

properties would be available to all railroads on non-discriminatory terms. See, as a more recent case involving a somewhat similar situation, Gamco, Inc. v. Providence Fruit & Produce Bldg., 194 F. 2d 484 (1st Cir. 1952).

The antitrust law as it relates to the proceedings presently before the Commission is described in the following passage from the Neale treatise, which is quoted in full here, despite its length, because it is an apt and accurate summary of the subject:

The Associated Press case is a clear guide to this aspect of the law. It shows that for refusal of entry into an association to constitute illegal restraint of trade there must be some important facility -- sometimes a virtual 'bottleneck' -- in the association's control, such that by keeping it exclusive to themselves the members of the association impose a real handicap on would-be competitors. [Footnote omitted.] This handicap need not be fatal: the facility need not be 'indispensable': it is enough that the association's exclusive hold on the scarce resource confers significant competitive advantages on members as against outsiders. Finally, it is no defense that the members have built up a facility -- such as the Associated Press news service -- for themselves; new entrants must still be allowed to share it on reasonable terms unless it is practicable for them to compete without it.

In this field there is clearly some scope for the Rule of Reason. Sometimes it is only fair that the newcomer should pay rather more for a facility than those who have invested in it over a long period. How much more is reasonable? Sometimes, as in the Associated Press case, the newcomer can find facilities of a sort elsewhere than in the association; but they may be far inferior. How much worse