

547
Criminal No. 6670

In the District Court of the United States
for the Eastern District of Kentucky

UNITED STATES OF AMERICA

v.

THE AMERICAN TOBACCO COMPANY, ET AL.,
Defendants

INFORMATION

EDWARD H. MILLER,
GEORGE H. DESSION,
Special Assistants to the Attorney General.

WILLARD B. COWLES,
WILLIAM C. CLAY, Jr.,
PAUL F. GIBBONS,
CARSON GLASS,
HAMILTON O'DUNNE,
WILHO TIKANDER,
Special Attorneys.

ROBERT H. JACKSON,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

JOHN T. METCALE,
United States Attorney.

FILED JULY 24, 1940

**In the District Court of the United States
for the Eastern District of Kentucky**

No. 6670 (CRIMINAL)

UNITED STATES OF AMERICA

v.

THE AMERICAN TOBACCO COMPANY, ET AL.

UNITED STATES OF AMERICA,

Eastern District of Kentucky, ss:

INFORMATION

At the June 1940 Term of the District Court of the United States of America for the Eastern District of Kentucky, held at Lexington, Kentucky, in said District, comes the United States of America, acting through John T. Metcalf, United States Attorney in and for said District, and, leave of the Court having first been obtained, informs the Court as follows:

FIRST COUNT

The defendants

1. The following named corporations, principally engaged in that substantial part of the trade and commerce among the several States of the United States and with foreign nations which consists in the purchase, handling, transportation, manufacture and sale of tobacco, are hereby made defendants herein. Tobacco, as referred to in this information, means the leaf of the tobacco plant, in any one or more phases of its transition from the growing leaf to and including one or more of the manufactured forms in which it is sold

for use, as indicated by the context. Each of said corporations is duly authorized to do business under the laws of the state of its incorporation as indicated:

Corporate Defendants	Abbreviated Name	State of Incorporation	Principal Place of Business in the United States
The American Tobacco Company	American.....	New Jersey.....	New York, N. Y.
Liggett & Myers Tobacco Company	Liggett & Myers.....	New Jersey.....	St. Louis, Mo.
R. J. Reynolds Tobacco Company	Reynolds.....	New Jersey.....	Winston-Salem, N. C.
P. Lorillard Company	Lorillard.....	New Jersey.....	New York, N. Y.
The Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.	Imperial.....	Great Britain.....	Richmond, Va.
British-American Tobacco Company Limited	British-American.....	Great Britain.....	Richmond, Va.
Philip Morris & Co., Ltd., Incorporated	Philip Morris.....	Virginia.....	New York, N. Y.
Universal Leaf Tobacco Company, Inc.	Universal.....	Virginia.....	Richmond, Va.

Said defendants, and those of their subsidiaries and affiliates hereinafter named as defendants, will sometimes be referred to as "defendant major tobacco companies," and each will hereafter be referred to by its abbreviated name as set forth above, which reference will also include its defendant subsidiaries and affiliates. With the exception of Universal, each is engaged in all phases of the aforesaid trade and commerce, with the principal products of each being cigarettes and smoking tobacco, and, in the cases of American, Liggett & Myers, Reynolds and Lorillard, chewing tobacco. Universal's share of the aforesaid trade and commerce is chiefly the purchase, handling, transportation and sale of unmanufactured tobacco. American, Liggett & Myers, and Reynolds are sometimes known in the trade as the Big Three; and, with the addition of Lorillard, as the Big Four. Said groups, including the respective

defendant subsidiaries and affiliates of each member, will sometimes hereafter be referred to by these designations.]

2. The following named corporations, being subsidiaries or affiliates of the respective parent companies above named and similarly engaged in various phases of the trade and commerce aforesaid, each being duly authorized to do business under the laws of the state of its incorporation as indicated, are likewise made defendants herein:

Parent Company	Corporate Defendants	State of Incorporation	Principal Place of Business in the U. S.
American.....	American Suppliers Inc.....	Delaware.....	New York, N. Y.
American.....	American Cigarette & Cigar Company	New Jersey.....	New York, N. Y.
American.....	American Tobacco Co. of the Orient, Inc.	New Jersey.....	New York, N. Y.
Liggett & Myers.....	Gary Tobacco Company.....	New Jersey.....	New York, N. Y.
Reynolds.....	Glenn Tobacco Co.....	North Carolina.....	Winston-Salem, N. C.
Lorillard.....	P. Lorillard Co. of Delaware.....	Delaware.....	New York, N. Y.
Imperial.....	The Imperial Tobacco Co. of Kentucky, Inc.	Virginia.....	Henderson, Ky.
British-American.....	Export Leaf Tobacco Co.....	Delaware.....	Richmond, Va.
British-American.....	Pocahontas Corporation.....	Delaware.....	Richmond, Va.
Universal.....	J. P. Taylor Company, Inc.....	Virginia.....	Richmond, Va.
Universal.....	Southwestern Tobacco Co., Inc.....	Virginia.....	Richmond, Va.
Universal.....	W. H. Winstead Company, Inc.....	Virginia.....	Baltimore, Md.
Universal.....	L. B. Jenkins Tobacco Co., Inc.....	Virginia.....	Kinston, N. C.
Universal.....	J. M. Edmunds Company, Inc.....	Virginia.....	Danville, Va.
Universal.....	W. B. Lea Tobacco Co., Inc.....	Virginia.....	Rocky Mount, N. C.
Universal.....	Person-Garrett Co., Inc.....	Virginia.....	Greenville, N. C.
Universal.....	R. P. Watson Company.....	North Carolina.....	Wilson, N. C.
Universal.....	W. A. Adams Company.....	North Carolina.....	Oxford, N. C.
Universal.....	G. T. W. Argue Company, Inc.....	Kentucky.....	Henderson, Ky.
Universal.....	T. N. Bright Tobacco Co., Inc.....	Virginia.....	Durham, N. C.
Universal.....	Rudolph-Hach & Company, Inc.....	Virginia.....	Clarksville, Tenn.
Universal.....	Kinston Tobacco Company, Inc.....	Virginia.....	Kinston, N. C.
Universal.....	Winston Leaf Tobacco & Storage Co.	North Carolina.....	Winston-Salem, N. C.
Universal.....	Eastern Leaf Tobacco Co. Inc.....	Virginia.....	Richmond, Va.
Universal.....	K. R. Edwards Company, Inc.....	Virginia.....	Richmond, Va.
Universal.....	W. B. Beach & Company, Inc.....	Virginia.....	Petersburg, Va.

3. The following individuals, actively engaged during the period covered by this information in the management, direction and control of the affairs and policies of the respective corporate defendants, and in par-

ticular of those affairs and policies which are covered by this information, who have authorized, ordered and done the acts of the corporate defendants constituting the offenses hereinafter charged, are likewise made defendants herein:

Major Company with which Associated	Individual Defendants	Addresses	Official Titles or Positions
American.....	George Washington Hill	Irvington, N. Y.....	President
American.....	Charles F. Neiley.....	Great Neck, Long Island, N. Y.	Vice President
American.....	James E. Lipscomb Jr.....	New York, N. Y.....	President American Suppliers Inc.
American.....	Paul M. Hahn.....	New York, N. Y.....	Vice President, and President American Cigarette & Cigar Company
American.....	Vincent Riggio.....	Chappaqua, N. Y.....	Vice President
American.....	George Washington Hill Jr.	New York, N. Y.....	Vice President
Liggett & Myers	William W. Flowers.....	St. Louis, Mo.....	Chairman Board of Directors
Liggett & Myers	James W. Andrews.....	New York, N. Y.....	President
Liggett & Myers	Ben Carroll.....	New York, N. Y.....	Vice President and Treasurer
Liggett & Myers	William D. Carmichael.....	New York, N. Y.....	Vice President
Liggett & Myers	William A. Blount.....	New York, N. Y.....	Manager manufacture
Liggett & Myers	Benjamin F. Few.....	New York, N. Y.....	Vice President
Liggett & Myers	Edward H. Thurston.....	St. Louis, Mo.....	Vice President
Liggett & Myers	George W. Whitaker.....	New York, N. Y.....	Vice President
Reynolds.....	William N. Reynolds.....	Winston - Salem, N. C.	Chairman Executive Committee
Reynolds.....	S. Clay Williams.....	Winston - Salem, N. C.	Chairman Board of Directors
Reynolds.....	James A. Gray.....	Winston - Salem, N. C.	President
Reynolds.....	Robert E. Lasater.....	Winston - Salem, N. C.	Vice President
Reynolds.....	John C. Whitaker.....	Winston - Salem, N. C.	Vice President
Reynolds.....	James W. Glenn.....	Winston - Salem, N. C.	Vice President
Reynolds.....	Edward A. Darr.....	Winston - Salem, N. C.	Sales Manager
Lorillard.....	George H. Hummel.....	New York, N. Y.....	President
Lorillard.....	George D. Whitefield.....	New York, N. Y.....	Vice President
Lorillard.....	Edgar S. Bowling.....	New York, N. Y.....	Vice President
Lorillard.....	Herbert A. Kent.....	New York, N. Y.....	Vice President
Lorillard.....	Harry A. Stout.....	New York, N. Y.....	Vice President
Imperial.....	Leslie H. Reed.....	Richmond, Va.....	Resident Director
British-American	Robert C. Harrison.....	Richmond, Va.....	President Export Leaf Tobacco Co.
Philip Morris.....	Otway H. Chalkley.....	New York, N. Y.....	President
Philip Morris.....	Alfred E. Lyon.....	New York, N. Y.....	Vice President
Philip Morris.....	Wirt H. Hatcher.....	Richmond, Va.....	Vice President
Universal.....	William A. Willingham.....	Richmond, Va.....	Chairman Board of Directors
Universal.....	Fred N. Harrison.....	Richmond, Va.....	President

Description of the tobacco industry and dominance of the defendants

4. The tobacco industry in the United States is characterized by diffusion in the growing of leaf tobacco and the retail distribution of tobacco products, contrasted with a high degree of concentration in the purchasing of leaf and the manufacture of tobacco products. [Tobacco is grown on approximately 500,000 farms in the United States and over 3,500,000 persons are principally dependent on such growing;] and tobacco products are sold through more than 750,000 retail outlets. On the other hand, the Big Four alone produce the bulk of this country's output of tobacco products. This has been true for a generation. In 1910, for example, just before the business (excluding snuff) of American Tobacco Company was divided among the present Big Four, it produced approximately 84% of the cigarettes made in the United States, about 76% of the smoking tobacco, and 84% of the chewing tobacco.

5. The total production of cigarettes in 1910 was approximately 8,644 million. By 1929 cigarette production had grown to approximately 122,392 million and by 1938 to approximately 171,686 million, amounting to a per capita consumption of over 1,250 annually, and an increase of nearly 1,900% in twenty-eight years. But despite this great increase in volume the Big Four have continued to produce about the same proportion of these products. Of the total number of cigarettes, the Big Four produced in 1938 about 130,676 million or over 76% of the total production in the United States. Philip Morris accounted for over 5% more.

6. The financial investment in the tobacco industry is likewise very great. In 1937 the Big Three had investments of about \$504,590,000. Profits have also been large, both in terms of total volume and in percentages on investment. For the twenty-one years, 1917 through 1937, annual profits of the Big Three have averaged about \$75,000,000. In terms of percentages on stockholders' investment, this represents about 20% annually for the twenty-one years, running in some years to 24% and 25%. Total combined profits for the Big Three of \$100,000,000 annually are not unusual. [In some years these profits have equaled or exceeded the entire farm value of the tobacco crop of the United States.]

7. At the present time cigarettes are by far the most important product of the tobacco industry in the United States, with an annual wholesale value of over \$1,000,000,000. One brand of cigarettes accounts for the major part of the business and profits of each of the Big Three. [These brands are Lucky Strike (American), Chesterfield (Liggett & Myers), and Camel (Reynolds), and are usually described as fifteen cent cigarettes. Other important domestic cigarette brands are Old Gold (Lorillard), Philip Morris (Philip Morris), and Pall Mall (American Cigarette & Cigar Company). Most of the remaining cigarette volume is accounted for by brands usually described as ten cent cigarettes.]

8. The defendants do not dominate the cigar and snuff industries. Some of them manufacture neither of these products, which are principally manufactured by other companies specializing in cigars or snuff to the exclusion of other products.

9. The Big Four support and finance the Tobacco Merchants' Association of the United States, a trade association through which certain of their common policies are effectuated.

10. The two largest manufacturers of cigarettes outside of the United States are Imperial and British-American. Imperial manufactures and sells its tobacco products exclusively in the British Isles, and British-American, in which Imperial is the largest stockholder, in other parts of the world. Export Leaf Tobacco Co. purchases leaf tobacco in the United States for its parent, British-American.

11. Flue-cured tobacco, sometimes known as "bright" or "Virginia" tobacco, is grown in Virginia, North and South Carolina, Georgia, and Florida. It derives its name from its process of curing by the application of artificial heat passing through flues in the curing barns. Of each annual crop, which ranges from approximately 500,000,000 to 1,000,000,000 pounds, about half is usually exported, principally to the British Isles. Burley tobacco is grown principally in Kentucky and Tennessee, with scattered production in six other states. It is a light air-cured type. The crop ranges from approximately 200,000,000 to 400,000,000 pounds, of which about 70 per cent is produced in Kentucky. Relatively little burley is exported. Maryland tobacco is grown in five counties in Southern Maryland. It also is a light air-cured type, and the annual crop averages approximately 25,000,000 pounds, of which about 80 per cent is used in this country, and the balance exported.

12. Maryland tobacco constitutes under 5 per cent of the tobacco content of Lucky Strikes, Chesterfields, and

Camels. Turkish tobacco, substantially all of which is bought in Southeastern Europe and Asia Minor, and which is a small leaf, air-cured type with a distinctive aromatic quality, constitutes under 15 per cent of each blend. The balance of each blend, and of the Old Gold, Philip Morris and Pall Mall blends, consists of flue-cured and burley tobaccos.

13. The Big Three, with Imperial and Export Leaf Tobacco Co., buy, principally through regular employees, approximately three fourths of the flue-cured tobacco produced in this country each year. The Big Three alone buy more than two thirds of the burley tobacco, and their buying agents purchase over four fifths of the Maryland tobacco, principally for them. In dollar value, the percentages of the crops purchased by these defendants are substantially higher. Universal is the next largest buyer of leaf tobacco, and the largest leaf tobacco dealer in this country.

14. Tobacco is the only major farm crop which is sold at auction. The 1939 flue-cured crop was marketed through approximately 363 auction warehouses operating in approximately 75 market towns. Flue-cured tobacco is grown and marketed in five geographical growing belts. Marketing seasons differ by belts, with the Georgia Belt markets opening in midsummer, followed successively by the South Carolina, New or Eastern North Carolina, Middle and Old Belt markets. All the markets in a given belt usually open at the same time. Marketing seasons differ in duration by belts, but most of the tobacco in each belt is sold during the first few weeks of marketing.

15. The 1939 crop of burley tobacco was marketed through approximately 236 auction warehouses operating in approximately 41 market towns. Burley marketing always begins in Lexington, Kentucky, usually in December, and the remaining Kentucky markets open one day later.

16. For many years and up to 1939 Maryland tobacco was marketed exclusively (except for limited farm buying) in hogsheads through commission firms and associations in Baltimore under a closed bid system. In 1939 and 1940 the Maryland crops have also been marketed through looseleaf auction markets similar to the burley and flue-cured markets.

17. In preparation for market, growers sort their tobacco as best they can. It is tied in bundles or "hands" (except in Georgia) and brought to the auction warehouses where it is piled in baskets, weighed, and placed in rows on the warehouse floor with a ticket on each pile. The auction goes forward with extreme rapidity—about one basket every ten seconds—the auctioneer, who is an employee of the warehouseman, proceeding along one side of a row and buyers moving with him. The auction is conducted in a technical vocabulary intelligible only to the initiated. The small amount of each type of tobacco which is not bought by the defendant major tobacco companies is bought principally by small dealers and speculators. Flue-cured and burley tobaccos are run through redrying plants by the purchasers soon after sale. Leaf tobacco is perishable until redried and suitably packed.

18. Each major buyer has a private grading system which is kept strictly confidential in so far as growers are concerned. The growers have no definite grading systems of their own. The United States Department of Agriculture has promulgated grading systems under which the tobacco sold in some markets is graded prior to sale.

19. The conditions of marketing are regulated by the Tobacco Association of the United States and local boards of trade in marketing communities. These organizations are made up of representatives of the buyers and of warehousemen. Growers, who are not organized for bargaining purposes, have only occasional minority representation in these organizations.

20. The principal manufacturing states for tobacco products, including cigarettes, are North Carolina and Virginia. The greater part of the tobacco purchased on the flue-cured auction warehouse floors, a still greater part of the tobacco purchased on the burley auction warehouse floors, and substantially all of the tobacco purchased in Maryland, are hence purchased for manufacture in other states and foreign countries, and sales consummated on all markets are predominantly sales in interstate or in interstate and foreign commerce.

21. Flue-cured tobacco is the largest cash crop in North Carolina and Virginia, and is exceeded only by cotton in South Carolina and Georgia. Burley tobacco is the largest cash crop in Kentucky, and is exceeded only by cotton in Tennessee. Maryland tobacco ranks first in Maryland. Except for these three types of tobacco, which are used almost exclusively in the manu-

facture of cigarettes and smoking and chewing tobacco, and which are the only domestic types used principally in the manufacture of cigarettes in this country, the only other types of tobacco grown in the United States are: (1) One Sucker, Green River, Virginia Sun Cured, and Perique, all of these being used in the manufacture of smoking or chewing tobacco or both, and bought principally by the defendant major tobacco companies (except for amounts exported); (2) four fire-cured types used in the manufacture of snuff and for export; and (3) various cigar types used as fillers, wrappers, and binders for cigars. Flue-cured, burley, and Maryland tobaccos account for over eighty per cent of the total domestic tobacco crop in poundage, and over ninety per cent in dollar value.

22. The defendant major tobacco companies have in their employ, or acting as their agents, the great majority of the trained and experienced tobacco buyers in the United States. They maintain large stocks of leaf tobacco. Such stocks usually exceed, in the case of the Big Three, Imperial, and British-American, one hundred million dollars each in cost, and amount to several years' manufacturing supply. Said defendants also have available ready credit in very large amounts. Taxes on cigarettes must be paid by the manufacturer at the time of manufacture and prior to sale. The federal tax on cigarettes alone amounts to over a half billion dollars annually. The tax is uniform at the rate of three dollars and twenty-five cents per thousand cigarettes regardless of their price, and is therefore a much larger percentage of the total price of ten cent ciga-

rettes than of the fifteen cent brands. In the process of manufacture the tobacco for the major domestic cigarette brands is impregnated with various sweetening and flavoring substances. Manufacturing costs, especially for labor, have progressively declined in recent years.

23. Manufactured tobacco products are transported from the states of manufacture to all of the states of the United States, and to many foreign nations. Nation-wide advertising on a very extensive scale by the Big Four and Philip Morris plays a major role in sales promotion and the development of volume distribution by creating consumer acceptance and demand for their products. They sell direct, on wholesale terms, to a relatively small number of distributors located throughout the United States. For the most part these are jobbers and large retail outlets, and comprise less than one per cent of all of the distributors of their products.

The combination and conspiracy in restraint

24. Before and during the period of three years next preceding the filing of this information, and continuing to the date of the filing thereof, defendants, and others to the United States Attorney unknown, well knowing the foregoing facts, have been engaged in the United States, and particularly in the Eastern District of Kentucky, in a wrongful and unlawful combination and conspiracy in restraint of the aforesaid interstate and foreign trade and commerce in tobacco, in violation of Section One of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (U. S. C. A. Title

15, Sec. 1), commonly known as the Sherman Act, that is to say:

25. Defendants by concerted action have unlawfully attempted to fix, establish, maintain, control, manipulate and tamper with the prices, conditions and instrumentalities of the marketing of tobacco in interstate and foreign commerce as aforesaid; have in fact unlawfully fixed, established, maintained, controlled, manipulated and tampered with said prices, conditions and instrumentalities; and have bought and sold tobacco in interstate and foreign commerce, as aforesaid, at prices, under conditions, and through instrumentalities thus unlawfully fixed, established, maintained, controlled, manipulated and tampered with. In so doing defendants have unlawfully attempted to restrict, eliminate, suppress, and unreasonably and unduly restrain, and have in fact unlawfully restricted, eliminated, suppressed, and unreasonably and unduly restrained, competition among themselves in interstate and foreign commerce in tobacco, the interstate and foreign trade and commerce of others in tobacco, and the ability of others to compete with defendants in the aforesaid interstate and foreign trade and commerce.

26. Said unlawful combination and conspiracy has been effectuated by the defendant major tobacco companies, acting through or under the direction of their respective officers and agents and those of their subsidiaries and affiliates hereinabove made defendants herein, and through others of their officers, agents, subsidiaries and affiliates, and other persons to the United States Attorney unknown, with the full knowledge,

consent and approval of those individuals named as defendants, and pursuant to their authorization, orders and direction, in the following manner and by the following methods, means and practices, among others (throughout such period of time, by concerted action, and pursuant to their common plan and understanding among them so to do), that is to say:

(a) The defendant major tobacco companies, as the principal purchasers of leaf tobacco, have attempted to support, build up, and maintain marketing systems and marketing conditions for leaf tobacco intentionally designed to deprive the growers thereof of any substantial bargaining power in connection with its sale, and to permit said defendants to control the instrumentalities through which leaf tobacco is marketed in order that defendants might purchase it under conditions unnaturally, unreasonably and artificially favorable to themselves, and unnaturally, unreasonably and arbitrarily restrictive, oppressive and unfair to the growers, sellers, other purchasers and other handlers of such tobacco. Defendants have in fact accomplished these objectives through domination of the boards of trade, and members thereof, in the several marketing localities, and of the Tobacco Association of the United States, through which, as well as through other channels, they jointly foster and enforce regulations and practices with respect to the terms, methods, conditions, places and times of sales of leaf tobacco.

(b). Within the framework of the marketing systems and conditions so brought about and maintained, defendants have further attempted arbitrarily to fix, es-

tablish, maintain, manipulate and tamper with the prices of leaf tobacco, including that purchased by themselves, with the purpose and effect of enabling them to purchase leaf tobacco at such prices and unreasonably to restrain and dominate the trade of the growers thereof, and with the further purpose and effect of unreasonably eliminating and tending to eliminate and restrain competition among themselves, competition from other purchasers and handlers of leaf tobacco, and competition from other manufacturers and potential manufacturers of tobacco products, particularly the manufacturers of ten cent cigarettes. Defendants have in fact accomplished these objectives by understandings in advance of the openings of the marketing seasons, and from time to time throughout such seasons, with respect to the prices to be paid for leaf tobacco; and by intentionally formulating their grades, buying instructions, (and products) so as to avoid competition among themselves for the same or similar kinds of tobacco, at the same times, in the same markets.

(c). Defendants the Big Four and Philip Morris have further pursued a common policy of fixing, controlling, manipulating and tampering with the factory prices of their products, for the purpose and with the effect of unreasonably and unduly restraining and eliminating price competition among themselves and enabling said defendants to exact unreasonably high and monopolistic prices, and with the further purpose and effect of developing and maintaining a system of artificial controls over price manipulable, and in fact manipulated, by said defendants as a weapon for suppressing, eliminat-

ing, and unreasonably restraining, competition from other manufacturers of tobacco products. Pursuant to this policy said defendants have for many years maintained identical factory prices for certain of their major products, with substantially identical discounts and terms, including inventory adjustment terms.

(d). Defendants the Big Four and Philip Morris have further pursued a common policy of domination over the practices and policies of distributors of their products, for the purpose and with the effect of developing and maintaining a distributive mechanism favorable to their products and unfavorable to those of existing and potential competitors. Such domination has been achieved by selling direct to less than one per cent of the distributors of their products and refusing to sell to the other distributors thereof, by maintaining a substantial identity in their direct customer lists, by granting to and withholding favors from distributors, and by other means, including those set out in the paragraph hereof numbered 26 (e).

(e). Defendants the Big Four and Philip Morris have further pursued a common policy of fixing, regulating, controlling and tampering with the wholesale and retail prices of their own and other tobacco manufacturers' products, for the purpose and with the effect of unreasonably and unduly restraining and eliminating price competition among themselves, of suppressing, eliminating, and unreasonably restraining, competition from other manufacturers, and of unreasonably and unduly restraining and controlling the trade of retailers and jobbers in defendants' and other manu-

facturers' products. Pursuant to this policy said defendants have by extensive and continuous nationwide advertising (and various sales promotion schemes) created and maintained such a public acceptance and demand for their major brands that, the offering of such products for sale being a necessary adjunct to the conduct of numerous wholesale, retail, and service establishments, such establishments are forced to handle the products of defendants and others even on unreasonable and arbitrary terms, and at such prices. Said defendants have further effectuated such control over resale prices by selling direct to selected retail outlets at wholesale terms denied to the great majority of retailers, by limited offers of advertising allowances, special "deals" or "free goods," and of other favors, to selected distributors from time to time, by advertising retail prices for their own brands—and in some instances for brands of other manufacturers—over the heads of retailers and such other manufacturers, and by other means, including those set out in the paragraph hereof numbered 26 (d).

Effects

27. The said unlawful combination and conspiracy has been designed to have the effects, among others, of permitting a few companies to attain control of a bottleneck in a great industry, through which a major farm commodity, on which several million are dependent, must pass, on its way through the hands of jobbers and retailers, to the many millions of people who use tobacco products; of enabling these few companies to

abuse their resulting strategic and dominant position, by making the income of growers of leaf tobacco lower than it otherwise would have been; by making the income of distributors and other manufacturers of tobacco products lower than it otherwise would have been; and by keeping from all other groups in the industry, and from consumers, the benefits which otherwise would flow from free, vigorous and normal competition.

Jurisdiction and venue

28. The combination and conspiracy herein set forth has operated and been carried out by defendants in substantial part within the Eastern District of Kentucky. In pursuance of said combination and conspiracy defendants (except Imperial) have purchased leaf tobacco in said district in the manner, at the prices, and under the conditions above described, and defendants the Big Four and Philip Morris have sold, transported, and delivered in said district tobacco products at the prices and under the conditions above described. Within the period of three years next preceding the filing of this information, said combination and conspiracy was by said defendants continued, extended, renewed, and carried out within said district, in the manner above described.

29. And so the United States Attorney accuses and says: that the defendants throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have engaged in a combination and conspiracy in restraint of the aforesaid trade and commerce in tobacco among the several states and with for-

eign nations; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

SECOND COUNT

30. Each and every allegation contained in the paragraphs of this information numbered 1 through 23 is here realleged with the same force and effect as though said paragraphs were here set forth in full.

The monopoly

31. Before and during the period of three years next preceding the filing of this information, and continuing to the date of the filing thereof, defendants, and others to the United States Attorney unknown, well knowing the foregoing facts, have, in the United States, and particularly in the Eastern District of Kentucky, wrongfully and unlawfully monopolized the aforesaid interstate and foreign trade and commerce in tobacco, in violation of Section Two of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (U. S. C. A. Title 15, Sec. 2), commonly known as the Sherman Act, that is to say:

32. Defendants by concerted action have unlawfully attempted to fix, establish, maintain, control, manipulate and tamper with the prices, conditions and instrumentalities of the marketing of tobacco in interstate and foreign commerce as aforesaid; have in fact unlawfully fixed, established, maintained, controlled, manipulated and tampered with said prices, conditions and instrumentalities; and have bought and sold to-

bacco in interstate and foreign commerce, as aforesaid, at prices, under conditions, and through instrumentalities thus unlawfully fixed, established, maintained, controlled, manipulated and tampered with. In so doing defendants have unlawfully attempted to restrict, eliminate, suppress, and unreasonably and unduly restrain, and have in fact unlawfully restricted, eliminated, suppressed, and unreasonably and unduly restrained, competition among themselves in interstate and foreign commerce in tobacco, the interstate and foreign trade and commerce of others in tobacco, and the ability of others to compete with defendants in the aforesaid interstate and foreign trade and commerce.

33. Said unlawful monopolization has been achieved by the defendant major tobacco companies, acting through or under the direction of their respective officers and agents and those of their subsidiaries and affiliates hereinabove made defendants herein, and through others of their officers, agents, subsidiaries and affiliates, and other persons to the United States Attorney unknown, with the full knowledge, consent and approval of those individuals named as defendants, and pursuant to their authorization, orders and direction (throughout such period of time, by concerted action, and pursuant to their common plan), in divers manners and by divers methods, means and practices, including among others the manners, methods, means and practices alleged in the paragraphs of this information numbered 26 (a) through 26 (e), which allegations are here realleged with the same force and effect as though said paragraphs were here set forth in full. In adopting and exercising such methods, means and practices, each

defendant has acted with full knowledge that unanimity of action with reference thereto was and would be the policy, intent and practice of the others, that such unanimity of action would necessarily result in drawing to defendant major tobacco companies as a group the power to dominate, control, and exclude others from the aforesaid interstate and foreign trade and commerce, has intended such result, and such result has in fact been achieved.

Effects

34. Said unlawful monopolization has had the effects, among others, of permitting a few companies to attain control of a bottleneck in a great industry, through which a major farm commodity, on which several million are dependent, must pass, on its way through the hands of jobbers and retailers, to the many millions of people who use tobacco products; of enabling these few companies to abuse their resulting strategic and dominant position, by making the income of growers of leaf tobacco lower than it otherwise would have been; by making the income of distributors and other manufacturers of tobacco products lower than it otherwise would have been; and by keeping from all other groups in the industry, and from consumers, the benefits which otherwise would flow from free, vigorous and normal competition.

Jurisdiction and venue

35. The monopolization herein set forth has operated and been achieved by defendants in substantial part within the Eastern District of Kentucky. In furtherance of said monopolization defendants (except Imperial) have purchased leaf tobacco in said district in

the manner, at the prices, and under the conditions above described, and defendants the Big Four and Philip Morris have sold, transported, and delivered in said district tobacco products at the prices and under the conditions above described. Within the period of three years next preceding the filing of this information, said defendants have in the manner and by the methods, means and practices aforesaid monopolized the aforesaid trade and commerce among the several states and with foreign nations, and in particular that portion thereof within, passing through, coming into and flowing from said Eastern District of Kentucky, and have excluded other persons therefrom.

36. And so the United States Attorney accuses and says: that the defendants throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have monopolized the aforesaid trade and commerce in tobacco among the several states and with foreign nations; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

THIRD COUNT

37. Each and every allegation contained in the paragraphs of this information numbered 1 through 23 is here realleged with the same force and effect as though said paragraphs were here set forth in full.

The attempt to monopolize

38. Before and during the period of three years next preceding the filing of this information, and continuing to the date of the filing thereof, defendants, and others to the United States Attorney unknown, well knowing

the foregoing facts, have, in the United States, and particularly in the Eastern District of Kentucky, wrongfully and unlawfully attempted to monopolize the aforesaid interstate and foreign trade and commerce in tobacco, in violation of Section Two of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (U. S. C. A. Title 15, Sec. 2), commonly known as the Sherman Act, that is to say:

39. Defendants by concerted action have unlawfully attempted to fix, establish, maintain, control, manipulate and tamper with the prices, conditions and instrumentalities of the marketing of tobacco in interstate and foreign commerce as aforesaid; have in fact unlawfully fixed, established, maintained, controlled, manipulated and tampered with said prices, conditions and instrumentalities; and have bought and sold tobacco in interstate and foreign commerce, as aforesaid, at prices, under conditions, and through instrumentalities thus unlawfully fixed, established, maintained, controlled, manipulated and tampered with. In so doing defendants have unlawfully attempted to restrict, eliminate, suppress, and unreasonably and unduly restrain, and have in fact unlawfully restricted, eliminated, suppressed, and unreasonably and unduly restrained, competition among themselves in interstate and foreign commerce in tobacco, the interstate and foreign trade and commerce of others in tobacco, and the ability of others to compete with defendants in the aforesaid interstate and foreign trade and commerce.

40. Said unlawful attempt to monopolize has been carried on by the defendant major tobacco companies,

acting through or under the direction of their respective officers and agents and those of their subsidiaries and affiliates hereinabove made defendants herein, and through others of their officers, agents, subsidiaries and affiliates, and other persons to the United States Attorney unknown, with the full knowledge, consent and approval of those individuals named as defendants, and pursuant to their authorization, orders and direction (throughout such period of time, by concerted action, and pursuant to their common plan), in divers manners and by divers methods, means and practices, including among others the manners, methods, means and practices alleged in the paragraphs of this information numbered 26 (a) through 26 (e), which allegations are here realleged with the same force and effect as though said paragraphs were here set forth in full. In adopting and exercising such methods, means and practices, each defendant has acted with full knowledge that unanimity of action with reference thereto was and would be the policy, intent and practice of the others, that such unanimity of action would create a dangerous probability of drawing to defendant major tobacco companies as a group the power to dominate, control, and exclude others from the aforesaid interstate and foreign trade and commerce, and has intended such result.

Effects

41. The said unlawful attempt to monopolize has created a dangerous probability that defendants' efforts, if unchecked, will have the effects, among others, of permitting a few companies to attain control of a bottleneck in a great industry, through which a major

farm commodity, on which several million are dependent, must pass, on its way through the hands of jobbers and retailers, to the many millions of people who use tobacco products; of enabling these few companies to abuse their resulting strategic and dominant position, by making the income of growers of leaf tobacco lower than it otherwise would have been; by making the income of distributors and other manufacturers of tobacco products lower than it otherwise would have been; and by keeping from all other groups in the industry, and from consumers, the benefits which otherwise would flow from free, vigorous and normal competition.

Jurisdiction and venue

42. The attempt to monopolize herein set forth has taken place and been carried on by defendants in substantial part within the Eastern District of Kentucky. In furtherance of said attempt to monopolize defendants (except Imperial) have purchased leaf tobacco in said district in the manner, at the prices, and under the conditions above described, and defendants the Big Four and Philip Morris have sold, transported, and delivered in said district tobacco products at the prices and under the conditions above described. Within the period of three years next preceding the filing of this information, said defendants have in the manner and by the methods, means and practices aforesaid attempted to monopolize the aforesaid trade and commerce among the several states and with foreign nations, and in particular that portion thereof within, passing through, coming into and flowing from said Eastern District of Kentucky, and to exclude other persons therefrom.

43. And so the United States Attorney accuses and says: that the defendants throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have attempted to monopolize the aforesaid trade and commerce in tobacco among the several states and with foreign nations; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FOURTH COUNT

44. Each and every allegation contained in the paragraphs of this information numbered 1 through 23 is here realleged with the same force and effect as though said paragraphs were here set forth in full.

The combination and conspiracy to monopolize

45. Before and during the period of three years next preceding the filing of this information, and continuing to the date of the filing thereof, defendants, and others to the United States Attorney unknown, well knowing the foregoing facts, have been engaged in the United States, and particularly in the Eastern District of Kentucky, in a wrongful and unlawful combination and conspiracy to monopolize the aforesaid interstate and foreign trade and commerce in tobacco, in violation of Section Two of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (U. S. C. A. Title 15, Sec. 2), commonly known as the Sherman Act, that is to say:

46. Defendants by concerted action have unlawfully attempted to fix, establish, maintain, control, manipulate and tamper with the prices, conditions and instru-

mentalities of the marketing of tobacco in interstate and foreign commerce as aforesaid; have in fact unlawfully fixed, established, maintained, controlled, manipulated and tampered with said prices, conditions and instrumentalities; and have bought and sold tobacco in interstate and foreign commerce, as aforesaid, at prices, under conditions, and through instrumentalities thus unlawfully fixed, established, maintained, controlled, manipulated and tampered with. In so doing defendants have unlawfully attempted to restrict, eliminate, suppress, and unreasonably and unduly restrain, and have in fact unlawfully restricted, eliminated, suppressed, and unreasonably and unduly restrained, competition among themselves in interstate and foreign commerce in tobacco, the interstate and foreign trade and commerce of others in tobacco, and the ability of others to compete with defendants in the aforesaid interstate and foreign trade and commerce.

47. Said unlawful combination and conspiracy has been effectuated by the defendant major tobacco companies, acting through or under the direction of their respective officers and agents and those of their subsidiaries and affiliates hereinabove made defendants herein, and through others of their officers, agents, subsidiaries and affiliates, and other persons to the United States Attorney unknown, with the full knowledge, consent and approval of those individuals named as defendants, and pursuant to their authorization, orders and direction (throughout such period of time, by concerted action, and pursuant to their common plan and understanding among them so to do), in divers manners and by divers methods, means and practices, in-

cluding among others the manners, methods, means and practices alleged in the paragraphs of this information numbered 26 (a) through 26 (e), which allegations are here realleged with the same force and effect as though said paragraphs were here set forth in full.

Effects

48. The said unlawful combination and conspiracy has been designed to have the effects, among others, of permitting a few companies to attain control of a bottleneck in a great industry, through which a major farm commodity, on which several million are dependent, must pass, on its way through the hands of jobbers and retailers, to the many millions of people who use tobacco products; of enabling these few companies to abuse their resulting strategic and dominant position, by making the income of growers of leaf tobacco lower than it otherwise would have been; by making the income of distributors and other manufacturers of tobacco products lower than it otherwise would have been; and by keeping from all other groups in the industry, and from consumers, the benefits which otherwise would flow from free, vigorous and normal competition.

Jurisdiction and venue

49. The combination and conspiracy herein set forth has operated and been carried out by defendants in substantial part within the Eastern District of Kentucky. In pursuance of said combination and conspiracy defendants (except Imperial) have purchased leaf tobacco in said district in the manner, at the prices, and under the conditions above described, and defendants

the Big Four and Philip Morris have sold, transported, and delivered in said district tobacco products at the prices and under the conditions above described. Within the period of three years next preceding the filing of this information, said combination and conspiracy was by said defendants continued, extended, renewed, and carried out within said district, in the manner above described.

50. And so the United States Attorney accuses and says: that the defendants throughout the period aforesaid, at the places and in the manner and form aforesaid, unlawfully have engaged in a combination and conspiracy to monopolize the aforesaid trade and commerce in tobacco among the several states and with foreign nations; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

JOHN T. METCALF
United States Attorney

ROBERT H. JACKSON
Attorney General

THURMAN ARNOLD
Assistant Attorney General

EDWARD H. MILLER

GEORGE H. DESSION

Special Assistants to the Attorney General

WILLARD B. COWLES

WILLIAM C. CLAY, JR.

PAUL F. GIBBONS

CARSON GLASS

HAMILTON O'DUNNE

WILHO TIKANDER

Special Attorneys