



**State Administration for Industry & Commerce
of the People's Republic of China**



第十六届中欧竞争周

The 16th EU-China Competition Week

对独家经销问题的思考

Issues on Exclusive sales

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对独家经销的基本态度/ General View on Exclusive Sales

- 独家经销是一种商业模式
Exclusive sales is a common business model.
- 具有一定的积极意义，同时也可能产生排除、限制竞争的问题。
There is both positive and negative effect on competition.
- 当其对市场竞争产生的不良影响大于积极影响，则应予以规制。
The conduct of exclusive sales may violate competition law if its negative effect on the market competition exceeds the positive effect.



举例/ Example

•市场上有4家企业生产同种原料药。2016年前，4家原料药生产企业既向经销商销售该原料药，又直接向药品生产企业销售该原料药。

There are four manufacturers who are manufacturing a certain kind of pharmaceutical raw material (PRM) in the market. The four manufacturers had been providing the PRM to PRM distributors as well as finished medicine producers before the year of 2016.

•2016年，经销企业A与4家原料药生产企业分别达成协议，由A独家在市场上销售4家原料药企业生产的该原料药。

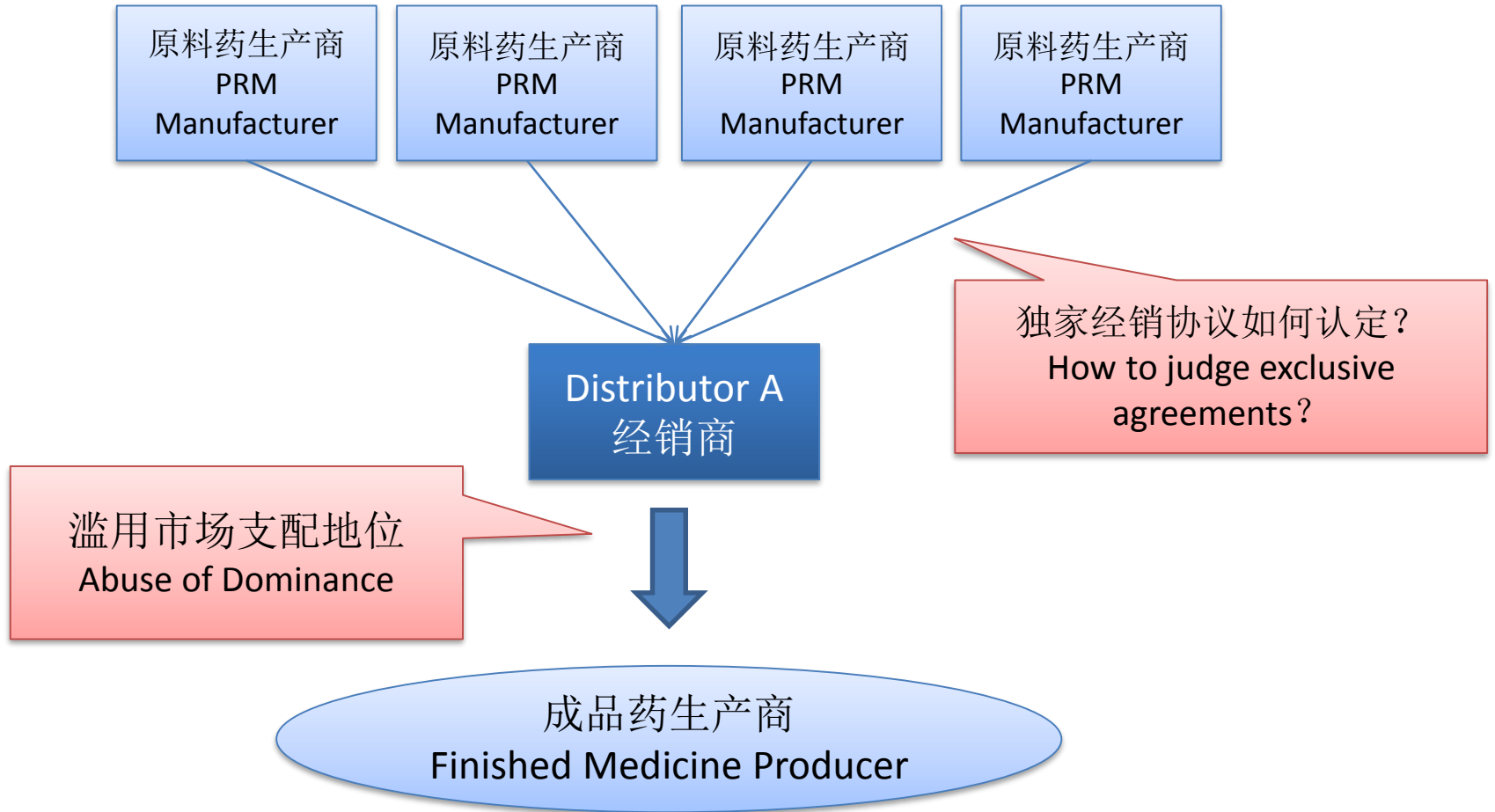
In 2016, Enterprise A, a distributor, made agreements with the four manufacturers respectively, saying that A is engaged to sell the PRM exclusively on the market.

•之后，A利用其独家销售地位，在市场以较高价格向药品制剂企业销售该原料药，并附加一些不合理交易条件，如要求药品生产企业将其生产的药品交由其销售等。

After obtaining the exclusive right to sell the PRM, A raised the PRM price and imposed unreasonable conditions to the finished medicine producers.



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损害竞争效果/ Foreclosure

- 其他企业很难进入销售市场，提高了销售市场的进入障碍，产生了市场封锁效应

Enhancing the entry barrier to the market and triggering the lock-in effect, which prevents other potential competitors from entering the market

- 改变了销售市场结构，实质减少了销售市场的销售者，提高了销售市场的集中度以及A企业对下游市场的控制力。

Concentrating the sales market, reducing the competitors in the sales market and reinforcing the control of downstream

- 产生横向共谋的效果。4家原料药生产企业无需为推销自己的产品开展竞争，4家原料药的市场价格得到了有效协调。

Anti-competitive effect equal to cartel: the PRM price has been coordinated among the four PRM manufacturers



独家经销协议的认定

How to apply competition law to exclusive agreements

《反垄断法》第13条
横向垄断协议？

Horizontal monopolistic
agreement?

《反垄断法》第14条
纵向垄断协议？

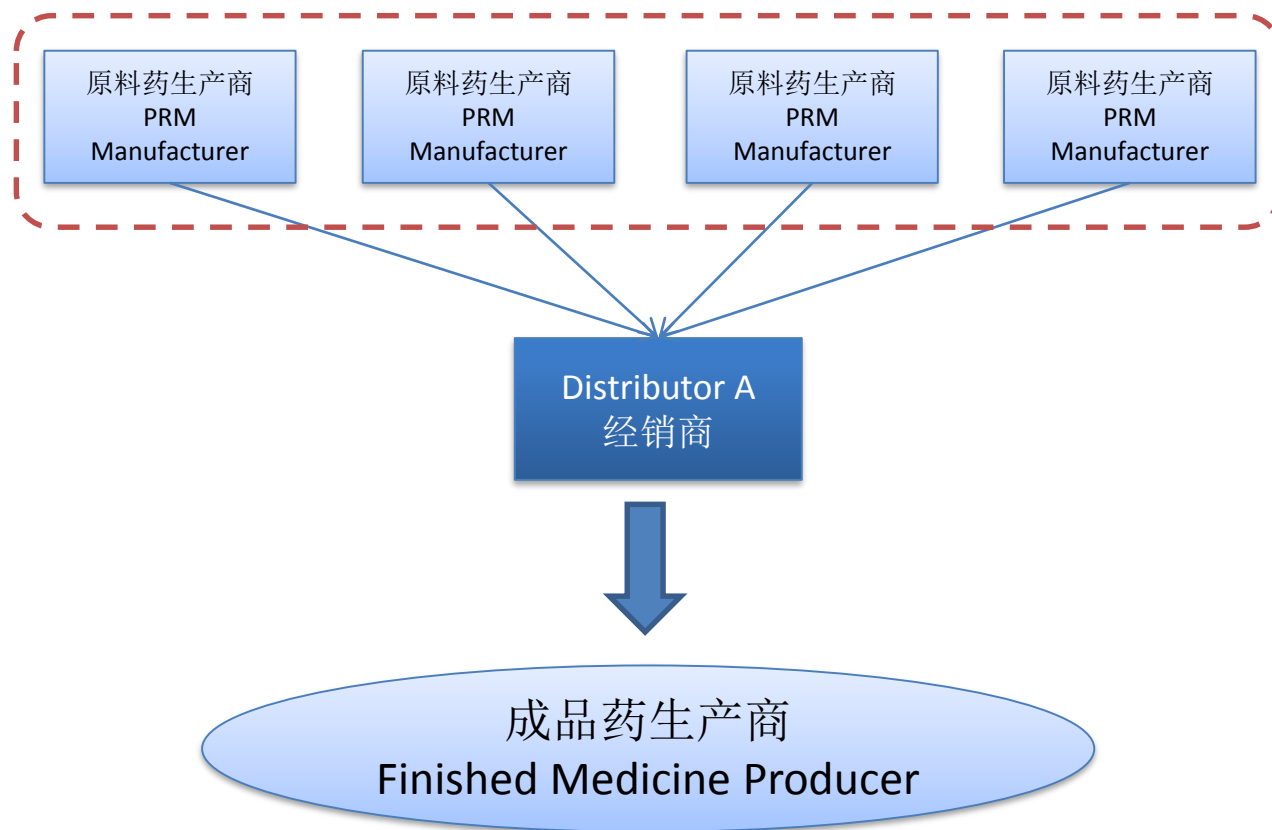
Vertical monopolistic
agreements?



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How to apply competition law to exclusive agreements

1. 原料药生产商共谋 Collusion among PRM Manufacturers



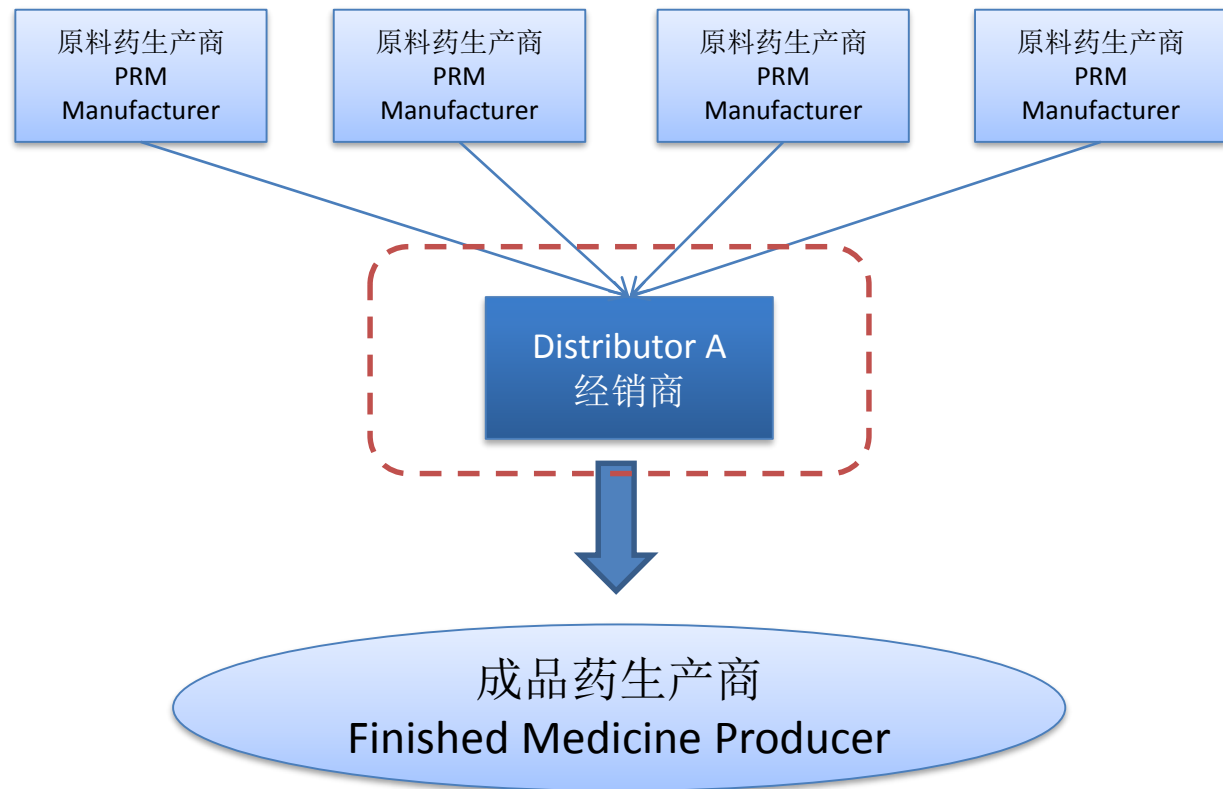


独家经销协议的认定

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2. 经销商发起

Distributor's offer



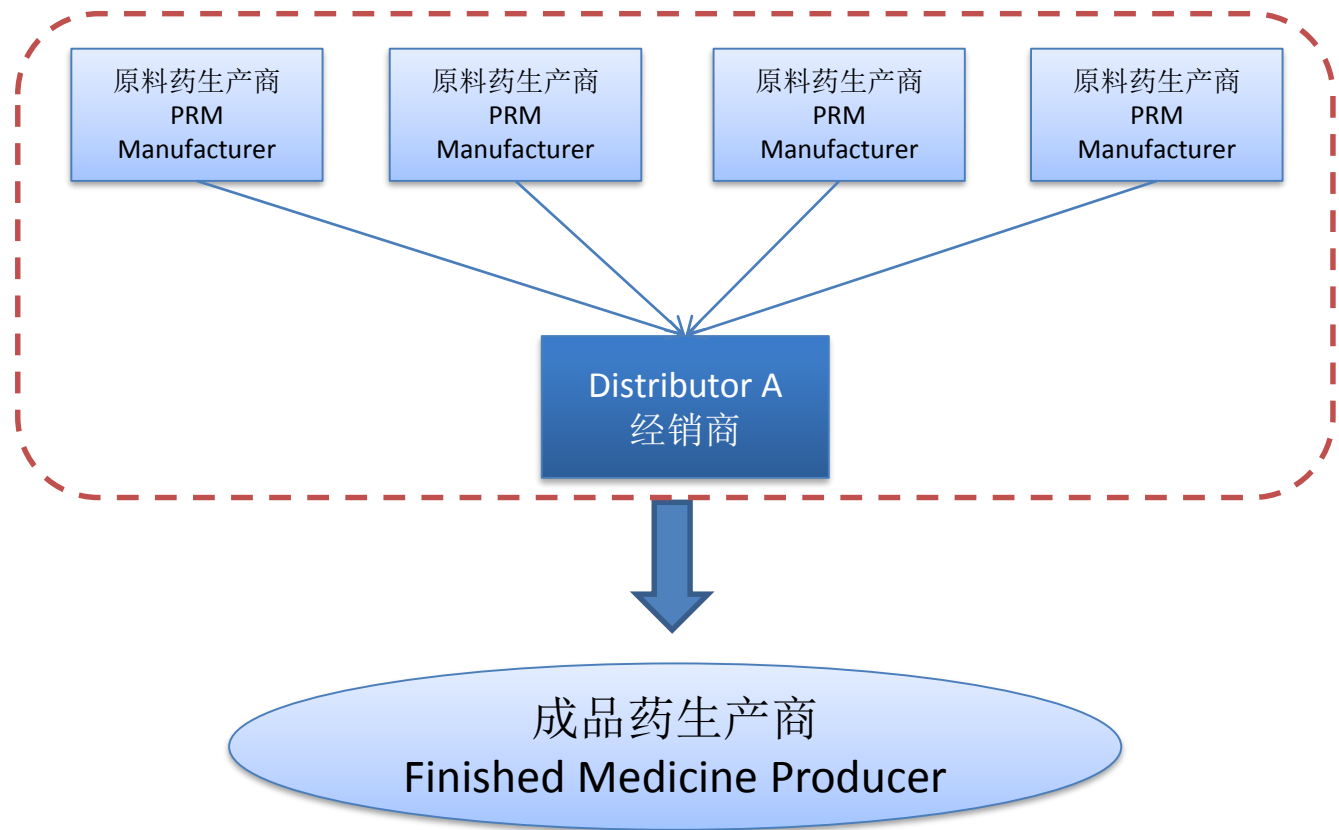


独家经销协议的认定

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3. 上下游共谋

Collusion between
upstream and downstream





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认定独家经销协议是否构成垄断协议，分析的原则：

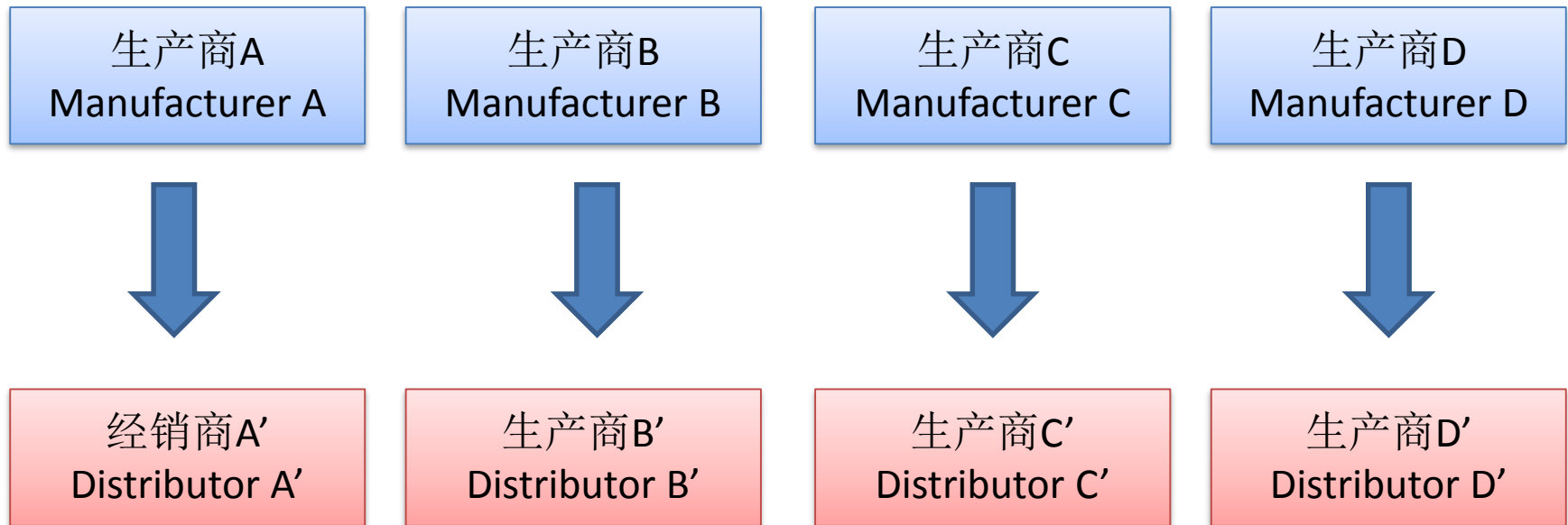
A basic principle to decide whether an exclusive agreement constitute a monopolistic agreement:

- 评估对市场竞争是否产生不良影响， 以及
Whether the exclusive agreement has an anti-competitive effect, and
- 这种不良影响的程度
The extent of the anti-competitive effect



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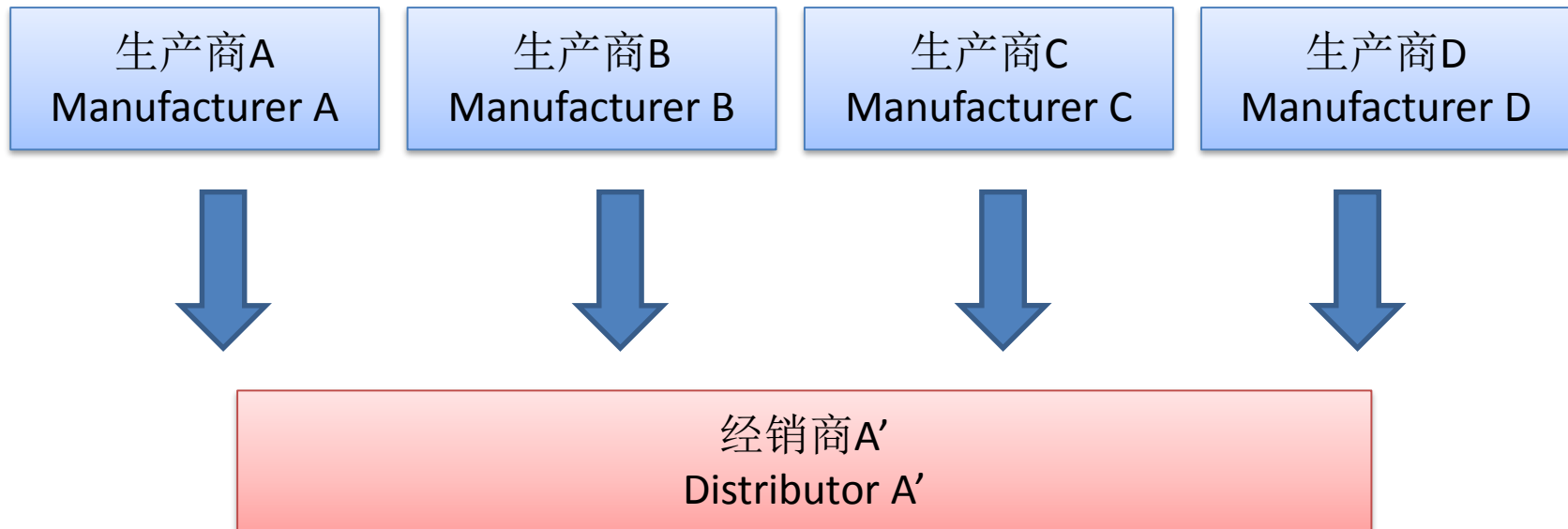
How to apply competition law to exclusive agreements





独家经销协议的认定

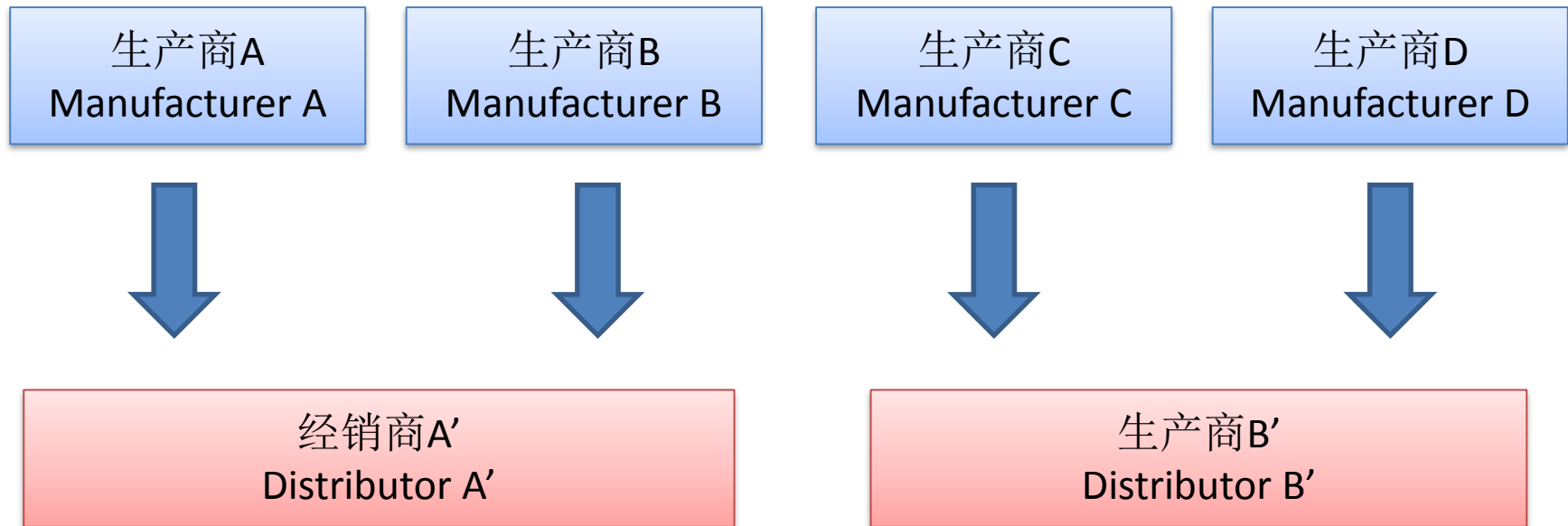
How to apply competition law to exclusive agreements





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谢谢！

Thank you!