

Identifying Dominance

The ANRCTI's Market Reviews under the EU Regulatory Framework,
Public Workshop, Bucharest, 16 January 2008

Peter Alexiadis

Brussels Office

Gibson, Dunn & Crutcher LLP



This project is funded by the European Union



A project implemented by the consortium of WIK-Consult
GmbH and Gibson, Dunn & Crutcher LLP



Assessment of Dominance

I. Individual Dominance

Legal Standards of Dominance

“The dominant position referred to in Article [82] relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately consumers”:



Case 27/76, United Brands v. Commission

“The existence of a dominant position may derive from several factors, which, taken separately, are not necessarily determinative but among these factors a highly important one is the existence of very large market shares”:



Case 85/76, Hoffmann-La Roche v. Commission

Assessment of Dominance

I. Individual Dominance

Legal Standards of Dominance

“... although the importance of the market shares may vary from one market to another the view may legitimately be taken that very large market shares are in themselves, and save in exceptional circumstances, evidence of a dominant position.”:

[Other factors include: size of operations, wide geographical presence, financial resources, vertical integration, product range, essential facilities.]



Case 85/76, *Hoffmann-La Roche v. Commission*

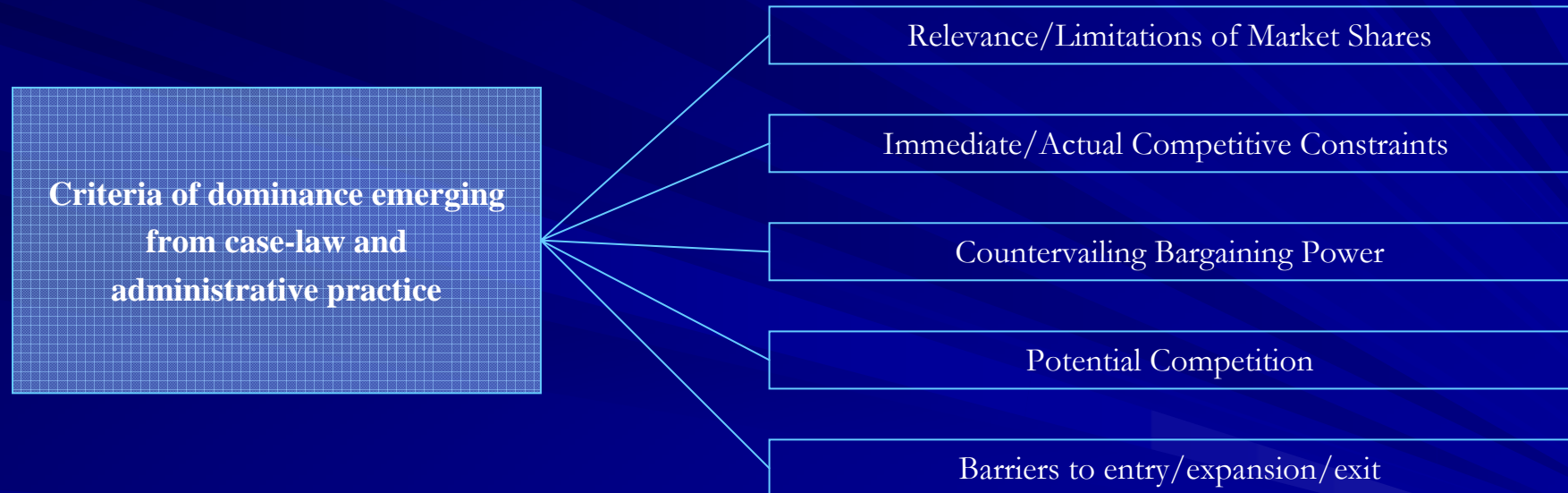
“Without going into a discussion about percentages ... [dominance] must be determined having regard to the strength and number of the competitors”:



Case 27/76, *United Brands v. Commission*

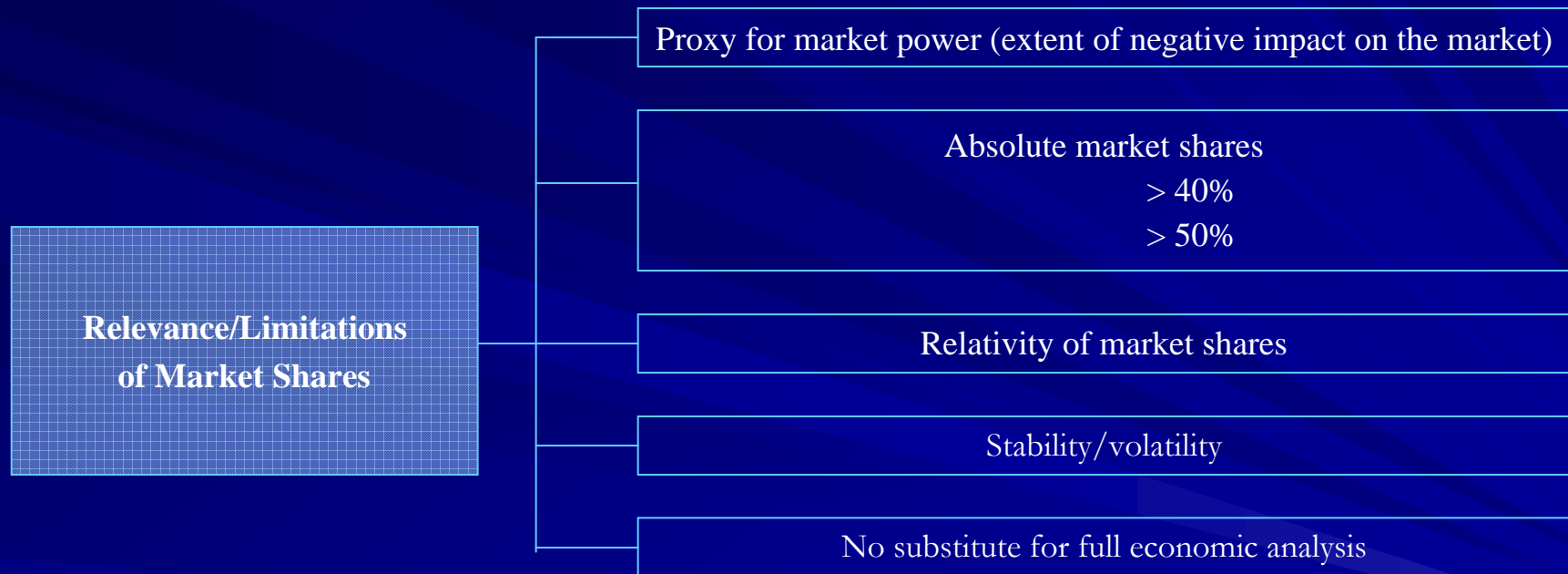
Assessment of Dominance

I. Individual Dominance



Assessment of Dominance

I. Individual Dominance



Assessment of Dominance

I. Individual Dominance

Market Share Evaluation

Market Share Evaluation Services

Parties, competitors, customers

Buyers, suppliers, trade associations

Market research report

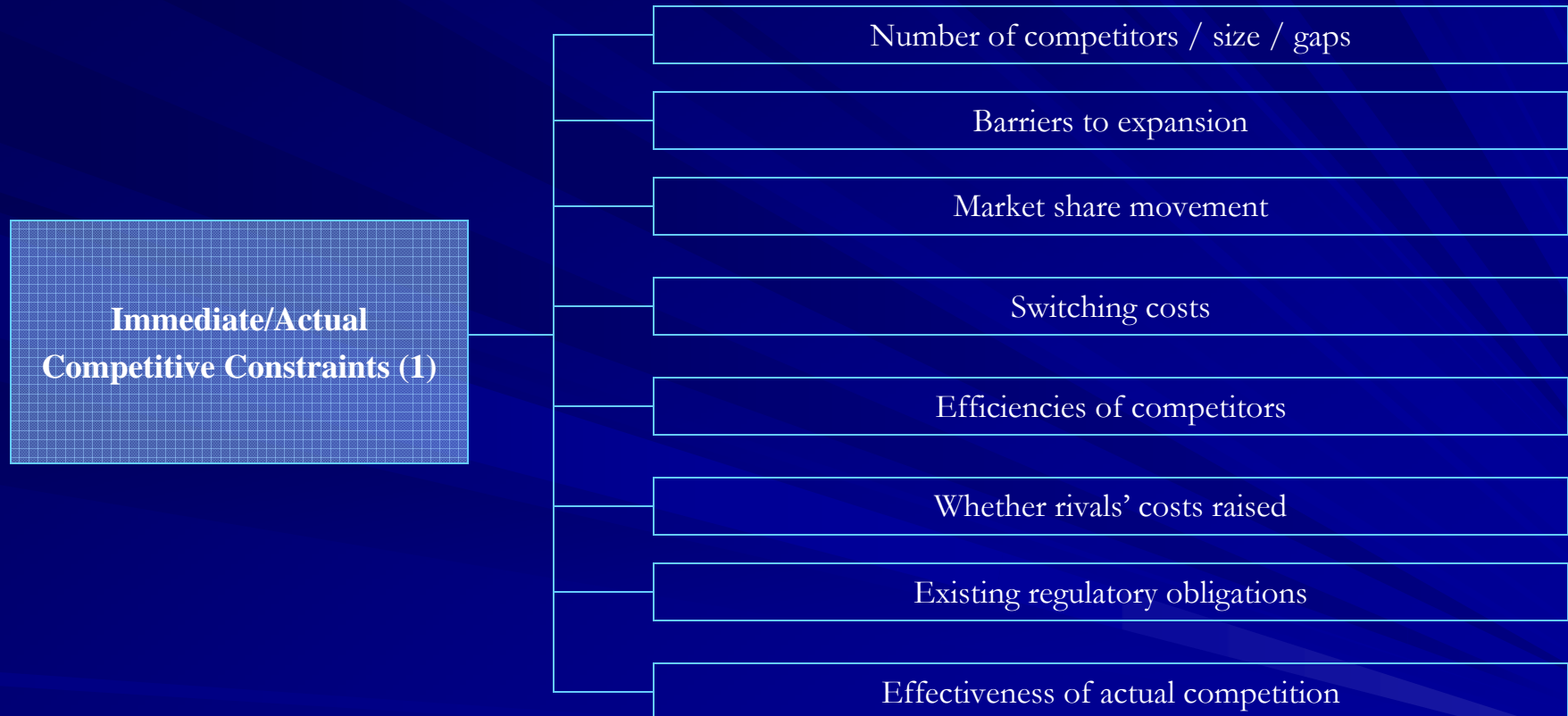
Market Share Evaluation Criteria

Revenues, volumes, production

Capacities, inputs depending on markets concerned
and available data

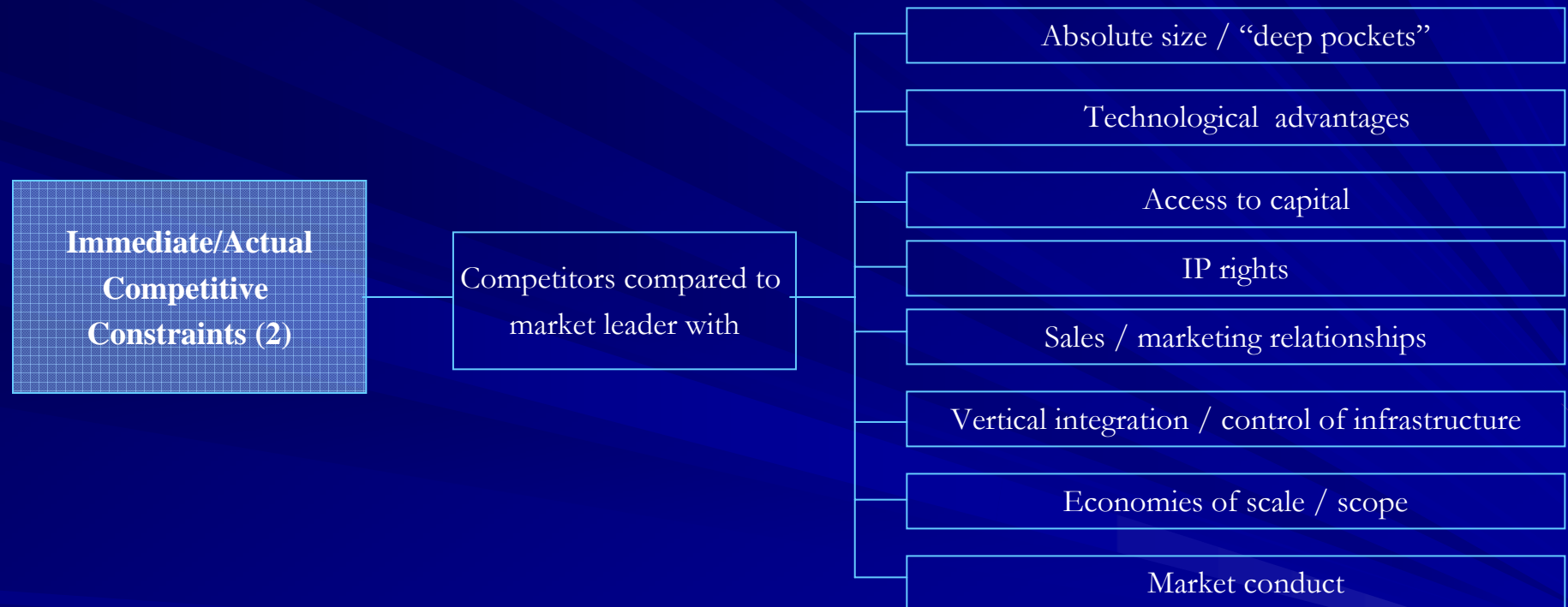
Assessment of Dominance

I. Individual Dominance



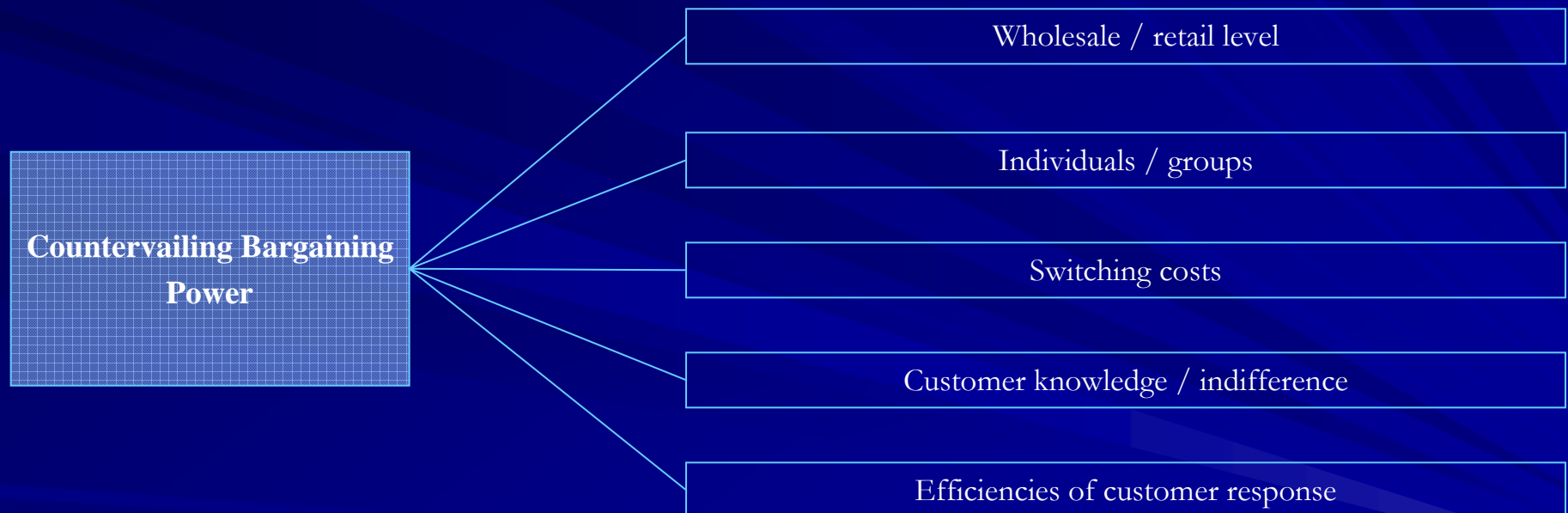
Assessment of Dominance

I. Individual Dominance



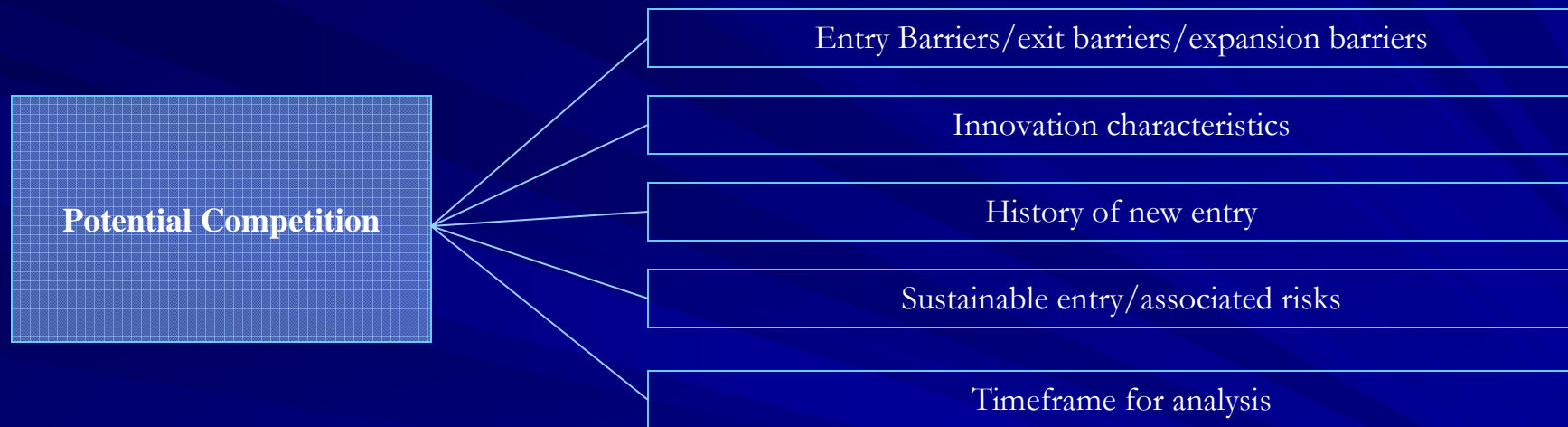
Assessment of Dominance

I. Individual Dominance



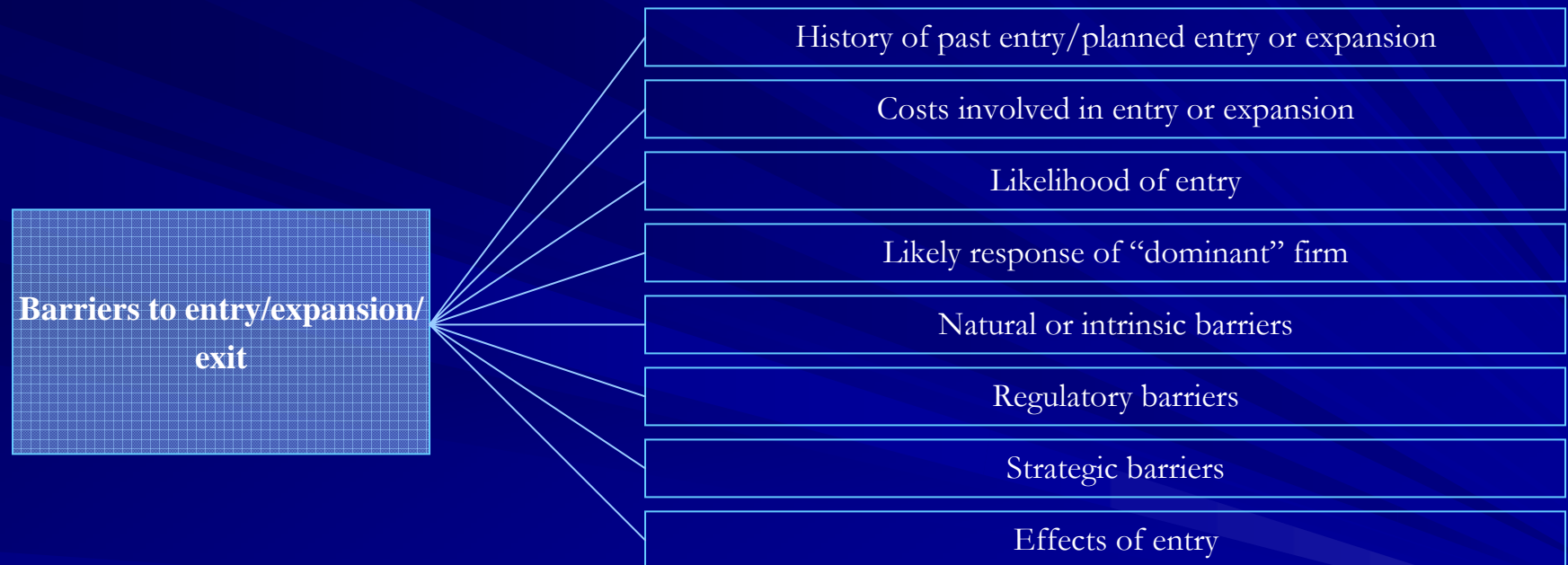
Assessment of Dominance

I. Individual Dominance



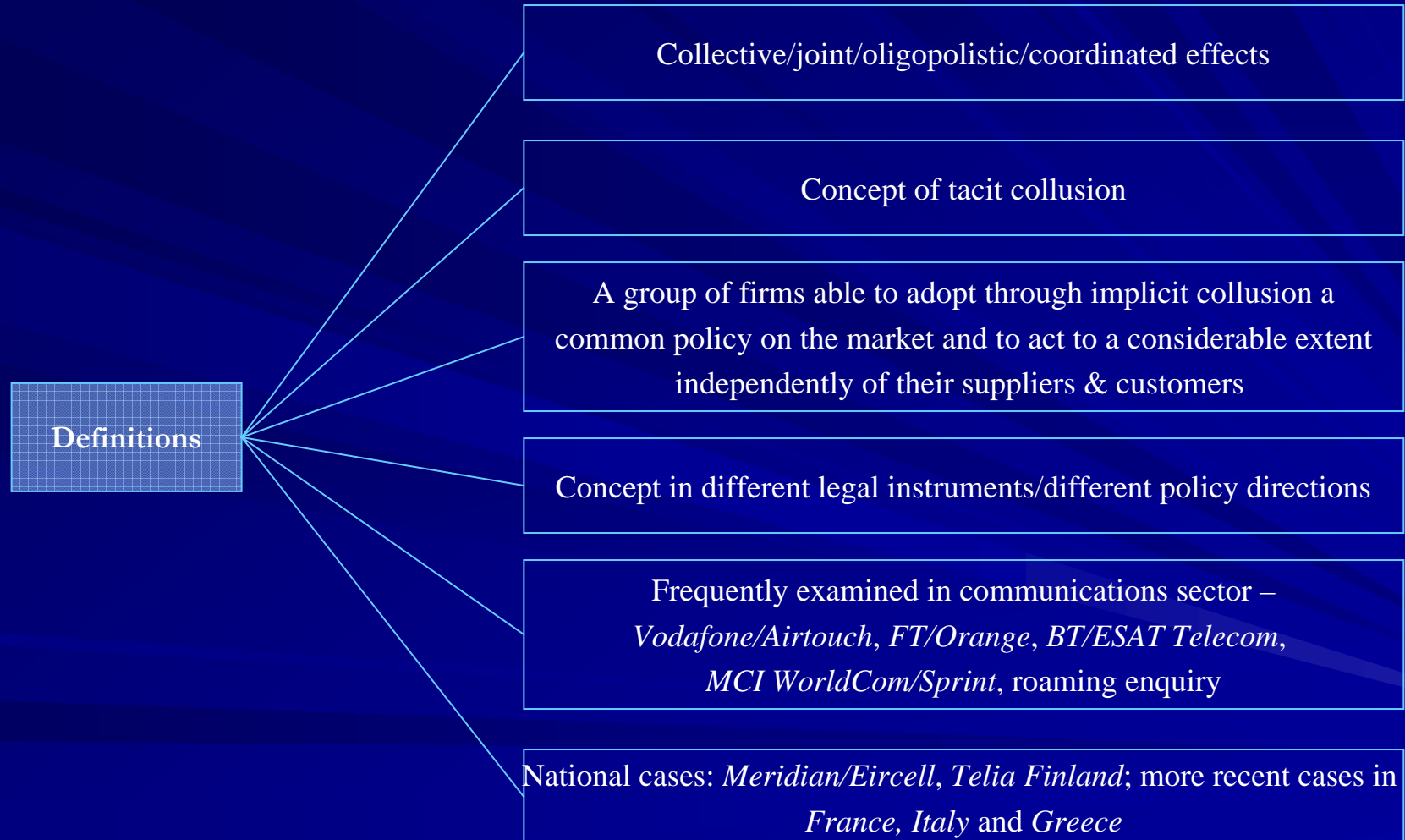
Assessment of Dominance

I. Individual Dominance



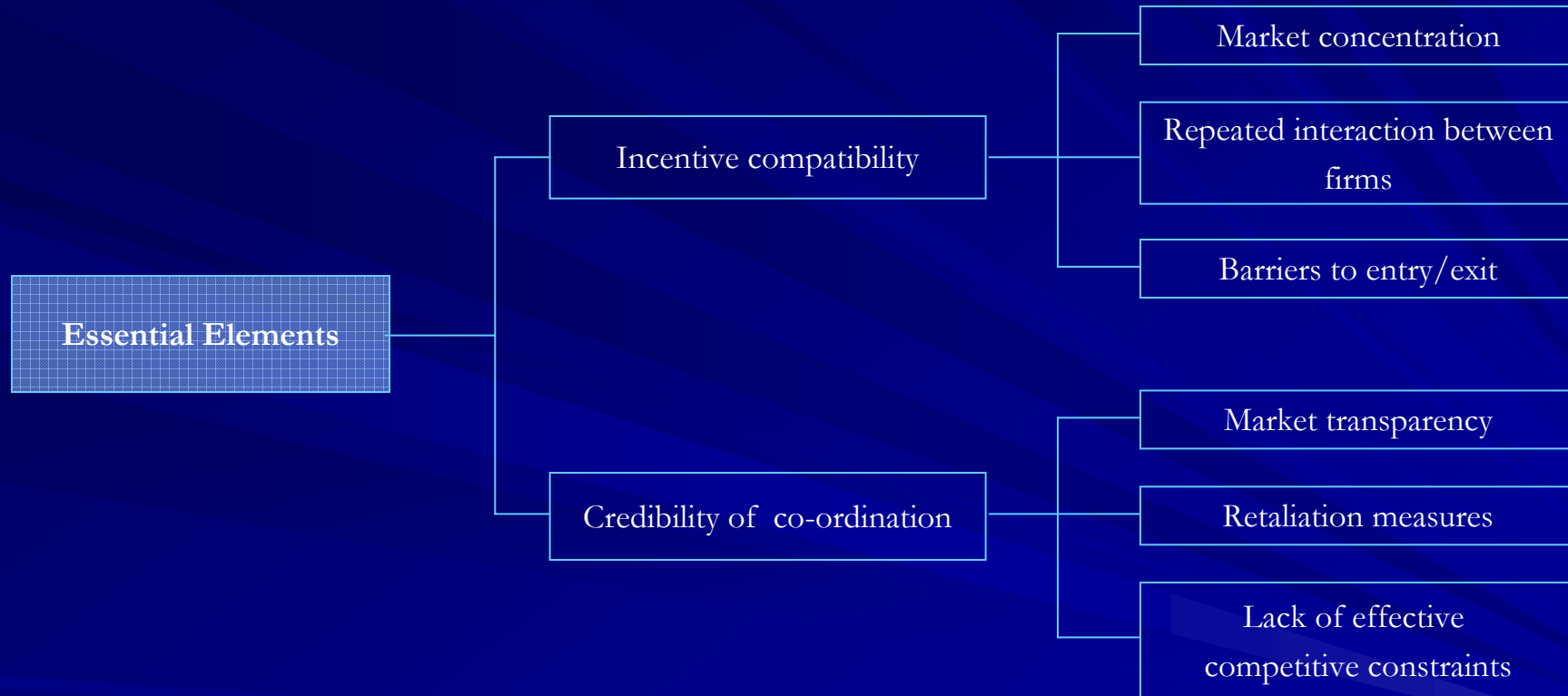
Assessment of Dominance

II. Collective Dominance



Assessment of Dominance

II. Collective Dominance



Assessment of Dominance

II. Collective Dominance

Level of Assessment

Dynamic vs. static approach

Margin of discretion

Purpose of various instruments: Article 82 EC, *Merger Regulation*, or *Framework Directive*

Rigorous economic analysis vs. checklist approach

Impact of *Airtours* and *Impala v. Commission*



GIBSON, DUNN & CRUTCHER LLP

Peter Alexiadis
Partner

IT TOWER
480, Avenue Louise
1050 Brussels
Belgium

www.gibsondunn.com