



Problem markets

The 'gap' between core
competition and
consumer law

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CCP@UEA

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Two key themes

1. *There is a 'gap' between core competition and consumer law*
This provides a potential role for *ex ante* interventions in competitive markets

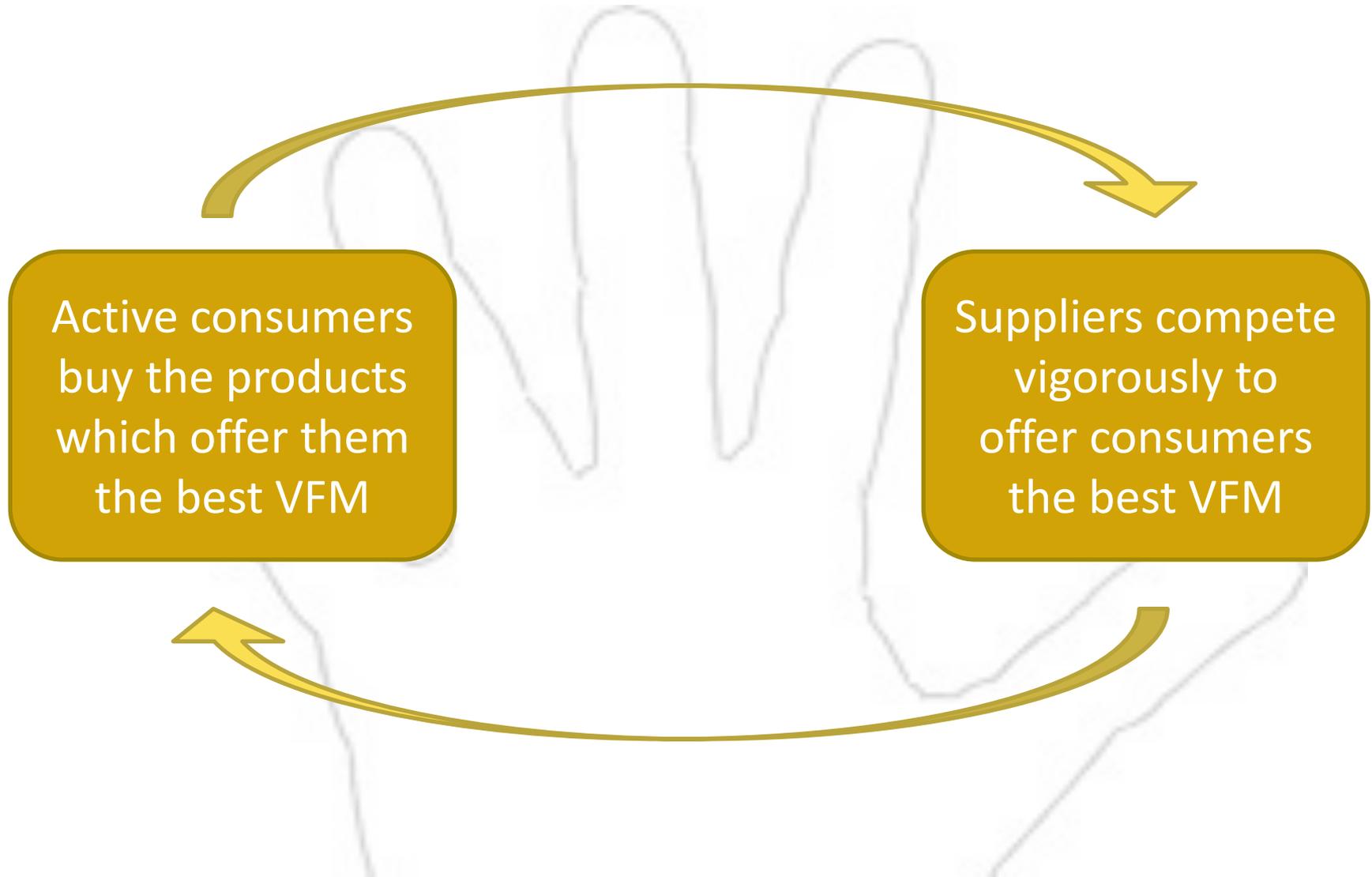
But...

2. *Such interventions can be costly and ineffective, or even have unintended consequences that do more harm than good*
So they need to be carried out with great care!

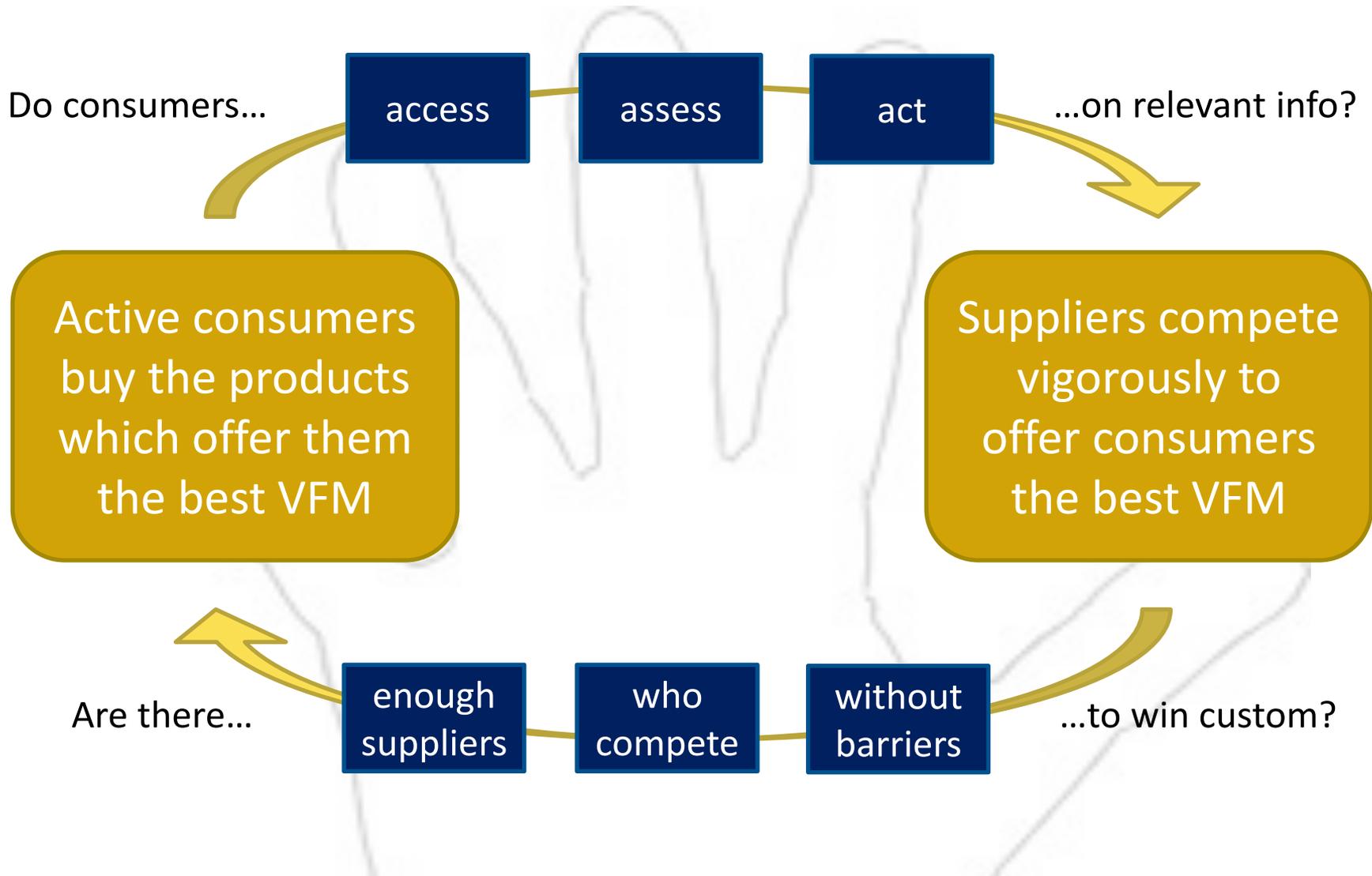
Theme one...

1. *There is a 'gap' between core competition and consumer law*
This provides a potential role for *ex ante* interventions in competitive markets

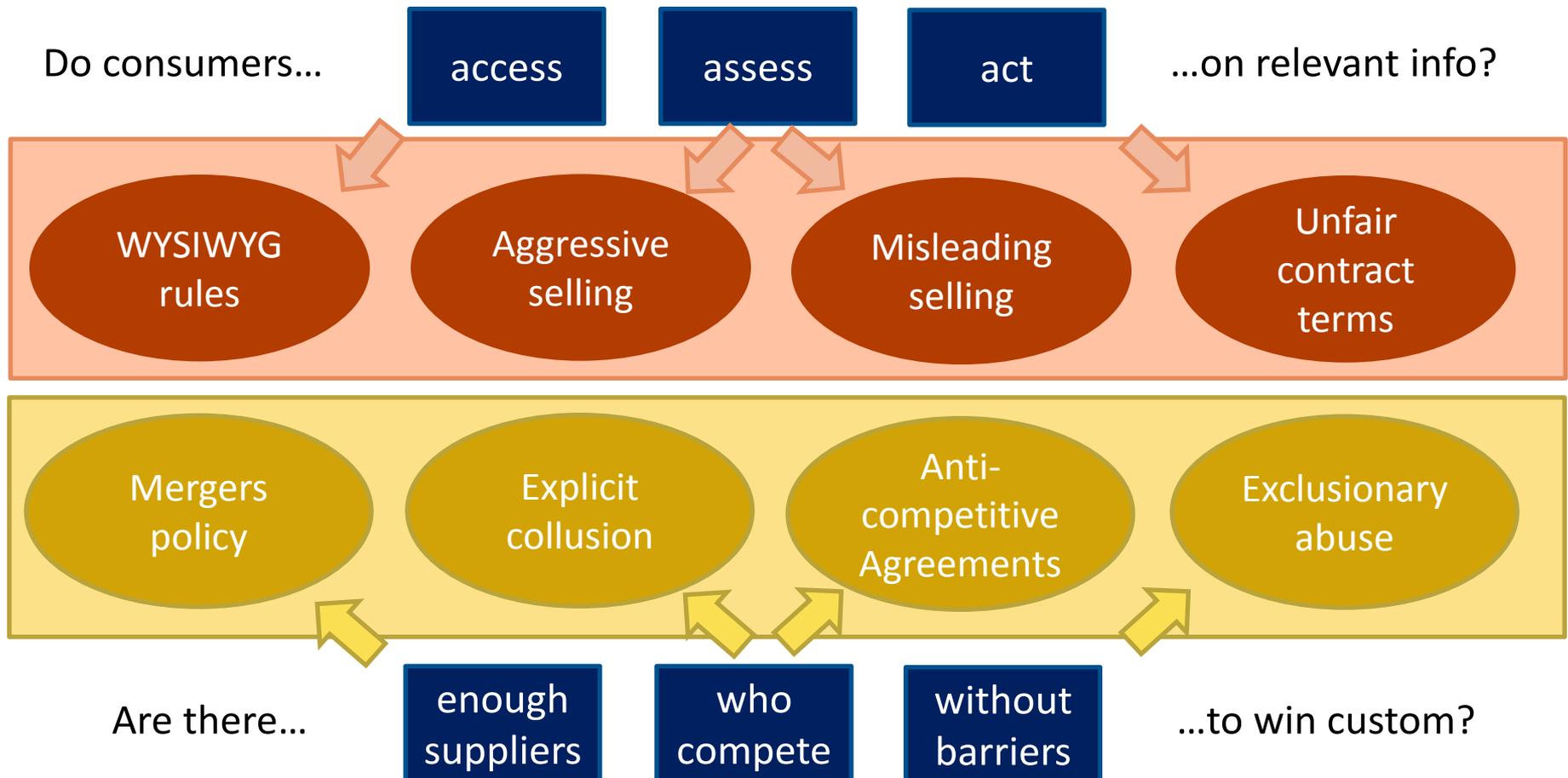
The competitive process as a virtuous circle



...but it needs certain key elements!

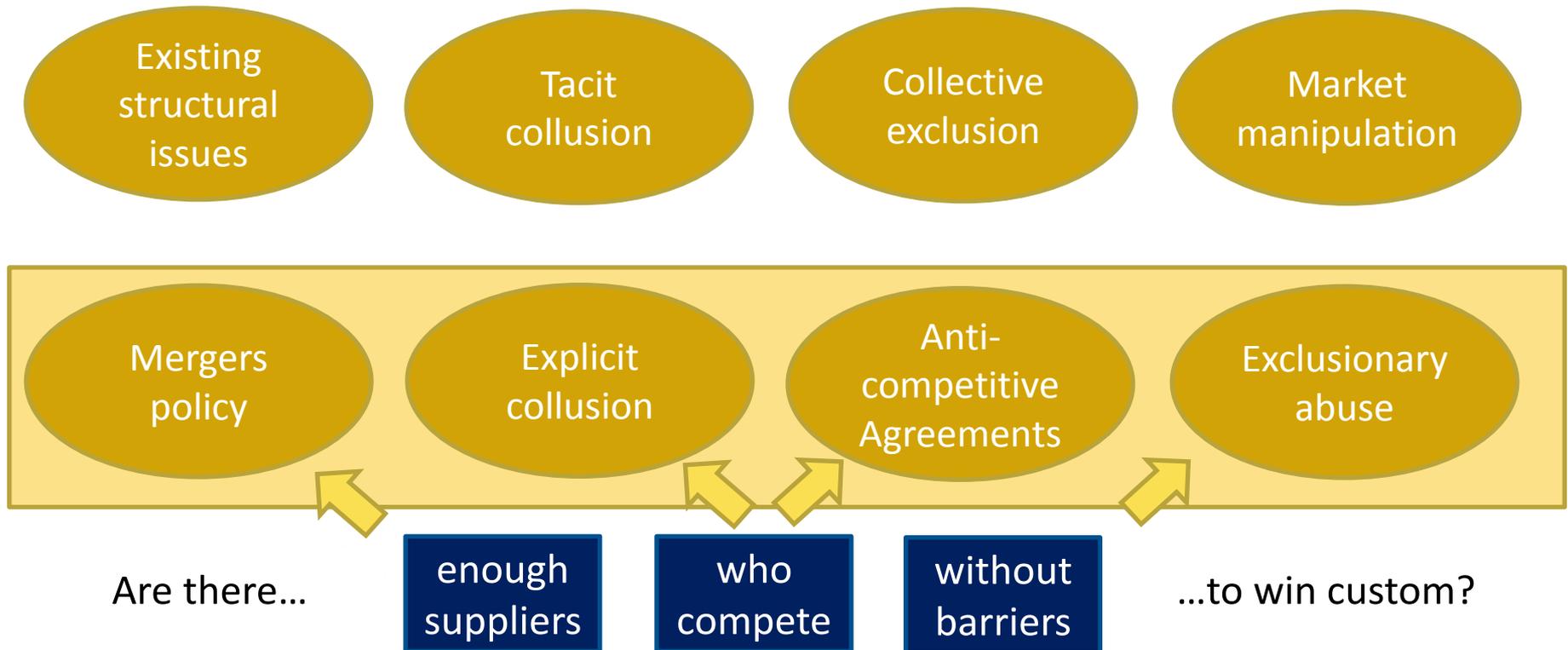


Ex post competition and consumer law are crucial tools

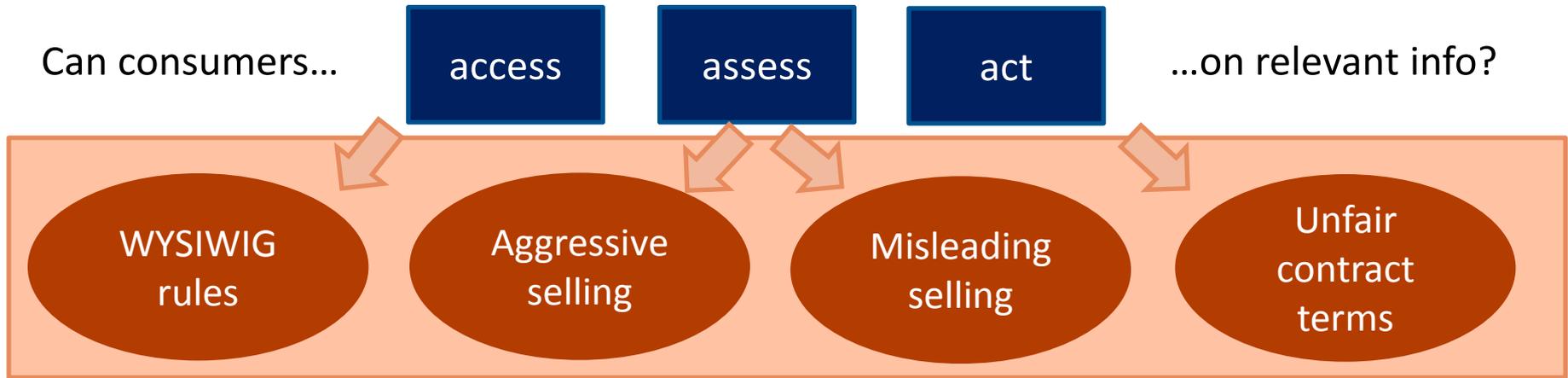


The gap on the supply side...

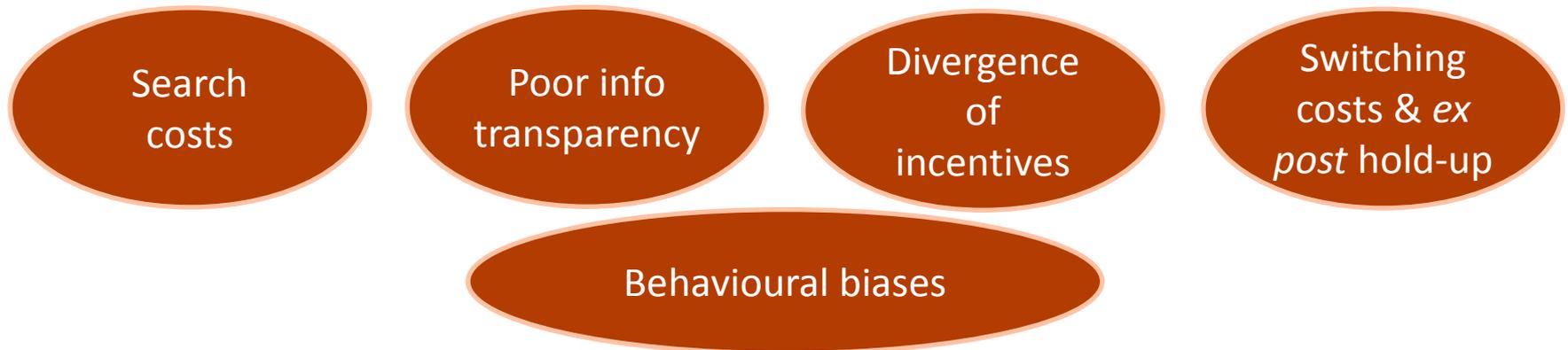
Standard *ex post* competition law doesn't deal well with:



...and on the demand side



Standard *ex post* consumer law doesn't deal well with:



Why can't these 'gap' issues just be covered by *ex post* laws?

- ❖ *Ex post* laws rely heavily on the concept of deterrence:
 - Not all firms that breach the law are caught, but sanctions for those that are provide incentives for compliance
- ❖ But effective deterrence requires:
 - high fines/sanctions...
 - ... which rightly require a high standard of proof, which in turn makes it harder, more costly, and a longer process to change behaviour...
 - ... and which are only appropriate where firms do something clearly wrong, otherwise they risk deterring pro-competitive behaviour
- Key issue in the 'gap' is that firms often don't really do anything 'wrong'.

The regulators are increasingly active in this 'gap' – Examples

Ofcom	Ofgem	FCA (and FSA)
<ul style="list-style-type: none">• Oct 2013: Protection against mid-contract price rises through switching and enhanced transparency• Oct 2013: Improved accreditation of PCWs to facilitate search• Aug 2013: Proposal for Gaining Provider Led (GPL) solution to enhance switching• Sept 2011: Ban on rollovers to enhance switching• 2010: Voluntary code of Practice on Broadband speeds to enhance transparency	<ul style="list-style-type: none">• Oct 2013: Ban on mid-term price rises and rollovers on fixed-price contracts, to prevent ex post hold-up and enhance switching.• Aug 2013: New standards of conduct around transparency, including on info to facilitate search.• July 2013: Wholesale level market-making obligations in electricity – to ensure effective price signals and facilitate entry/expansion.• Feb 2013: Requirement that complaints data be comparable to aid search	<ul style="list-style-type: none">• Nov 2013: Upcoming consultation on transparency in asset management.• Oct 2013: Proposal for tougher rules on payday lending to limit behavioural biases and ex post hold-up and on P2P lenders to enhance transparency.• Jan 2013: RDR – new rules on financial advisors to enhance transparency and reduce divergence of incentives.• Oct 2012: MMR – new rules to enhance transparency (by reducing disclosure!) and limit behavioural biases

'Gap' issues also occur elsewhere

.... Selected CC inquiries

Date	Inquiry	Key findings
2013	Aggregates, cement and RMX concrete	<ul style="list-style-type: none">• Tacit coordination in GB cement market, including collective exclusion of imports
2013	Private healthcare	<ul style="list-style-type: none">• Market power in hospital services markets• Lack of transparency on performance by hospitals or consultants• Divergent incentives between patients and consultants due to referral Incentive schemes
2013	Statutory audit services for large companies	<ul style="list-style-type: none">• Lack of transparency about audit quality in advance, leading to barriers to switching• Divergence of incentives between shareholders and management
2009	BAA airports	<ul style="list-style-type: none">• Structural issues identified, giving BAA excessive market power in Scotland and South-East.
2006	Domestic bulk LPG	<ul style="list-style-type: none">• High switching costs, search costs and a lack of transparency

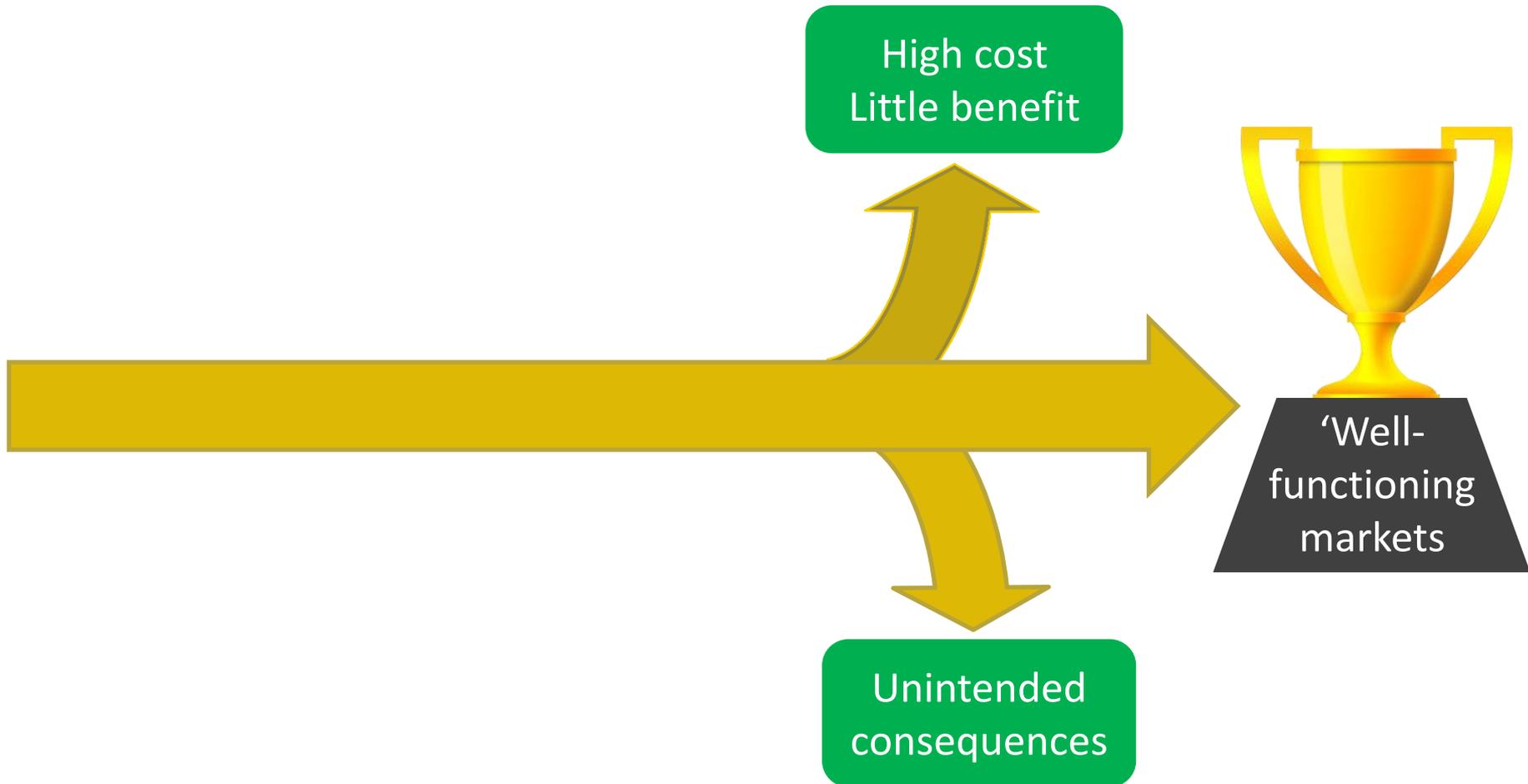
...And the CC in financial services

Date	Inquiry	Key findings
Ongoing (to 2015)	Payday lending	<ul style="list-style-type: none">Issues include transparency, search costs, switching costs and behavioural biases (as well as barriers to entry and expansion)
Ongoing (to 2014)	Private motor insurance	<ul style="list-style-type: none">Issues include divergence of incentives, vertical integration, and switching costs (NB Careful recognition of ongoing FCA work!)
2009	PPI	<ul style="list-style-type: none">High search costs and lack of transparency, combined with switching costs and mis-selling
2007	PCA services in NI	<ul style="list-style-type: none">Poor transparency, search costs and switching costs
2006	Store card credit services	<ul style="list-style-type: none">Poor transparency, lack of clear APR info to enable search, ex post hold-up through high penalty charges
2006	Home credit	<ul style="list-style-type: none">Search costs, switching costs and lack of transparency

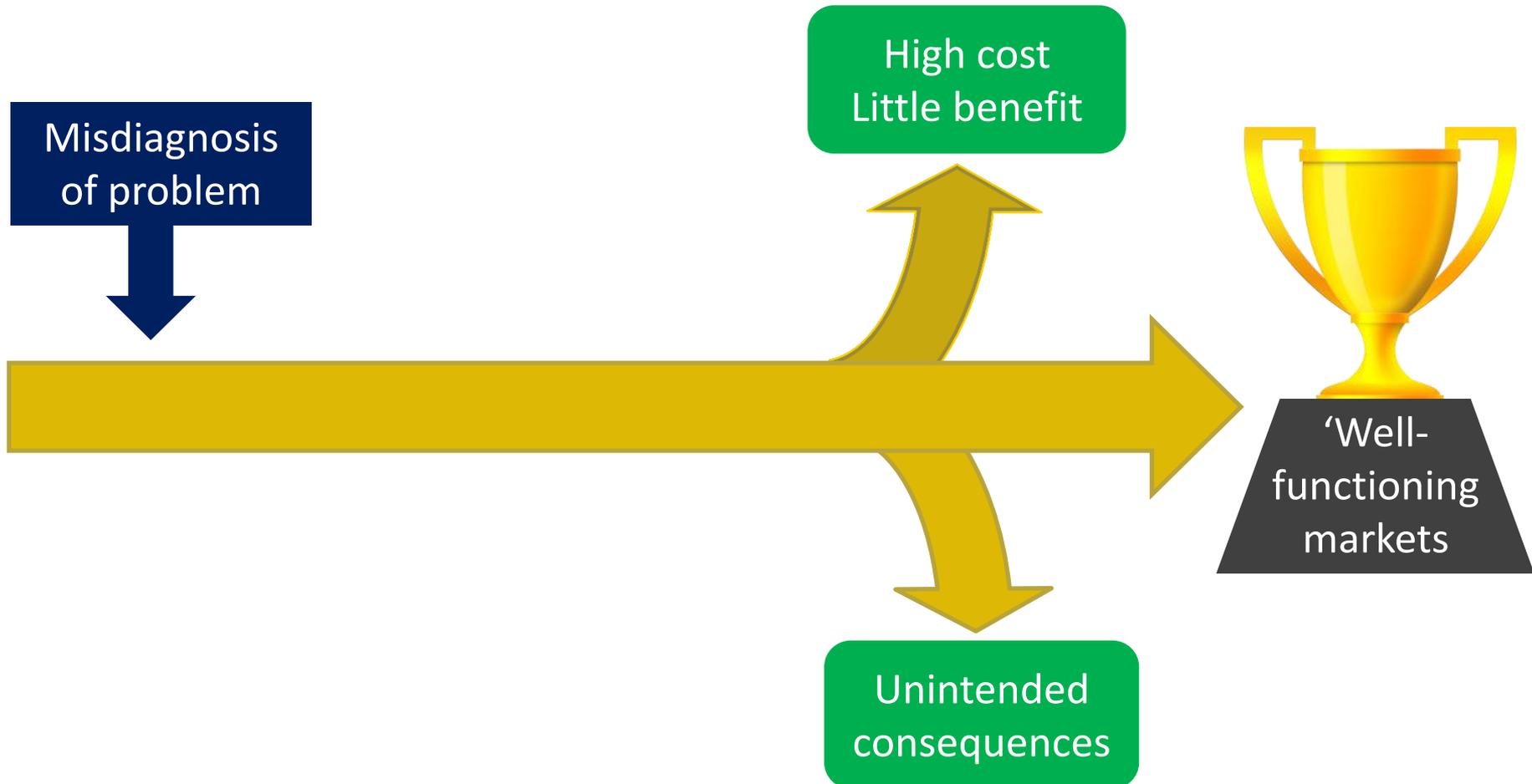
Theme two...

- 2. Such interventions can be costly and ineffective , or even have unintended consequences that do more harm than good*
So they need to be carried out with great care!

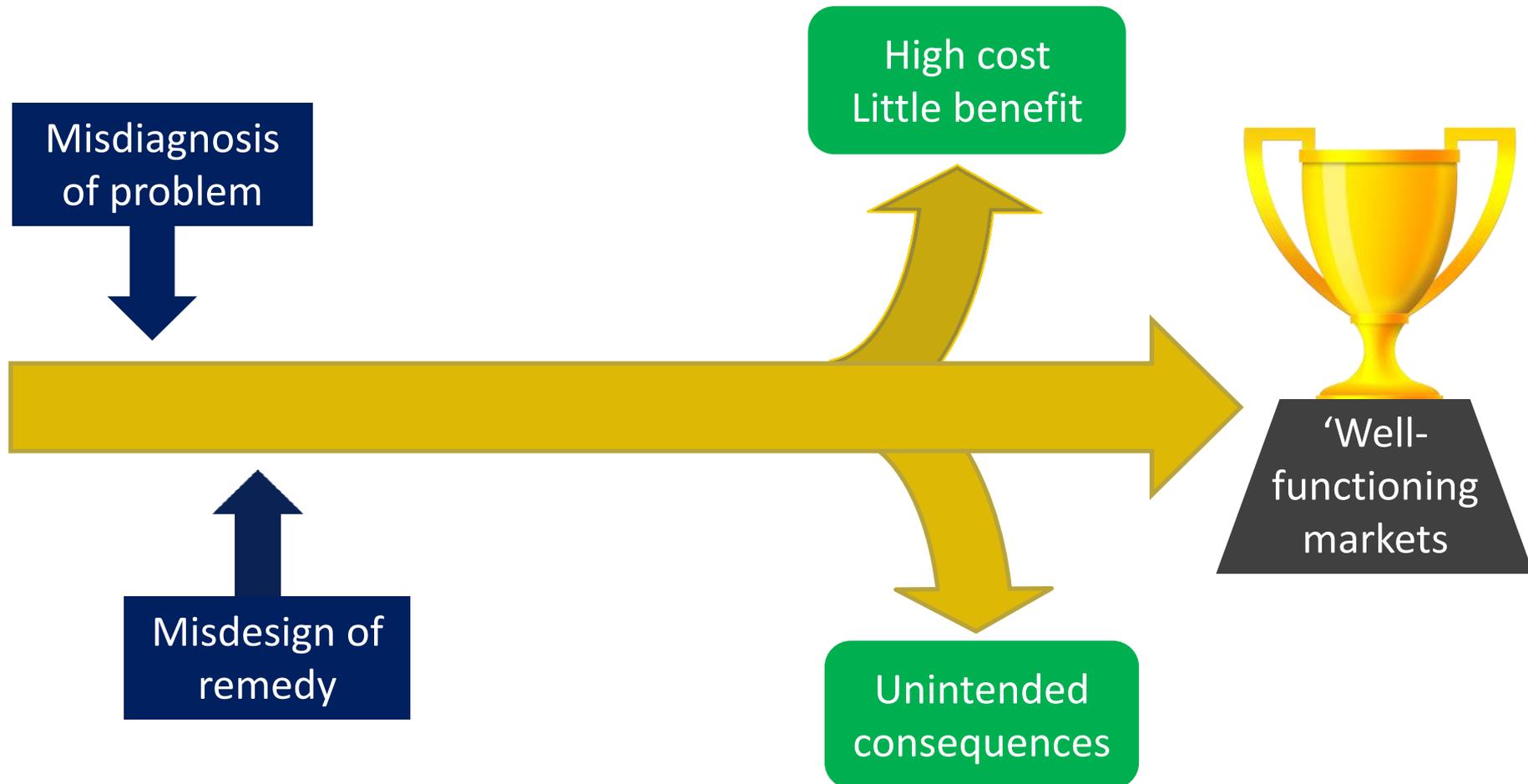
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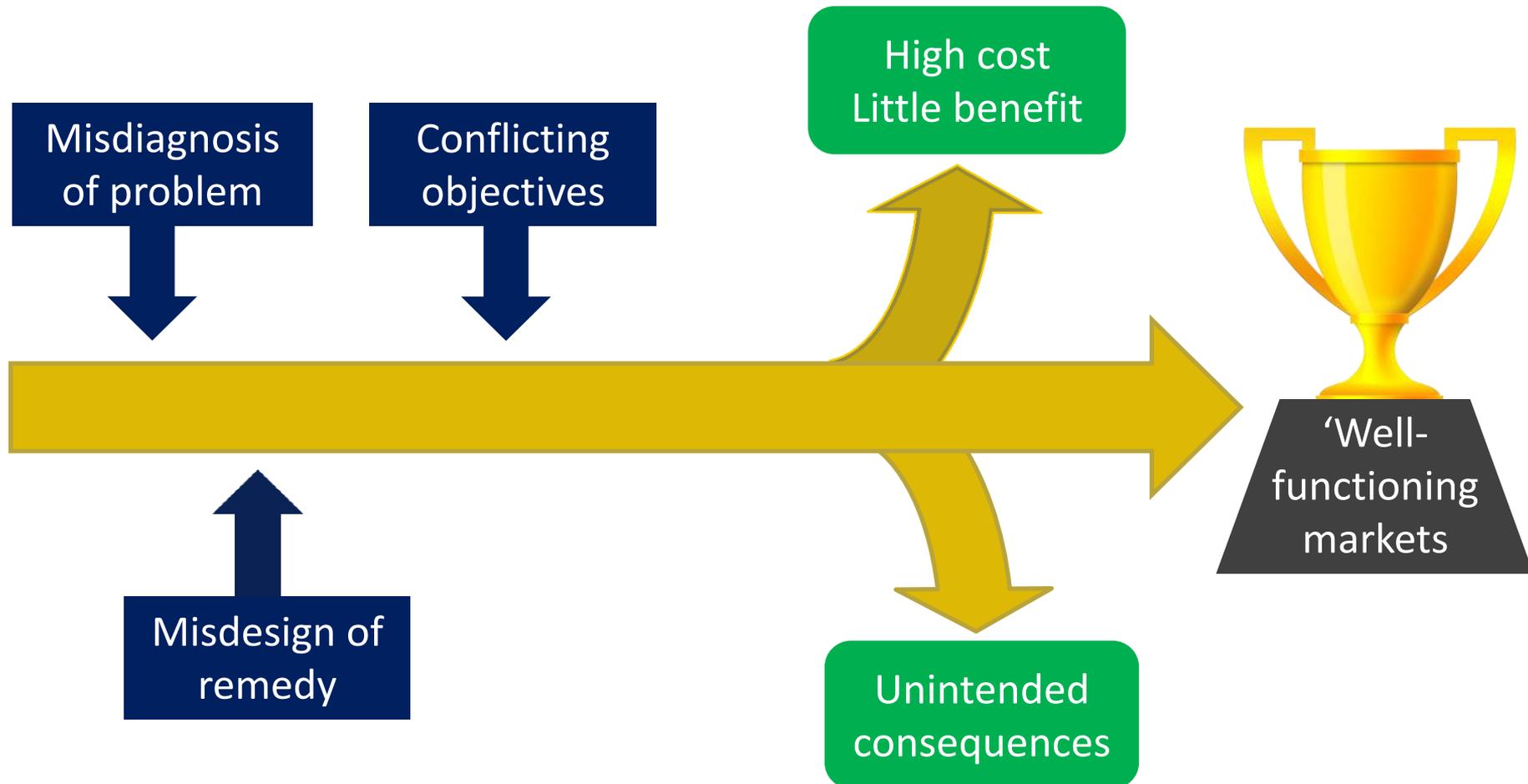
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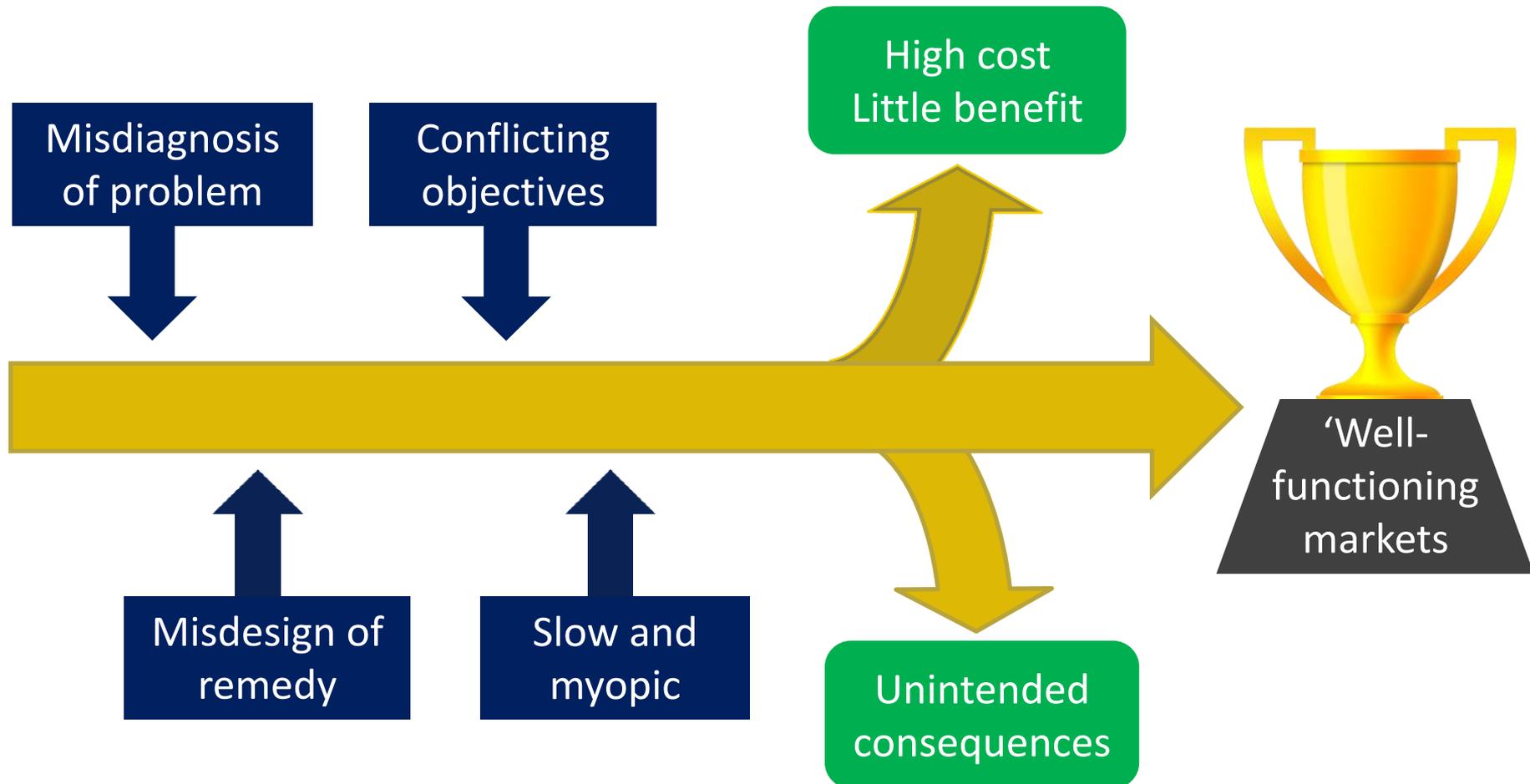
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