



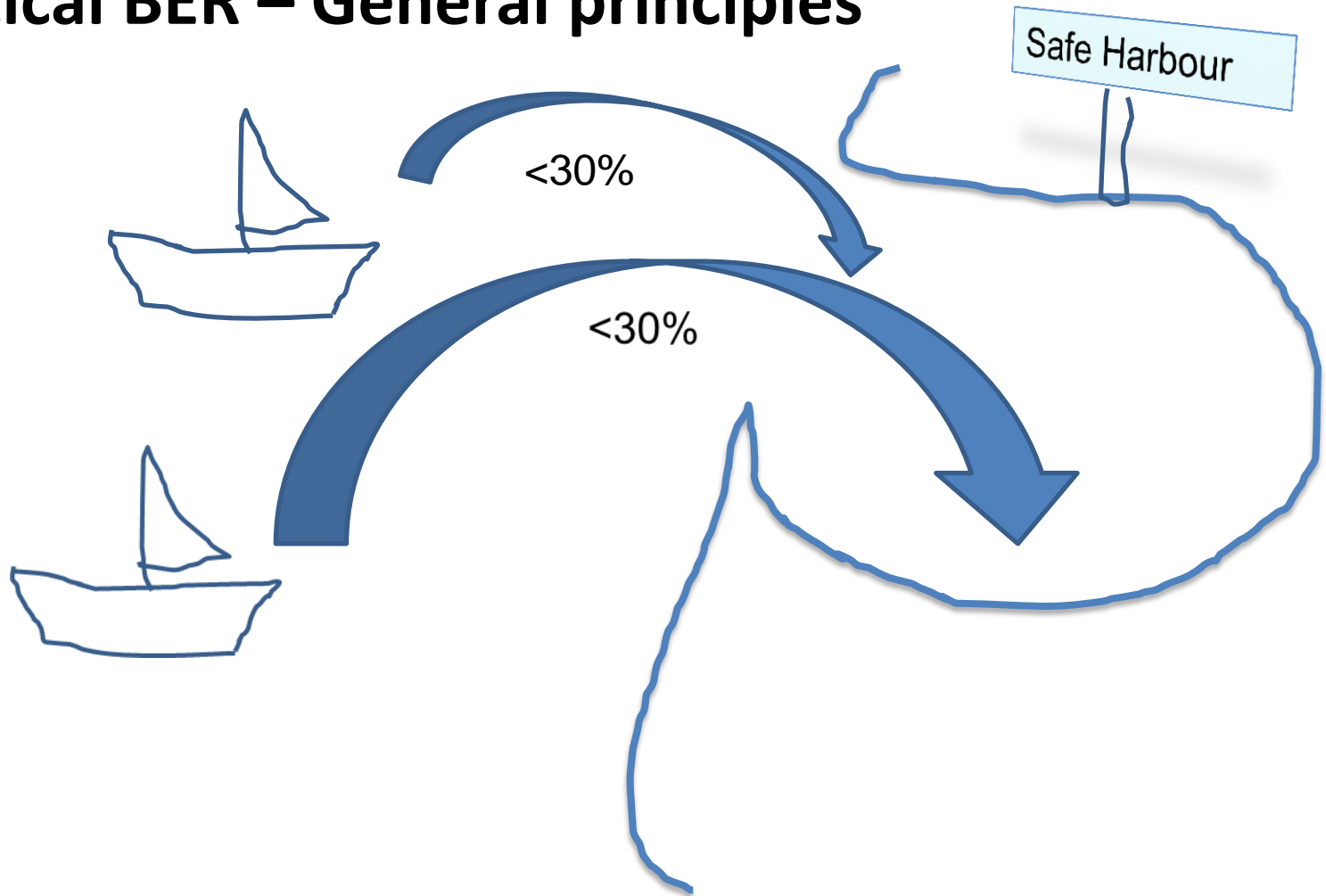
ONLINE SALES RESTRICTIONS: SOME TOPICAL ISSUES

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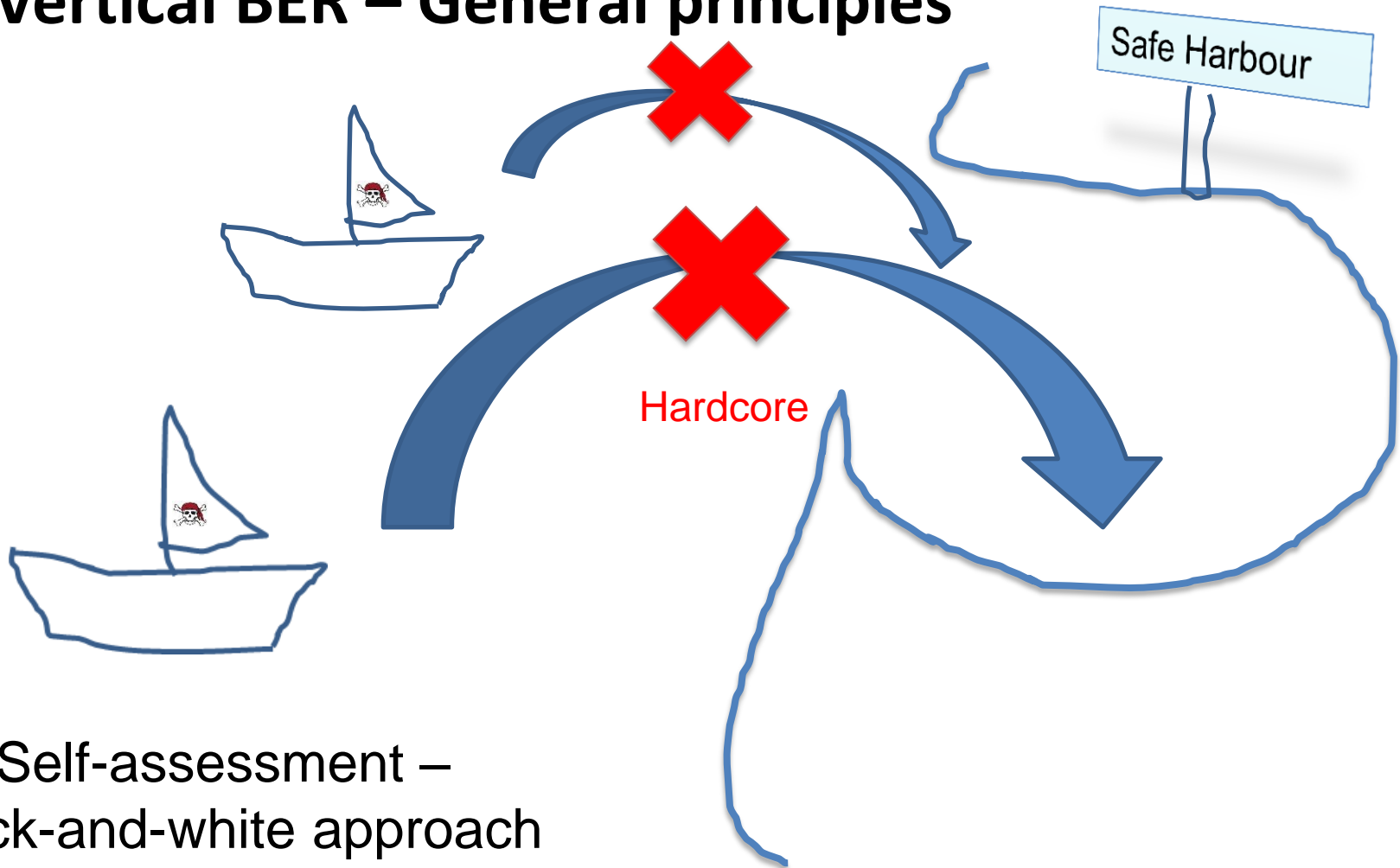
AntitrustItalia
Brussels, 17 February 2016

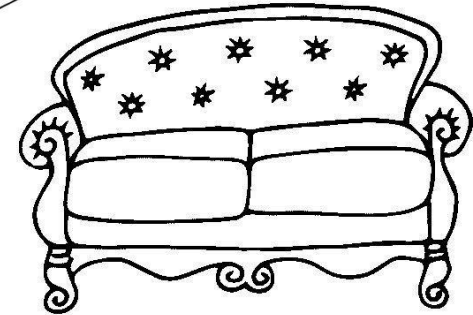
*The views expressed are those of the speakers and do not necessarily reflect those of DG Competition or the European Commission

Vertical BER – General principles



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Restrictions of online sales

Online sales = Passive or active sales

- Vertical BER
- Vertical Restraints Guidelines

Relevant hardcores:

The VBER does not apply to agreements that have as their object to restrict the territory into which or the customers to whom a buyer can sell. However:

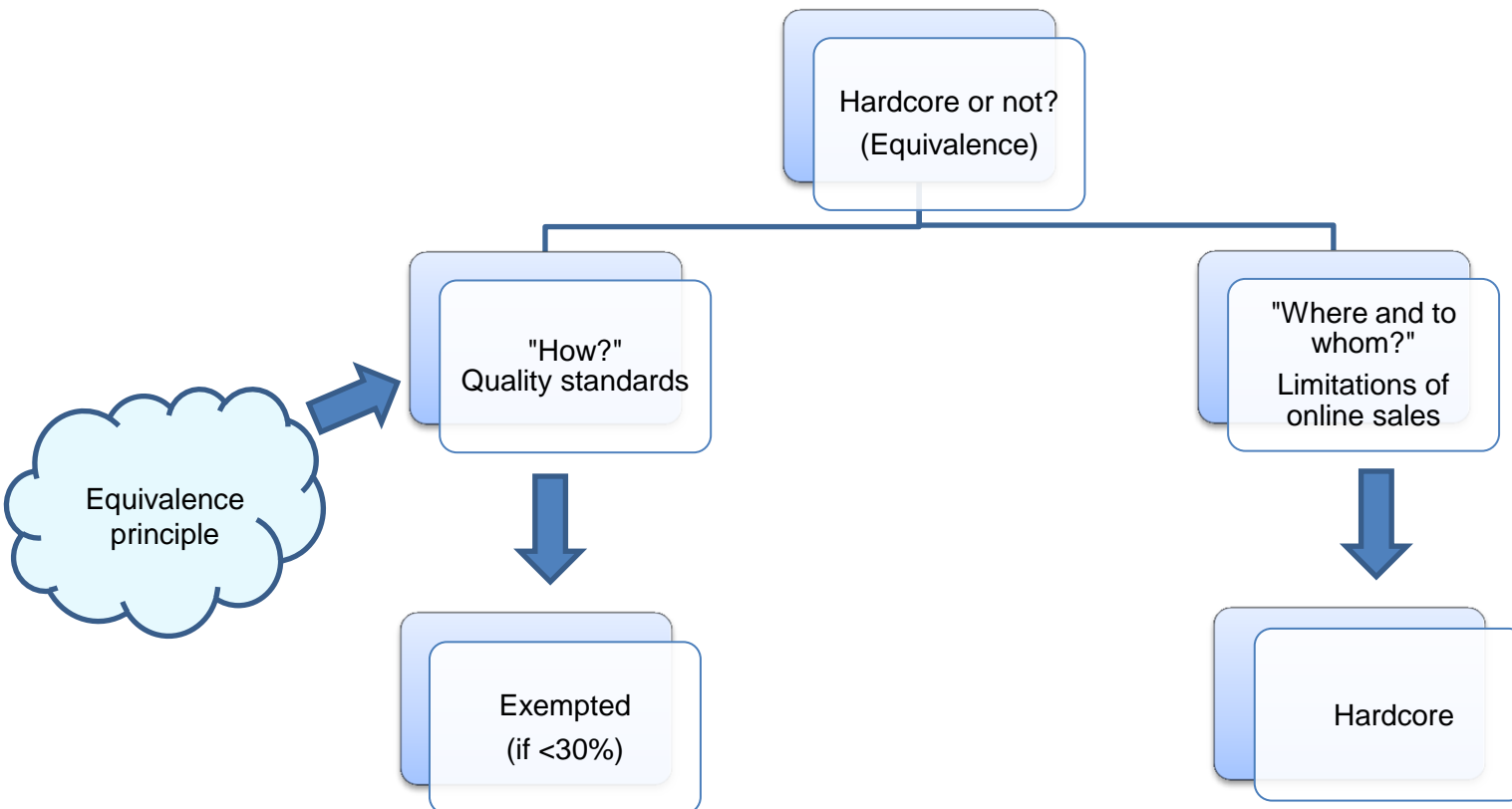
- Art. 4(b)(i) – in exclusive distribution, restrictions of active sales into territories or to customer groups exclusively allocated to another distributor or reserved for the supplier are block exempted;
- Art. 4(c) – in selective distribution, it is block exempted to restrict active and passive sales to unauthorised distributors;
- Art 4(b & c) - Restricting a buyer's place of establishment is never a hardcore restriction

Total or de facto bans of online sales

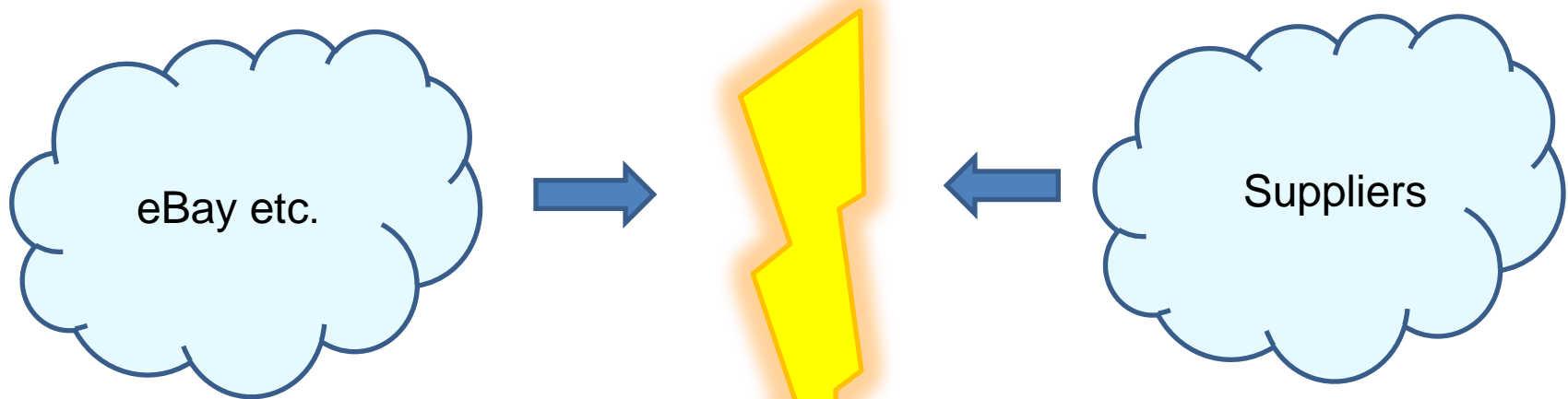
Case C-439/09 - Pierre Fabre

- Products only to be sold in a physical space, with a qualified pharmacist present
- De facto prohibition to sell online
- Has at the very least as its object the restriction of passive sales to end users wishing to purchase online and located outside the physical trading area
- Hardcore pursuant to Article 4(c)

Less far-reaching restrictions of online sales



Use of online platforms



Internet:

- Is essential to reach customers
- Reduces costs
- Enhances competition
- Facilitates cross-border trade

Want to control how authorised retailers use the Internet (including platforms) because of

- Brand image
- Counterfeit
- Incentives for innovation

Platform bans - §54 of the Vertical GL

- §54: Requirements not to sell on logo-carrying platforms are in the "How" category => exempted
- Today:
 - No platforms without logo
 - Consumers increasingly buy on platforms

Platform bans – Hardcore assessment today

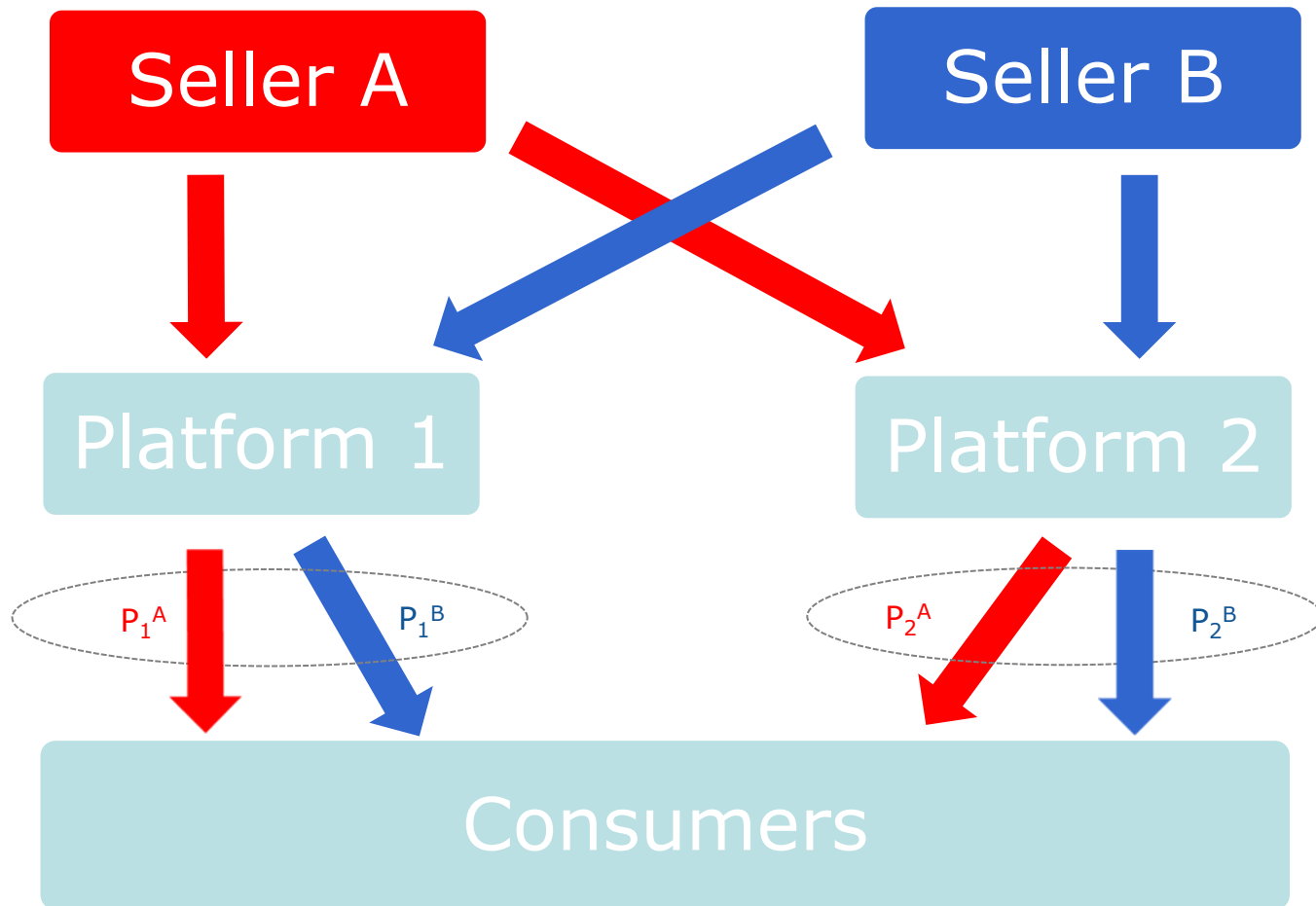
- Commission is bound by §54 of the Vertical GL
- Interpretation of Art. 4(c) and (b) VBER by NCAs
 - Legally not bound by §54 but companies have modelled their agreements in accordance
 - Article 4(b) and (c) VBER: What is the object of platform bans: restricting to "whom/where" to sell or regulating the "how" of the sales?
 - Cannot be answered on the basis of few individual cases, but needs broader view across markets and groups of distributors

Across Platform Parity Agreements

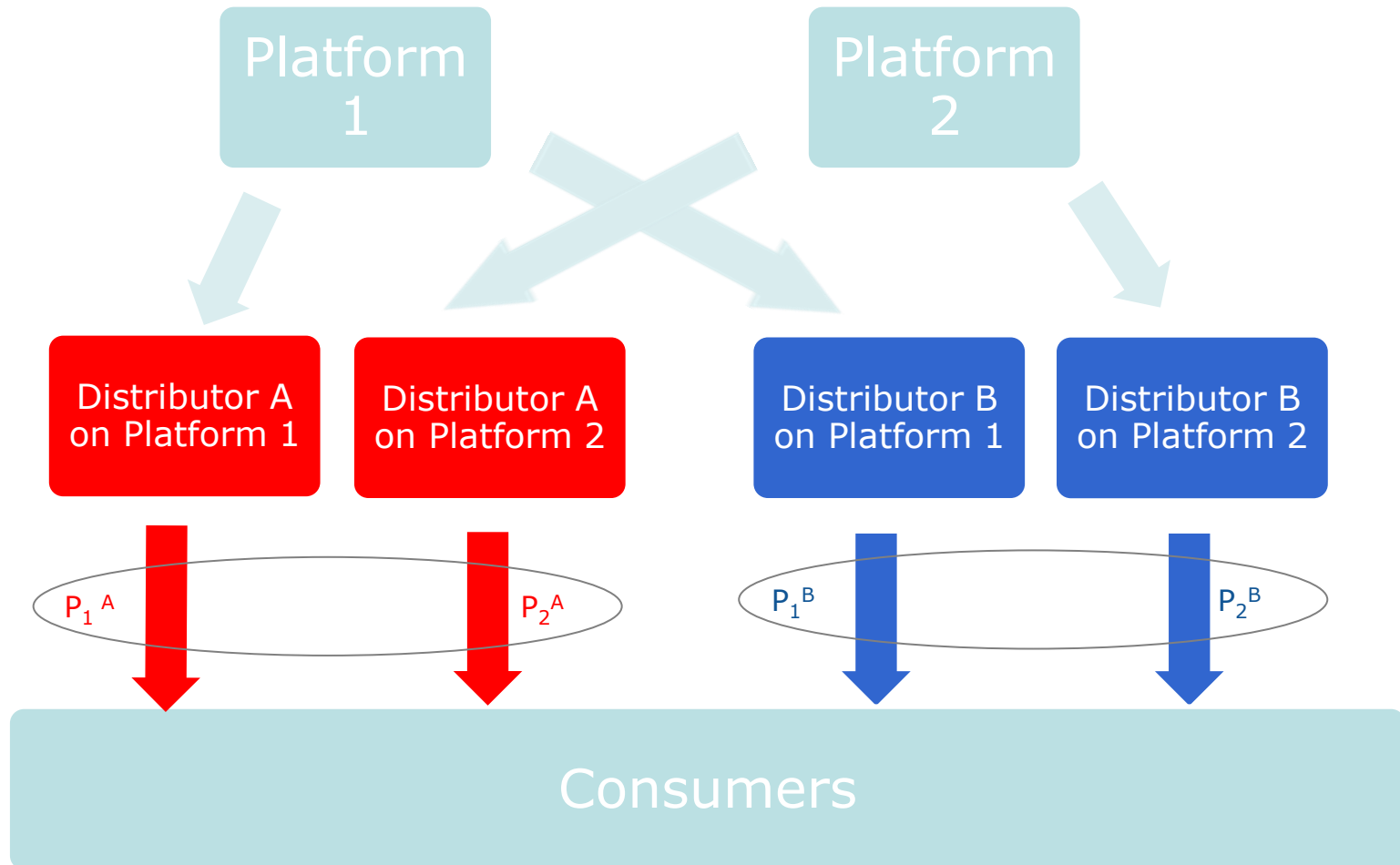
The term APPA is defined very widely: it covers restrictions which are different in form and effect

Term also includes restrictions which are not necessarily related to online or platform sales

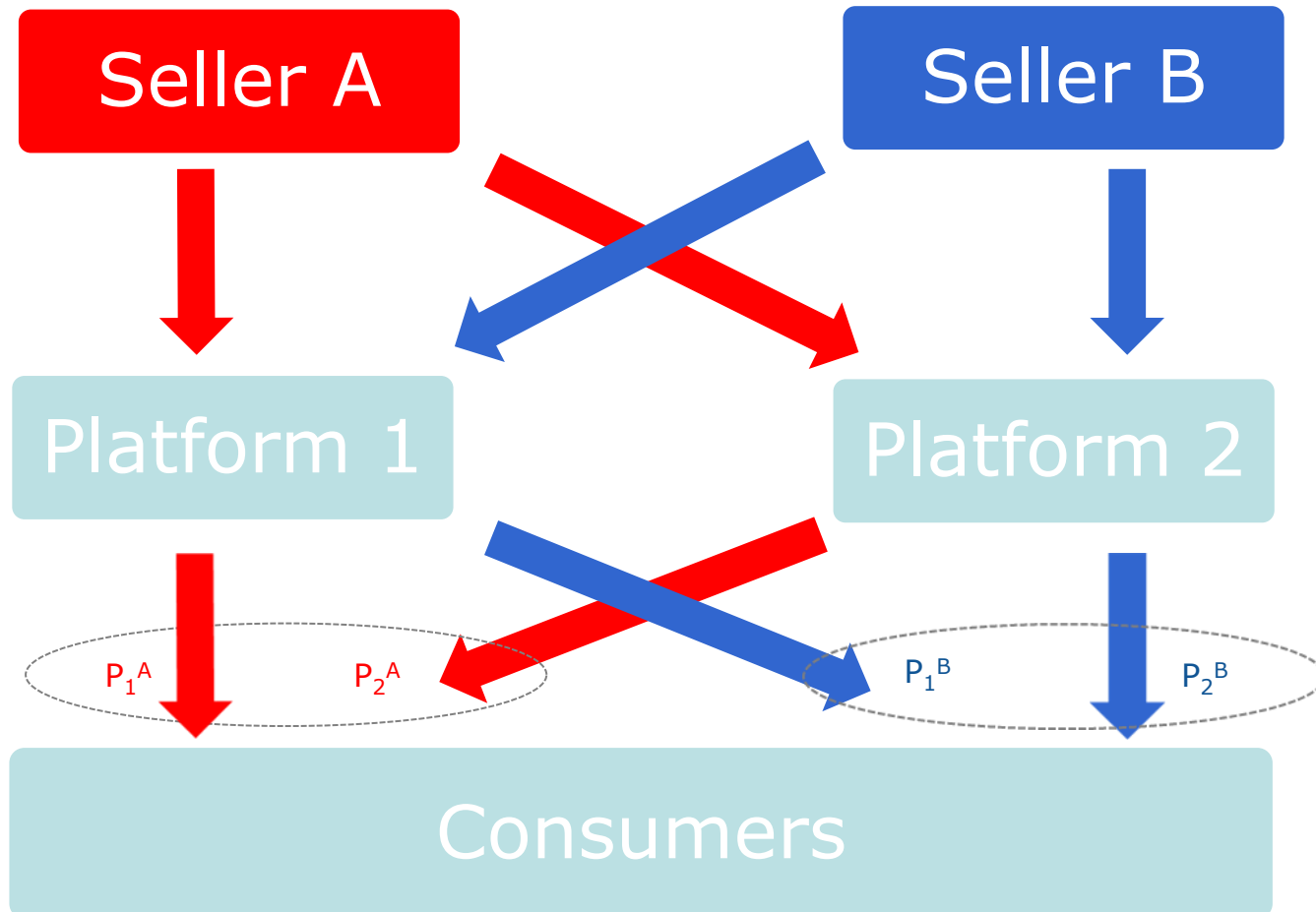
Manufacturer induced inter-brand restriction



Marketplace induced intra-brand restriction



Retailer induced intra-brand restriction



Retail MFC clauses

It is the latter scenario which provides most cases and discussion and where the restriction is usually referred to as Retail MFC clause

Noticeable that these cases are concerned with intra-brand competition restrictions

Retail MFCs often involve agency issues and may be linked to RPM

Our experience with Retail MFCs

We are involved in Retail MFCs through:

- our cases (e-Books, Amazon)*
- ECN case consultations*
- ECN working group on vertical restraints regularly discusses issues and cases*
- e-Commerce Sector Inquiry*

Questions?

THANK YOU!