

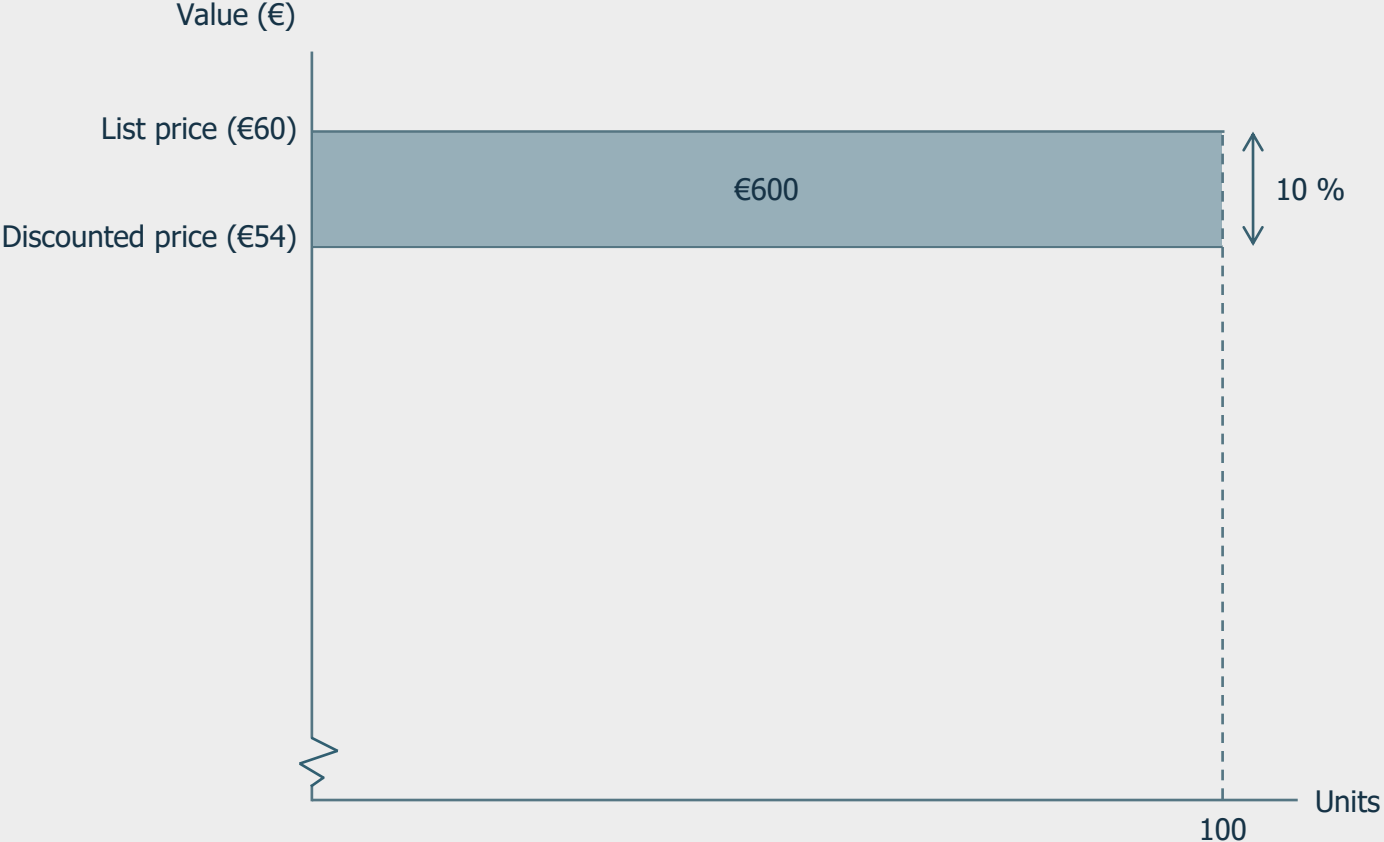
3 February 2025

Putting the AEC test into work

How did the More Economic Approach and the AEC test change how we review rebates?

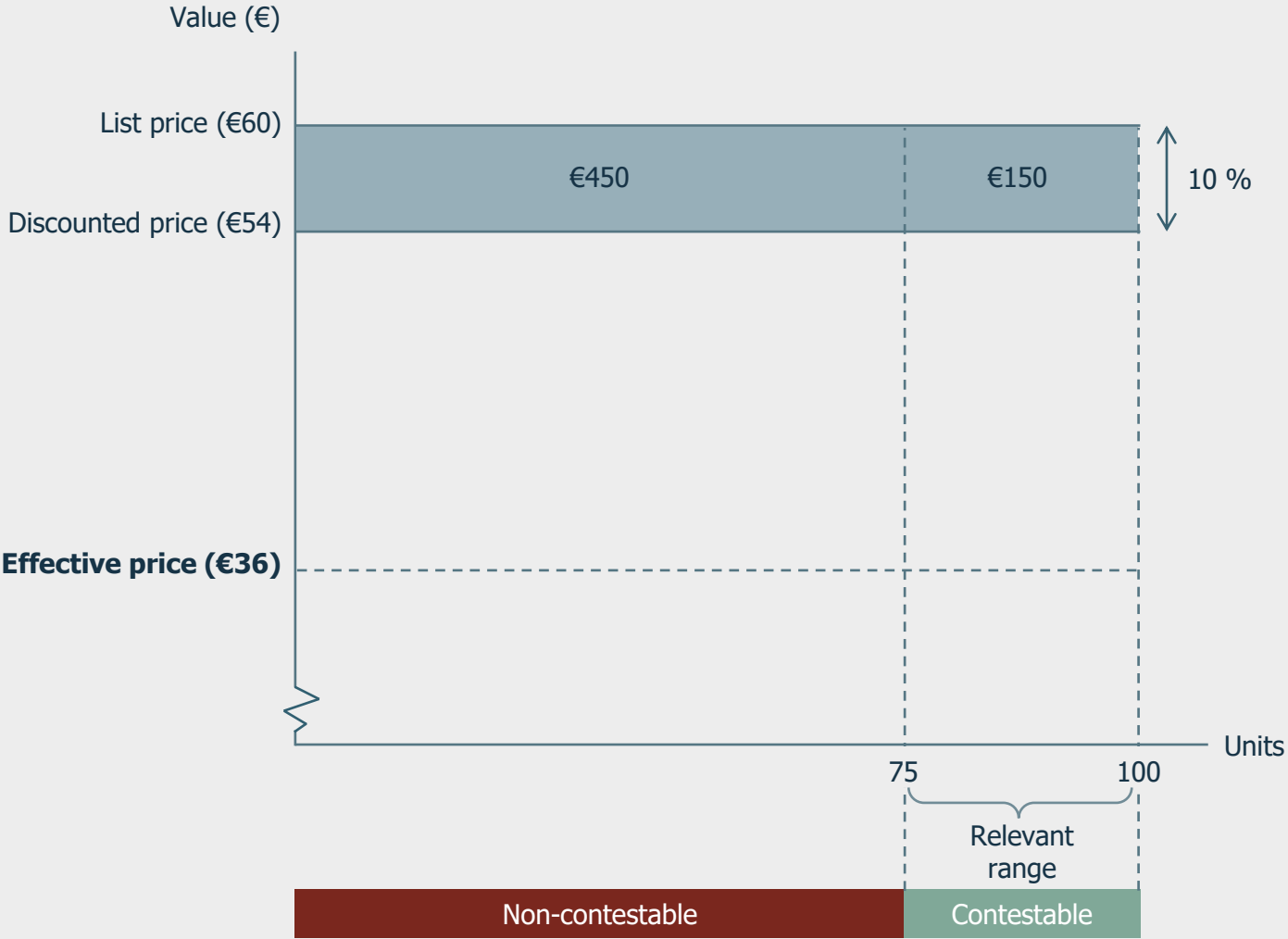
Rie Paving Mortensen, Chief Economist, Partner

Illustration of the AEC test for retroactive rebates (exclusivity rebate)



	
Total rebate	$(€60 - €54) * 100 = €600$

Illustration of the AEC test for retroactive rebates (exclusivity rebate)





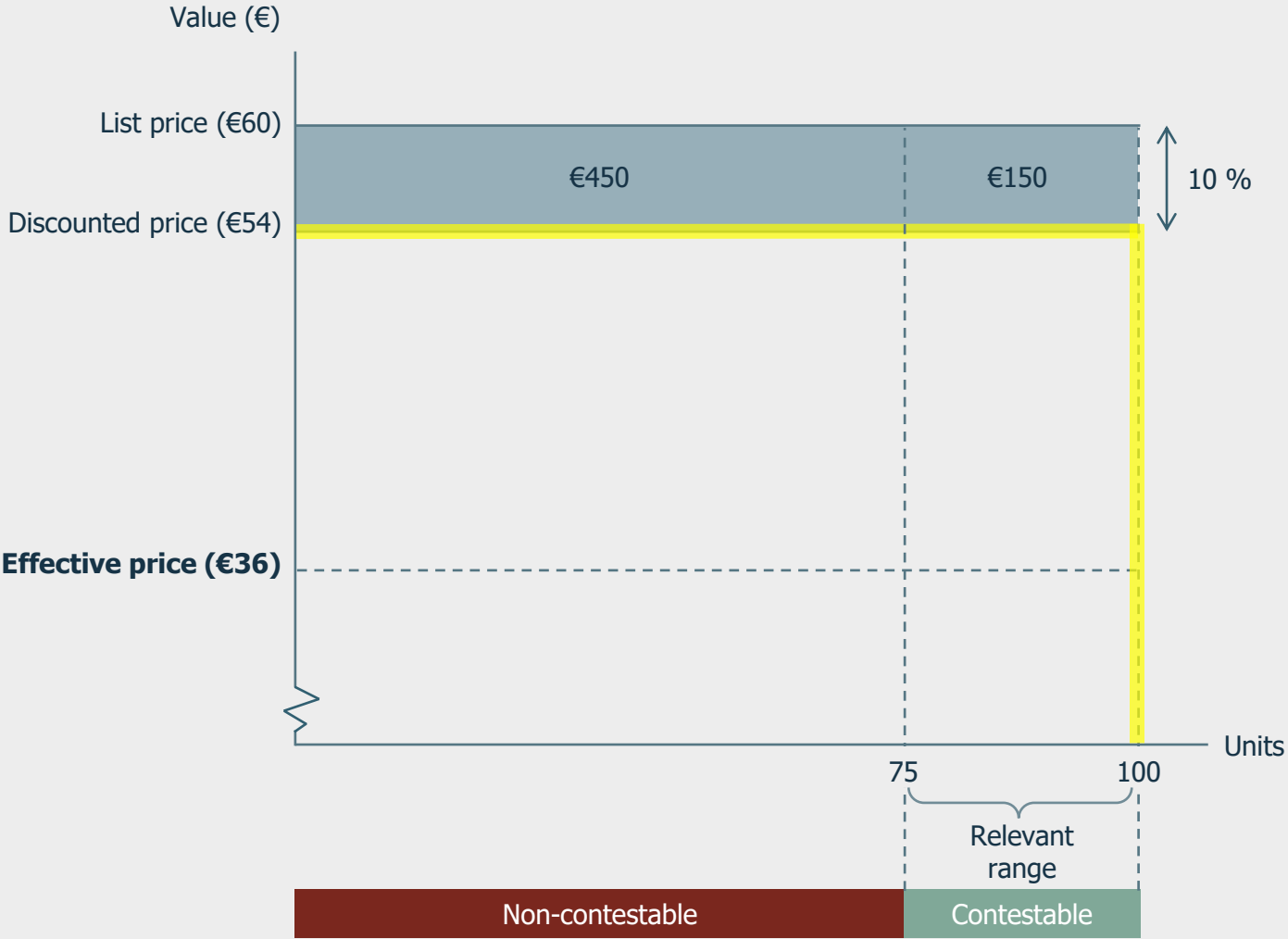
	
Total rebate	$(€60 - €54) * 100 = €600$
Required rebate pr. unit for units within the relevant range	$\frac{€600}{25} = €24$
Effective price	$€60 - €24 = €36$

Illustration of the AEC test for retroactive rebates (exclusivity rebate)




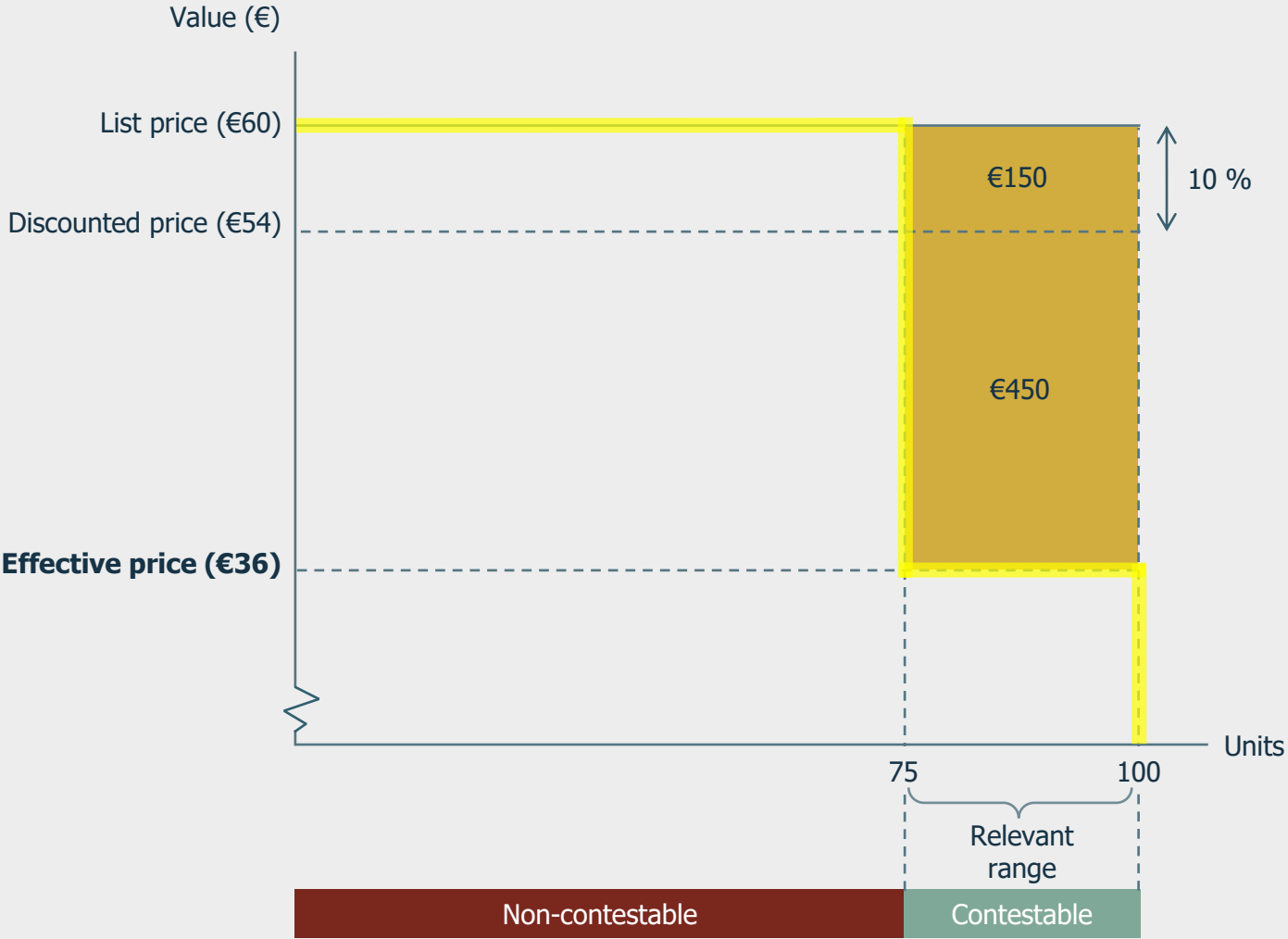
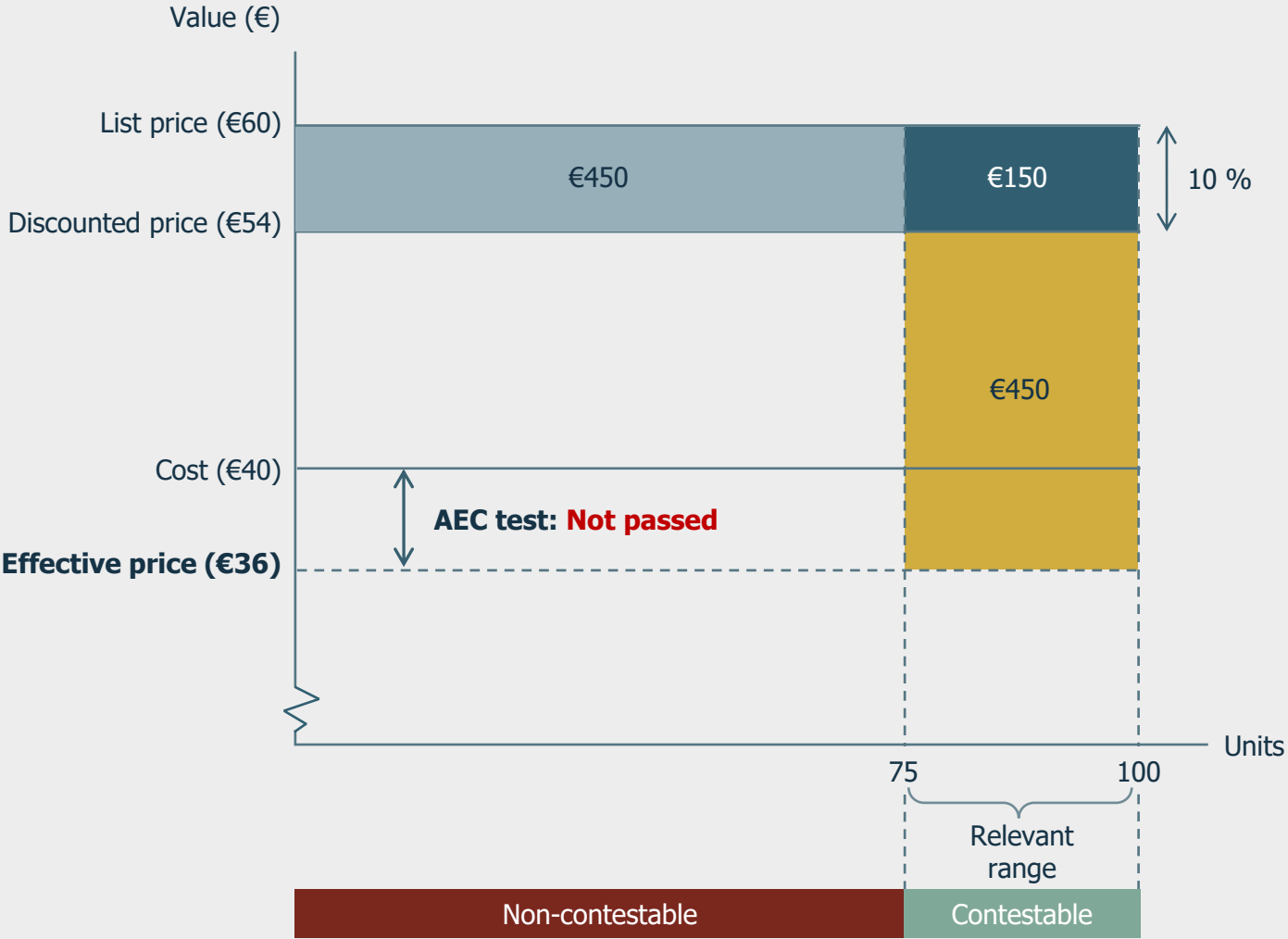
	
Total rebate	$(€60 - €54) * 100 = €600$



Illustration of the AEC test for retroactive rebates (exclusivity rebate)



	
Total rebate	$(€60 - €36) * 25 = €600$

Illustration of the AEC test for retroactive rebates (exclusivity rebate)



	
Total rebate	$(€60 - €54) * 100 = €600$
Required rebate pr. unit for units within the relevant range	$\frac{€600}{25} = €24$
Effective price	$€60 - €24 = €36$

Relevant cost benchmark?

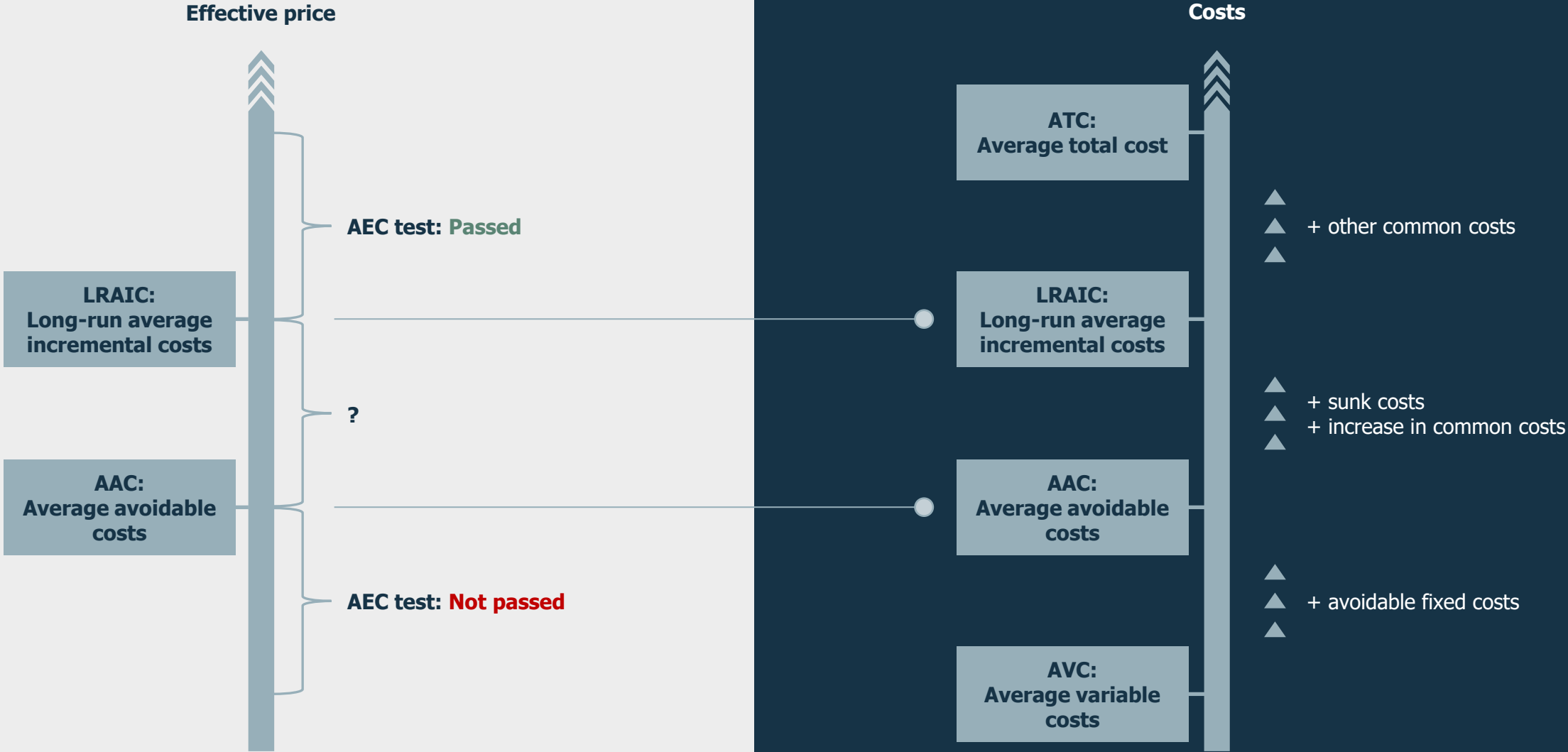
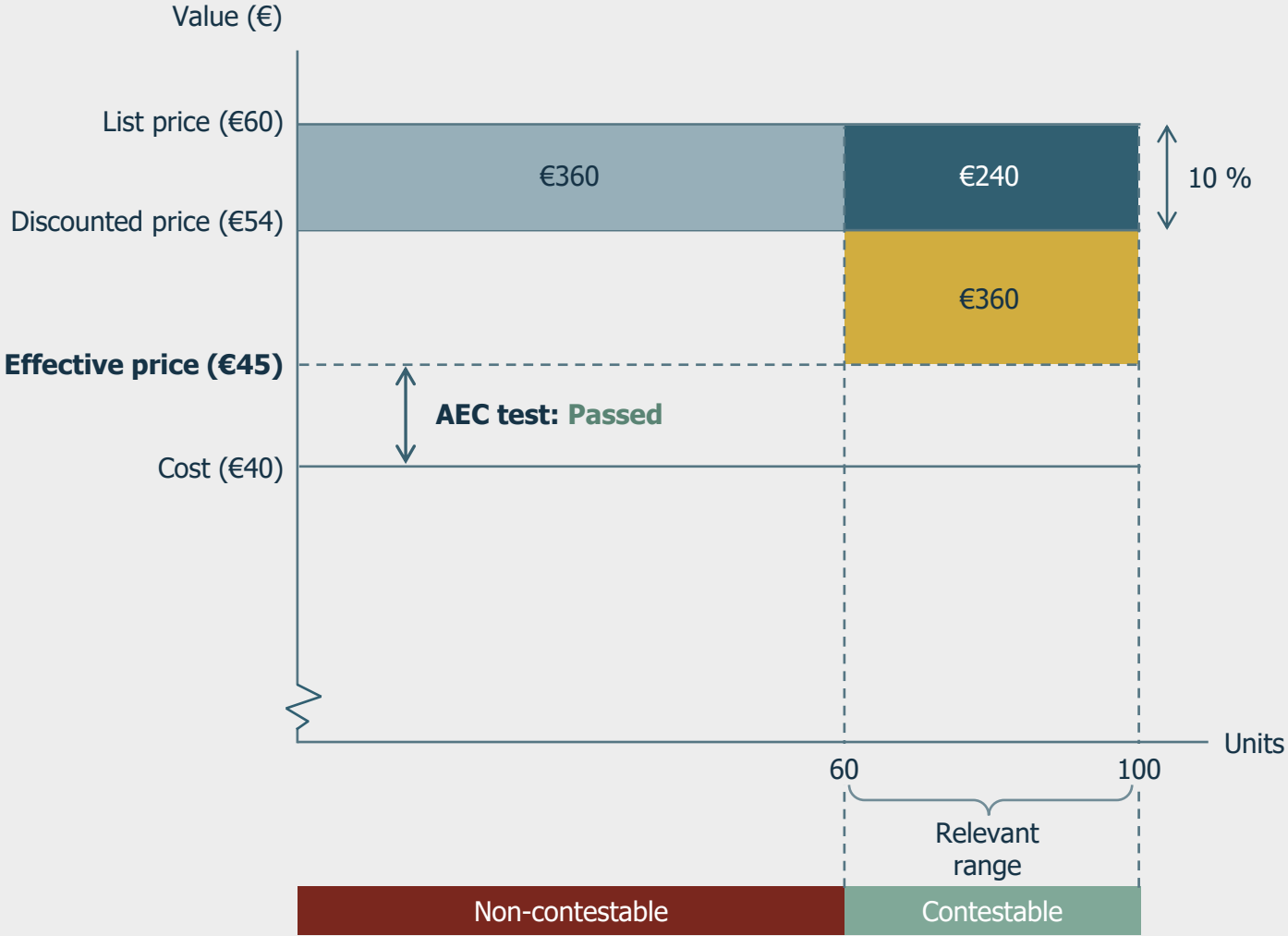


Illustration of the AEC test for retroactive rebates (exclusivity rebate)





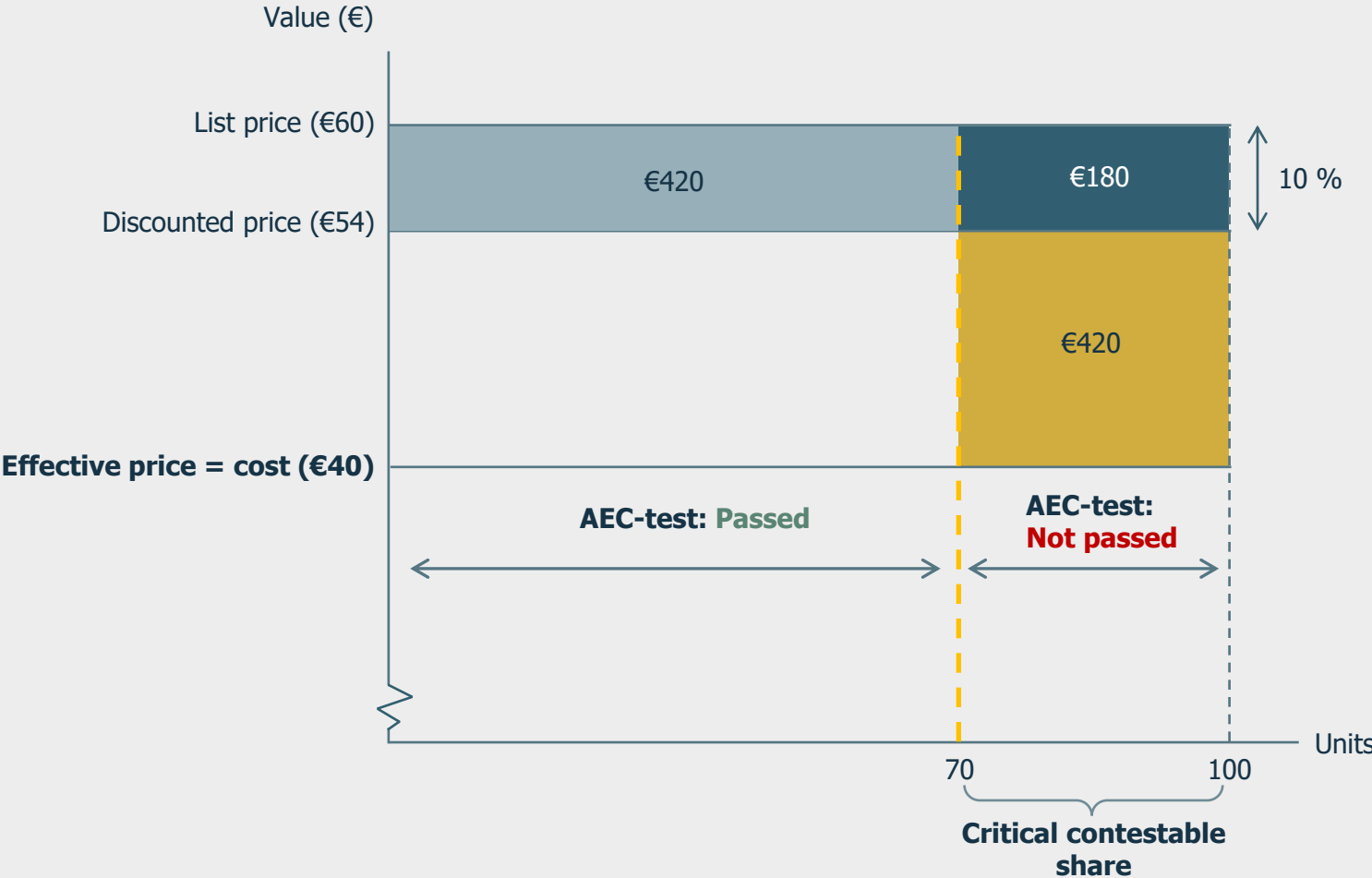
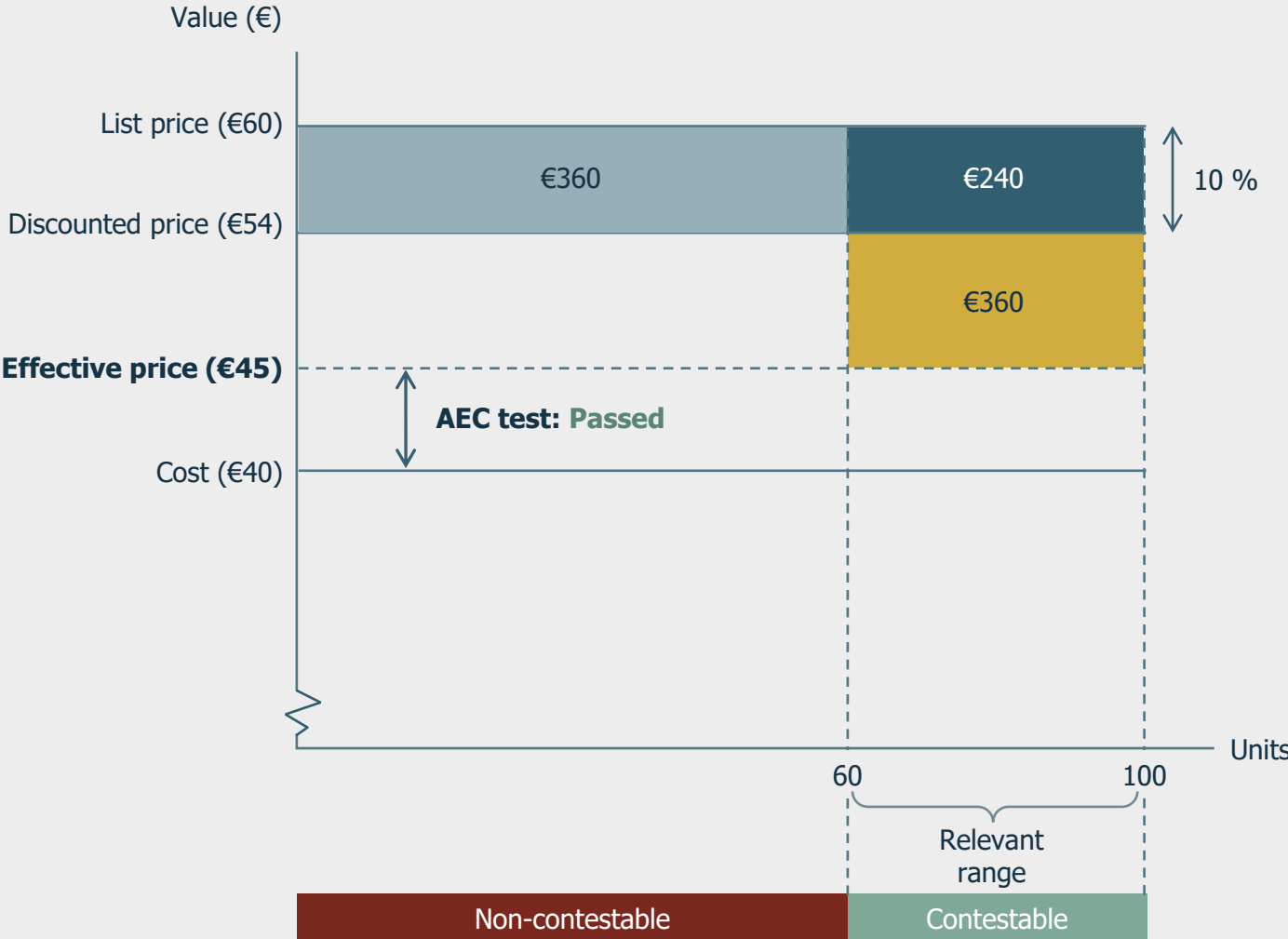
	
Total rebate	$(€60 - €54) * 100 = €600$
Required rebate pr. unit for units within the relevant range	$\frac{€600}{40} = €15$
Effective price	$€60 - €15 = €45$

Illustration of critical contestable share



	
Total rebate	$(€60 - €54) * 100 = €600$
Effective price = Cost	€40
Required rebate pr. unit for units within the relevant range	$€60 - €40 = €20$
Critical contestable share	$\frac{€600}{€20} = 30$

Illustration of the AEC test for retroactive rebates (exclusivity rebate)





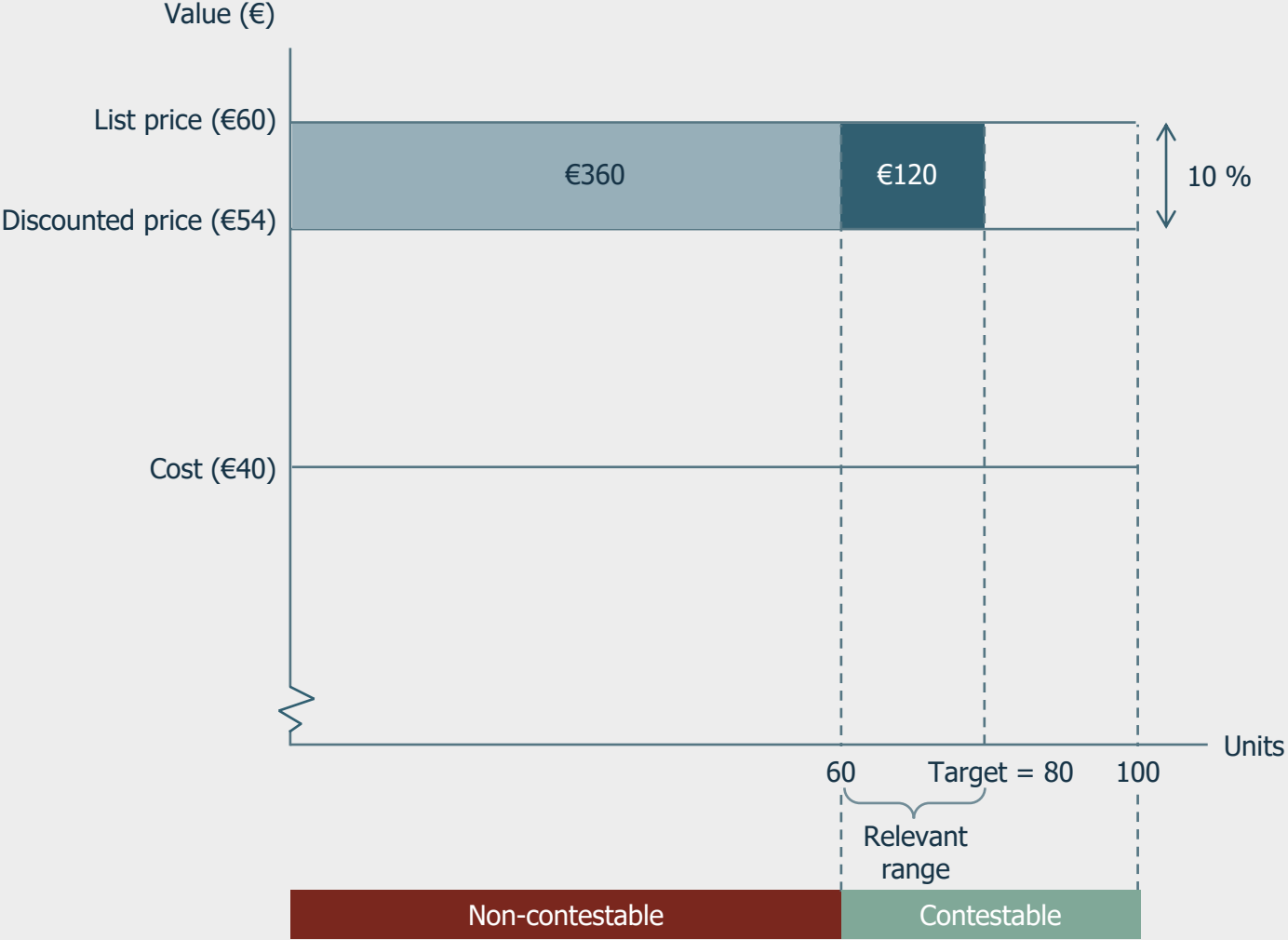
	
Total rebate	$(€60 - €54) * 100 = €600$
Required rebate pr. unit for units within the relevant range	$\frac{€600}{40} = €15$
Effective price	$€60 - €15 = €45$

Illustration of the AEC test for retroactive rebates (target rebate)





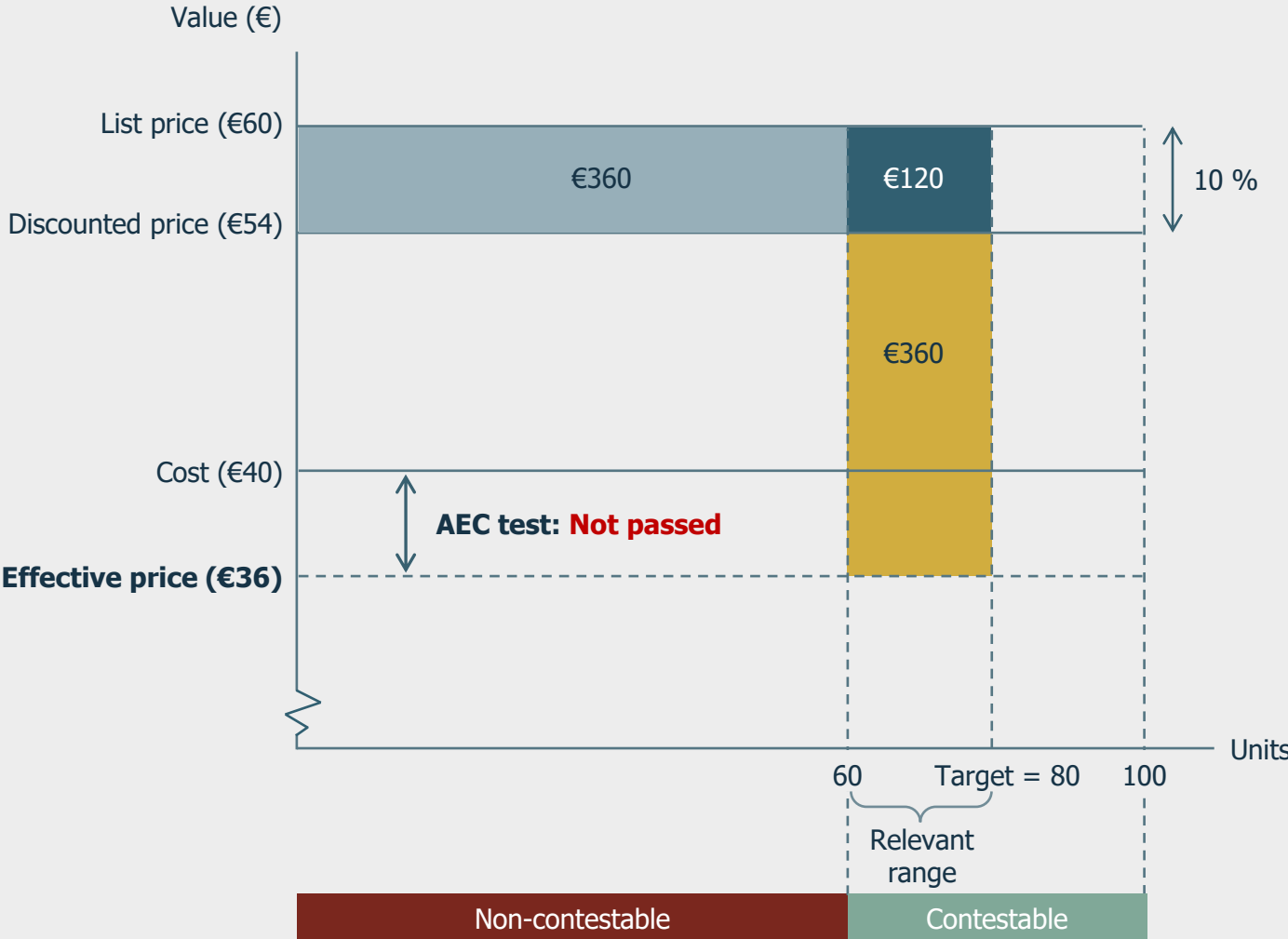


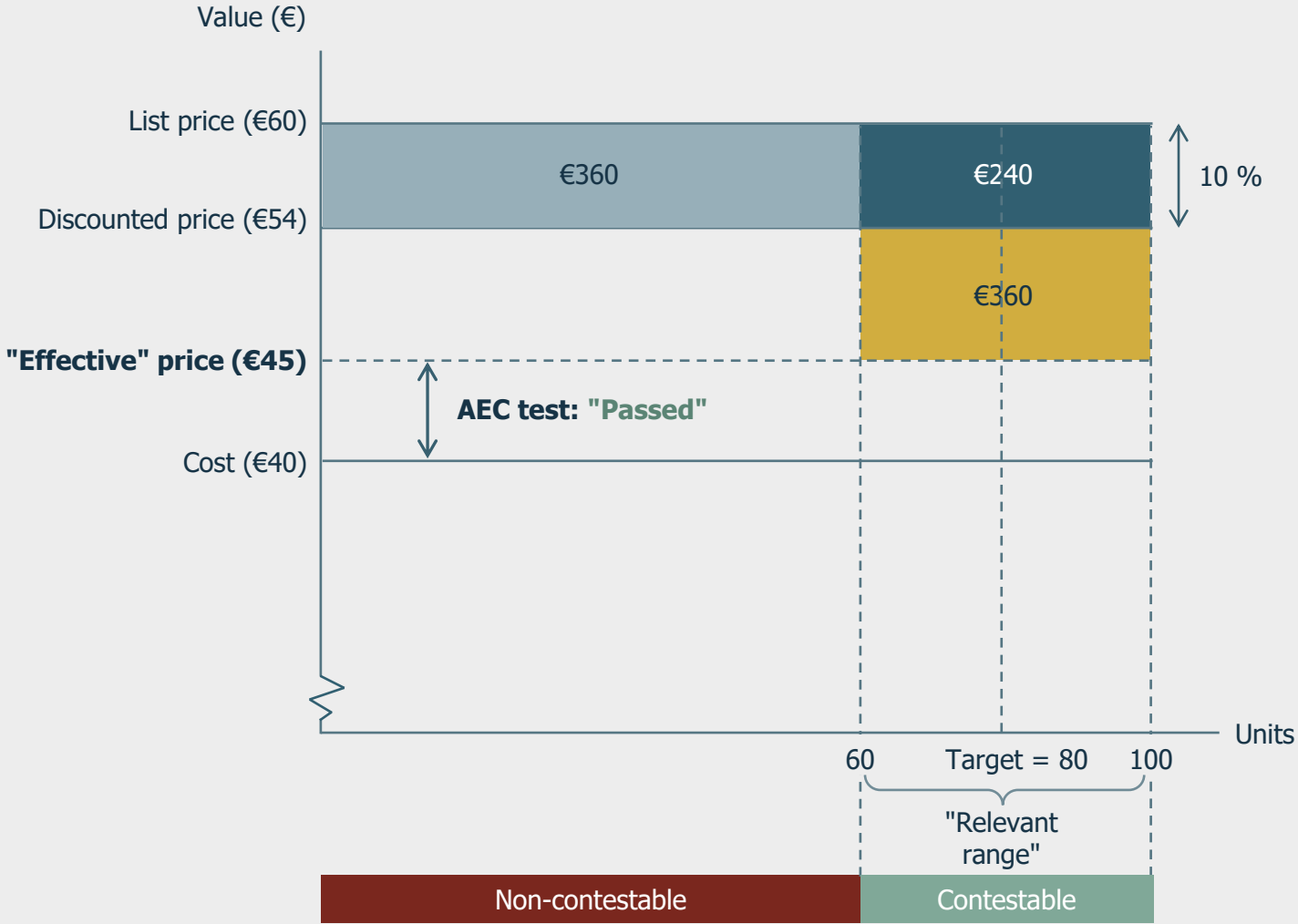
	
Total rebate	$(€60 - €54) * 80 = €480$
Required rebate pr. unit for units within the relevant range	$\frac{€480}{20} = €24$
Effective price	$€60 - €24 = €36$



Illustration of the AEC test for retroactive rebates (target rebate)



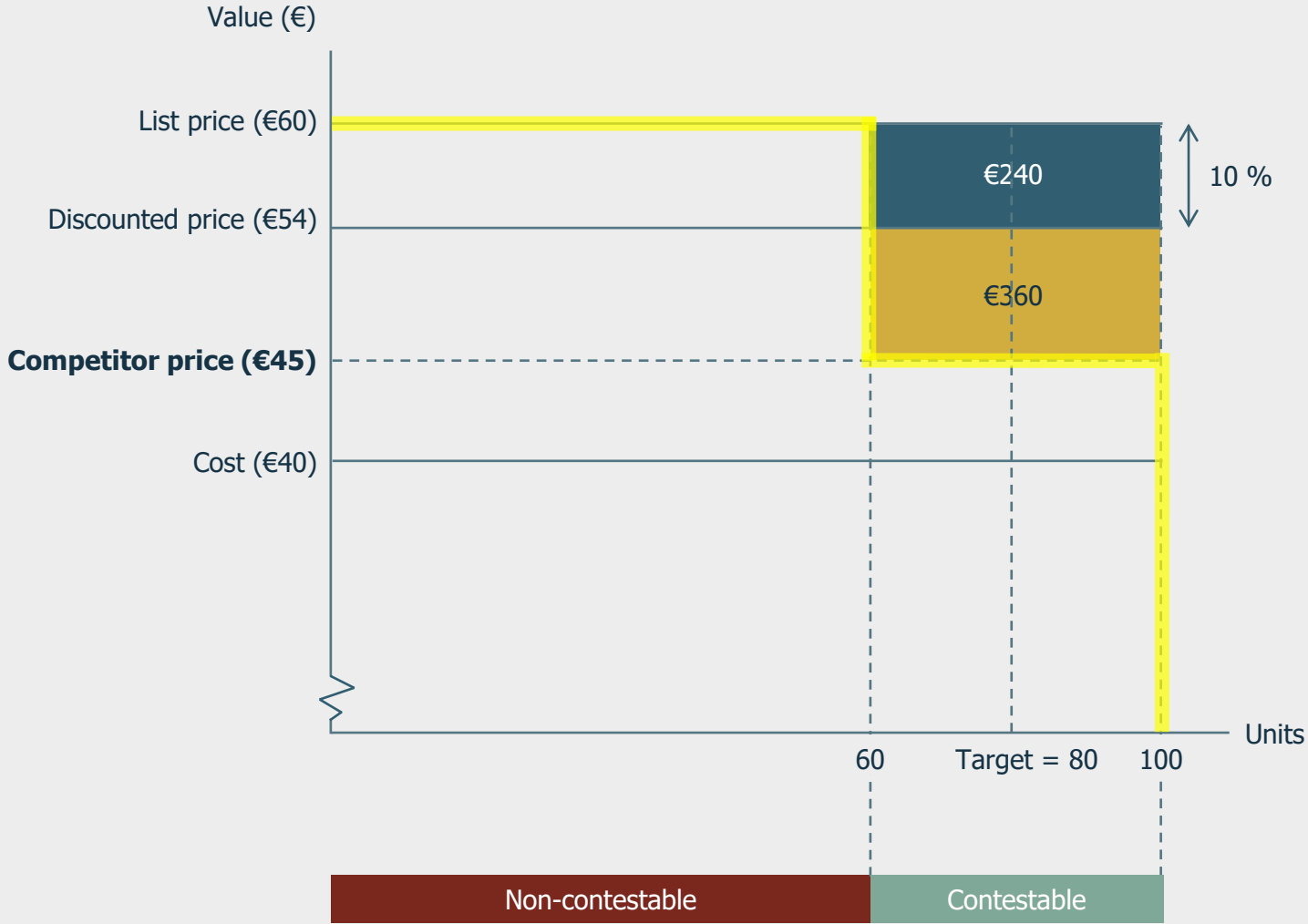
	
Total rebate	$(€60 - €54) * 80 = €480$
Required rebate pr. unit for units within the relevant range	$\frac{€480}{20} = €24$
Effective price	$€60 - €24 = €36$


Determination of the relevant range



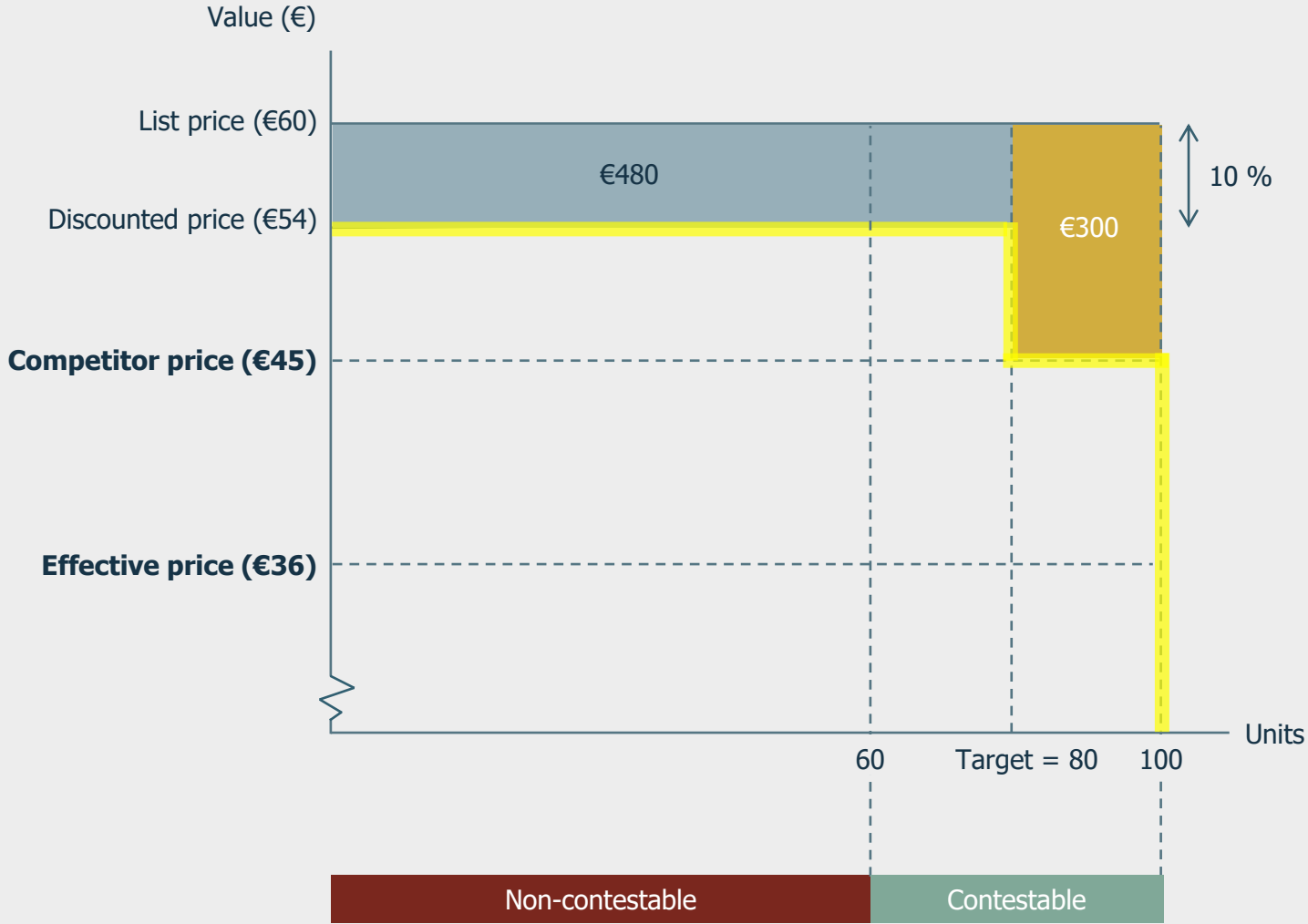
	
Relevant range	40 (Contestable share)
Total rebate	$(€60 - €54) * 100 = €600$
Required rebate pr. unit for units within the relevant range	$\frac{€600}{40} = €15$
"Effective" price	$€60 - €15 = €45$



Determination of the relevant range



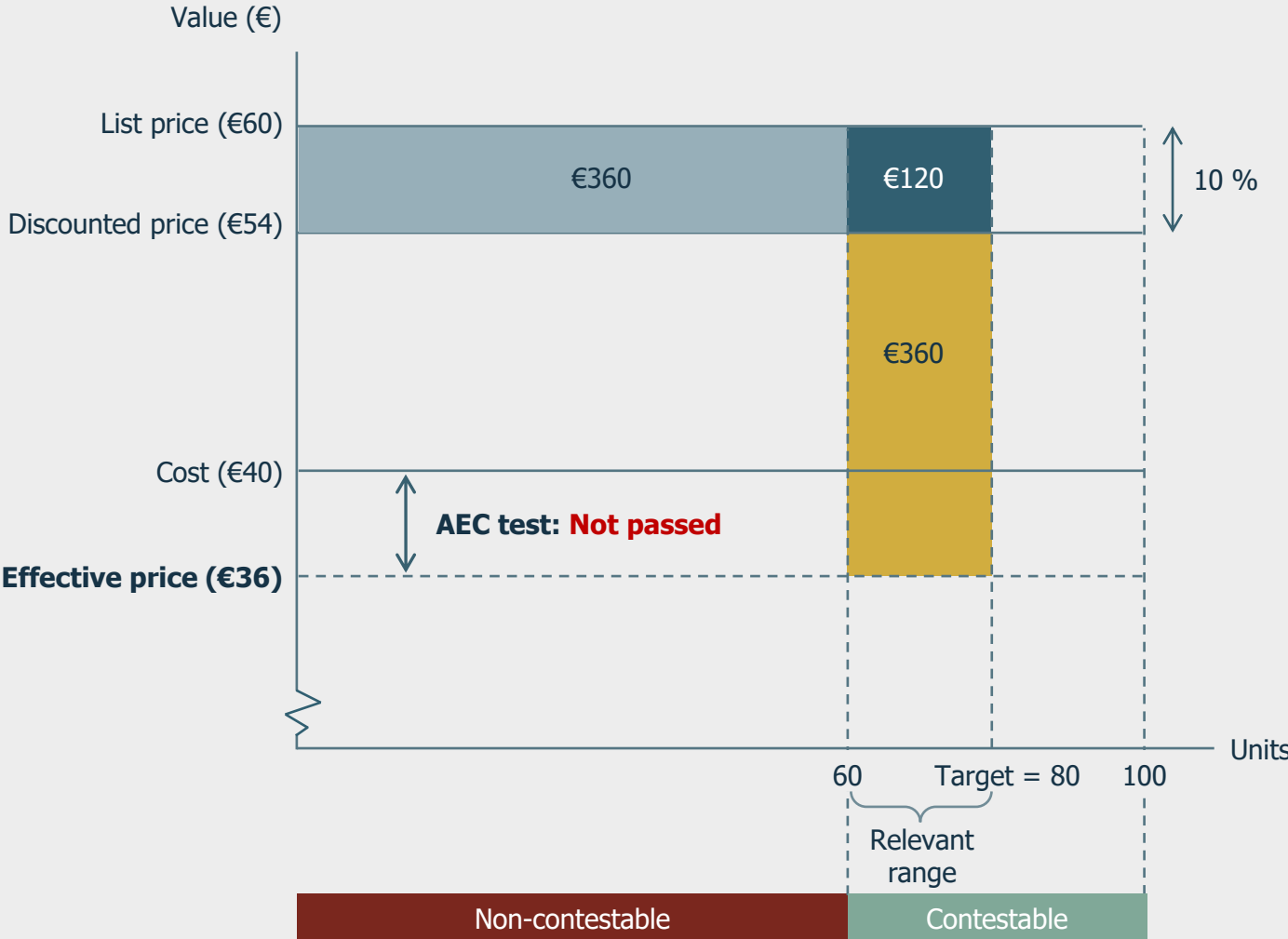
	
Total rebate (if buying 40 units from competitor)	$(€60 - €45) * 40 = €600$



Determination of the relevant range



	
Total rebate (if buying 40 units from competitor)	$(€60 - €45) * 40 = €600$
Total rebate (if buying 20 units from competitor)	$(€60 - €54) * 80 + (€60 - €45) * 20 = €780$

Determination of the relevant range



	
Total rebate	$(€60 - €54) * 80 = €480$
Required rebate pr. unit for units within the relevant range	$\frac{€480}{20} = €24$
Effective price	$€60 - €24 = €36$

146. The application of a price-cost test to conditional rebates must be based on effective prices and costs calculated over **the part of demand which customers could switch to competitors of the dominant undertaking (the "relevant range")**.

[...]

149. For retroactive rebates, determining **the relevant range** generally requires assessing, in the specific market context, the share or purchase requirements that a customer is realistically able and willing to switch to competitors of the dominant undertaking. This portion of the customers' demand is **also known as the "contestable share"** as opposed to the "non-contestable share", which refers to the portion of demand that customers in any event want to obtain from the dominant undertaking, given its potential position as unavoidable trading partner.[...]

150. When the Commission uses a price-cost test over the contestable share of demand, it will **estimate the effective price per contestable unit** that a competitor to the dominant undertaking would have to offer in order to compensate the customer for the loss of the rebate if the latter were to switch the contestable share of its demand away from the dominant undertaking.

The European Commission's DRAFT guidelines (2024) on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings

Any questions?



Contact



Rie Paving Mortensen
Chief Economist, Partner

+45 30 37 27 64
+45 36 94 12 88
rpm@plesner.com