

# The Characterisation of Collusion in Competition Law

2009 CCP 5th Annual Conference: Cartels and Tacit Collusion

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# Outline

- the role of collusion in competition law
- distinction between vertical and horizontal collusion
- the characterisation of collusion a horizontal rather than vertical
  - hub-and-spoke concept

# The Text of Article 81(1) EC

‘The following shall be prohibited as incompatible with the common market:

all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect ... the ... restriction ... of competition’

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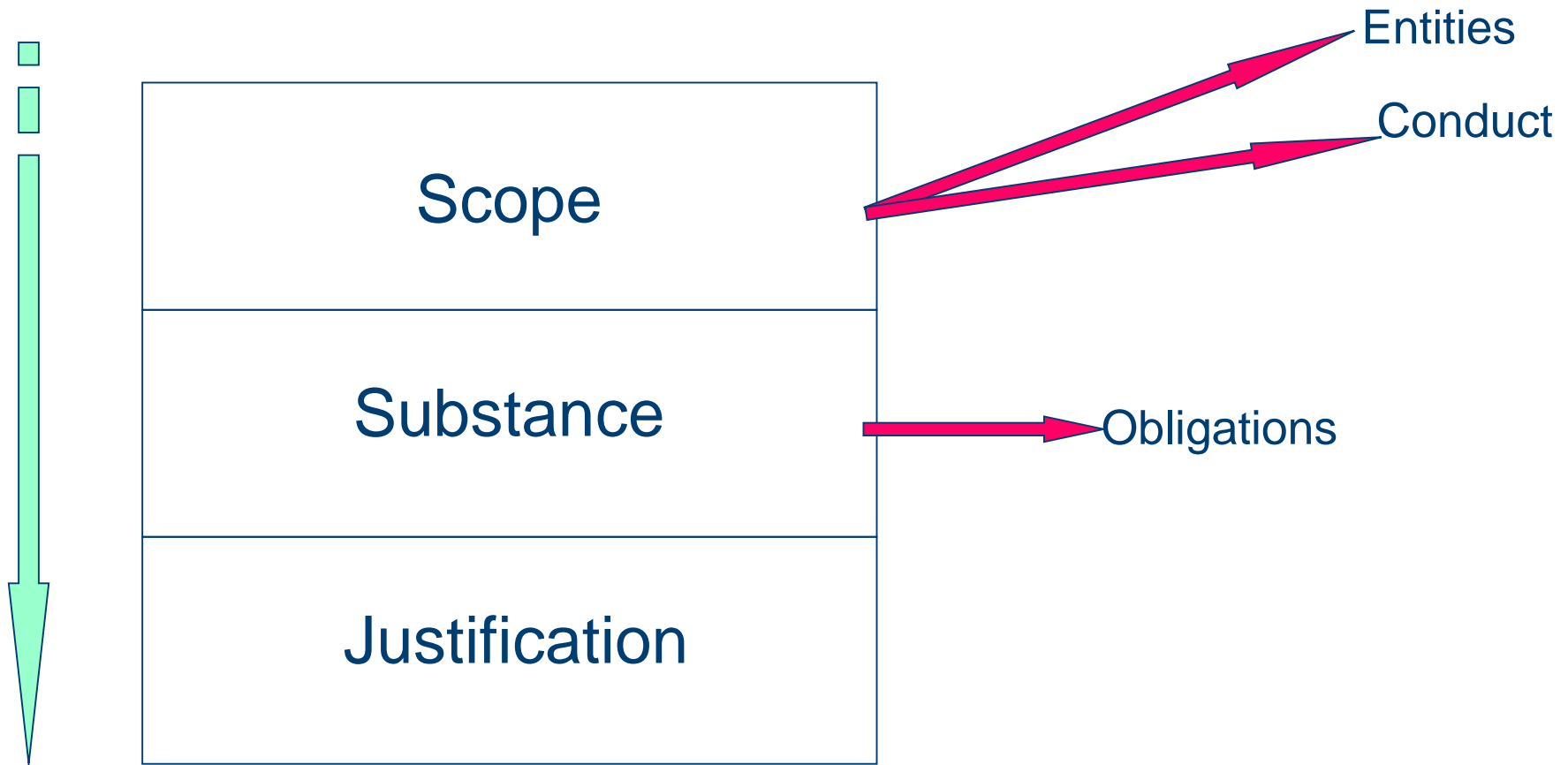
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# The Structure of Article 81

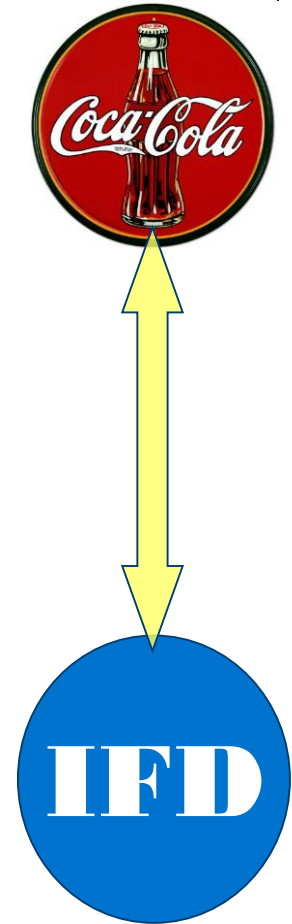
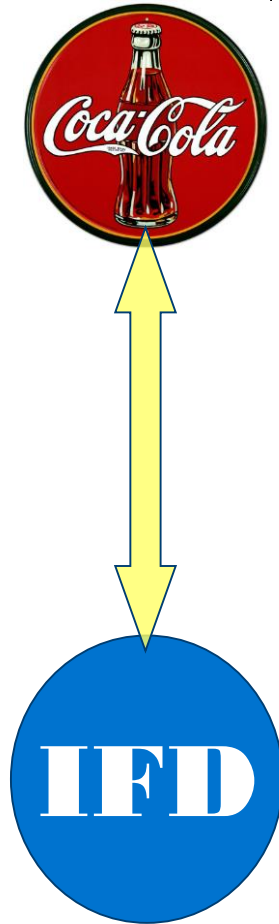
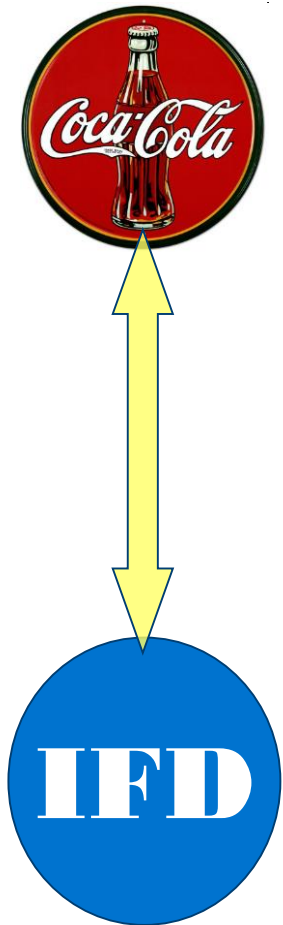




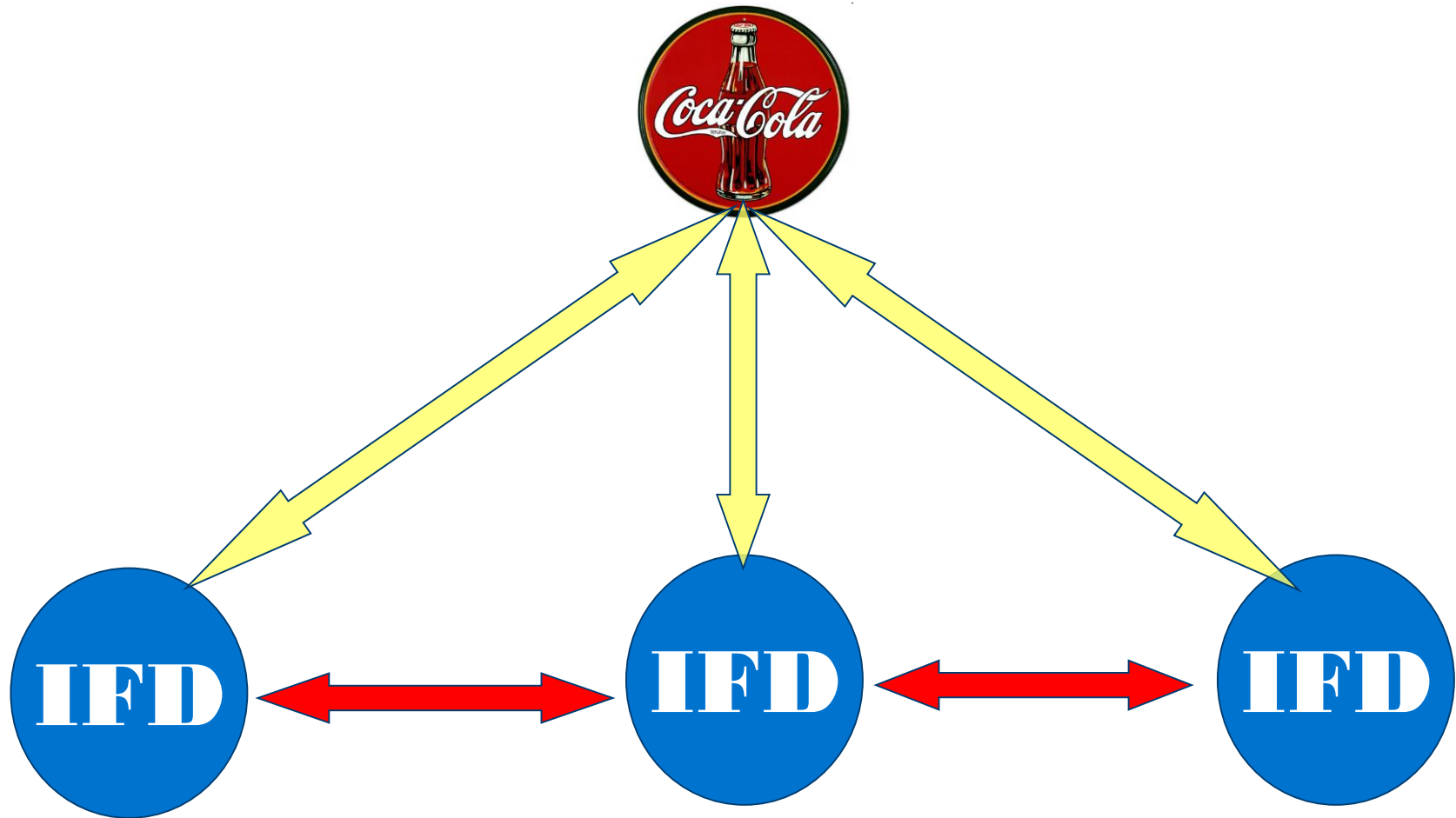
# The vertical/horizontal distinction

- a different mode of assessment applies
  - object (per se)
  - effect (rule of reason)
  - de minimis presumptions
  - BER (justifications)
- Different sanctioning regime applies

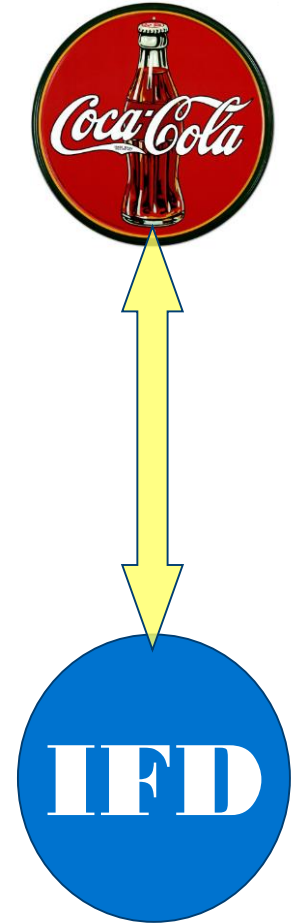
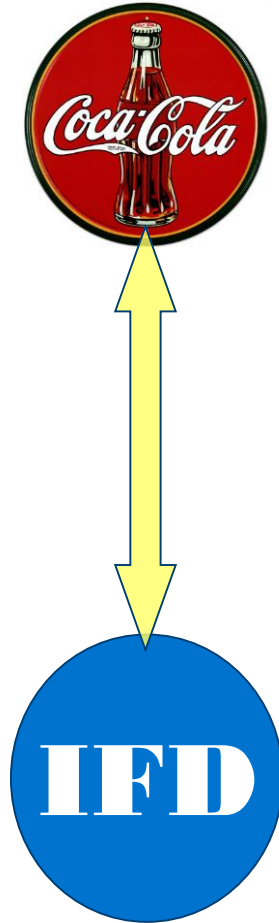
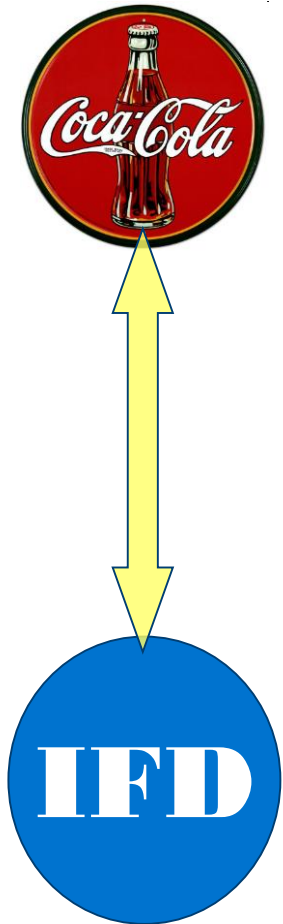
# PepsiCo v Coca-Cola



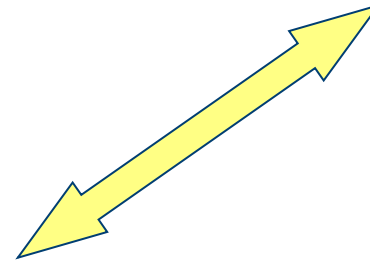
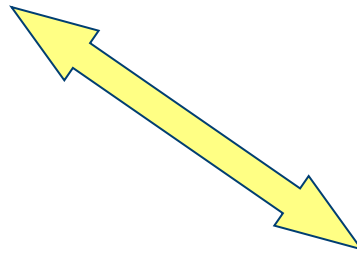
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# Toys "R" Us v Federal Trade Commission

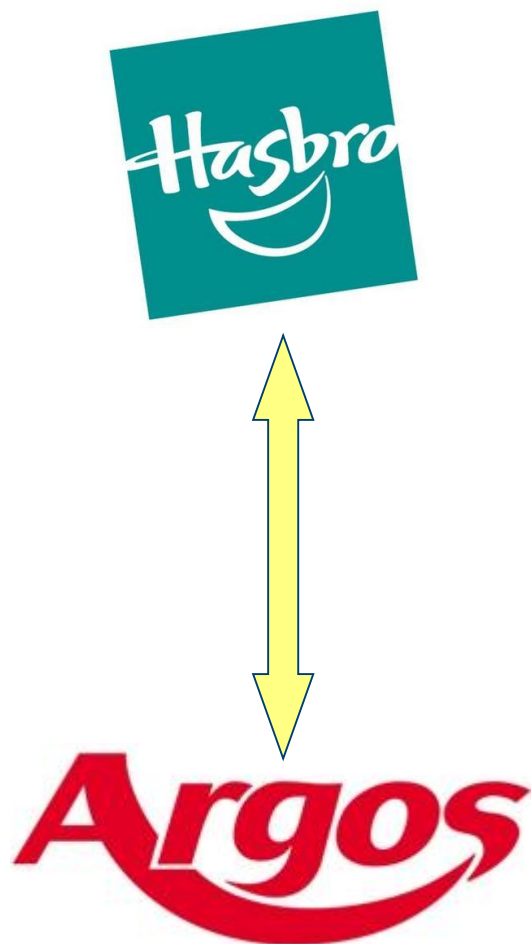


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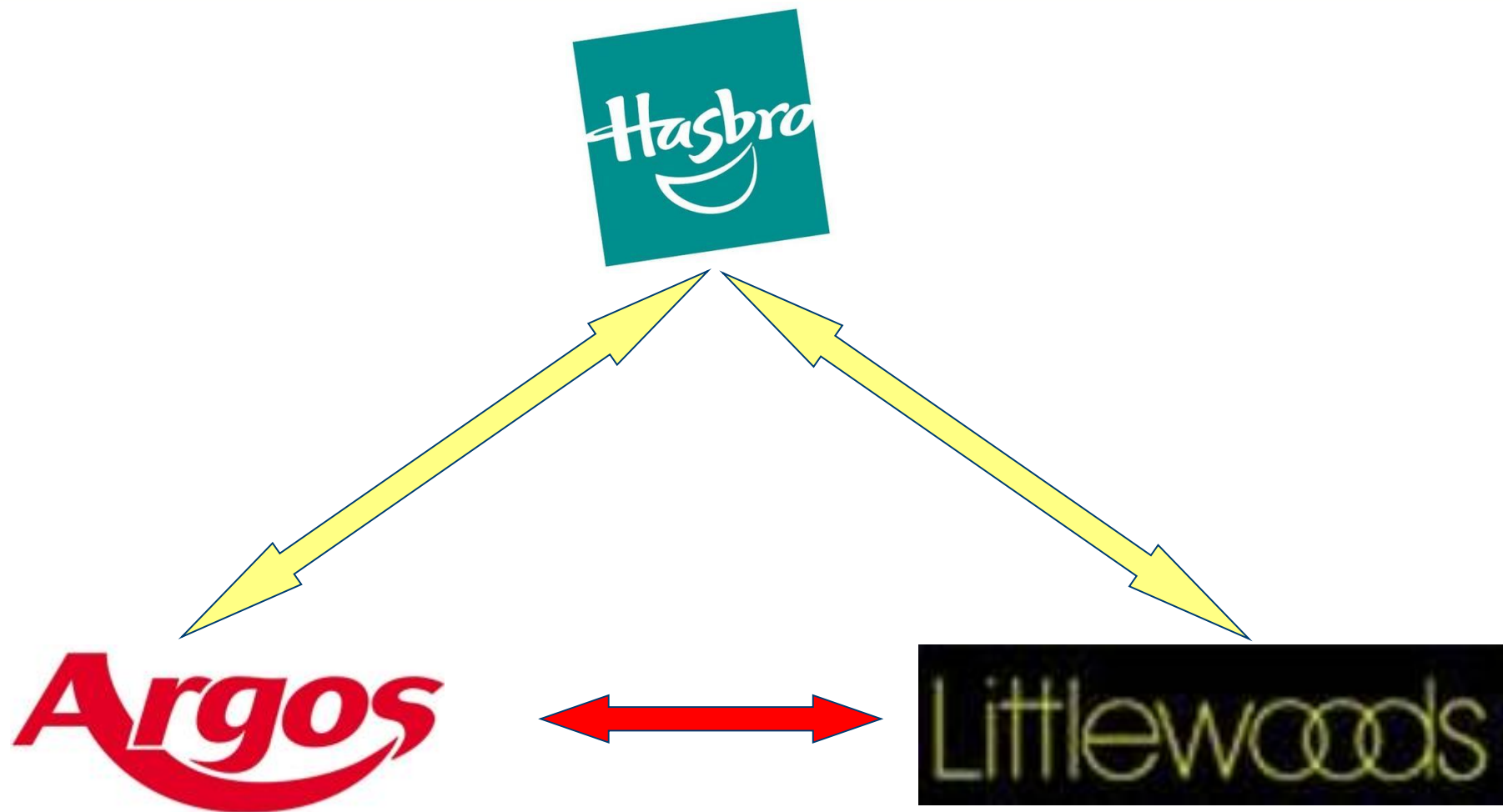


1. conditional participation
2. the hub monitors compliance

# *Argos and Littlewoods v Office of Fair Trading*



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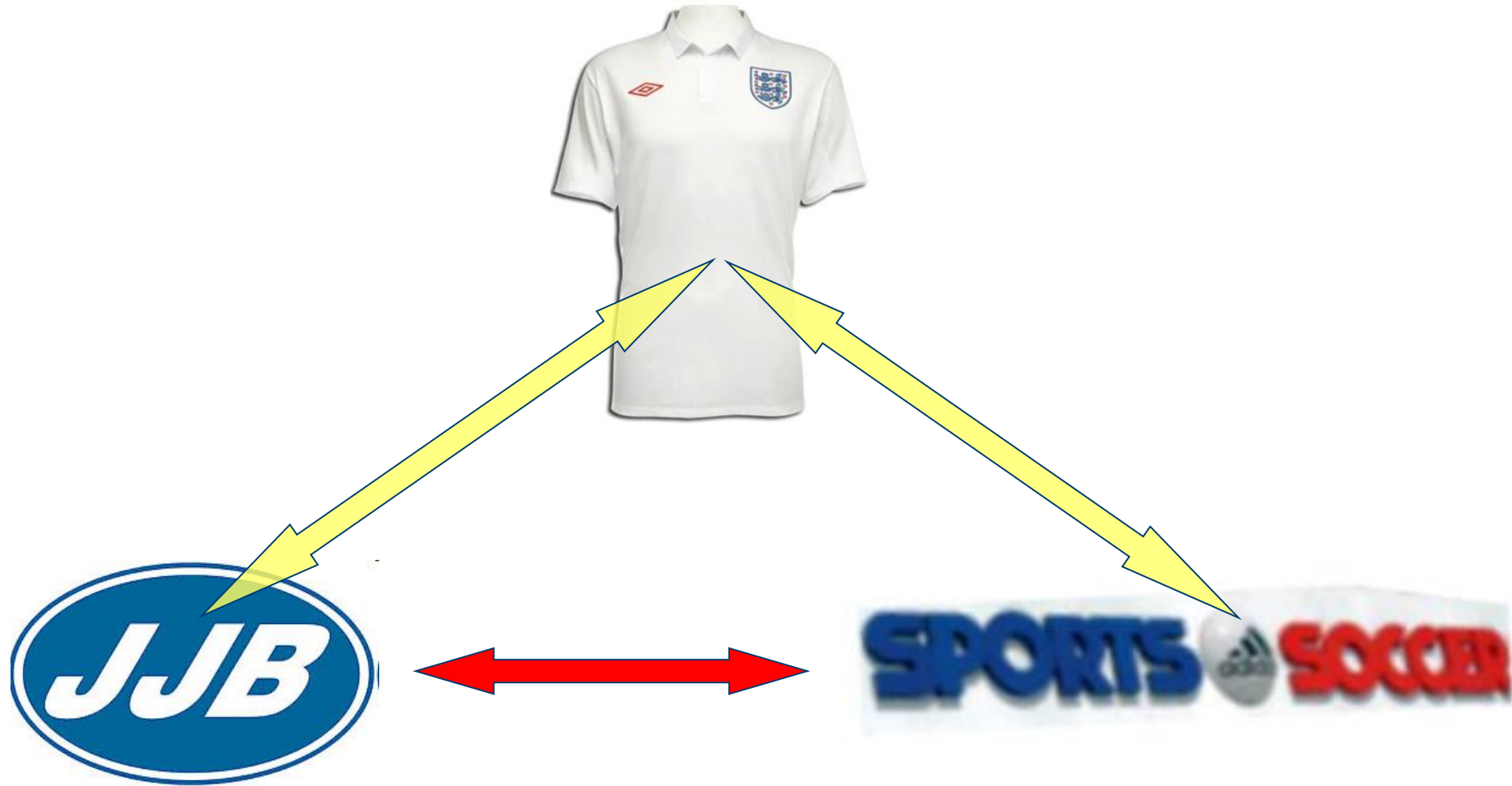


# *Argos and Littlewoods v Office of Fair Trading*

1. conditional participation
2. interdependent agreements
3. the hub:
  - i. exchanges information
  - ii. monitors compliance



# JJB Sports v Office of Fair Trading



# *JJB Sports v Office of Fair Trading*

- [i] retailer A discloses to supplier B its future pricing intentions in circumstances where
- [ii] A may be taken to intend that B will make use of that information to influence market conditions by passing that information to other retailers (of whom C is or may be one),
- [iii] B does, in fact, pass that information to C in circumstances where
- [iv] C may be taken to know the circumstances in which the information was disclosed by A to B and
- [v] C does, in fact, use the information in determining its own future pricing intentions,

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