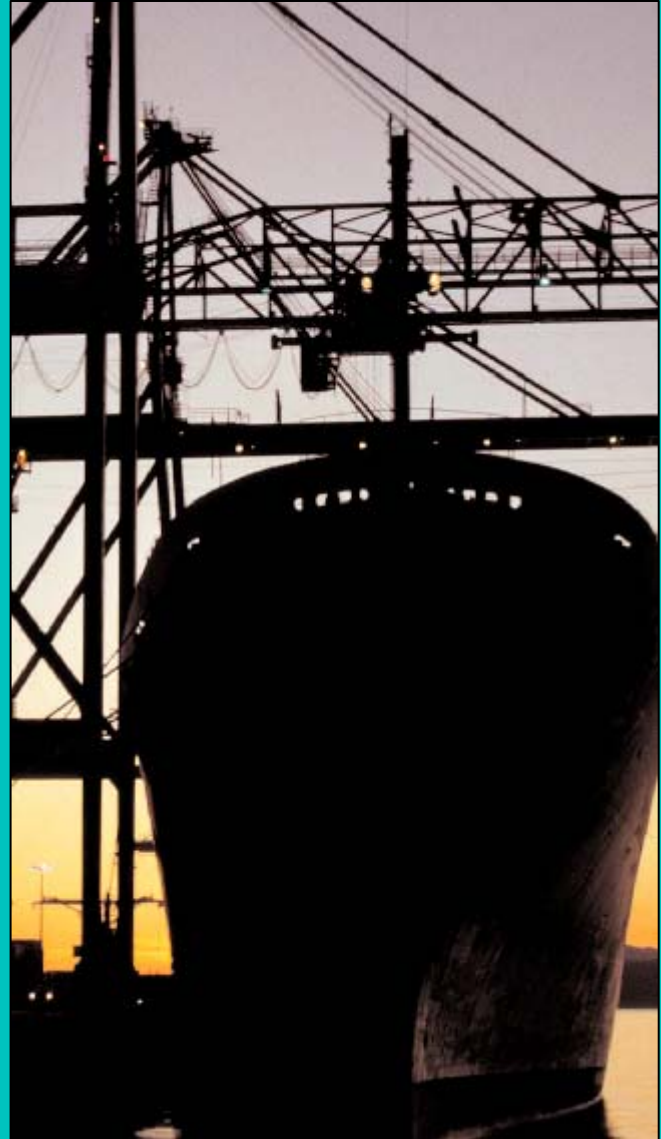


Module 6

Port Regulation



Introduction : Public Interest Concerns

- **Economic oversight** : fair and competitive services
- **Technical oversight** : navigation and safety
- **Environmental oversight** : hazardous materials, safety incidents, land use planning...
- **Social or administrative oversight** : equitable and just treatment of workers

Port Regulation

- Regulatory concerns when formulating a port reform strategy
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- Summary and conclusions

How do ports compete ?

- **Inter-port competition** : for same **trades**
- **Intra-port competition** : for same **markets**
- **Intra-terminal competition** : for same **services** within the same terminal

Assessing Port Competition (1/2)

- **Transport options** : technical capabilities of the ports, available inland connections, overall transport system costs
- **Operational performance** : **berth occupancy**, **ship waiting time** and **berth utilization ratio** assess the supply/demand balance
- **Tariff comparisons** with **historical** rates, with rates at **other ports** in the same country and with theoretical rates based on “**model port**” costs
- **Financial performance** : financial profit should not be “abnormally” high. Return on equity and return on assets relate it to investment.

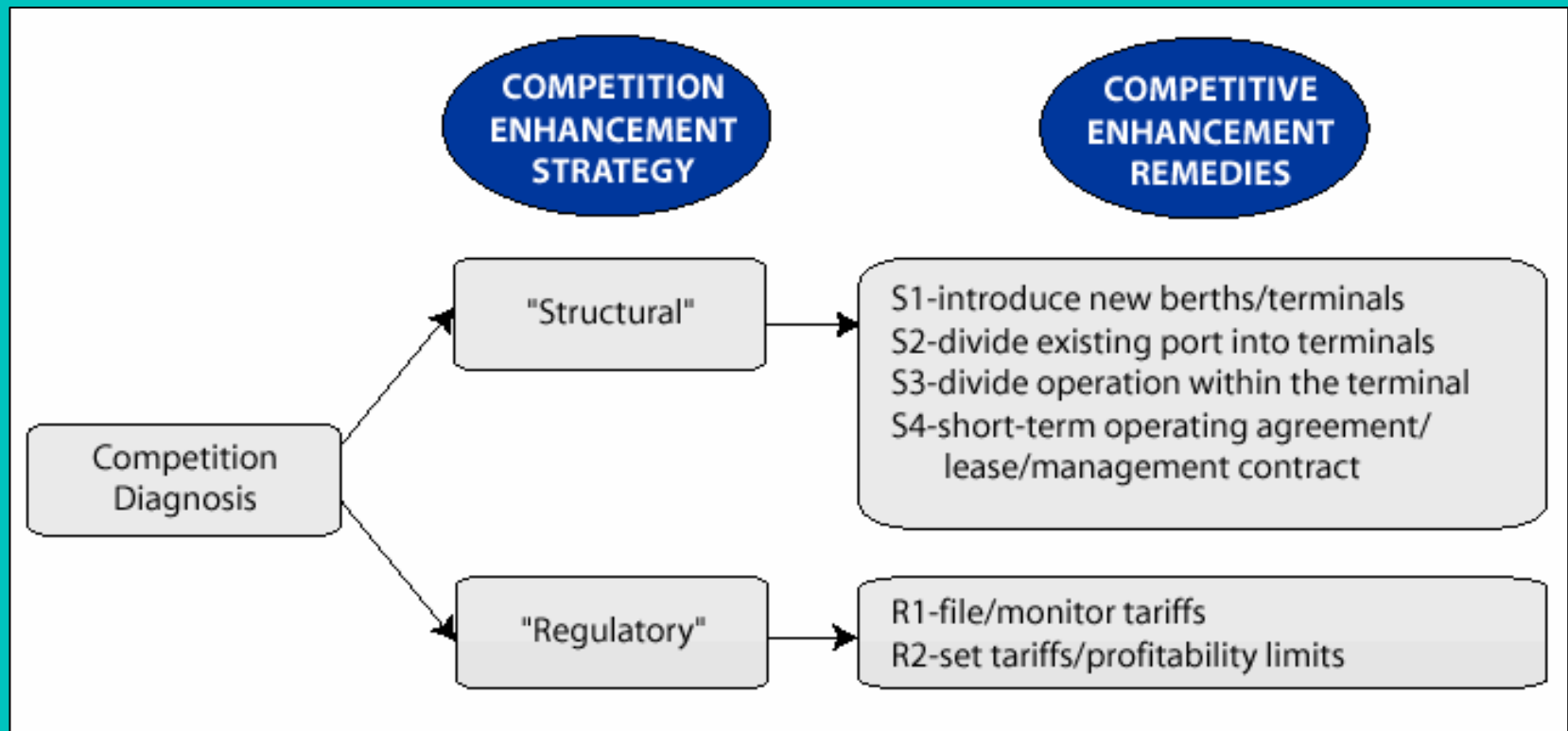
Costs of an Inadequate Regulatory Framework

- **Inefficient** and **high-cost** port services
- Harm to product **competitiveness** in world markets, carrier penalty surcharges
- Creation of **private monopolies**
- **Illegal practices**: Pricing or market collusion, predatory pricing, service bundling (tying arrangement), exclusive dealing

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Competition Enhancement Strategies



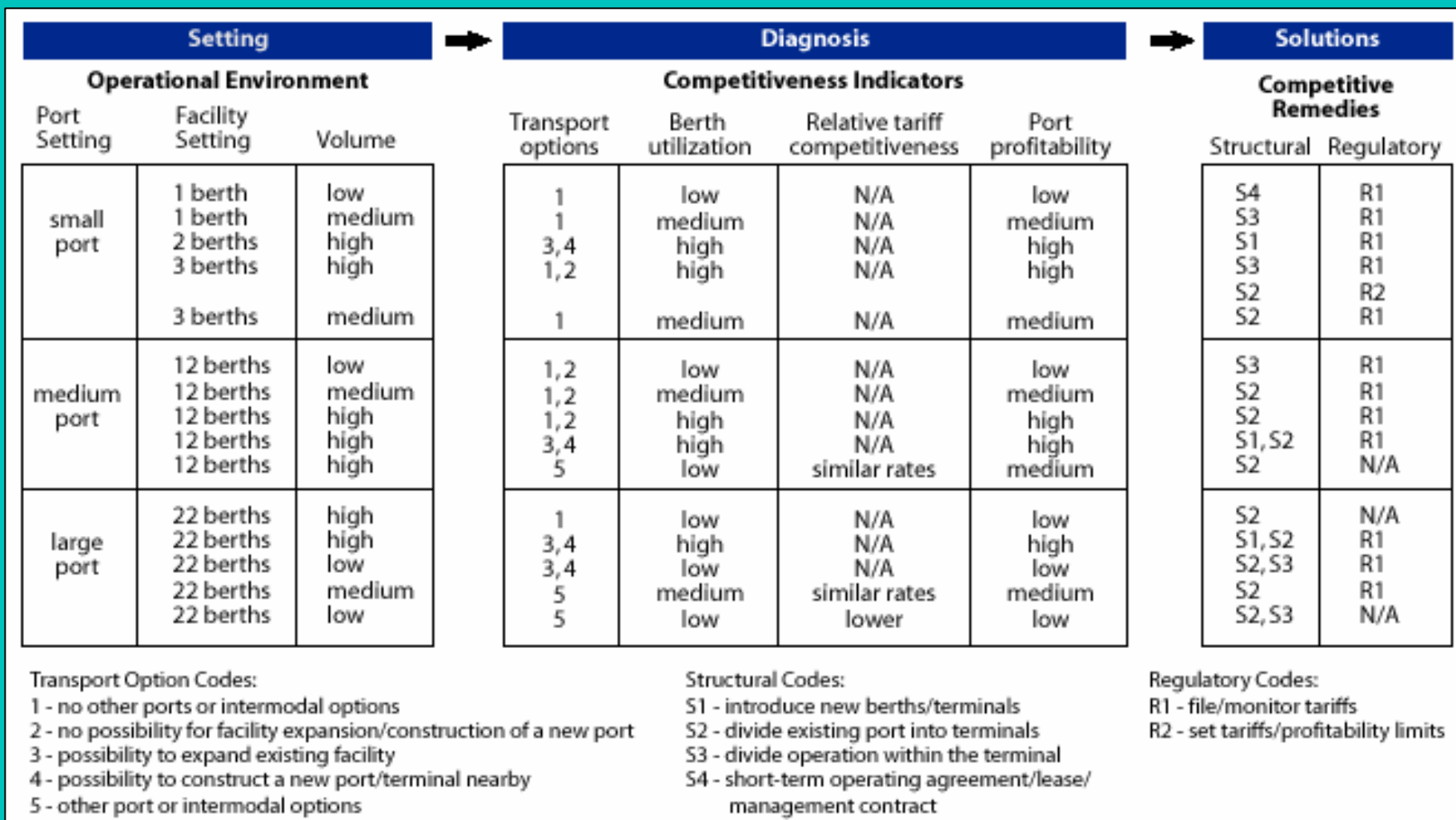
Structural Strategies

- Introduces competitive pressures
- Competition reduces the level of regulation needed
- Balance sought between
 - efficiency gains from economies of scope
 - cost reductions from competitive pressures

Regulatory Strategies

- Tariff filing to monitor for and discourage anti-competitive behavior
- Setting of tariffs to prevent monopolistic behavior
- Encourage communication between port planners and regulators to determine if structural remedies are available

Decision Framework for Selecting Port Competition



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Regulatory Design Principles

A port regulatory system should be...

- Realistic
- Not too restrictive or controlling
- Consistent with the institutional capabilities and resources of regulators

Guidelines for Regulatory Design

- Understanding of competitive environment
- Understanding risk of antitrust behavior
- Define form of economic regulation
- Separate port operations regulation from competition regulation
- For economic regulation, knowledge of cost structure
- For monitoring behavior, define the reporting requirements
- Communicating antitrust competition policy
- Input from regulated in policy and case deliberations
- Enforceable decisions with recourse for appeal

Eight Steps in Regulatory System Design

1. Specify objectives
2. Review existing law
3. Determine institutional arrangements for regulatory oversight
4. Consider extent of regulatory discretion
5. Identify regulatory tools/mechanisms
6. Define operational/financial performance indicators
7. Establish case disposition and appeal process
8. Incorporate regulatory policy into law

Step 1 : Specify the essential regulatory objectives and tasks

- Promotion of **efficiency**
- Satisfaction of **demand**
- Protection of **consumers and users**
- Protection and promotion of **competition**
- Prevention of pricing or service **discrimination**
- Protection of **investors** against unfair government action

Step 2 : Conduct legal review of regulatory system

- Constitutional and legislative **division of responsibilities** for service among national, regional and local governments
- General legislation affecting **private sector involvement**
- Issues related to **land use titling**
- **Competition** law
- **Contract and Concession** law

Step 3 : Determine Institutional Arrangements for Regulatory Oversight (1/4)

- Should the regulation be **multisectoral** or **sector-specific**?
 - **Advantages** of a multisectoral regulatory agency:
 - administrative **economies of scope**
 - lower risk of corruption
 - **uniform** application of competition policy across **all sectors**
 - allows cross-sectoral impact assessment of possible enforcement action
 - **Drawbacks** :
 - array of cases to pursue
 - insufficient **specific industry expertise**

Step 3 : Determine Institutional Arrangements for Regulatory Oversight (2/4)

- Should the regulator be **centralized** or **decentralized**?
- How can the regulatory entity encourage direct **participation of port users**?
 - Establishing **user advisory boards**
 - Encouraging **cooperation in evidence gathering/ testimony in regulatory hearings**
 - Having **user representatives** on Port Authority boards
 - Establish web site to seek input, convey case decisions
- Port user membership on regulatory boards should not be permitted

Step 3 : Determine Institutional Arrangements for Regulatory Oversight (3/4)

- How can the regulatory entity's **independence** be protected ?
 - **Threats** :
 - Short-term **political pressure**
 - **Undue influence** of port operators and service providers
 - **Remedies** :
 - Establish the agency as an **independent** body
 - **Professionalization** of the regulatory function
 - Rules avoiding potential **conflict of interest** among regulatory staff
 - **Separation** of the *competition* and *operational* regulations
 - **Anonymity** in case assignments
 - No involvement of CEO in actual decisions
 - Case disposition independence
 - Appoint board members/commissioners to staggered terms

Step 3 : Determine Institutional Arrangements for Regulatory Oversight (4/4)

- How should the regulatory authority **coordinate** with other regulatory institutions ?
- How can requirements for **staffing** and **technical capabilities** be met ?

Exemption from civil service salary restrictions and earmark funding to...

- Recruit and retain **better-qualified** staff
- Hire **external consultants**
- Hire **verification companies** for performance audits

Step 4 : Consider Degree of Regulatory Discretion

- Seek balance between regulatory function and operational encroachment
- Avoid being cornered in -- assure ability to change rules as market and other conditions dictate

Step 5 : Identify Appropriate Regulatory Tools and Mechanisms

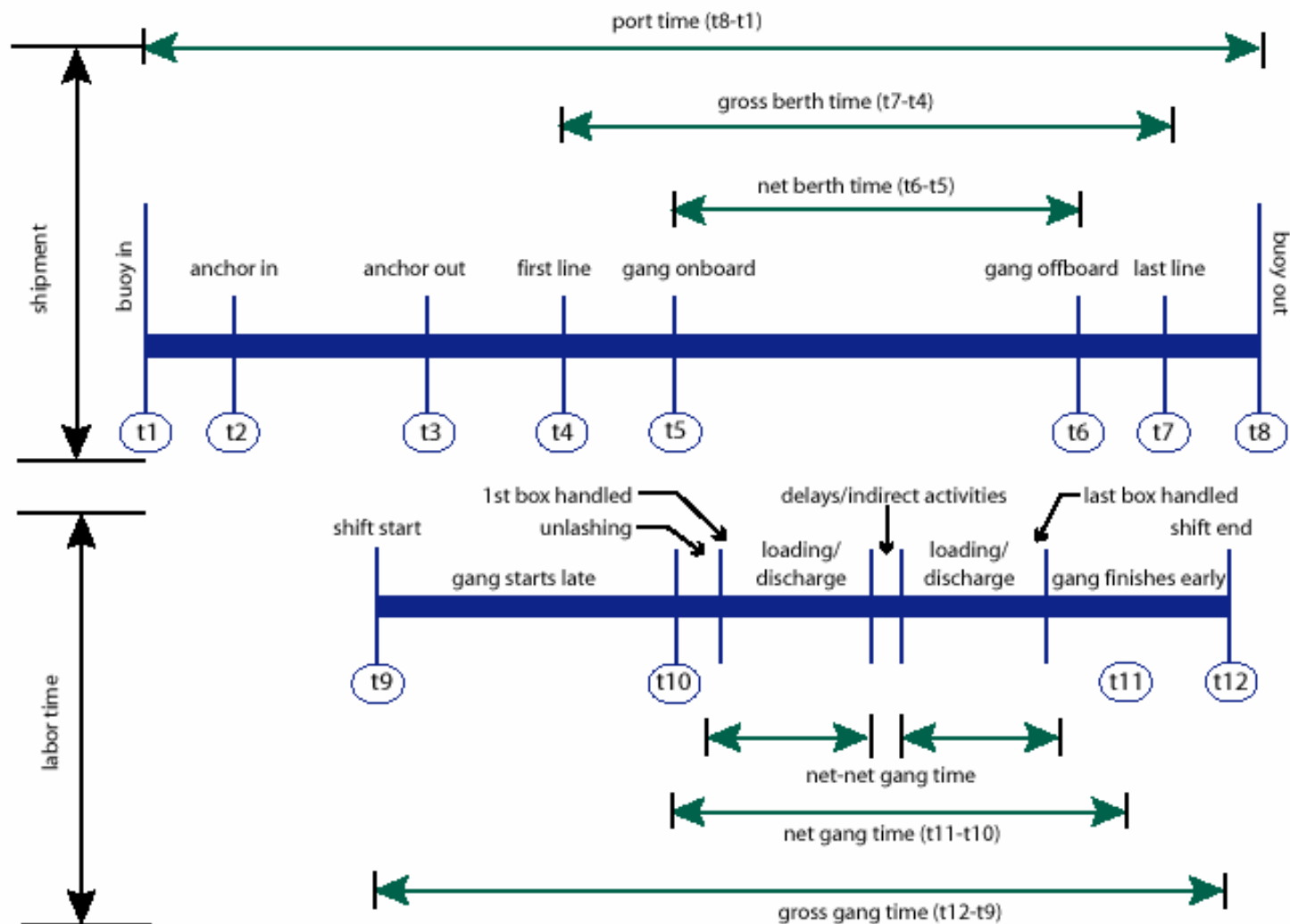
- **Pricing regime** may be applicable if...
 - Sufficient **information** is **available**
 - The authority can require the regulated enterprise to **disclose** it
 - This information's **accuracy and reliability** are **verifiable**
- Different from country to country and from sector to sector:
 - **Rate-of-return** regulation
 - **Price caps** regulation
 - **Revenue-yield** controls

Step 6 : Specify Operating and Financial Performance Indicators

Performance standards may...

- **Change** in accord with the **investment obligations** scheduled during the term of agreement
- Take into account the operator's **controllability of indicators**
- Address the **vessel's time in port**, particularly on the berth (connectivity, frequency, gross berth productivity, waiting rate...)
- Take into account the **available technology**

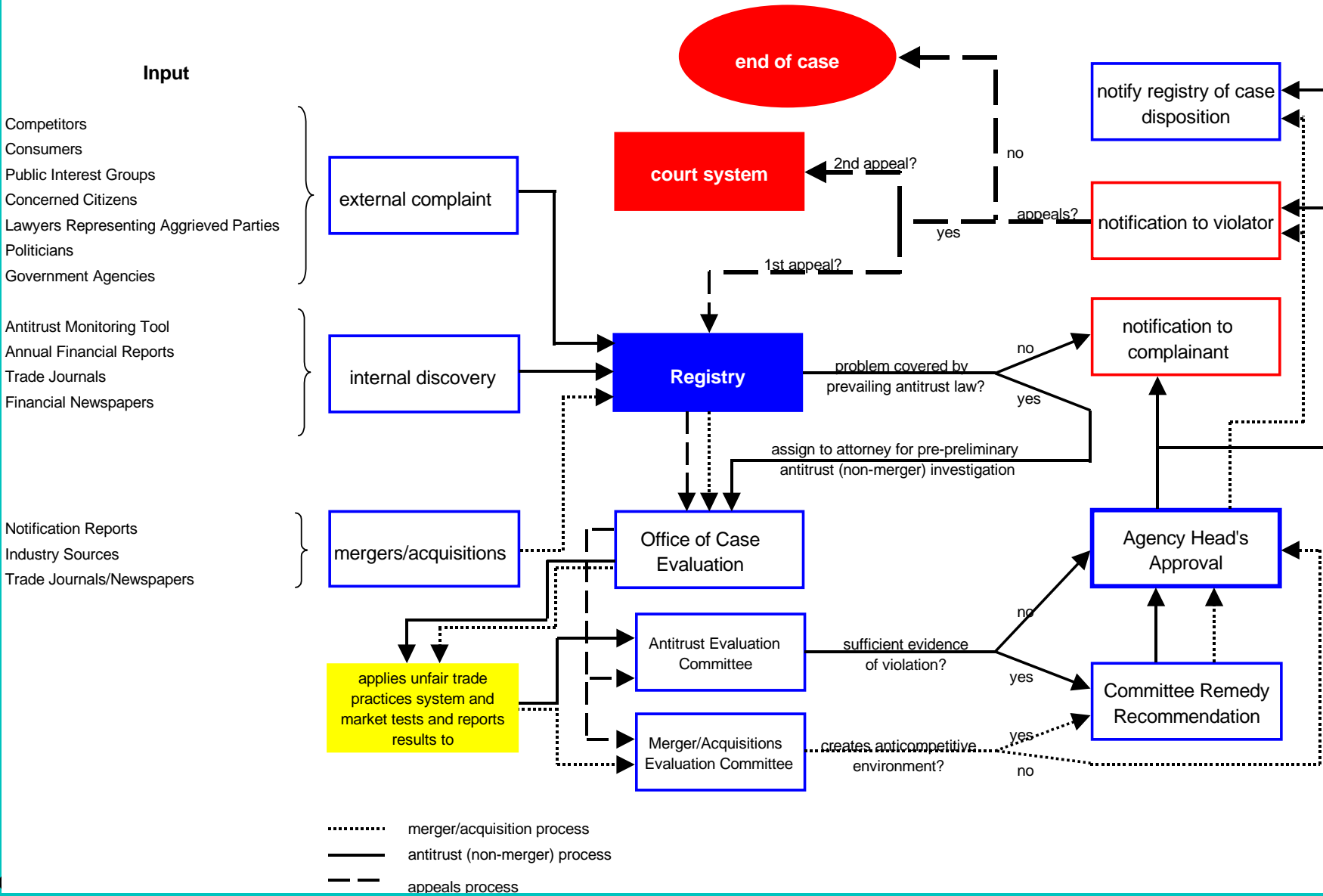
“Production” process and time spent in the port



Step 7 : Establish Appeals Process and Procedures

- Appeal through regulator's case disposition process
- Appeal through the courts
- International arbitration

Case Disposition Process



Step 8 : Incorporate Regulatory Details into Laws and Contracts

- Should **all regulatory details** be encompassed in the law or within the contract ?
 - Highly specified law and contracts will **lack flexibility** and will often need to be **amended/renegotiated**
- Regulatory approach and requirements should reflect a vision of the possible future competitive environment

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General Principles to Follow

- **Governments :**
 - Clear understanding of the **competitive environment** of the port sector
 - Focus on “structural” measures to induce competition
 - Seek a balance between protecting the public interest and assuring a “reasonable” regulatory system
 - Focus on the transport options available to port users
- **Regulators :**
 - Choice of the **economic regulation** to be applied
 - **Separation of regulation of operations** and *competition*
 - Opportunity for affected parties to **present their views** and to **appeal**