

must the inferior ones be to make it illegal to keep the better ones exclusive? These are questions which the courts have to answer by reference to 'the facts peculiar to the business' in each case. What they are really trying to get at is the actual competitive situation; and, once again, the prudent businessman, who wants to steer clear of antitrust trouble, should reckon that if his association's exclusiveness really does harm the newcomer or outsider, then the courts will discover the harm and penalize it. But they will not simply infer injury where it does not exist from the sheer fact of exclusiveness. (Neale, supra, 70-71).

For an application of these principles in an administrative context, see Agreement Establishing Air Cargo Incorporated, 9 C.A.B. 468 (1948). See also Fulda, Competition in the Regulated Industries: Transportation §§ 7.27, 7.28, and 9.9 (1961).

4. The Vermont Yankee Case

Note is made of the recent decision of the Vermont Public Service Board in Vermont Yankee Nuclear Power Corp., 68 P.U.R. 3d 6, 26-32 (Vt. Pub. Serv. Bd. 1967). The proceeding in that case was on a petition by the Vermont Yankee corporation for approval of a stock issuance. Two Vermont municipal systems and three cooperative systems complained of their exclusion from the Vermont Yankee project. The Board found that there was an "inequitable ownership pattern," and while it approved the stock issuance to avoid delaying the project, it said: 'We shall expect the petitioner to give all Vermont