

## Conditional Rebates under EU Competition Law:

A retrospective on Michelin I, Michelin II and BA/Virgin

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# Agenda

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- 1 The Focus Cases in a nutshell
- 2 Assessment of the analytical framework of the Focus Cases
- 3 The economics of conditional rebates

The Focus Cases in a nutshell.

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## Focus Cases: in a nutshell

### Michelin I

- > In 1981, the EC issued a decision condemning Michelin NV's rebates system as abusive
- > Michelin NV operated in the market for replacement tyres for trucks and buses in the Netherlands
- > Its rebates were linked to increasing the number of purchases from Michelin NV explicitly or through the setting of targets
- > In 1983, the ECJ upheld the EC's infringement finding on appeal

### BA/Virgin

- > In 1999, the EC issued an infringement finding against British Airways ("BA") in relation to commissions that BA offered to its travel agents
- > The EC found that BA operated a target rebate system that restricted freedom of agents to sell services to other airlines and was discriminatory
- > The CFI (in 2003) and the ECJ (in 2007) dismissed BA's appeals

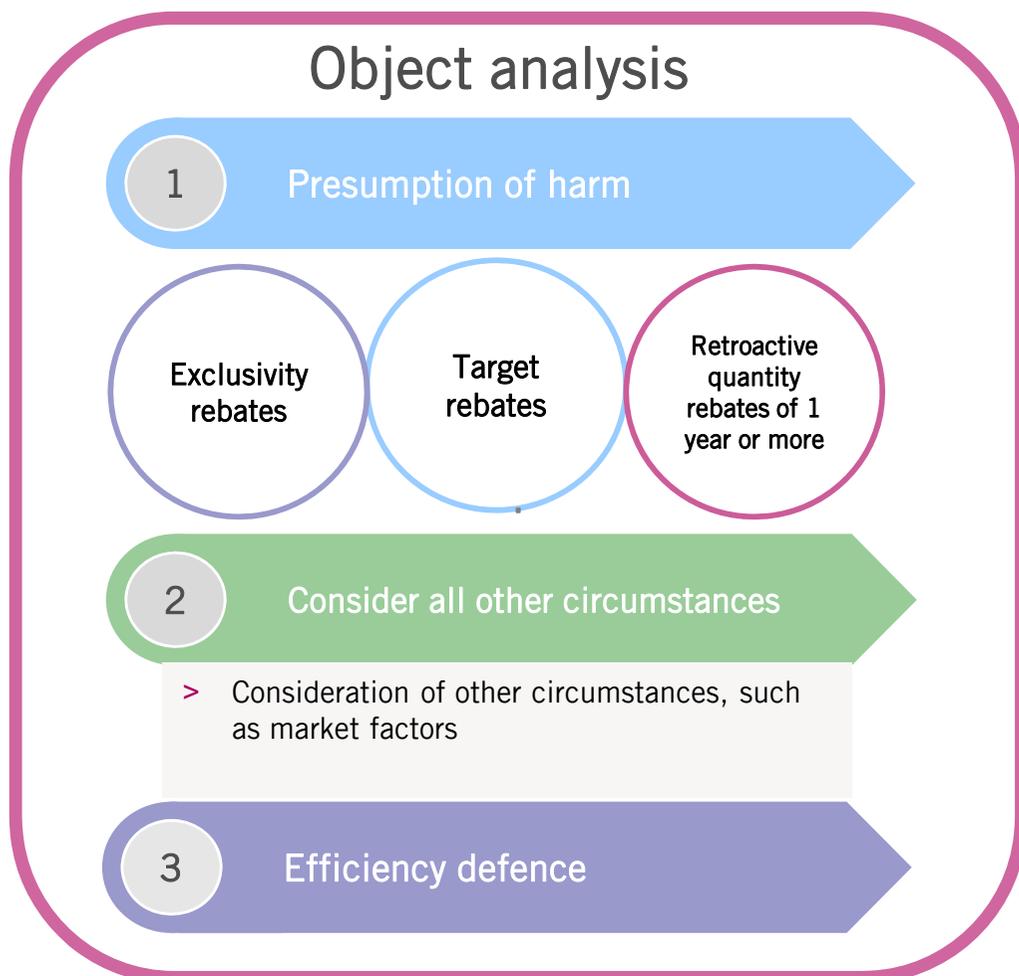
### Michelin II

- > In 2001, the EC issued an infringement decision against Michelin France, which also operated in the market for replacement tyres (but in France)
- > Michelin France used a complex system of retroactive volume rebates with a reference period of 1 year or more, which the EC found to be loyalty-inducing
- > In 2003, the CFI upheld the EC's infringement finding. There was no appeal to the ECJ.

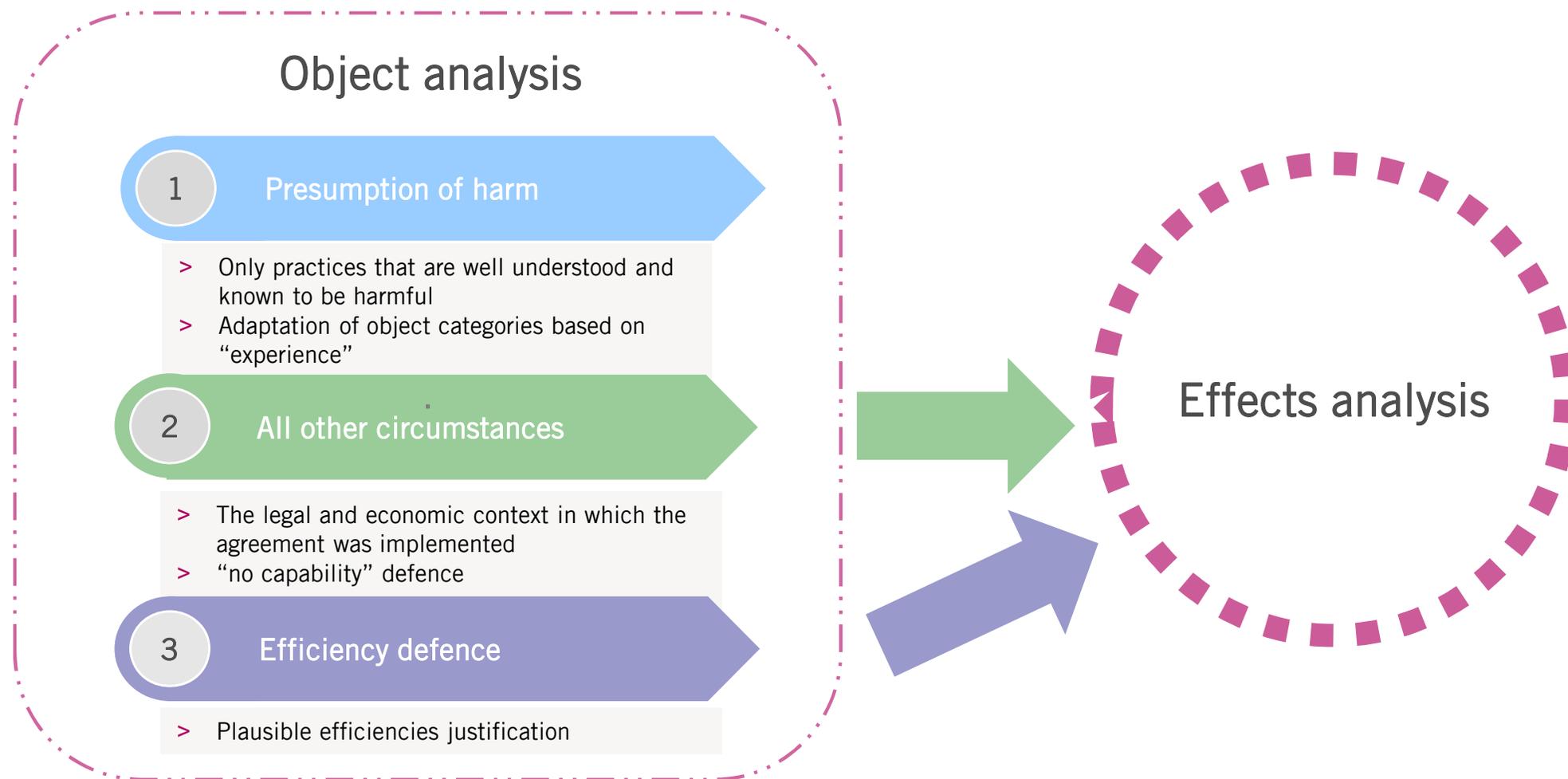
Assessment of the analytical framework of the Focus Cases.

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# Focus Cases: Analytical framework



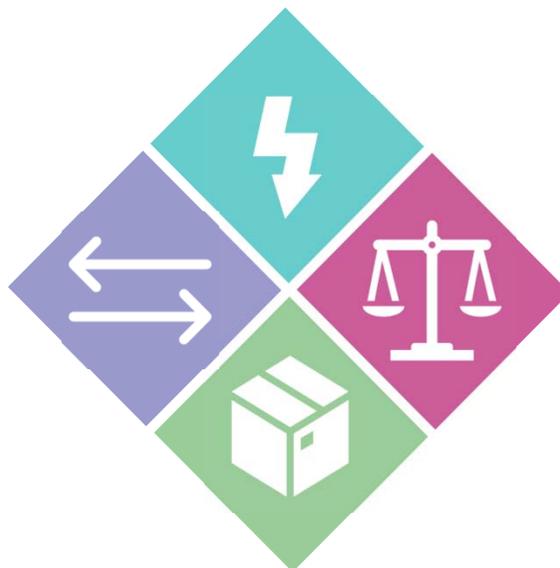
# Budapest Bank: ‘Object restriction’ framework



# Focus Cases vs. 'object restriction' framework

## Focus Cases

- Stipulated categories presumed to be harmful
- Hermetically closed 'object box'
- No balancing between harm and efficiencies
- Narrow scope of efficiencies



## Budapest Bank

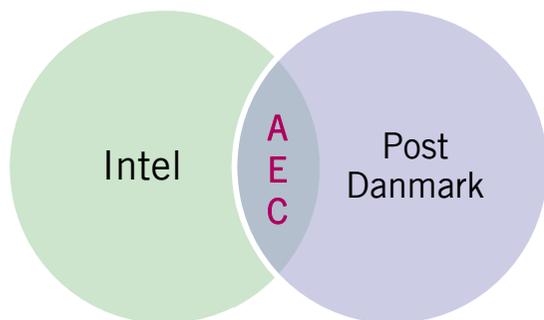
- Adaptation of categories of harm based on experience
- Open 'object box' with routes to effects analysis
- Balancing during effects analysis
- Wide scope of efficiencies

# The way forward: towards an effects analysis

## Intel (2017)

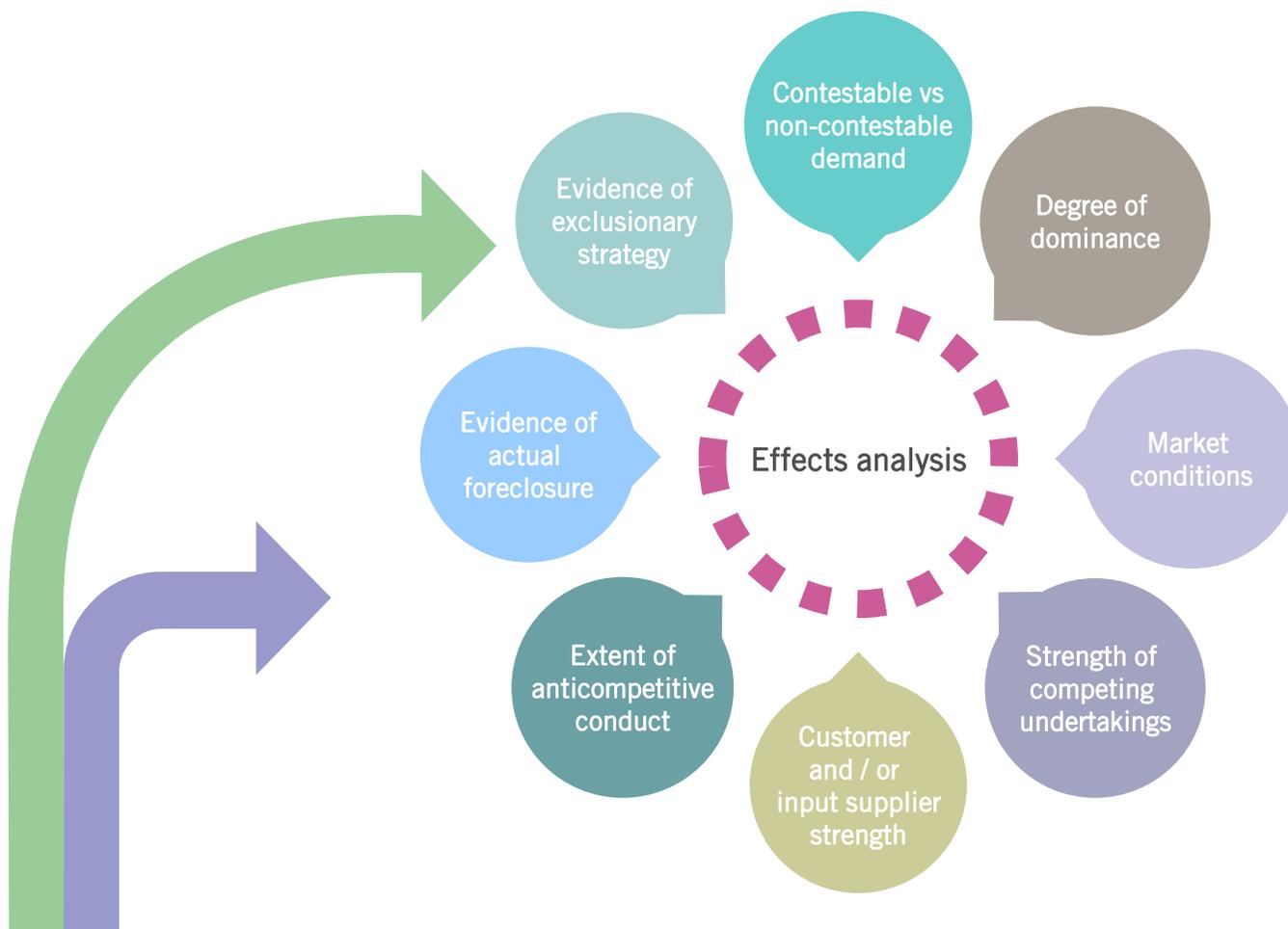
> Two exits from the object analysis box:

1. No capability; and
2. Plausible efficiencies



## Post Danmark I (2012) & Post Danmark II (2015)

- > Direct application of effects analysis
- > “As efficient competitor” (AEC) test, an important tool in the assessment



The economics of conditional rebates.

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