

Vertical Restraints

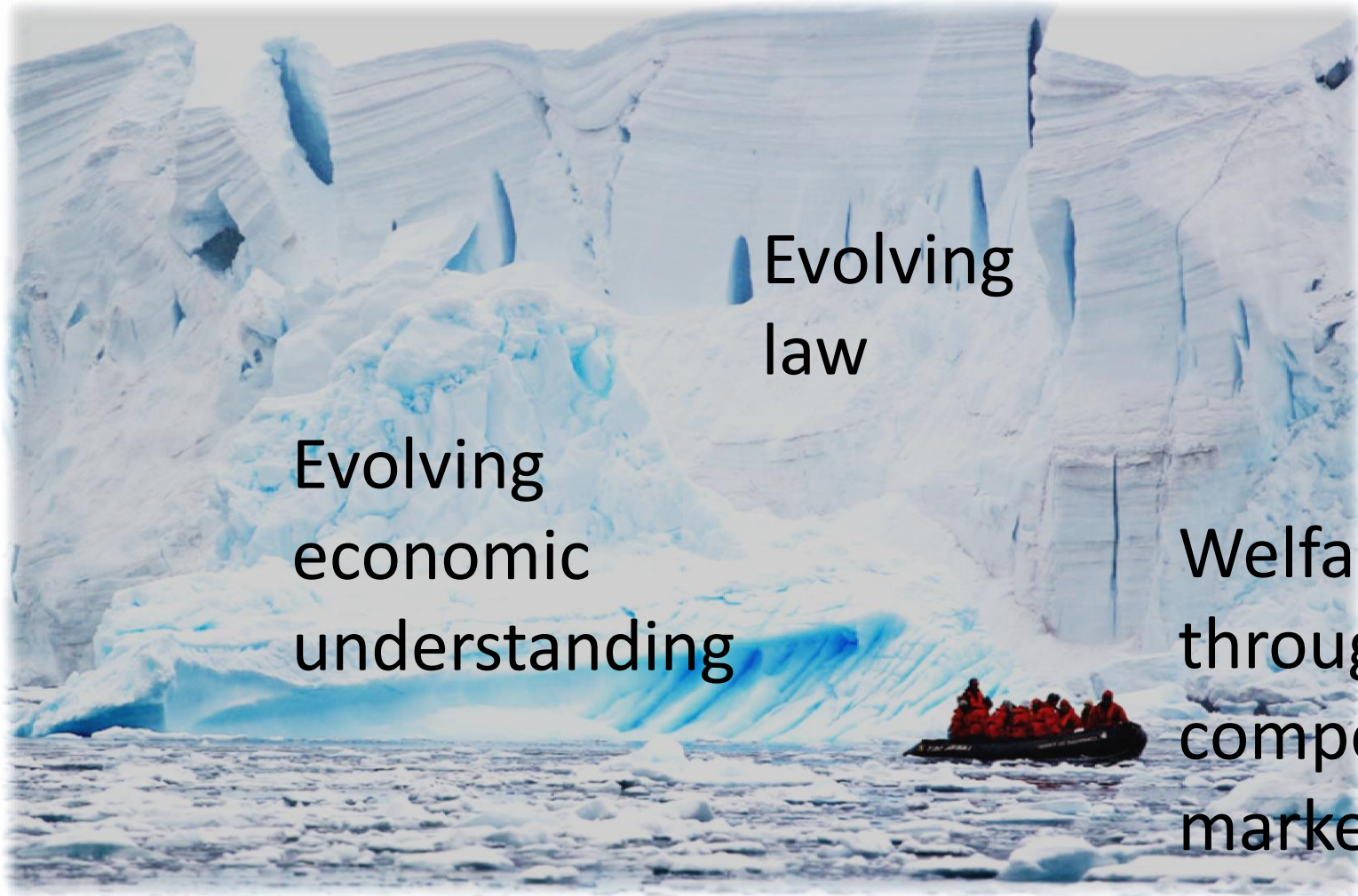
A National Enforcer's Perspective

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Navigating verticals

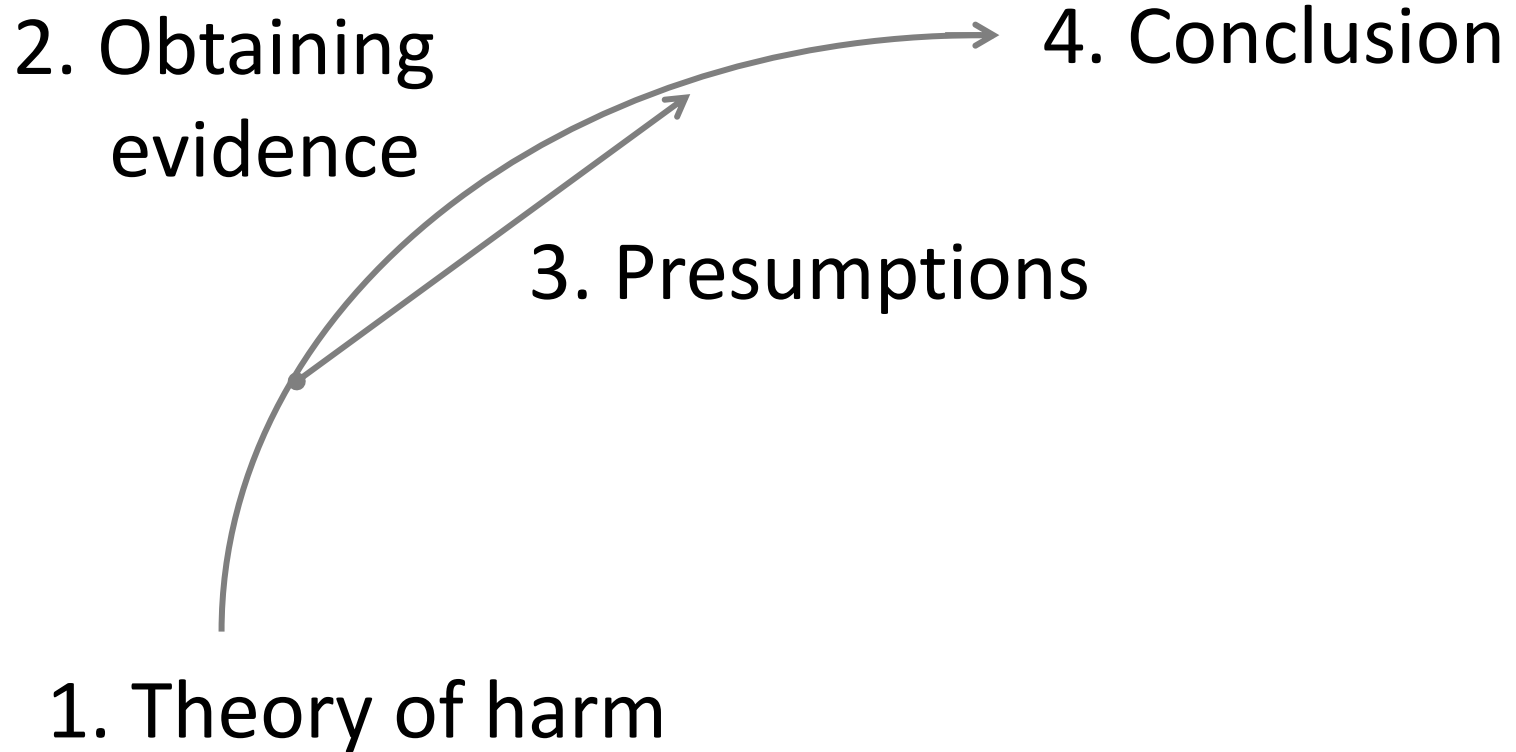


Evolving
law

Evolving
economic
understanding

Welfare
through
competitive
markets

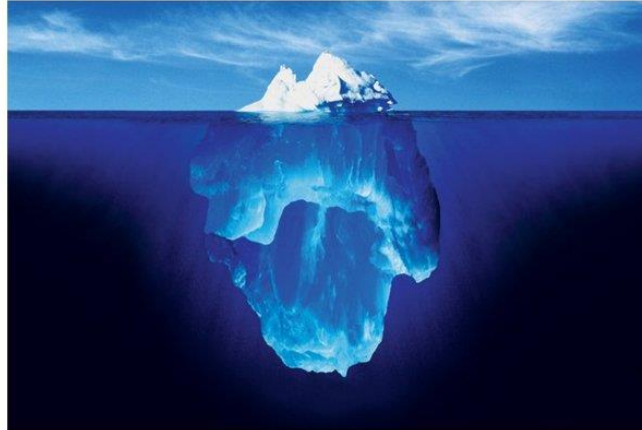
Building a case



1. Theory of Harm

- The Economics of the Case
- Vertical theories of harm often more challenging than horizontal ones
 - more sensitive to institutional setting & market structure
 - important efficiencies (all firms want to improve their distribution, "combining complements is good")
- VRBER & VRGL provide useful roadmap
 - largely consistent with economic understanding

1. Theory of Harm



- VRBER/GL largely consistent with economic understanding, but are only the tip of the iceberg
- The VRBER/GL not sufficient for theory of harm
 - need to make use of underlying ideas
 - useful to understand: what are the incentives of the contracting parties?

3. Presumptions

- Shortcuts for refuting or accepting theory of harm. Can be explicit or implicit
 - the safe harbor of VRBER
 - object/effect-dichotomy and other case law
 - established results in economics
- Uses
 - reduces or shifts burden of proof
 - saves investigative resources
 - increases predictability (most of the time)
 - ideally balances enforcement errors

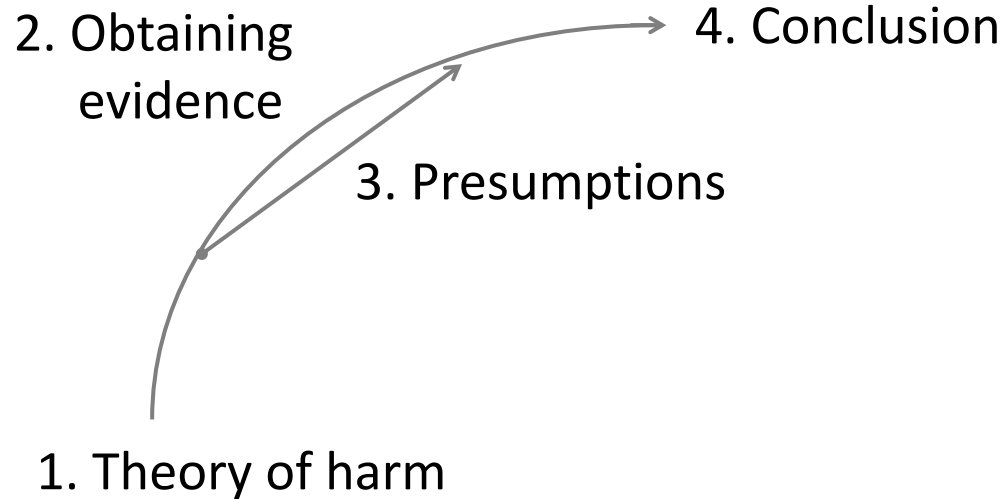
3. Presumptions

- Confusion regarding what is meant by effects-based analysis
 - Empirical finding publishable in top-ranked economics journal?
- The use of presumptions will, to some extent, always be needed in order to enforce effectively
 - E.g., increasing barriers to entry reduce competitive pressure and increase consumer prices
 - "Potential effects"

3. Presumptions

- Object/effect-dichotomy
 - *Allianz Hungaria* etc will be discussed today
 - Advocate General Wahl in *Groupement des cartes bancaires* (C-67/13 P)
 - horizontal case on payment card fees
 - suggests a practical approach
 - clear delineation object/effect-analysis, less analysis when object restrictions
 - object box limited to conduct that, based on experience and economic science, is certain to harm

Prioritising as an enforcer



- Deciding at an early stage, are we likely to succeed?
- Theory of harm always crucial component in this decision

Enforcement trends at NCA level

- Based on quick overview of ECN data on vertical art. 101-cases at NCA level:
 - Online cases roughly 1/3 of cases
 - RPM around half of cases
 - Quite a few price parity cases
- Quite substantial difference in number of RPM-cases across member states