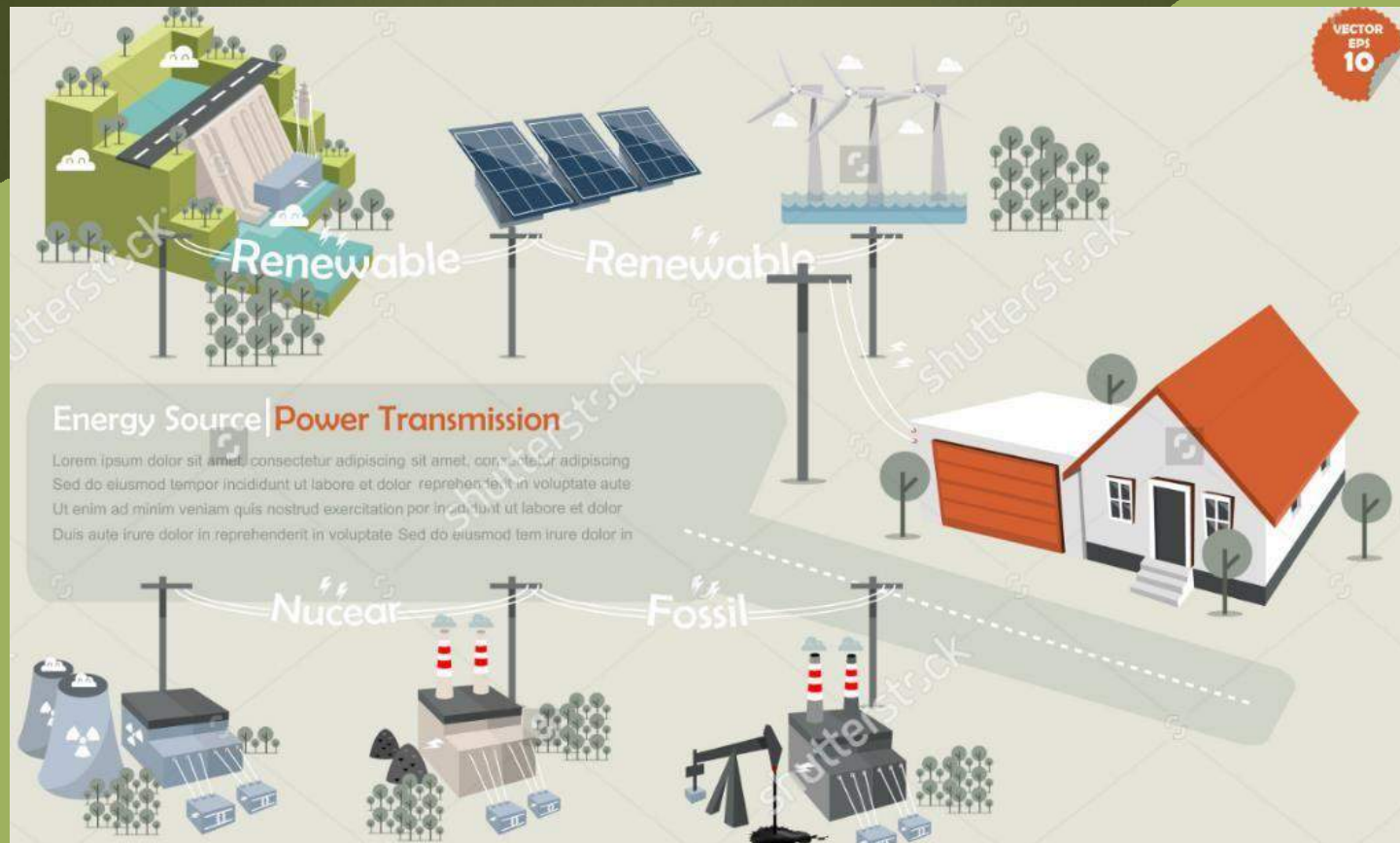


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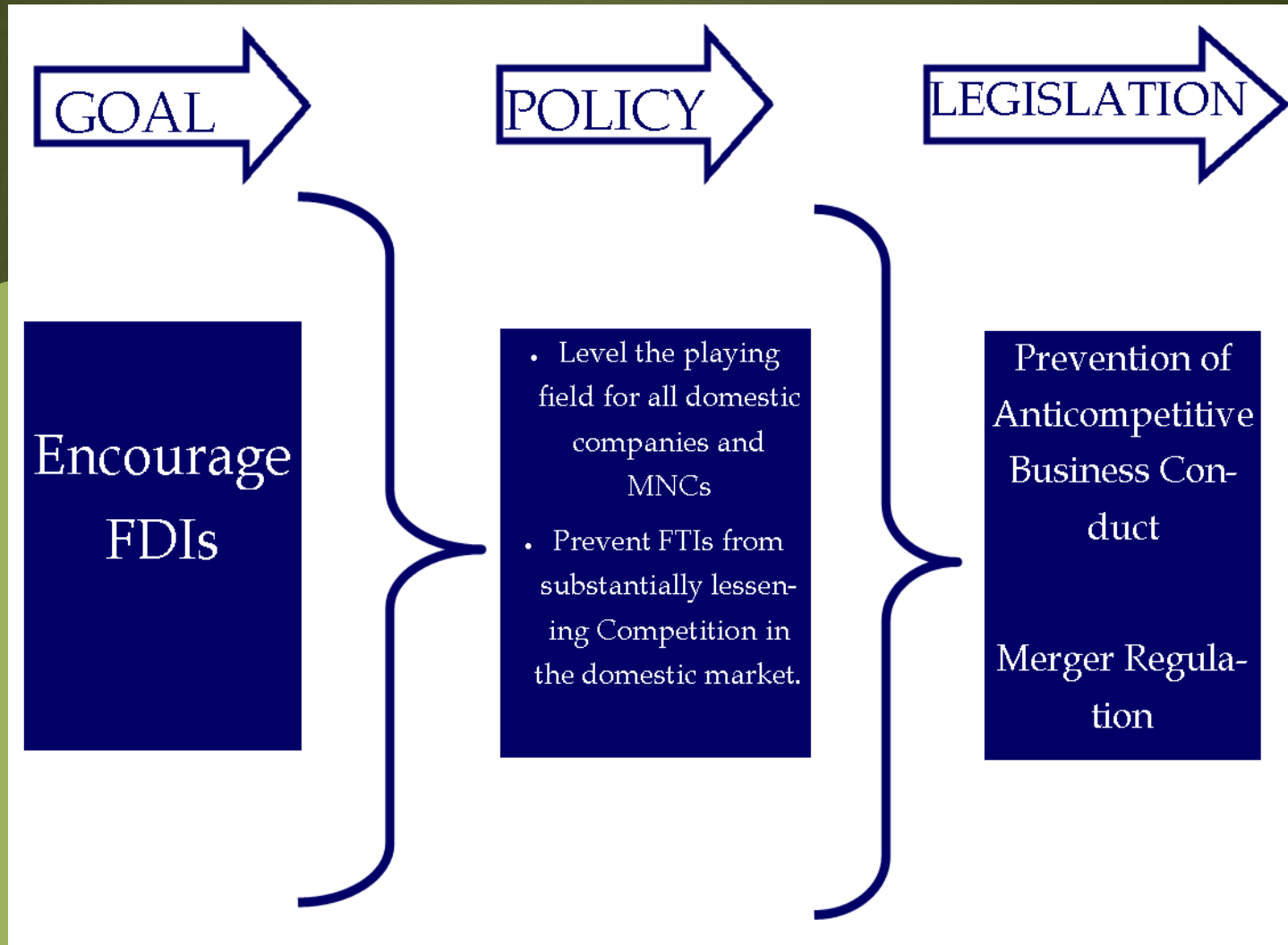


Typing can lead to lack of product dynamism/innovation and consumer inertia/stunting of consumer knowledge

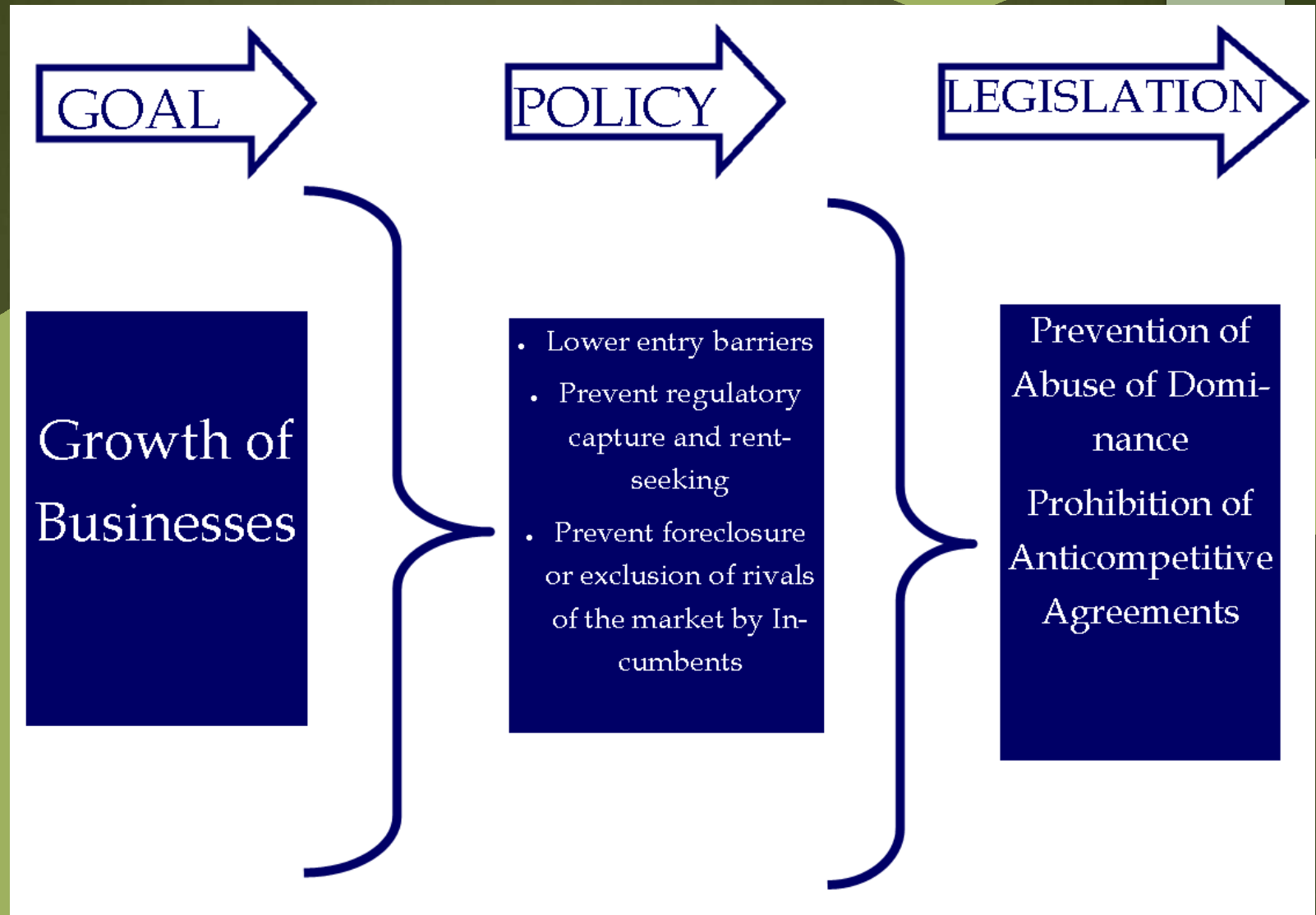
Diversifying Essential Sectors Using Policy and Law



Converting Policy to Law



Converting Policy to Law



Converting Policy to Law

GOAL

POLICY

LEGISLATION

Poverty
Reduction

- Create opportunities for employment.
- Encourage small business/Cottage Industry
- Encourage competition among professional service workers (lawyers, engineers)

Prevention of Abuse of Dominance
Prohibition of Anticompetitive Agreements

Thank You!

Questions/Comments:

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**PLEASE CONTINUE TO
PART 2 OF THIS
PRESENTATION**