
UNECE
TEAM OF SPECIALISTS ON
PUBLIC-PRIVATE PARTNERSHIPS

Comparative Review on legal issues: Where are the areas for improvement? Is more PPP legislation needed or less?

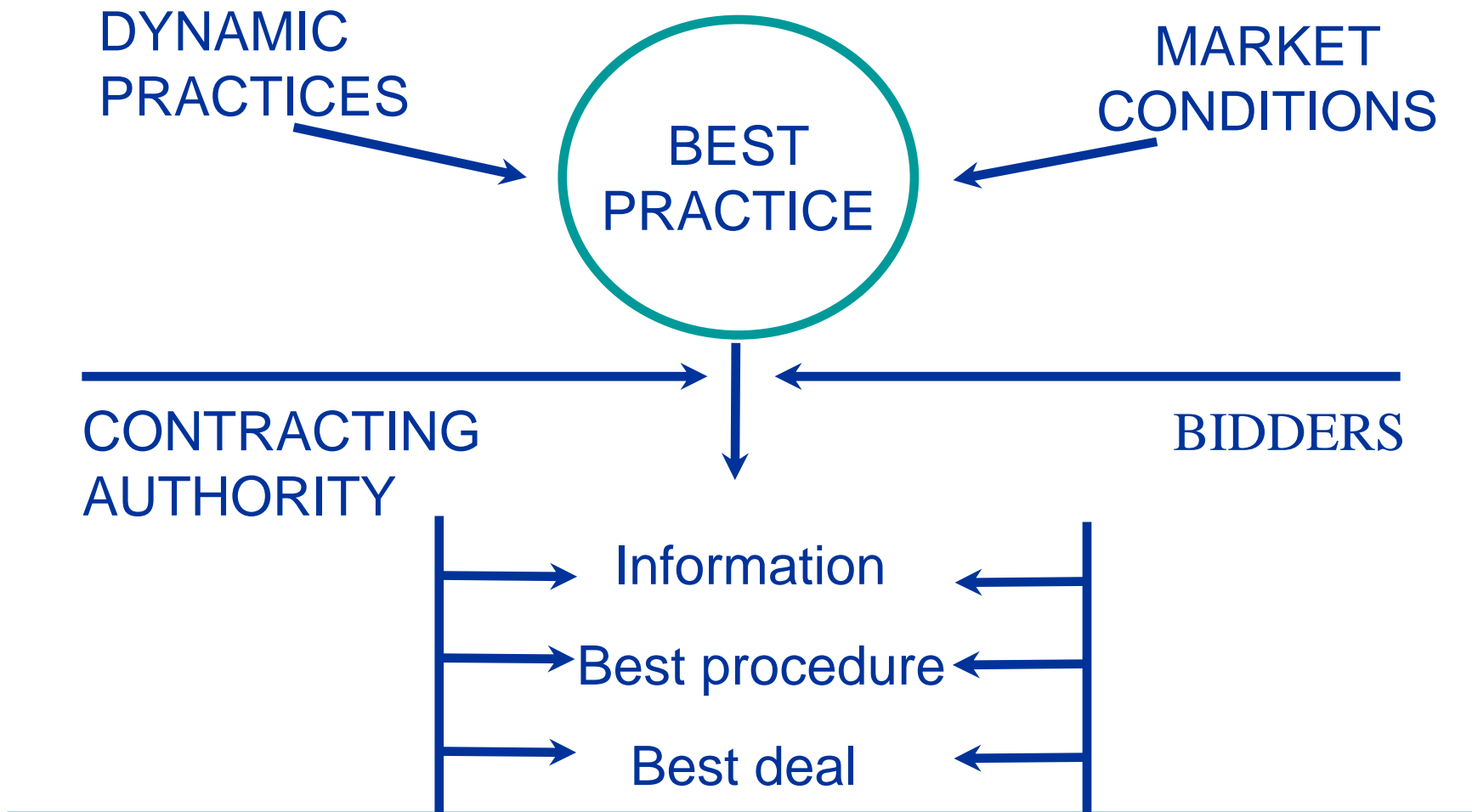
Velia M. Leone

Geneva, February 29, 2008

PPPs and PP legislation

- Detailed harmonized rules on PP
- PPP regulated “*per relationem*”
- Different approach to similar problems
- Legislation = lack of flexibility ?
- Flexibility = lack of transparency ?

THE SCOPE OF PPP RULES



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BEST PRACTICE RECIPE

- TRANSPARENCY
- FAIRNESS
- EFFICIENCY
- VALUE FOR MONEY

Real world

**PPP
Rules**

VALUE FOR MONEY

TRANSPARENCY

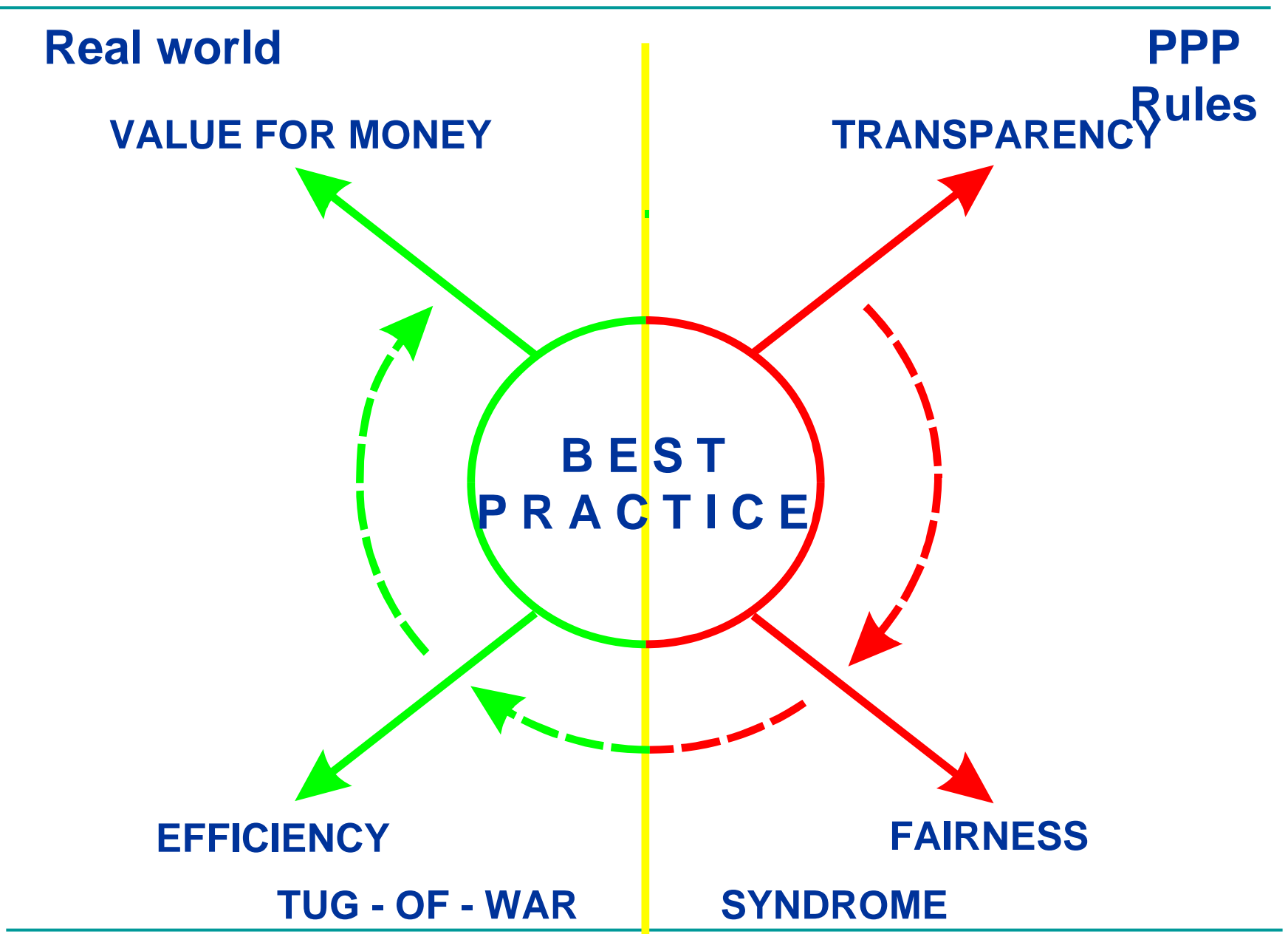
**BEST
PRACTICE**

EFFICIENCY

FAIRNESS

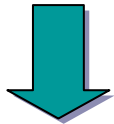
TUG - OF - WAR

SYNDROME



IDEAL PP/P

- PLANNING is KEY
- MANAGING the PROCESS
- EXECUTION of the CONTRACT



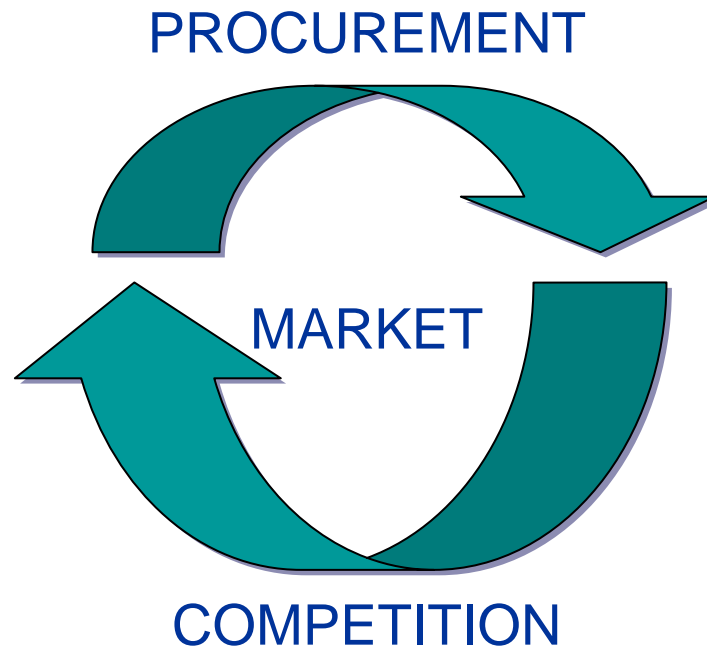
IMPACT on the MARKET







COMPETITION

PP/P & COMPETITION

THE VIRTUOS CIRCLE



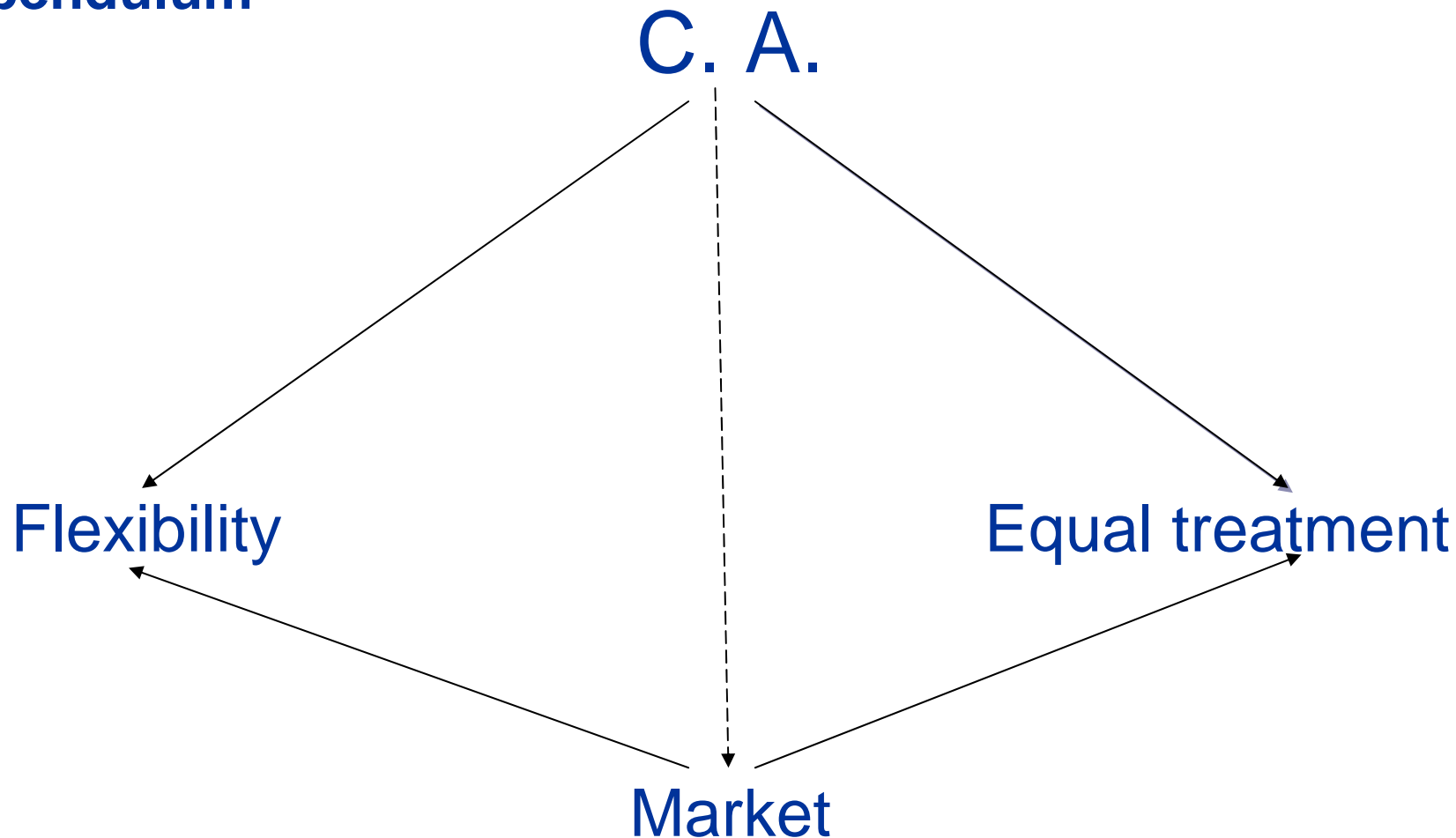
PPP as concessions

- CONCESSION = CONTRACT
 - WORKS  SERVICES
 - KEY ISSUE  ECONOMIC & COMMERCIAL RISK
 -  effective allocation of risks
- 
AWARD vs EXECUTION

PPP as concessions

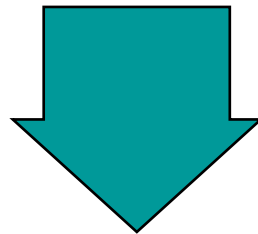
- Usually for a long duration: foreclosure.
- Competition in the market vs competition for the market: PP procedures only provide for the latter.
- Modifications during execution: economic balance requires certain flexibility vs rules on transparency and equal treatment demand to provide for everything in advance.

PPP- Flexibility vs Equal treatment: a swinging pendulum



PPP: role of the C.A.

- DEATH OF WELFARE STATE
- LACK OF PUBLIC FUNDS
- HIGHER LEVEL OF SERVICES REQUIRED BY CITIZENS
- NEW ROLE FOR THE PRIVATE SECTOR



CONFRONTATIONAL



PARTNERSHIP

Role of the C.A.: KEY ISSUE

- Public procurement is about procedures
- Execution of the contracts is about market
- Procedures \neq Market



C.A. => project manager

PPP: way forward

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CONTRACTING
AUTHORITY

CONTRACTORS

INFORMATION
BEST PROCEDURE
BEST DEAL

PARTNERSHIP

PPP: way forward

PLAYER/ SOLUTION ← COMPETITIVE DIALOGUE

↓
CONCENTRATE ON SOLUTION (market)

THEN


IDENTIFY the PLAYER
(STEP IN RIGHTS BY C.A.)



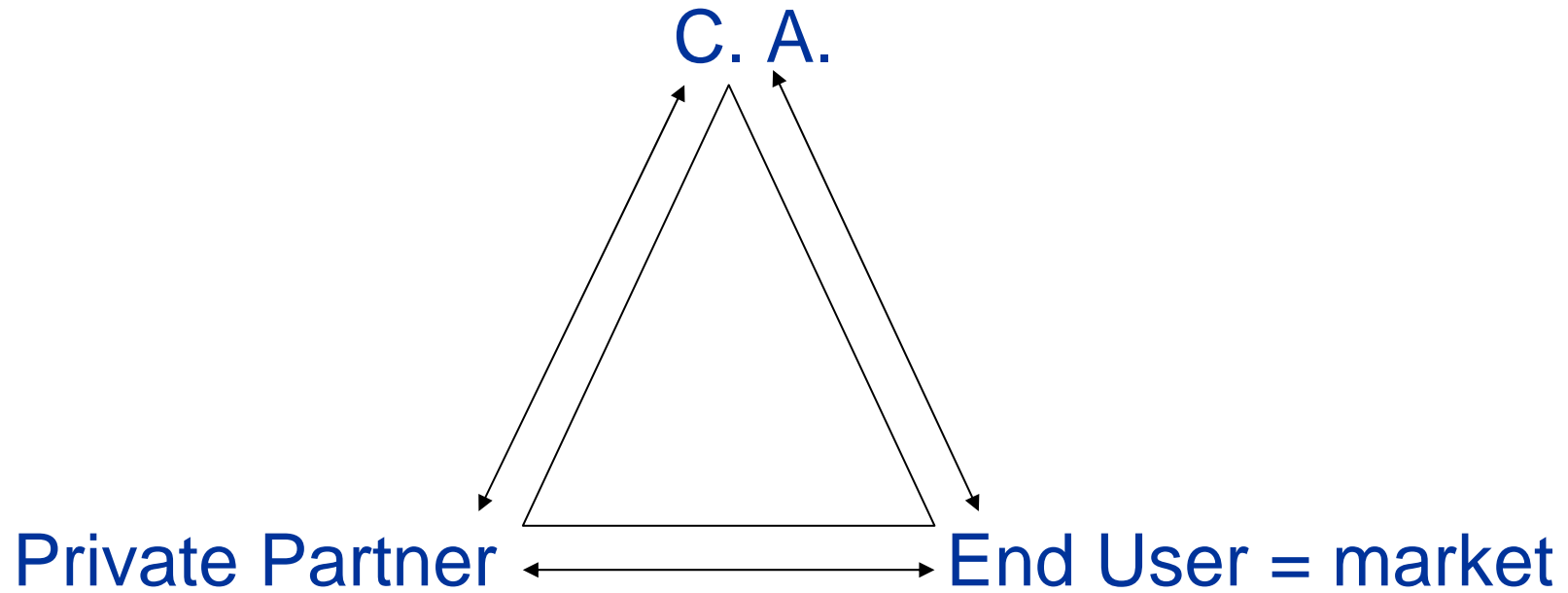
execution of the contract

- allocation of risks
- renegotiation
- claw back (incentive)
- length
- S.L.A.

PPP = acid test for a change

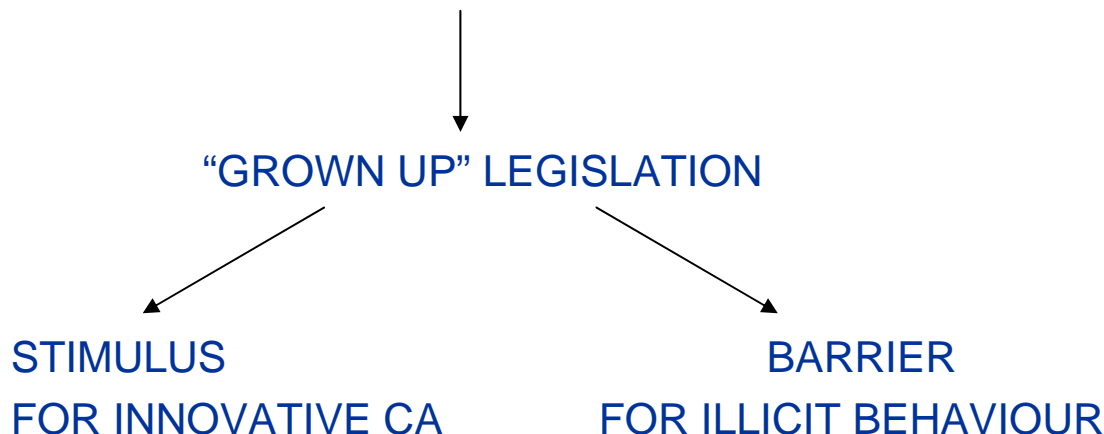
- Ideal benchmark
 - closer to the market
 - C. A.  private sector
 - utilities = positive example
 - art. 30 Directive 2004/17
 - money at stake
 - whom does it belong to?
 - private vs. public
 - whom is it benefiting?
 - public vs. private

PPP = acid test for a change



A NEW ERA FOR PP/P? carrot & stick

- Proscriptive approach
- Treaty principles
- Follow the trail (dynamic approach)
 - from planning
 - to execution of the contract
- CA = project manager
- Specific links with competition (cartels) & criminal offences
- More secondary legislation & guidance



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