

# Antitrust: Key Concepts

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KEY CONCEPT 1

Pre-modern "Zero-Sum" world

- Expectation: near universal poverty
- Focus: distribution (distributive justice)

Modern "Non-Zero Sum" world

- Expectation: "universal opulence" (a decent standard of living for everyone)
- Focus: production (or GDP growth)

Requires

- Rule of law
- Property
- Contracts
- Competition

Two main strategies for individual conduct

Societal and individual goals

- Increase Output = societal goal
- Increase Profit = individual goal

(1) Get rich by making others better off

- increases output ("growing the pie")
- increases profit ("reward for growing the pie")
- Harmony between individual and societal goals

(2) Get rich by making others worse off

- decreases output ("shrinking the pie")
- increases profit ("take a bigger slice")
- Mismatch between individual and societal goals

The antitrust laws discourage (2) but do not require (1)

Societal (legal) response to the individual strategies: Antitrust

EXTREME 1  
 Not enough competition

- Collusion
- Directly harms consumers
- Strongly disfavored
- Can be criminal

§1 (ROR, per se), §7

MIDDLE GROUND  
 Antitrust encourages "regulated competition" or "competition on the merits."

ECONOMIC GOALS

- Productive efficiency (make more with less)
- Allocative efficiency (ensure that goods travel to those who value them most)
- Dynamic efficiency (create incentives to invest in innovation)

NON-ECONOMIC GOALS

- Protect the political process from dependency on concentrated economic power ("too big to fail")?
- Fairness: Reduce systemic bargaining inequality?

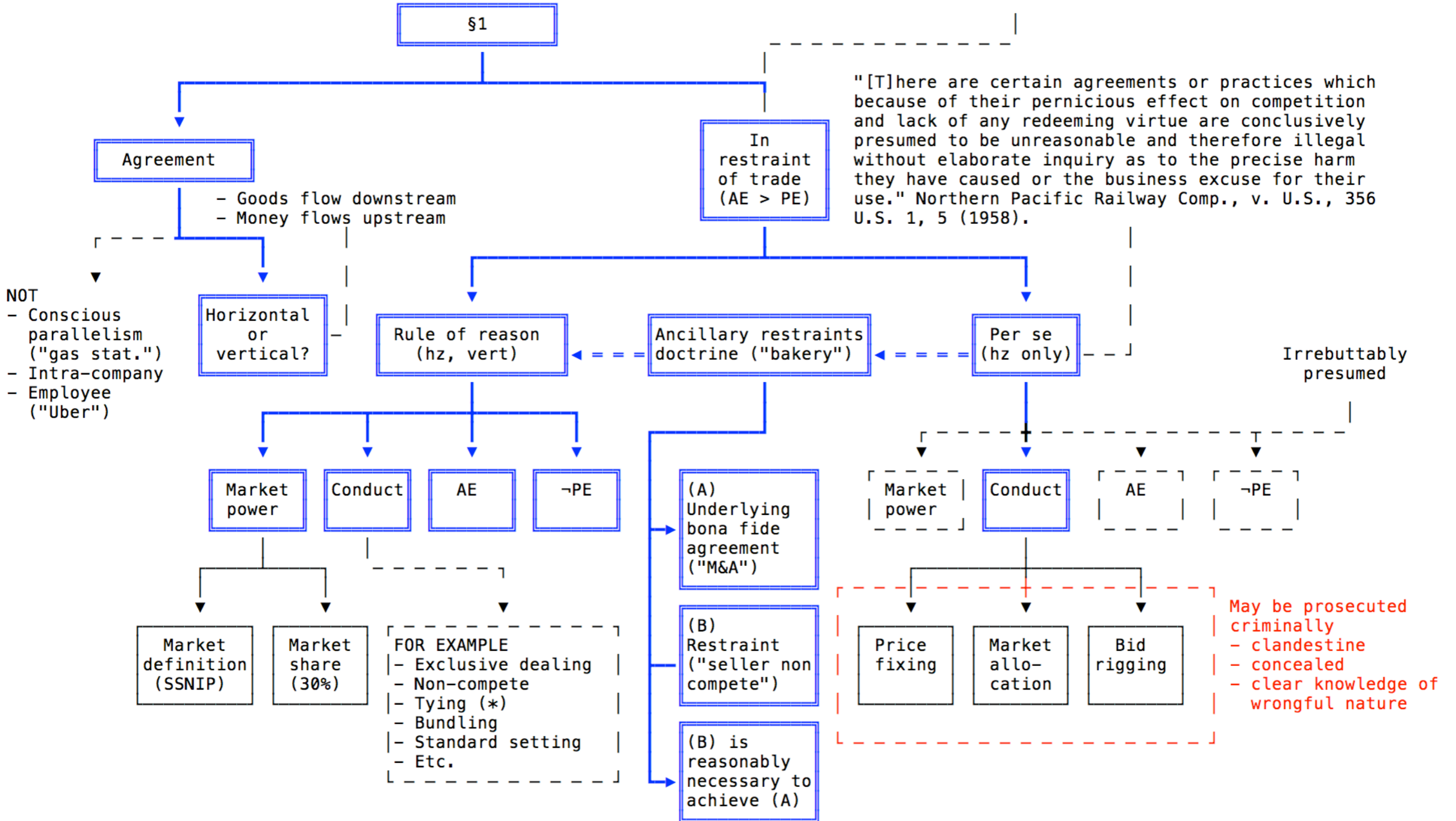
EXTREME 2  
 Too much (or the wrong kind of) competition

- Monopolization
- Directly harms rivals to the point of damaging the competitive process, thus indirectly harming consumers
- Disfavored
- Not criminally prosecuted

§2, §7, ROR

KEY CONCEPT 2

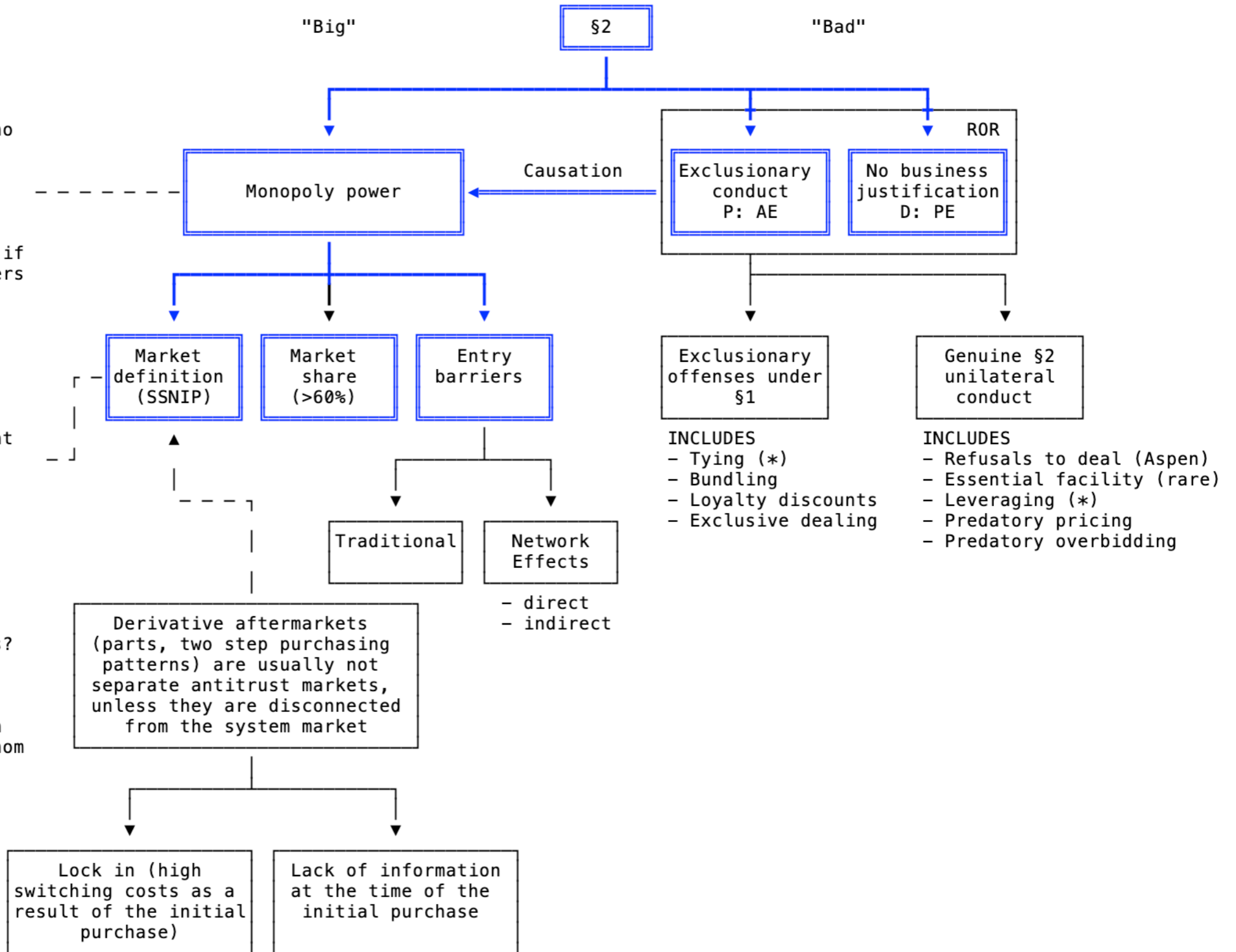
AE = Harm to the competitive process (and as a result, harm to consumers)  
 PE = Benefits to consumers



KEY CONCEPT 3

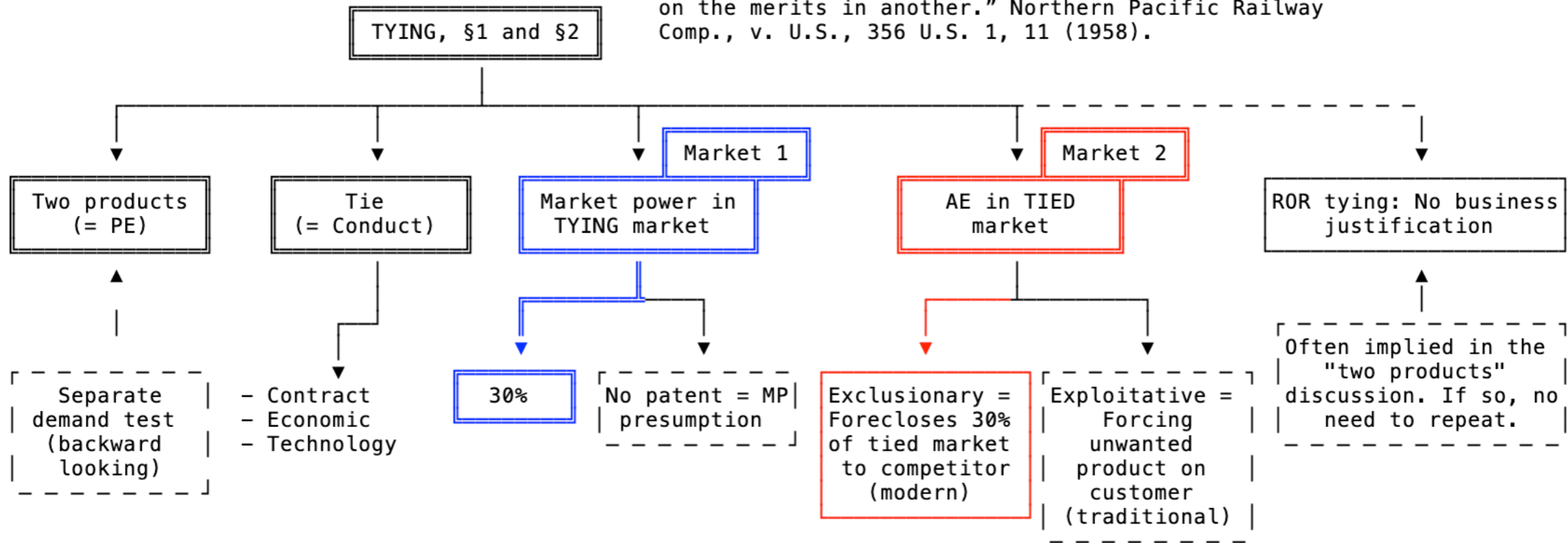
- Market Power Inquiry:
1. Market definition = Who are the competitors?
  2. Market share = How meaningful are they?
  3. Entry barriers = High market shares only indicate market power if there are entry barriers

- a. hM + SSNIP test = aspirational goal; what we would do in a perfect world
- b. Imperfect, real world approach
- Which products do customers consider as viable alternatives?
  - Whom do the parties identify as competitors?
  - Whom do industry observers identify as competitors?
  - Whom do the parties win business from and to whom do they lose business (win/loss; discount approval)?



KEY CONCEPT 4

"[T]he vice of tying arrangements lies in the use of economic power in one market to restrict competition on the merits in another." Northern Pacific Railway Comp., v. U.S., 356 U.S. 1, 11 (1958).



NOTE: Tying is, for historical reasons, still classified as a "per se" offense, but in practice it is a variant of the ROR, because market power is always required in the TYING product market. This chart works for both §1 and §2 tying.