

Competition and the Food Chain

EL&I, TILEC & CPB competition workshop 17 May 2011

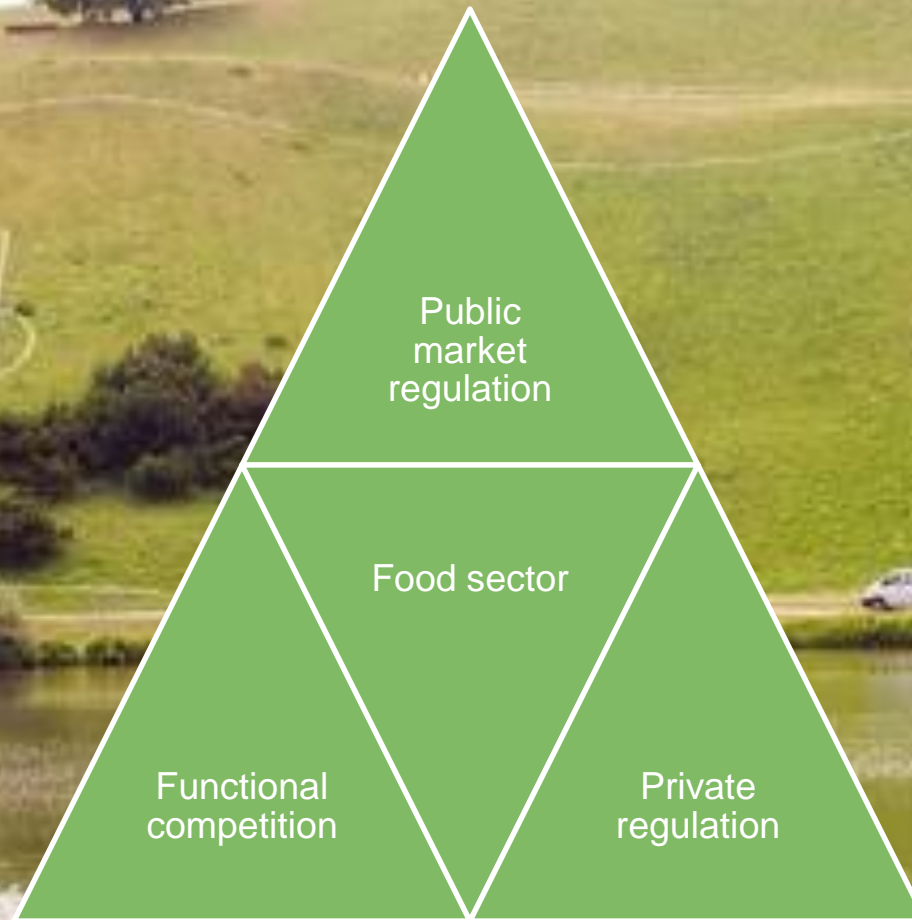
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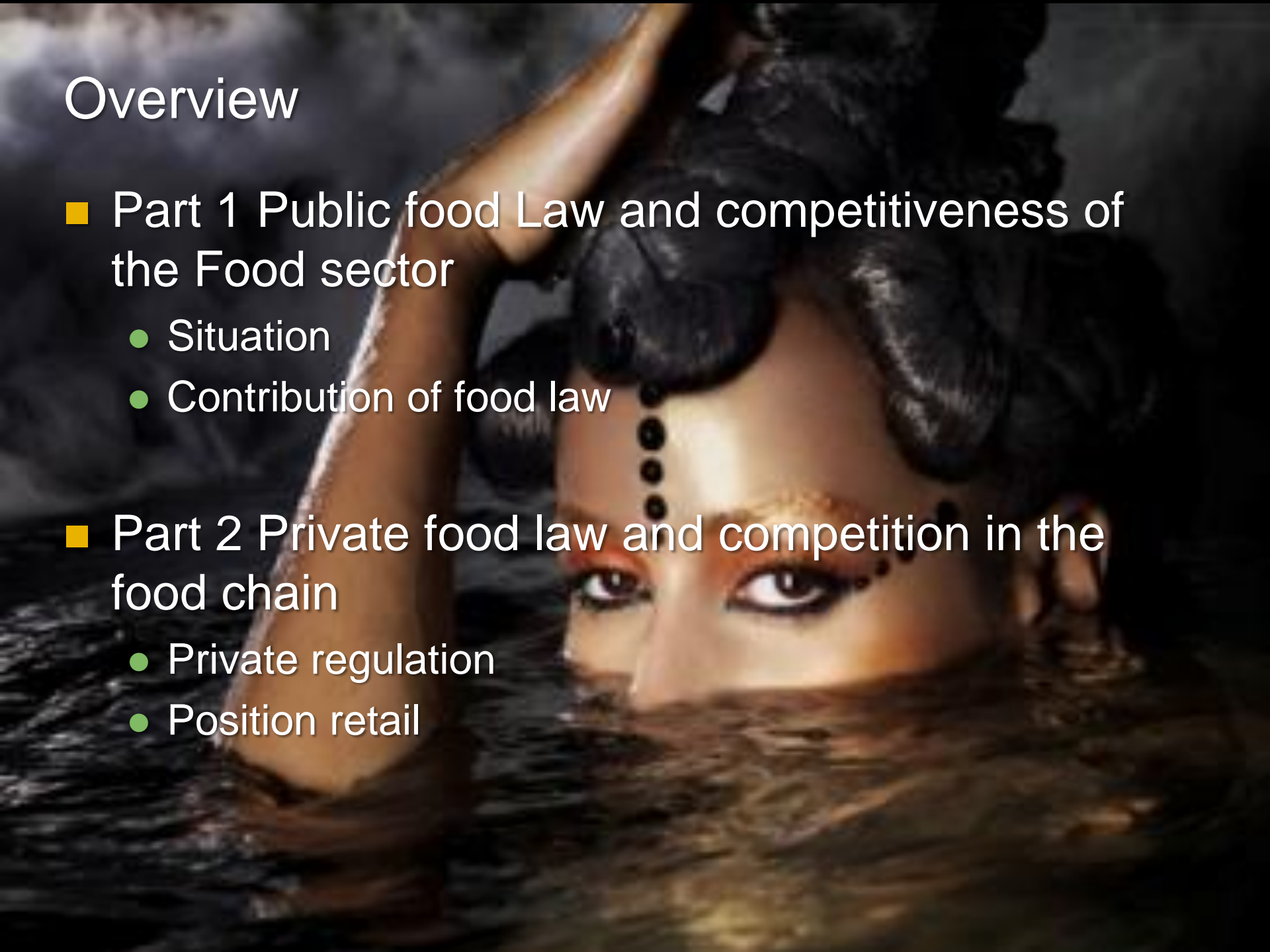


Problem field: market governance trichotomy



Overview

- Part 1 Public food Law and competitiveness of the Food sector
 - Situation
 - Contribution of food law
- Part 2 Private food law and competition in the food chain
 - Private regulation
 - Position retail



Competitiveness studies

- Sector level (EU vs. USA, Australia, Brasil, etc.)
 - Wijnands et al. 2007 Competitiveness of the European Food Industry. An economic and legal assessment
< http://ec.europa.eu/enterprise/food/competitiveness_study.pdf >
 - Poppe et al. 2009 Food legislation and competitiveness in the EU food industry. Case studies in the dairy industry
< http://ec.europa.eu/enterprise/sectors/food/files/competitiveness/food_legislation_dairy_sector_en.pdf >
- Chain/Business level
 - Bunte et al. 2011 The impact of private labels on the competitiveness of the European food supply chain
<http://ec.europa.eu/enterprise/sectors/food/files/study_privlab04042011_en.pdf >

Food legislation and competitiveness in the **EU food industry**

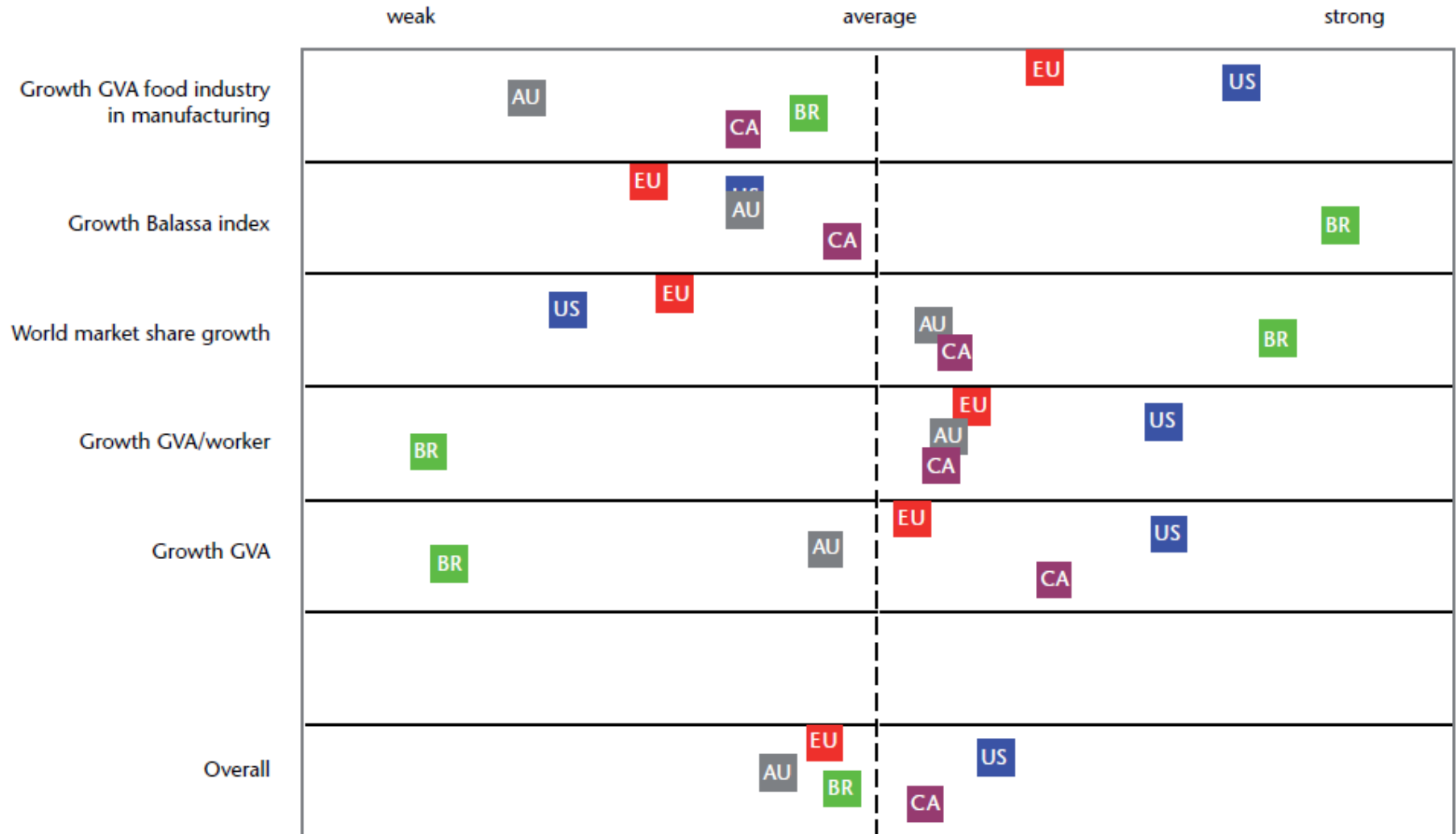
Case studies in
the dairy industry

Part I



Wijnands 2007: role of legislation?

Figure 1 Competitiveness of the EU food industry



EU food industry

- (3rd?) most regulated sector in the EU
- 99% of businesses SME
- 50% of turnover SME
- Is the legal infrastructure adequate for such sector?

Sector competitiveness and public law

- Core issues
- EU food law causes problems due to:
 - Quantity
 - Quality
 - Exclusion

Quantity of food law

- Wijnands: 1997-2006: 1,359 official publications (~4 per day)
- EUROVOC 2011: 13,356 hits for foodstuffs
- EUROVOC 2011: out of 64,404 for Agri-Foodstuffs
 - EUROVOC 2011: 7,092 for chemistry (of 33,975 industry)
- Complexity of legislation

Legal quality I

■ EU legislator

- No human rights awareness
- Limited user-friendliness
- Limited simplification
 - Sanco identified 110 regulation and directives holding labelling requirements, codification 8; more considered too complex
- Lack in structure
- Business interests outside scope of objectives

■ National legislator

- Similar
- Codification requirement ignored

Legal quality II

- EU administration ('science based') comitology
 - Lack of awareness legal framework
 - Lack of compliance with legal obligations
 - Substantiation of decisions
 - Meeting deadlines
 - Lack in compliance assistance

- National administration
 - ...

Exclusion from the market

- Market authorisation requirements
- Novel foods
 - (and additives, and supplements, and herbal remedies, and PARNUTS, and health claims, and GMOs, and decontaminants, and many more)
- are banned from the market except when authorised
- Authorisation cannot be acquired by average business

Recast Novel Foods Regulation killed in EP

- Problem is not in the text of the law
- But its application
- Decisions taken by experts
- Application of criteria based on compromise
- Member States do not trust each other's risks assessments
- Burdens on businesses
- Lack of compliance with authorities' obligations
- Lack of compliance assistance

What can EL&I do?

- Bring legal awareness to comitology
- Increase compliance awareness
- Mitigate burdens through compliance assistance
- Example: lysteria case

The impact of private labels on the competitiveness of the European food supply chain

Part II

Dichotomy or trichotomy of governance models?

- Government
 - Market
 - Private regulation
-
- Does leeway left by public regulation lead to competition or is it filled by private regulation?

Business competition and private regulation

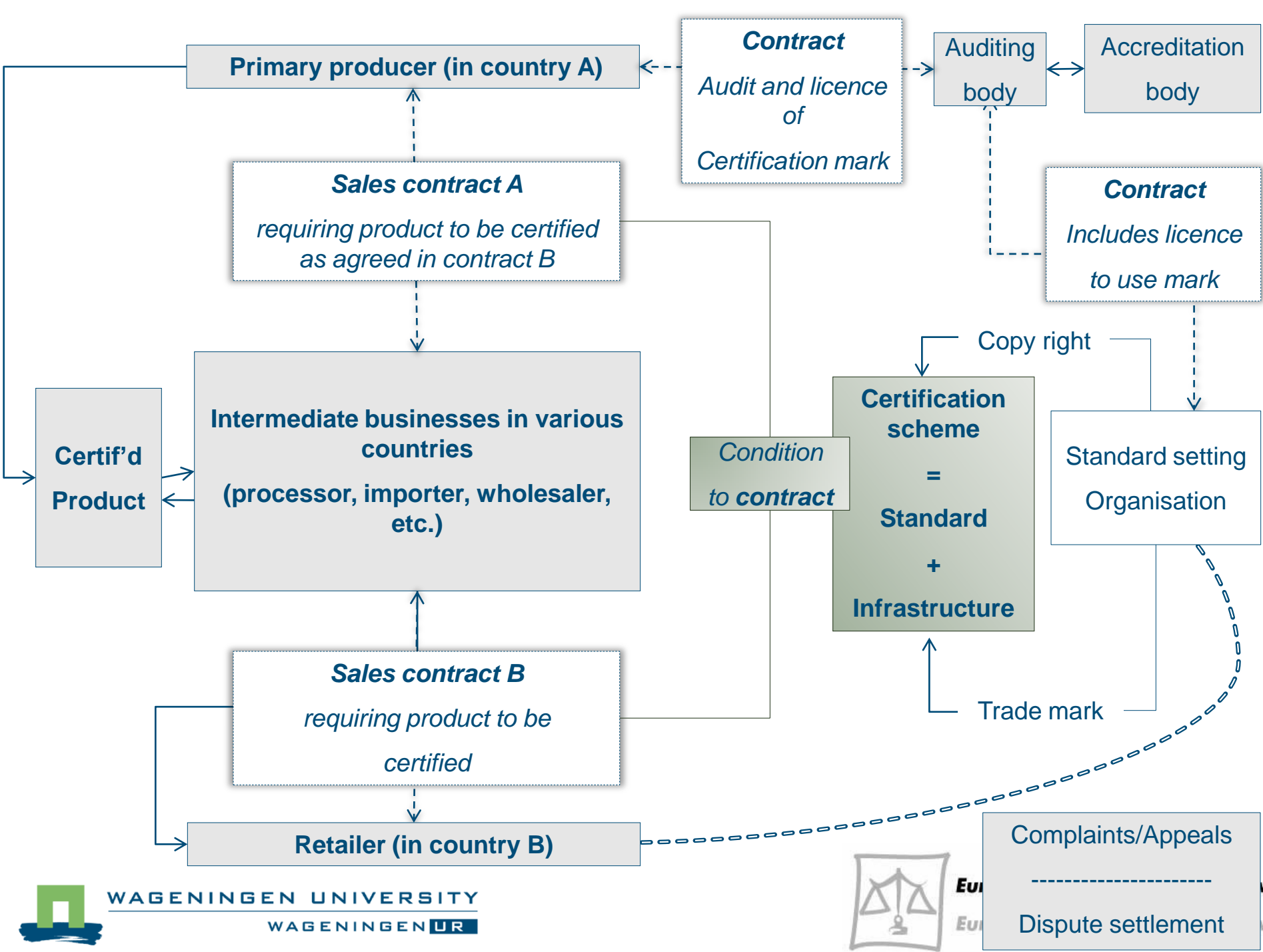
A close-up photograph of two black bulls with large, curved horns. They are facing each other, and their heads are the central focus of the image. They are wearing large, dark, spherical bells around their necks. The background is blurred, showing some yellow and blue colors.

■ Competition parameters

- Price
- Quantity
- Quality

■ Non-competitive issues?

- Safety



Dairy chain in NL

- Retail: 3 chains 70% of market
 - Require GFSI approved certification
- Processing: 10 businesses (80-85% FrieslandCampina)
 - Require KKM type certification + GMP+ feed
- Dairy farms: 18.000
 - Must comply with GlobalGAP (retail requirement)
 - Can source only from TrusQ or Safe Feed (now merging) (processor requirement)
- Compound feed: 150
 - Must comply with GMP+
- Feed ingredients
 - Must comply with GMP+

Competition law relevance

- Restraints on competition?
- Agreement/decision/concerted practice?
- Perceivable (merkbaar)?
- Justified?

Retail

- Regulator
 - Certification requirements for non/private label
- Facilitator (essential?)
 - Access to consumer
- Customer
 - Purchase for private label
 - Purchase branded products for sale
- Competitor
 - Private label vs. brands



A dramatic, low-key photograph of two muscular men shaking hands. The lighting is warm and focused on their hands and forearms, creating a sense of strength and agreement. The background is dark and out of focus.

Perceived unfair practices

- Copycatting
- Listing fees / delisting
- Restrictions on third party relations
- Discrimination
- Retroactive changes to contract
- Transfer of costs
- Define competition parameters brands and private labels
- Use information as competitor received as customer

Puzzles

- Is abuse possible without dominance?
- How to delineate relevant markets in chain relations?
- Possible remedies?

Table 7.6	Legal elements ensuring fair practices						
	Rights the weaker party can invoke	Requirements on the content of contracts	Access to civil courts	Remedy	Official controls by authorities	Sanctions by authorities	Collective action Countervailing cooperation
IPR	+	-	+	Injunction Damages	-	-	-
DCFR	+	-	+	Injunction Annulment Damages	-	-	-
Competition law	+	+	+	Injunction Annulment Damages	+	Injunction Fines	-
<i>Liberalization law</i>	+	+	+	Injunction Annulment Damages	+	Injunction Fines	-
Consumer law	+	+	+	Injunction Annulment Damages	+	Injunction Fines	+
GSCOP	+ -	+	+ -	?	-	-	-
CMO	-	-	-	-	-	-	+

Discussion

- The food sector is heavily regulated
- Room for manoeuvre is filled in with private regulation
- Can the market counterbalance power positions?
- Should the public sector lend a hand?

See also: **European
Food Law
Handbook**

■ <http://www.wageningenacademic.com/eifl>

Bernd van der Meulen
Menno van der Velde

**Reconciling
food law to
competitiveness**

Report on the regulatory environment of the
European food and dairy sector



Bernd van der Meulen

Thank you for your kind attention

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