

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO COMPANY,  
RJI CORPORATION, SEA-LAND  
SERVICE, INC., WALTER KIDDE &  
COMPANY, INC., and UNITED  
STATES LINES, INC.,

Defendants.

Civil Action No. 1668-70

Filed: December 15, 1970

C O M P L A I N T

The United States of America, plaintiff, by its attorneys, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this proceeding is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. §25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. §18), and under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendants, R.J. Reynolds Tobacco Company and Walter Kidde & Company, Inc., of Section 1 of that Act, as amended (15 U.S.C. §1).

2. Each of the defendants, R.J. Reynolds Tobacco Company, Sea-Land Service, Inc., Walter Kidde & Company, Inc., and United States Lines, Inc., is found and transacts business within the District of New Jersey.

## II

### THE DEFENDANTS

3. R.J. Reynolds Tobacco Company (hereinafter referred to as "Reynolds") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Winston-Salem, North Carolina. In 1969, Reynolds had net sales of approximately \$1.57 billion and total assets of approximately \$1.69 billion, making it the 62nd largest industrial corporation in the United States on the basis of sales and the 48th largest on the basis of assets. While Reynolds is primarily engaged in the manufacture and sale of tobacco products, from which it derived approximately 76 percent of its net sales in 1969, it is also engaged, through various wholly owned subsidiaries, in the manufacture and sale of wrapping materials, food and beverages, and in providing marine transportation of freight by means of a full containership system of service.

4. RJI Corporation (hereinafter referred to as "RJI") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of Delaware, and is a wholly owned subsidiary of Reynolds. RJI was organized for the sole purpose of effectuating the Agreement of Merger which is the subject matter of this complaint.

5. Sea-Land Service, Inc. (hereinafter referred to as "Sea-Land") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Elizabeth, New Jersey. Sea-Land is a wholly owned subsidiary of Reynolds and ranks as a leader among companies engaged in the marine transportation of freight in the foreign commerce of the United States by means of full containership systems. In 1969, Sea-Land realized approximately \$280 million from the sale of such services.

6. Walter Kidde & Company, Inc., (hereinafter referred to as "Kidde") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Belleville, New Jersey. Kidde is a highly diversified company with numerous wholly owned subsidiaries engaged principally in the manufacture and sale of security equipment, industrial and technological products, commercial and consumer products and in the sale of transportation services, including the marine transportation of freight by means of a full containership system. In 1969, Kidde had net sales of approximately \$786 million and total assets of approximately \$774 million, making it the 143rd largest industrial corporation in the United States on the basis of sales and the 126th largest on the basis of assets.

7. United States Lines, Inc. (hereinafter referred to as "U.S. Lines") is named a defendant herein. Said defendant is a corporation organized and existing under

the laws of the State of Delaware with its principal place of business in New York, New York. U.S. Lines is a wholly owned subsidiary of Kidde and ranks as a leader among companies engaged in the marine transportation of freight in the foreign commerce of the United States by means of full containership systems. U.S. Lines also transports freight over water by means of conventional cargo vessels. In 1969, U.S. Lines realized total operating revenues of about \$132 million, and a net profit before taxes of about \$7.5 million.

### III

#### TRADE AND COMMERCE

8. A full containership system is a highly automated mode of marine freight transportation which permits goods to be loaded into containers at their point of origin and to be transported without removal from such containers to their point of destination. The loaded containers, which are generally constructed in 20', 35' or 40' lengths, are transported by truck, rail or both, to port terminals, transferred to full containerships and carried across water to ports of call where the process continues until the goods, still within their containers, arrive at their destination.

9. The heart of the full containership system is the full containership, a specially constructed or converted vessel designed to carry containers only. The efficient management and use of a full containership require the assistance of technology, equipment and support services which are distinct from those employed with any other form of marine freight transportation.

These distinct supporting features, including sophisticated computer technology and specially designed containers, terminals, cranes, truck chassis, and feeder vessels, are primarily designed to speed and facilitate the intermodal transportation of containerized freight and, together with the full containership, comprise the full containership system.

10. The full containership system, as compared with other conventional forms of marine freight transportation, affords distinct competitive advantages to the full containership operator and distinct service advantages to the shipper. These advantages stem primarily from the highly automated nature of the full containership system, and the consequent elimination of much time consuming and costly cargo handling processes which are prevalent with other forms of marine freight transportation. Competitive advantages to the full containership operator include a significant increase in the ratio of vessel sea time to port time, a consequent increment in vessel utilization and revenue production, and a substantial reduction in unit costs. Service advantages to the shipper include greater regularity and frequency of service, faster delivery times, greater number of cargo distribution points, reduction of inventory holding requirements, reduction of losses due to spoilage, breakage or theft, reduction of port fees, reduction of packaging material required, and reduction of insurance premiums as a result of diminished loss claims. These factors have caused a distinct customer preference for the marine freight transportation service provided by full containership systems.

11. Because of these distinctive competitive and service advantages, the shipping industry has undertaken and is now in the midst of a transition from the marine transportation of freight by conventional break bulk vessels to the marine transportation of freight by full containership systems. In terms of full containership capacity on order, this industry-wide transition will be nearing completion by about 1974. Companies, such as U.S. Lines, which are participating in this transition must make substantial initial and continuing capital investments in the specially designed equipment and facilities essential to a full containership system, and must often reorganize, reorient, educate and expand management and marketing personnel in order to realize efficient utilization of full containership systems. By the same token, the imminence of this industry transition, and the size and frequency of the capital investment required, as well as the marshalling of technological and managerial resources which is necessary for the effective operation of a full containership system, make the barriers to entry into the marine transportation of freight by full containership systems extremely high.

12. The marine freight transportation services of full containership systems are provided to the general shipping public by United States flag common carriers, including Sea-Land and U.S. Lines, and foreign flag common carriers at published rates, on a first-come, first-served basis, and according to regularly scheduled sailings over various trade routes in the foreign commerce of the United States.

13. A substantial portion of the cargo shipped over the various trade routes in the foreign commerce of the United States is required by law to be transported aboard vessels operating under the flag of the United States. All military cargo shipped by the Department of Defense or related agencies to foreign countries, all foreign-bound mail of the United States, and at least 50 percent of all cargo owned or controlled by agencies of the United States Government must be carried on United States flag vessels. To a large extent, United States flag vessel operators depend upon the carriage of such cargo to maintain profitable operations. The importance of the availability of such cargo to profitable operations for United States flag carriers is also related to the existence of pervasive foreign flag national cargo preferences which tend to limit the total pool of cargo open to the competition of United States flag carriers operating in the foreign commerce of the United States.

14. The major trades in the foreign commerce of the United States which are served by United States and foreign flag operators of full containership systems are the Atlantic trades and the Pacific trades. These trades, in turn, are comprised of various trade routes which have received numerical designations from the Maritime Administration of the United States Department of Commerce and which have industry and shipper recognition. These trade routes extend to the major European and Far Eastern trading areas from the Atlantic, Pacific and Gulf Coasts of the United States.

15. The Atlantic trades encompass trade between all coasts of the United States and Europe. Among those trade routes which comprise the Atlantic trades are the following commercially important individual trade routes or combinations of trade routes:

- (a) Trade Routes 5-7-8-9, which encompass trade between North Atlantic ports in the United States and North Atlantic ports in Europe; and
- (b) Trade Route 10, which encompasses trade between North Atlantic ports in the United States and Mediterranean ports in Europe.

16. The Pacific trades encompass trade between all coasts of the United States and the Far East. Among those trade routes which comprise the Pacific trades are the following commercially important individual trade routes:

- (a) Trade Route 12, which encompasses trade between Atlantic Coast ports in the United States and ports in the Far East; and
- (b) Trade Route 29, which encompasses trade between Pacific Coast ports in the United States and ports in the Far East.

17. Among carriers who operate full containership systems under the flag of the United States in the foreign commerce of the United States, in the Atlantic and Pacific trades, and on various of the trade routes or combinations of trade routes which comprise these trades, there presently exist extremely high degrees of concentration. As indicated below by their approximate shares of United States flag full containership capacity, both U.S. Lines and Sea-Land occupy leading



actual or potential competitive positions in these highly concentrated service markets.

UNITED STATES FLAG FULL CONTAINERSHIP CAPACITY

<u>Service Market</u>	<u>Degree of Concentration</u>	<u>U.S. Lines</u>		<u>Sea-Land</u>	
		<u>Share</u>	<u>Position</u>	<u>Share</u>	<u>Position</u>
Foreign Commerce of the United States	Four carriers account for 90.1%	32.1%	1	24.8%	2
Atlantic Trades	Five carriers account for 100%	34.4%	1	19.3%	3
Pacific Trades	Four carriers account for 100%	23.4%	2	45.9%	1
Trade Routes 5-7-8-9	Four carriers account for 100%	46.8%	1	18.7%	2
Trade Route 10	Three carriers account for 100%	One of the most likely potential entrants		21.4%	2
Trade Route 12	One carrier accounts for 100%	100%	1	One of the most likely potential entrants	
Trade Route 29	Four carriers account for 100%	12.9%	3	52.2%	1

18. Among both United States and foreign flag carriers who operate full containership systems in the foreign commerce of the United States, in the Atlantic and Pacific trades, and on various of the trade routes or combinations of trade routes which comprise these trades, there also presently exist high degrees of concentration. As indicated below, by their approximate shares of all flag full containership capacity, both U.S. Lines and Sea-Land are among the leading actual and potential competitors in these highly concentrated service markets.

ALL FLAG FULL CONTAINERSHIP CAPACITY

<u>Service Market</u>	<u>Degree of Concentration</u>	<u>U.S. Lines Share</u>	<u>U.S. Lines Position</u>	<u>Sea-Land Share</u>	<u>Sea-Land Position</u>
Foreign Commerce of the United States	Four carriers account for 59.1%	20.1%	1	15.5%	2
Atlantic Trades	Four carriers account for 69.2%	23.5%	1	13.2%	4
Pacific Trades	Four carriers account for 54%	11%	2	21.6%	1
Trade Routes 5-7-8-9	Four carriers account for 72.5%	30.1%	1	12.5%	3
Trade Route 10	Four carriers account for 100%	One of the most likely potential entrants		19%	2
Trade Route 12	One carrier accounts for 100%	100%	1	One of the most likely potential entrants	
Trade Route 29	11 carriers account for 100%	5.6%	9	22.9%	1

19. In the conduct of their various business operations, including that of providing marine freight transportation by means of full container-ship systems, Reynolds, Sea-Land, Kidde and U.S. Lines are engaged in interstate and foreign commerce.

#### IV

##### FIRST OFFENSE

20. On November 9, 1970, Reynolds, RJI, Sea-Land, Kidde and U. S. Lines entered into an Agreement of Merger whereby Reynolds will acquire sole ownership and control of U. S. Lines through RJI, a wholly-owned subsidiary of Reynolds. By the terms of the Agreement of Merger, consummation of this acquisition is subject to the prior approval of the Federal Maritime Commission pursuant to Section 15 of the Shipping Act of 1916, as amended (46 U.S.C. §814), as well as the prior approval of such other government agencies as may be required by law.

21. The effect of the acquisition by Reynolds of U. S. Lines, with respect to the service provided by full containership systems of all flags and with respect to the service provided by full containership systems of the United States flag, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Actual competition between Sea-Land and U. S. Lines will be eliminated in the foreign commerce of the United States, in the Atlantic and Pacific trades, on Trade Routes 5-7-8-9. and on Trade Route 29;
- (b) Potential competition between Sea-Land and U. S. Lines will be eliminated in

the foreign commerce of the United States, in the Atlantic and Pacific trades, on Trade Route 10, and on trade Route 12;

- (c) Concentration and barriers to entry will be increased and furthered in the foreign commerce of the United States, in the Atlantic and Pacific trades, and on various of the trade routes or combinations of trade routes comprising these trades; and
- (d) Sea-Land will entrench and enhance its position of dominance to the detriment of competition generally in the foreign commerce of the United States, in the Atlantic and Pacific trades, and on various of the trade routes or combinations of trade routes comprising these trades.

## V

### SECOND OFFENSE

22. Beginning on or about November 9, 1970, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants, Reynolds and Kidde, have engaged in a combination and contract in unreasonable restraint of the above-described interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

23. Pursuant to the aforesaid combination and contract, the defendants, Reynolds and Kidde, entered into an agreement on November 9, 1970, which is a supplement to the Agreement of Merger described in paragraph 20; the substantial terms of which are:

- (a) Reynolds guarantees to Kidde the full amount of the purchase price designated in the Agreement of Merger in the event that consummation of the acquisition described in paragraph 20 is frustrated;
- (b) In such event, Reynolds will undertake through a financial institution of its choosing, to find a substitute purchaser for U. S. Lines;
- (c) Reynolds retains the right to object to the substitute purchaser if Kidde requires it to guarantee the substitute purchaser's obligation to pay the purchase price to Kidde or if Reynolds determines that the fair value of U. S. Lines exceeds the price offered by the substitute purchaser;
- (d) If the sale of U. S. Lines cannot be effected by these means, a financial institution designated by Reynolds will dispose of U. S. Lines by public sale of all U. S. Lines common stock, by distribution of that stock to Reynolds shareholders, or by sale of U. S. Lines'

- assets at competitive bidding and at prices acceptable to Reynolds; and
- (e) Any attempt to use a method of disposition intended to preserve U. S. Lines as an operating entity is subject to the condition that such disposition is not materially disadvantageous to Reynolds.

24. The effects of the aforesaid combination and contract are, among others, the following:

- (a) The vesting in Reynolds of control over the disposition and effective existence of U. S. Lines as a competitor;
- (b) The immediate and irreparable injury to U. S. Lines as an independent operating entity and competitive force in the marketplace;
- (c) The ultimate destruction and elimination of U. S. Lines as an independent operating entity and competitive force in the marketplace; and
- (d) The elimination of significant actual and potential competition between Sea-Land and U. S. Lines.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition or merger of U. S. Lines by or with Reynolds or any subsidiary or affiliate of Reynolds be adjudged a violation of Section 7 of the Clayton Act.

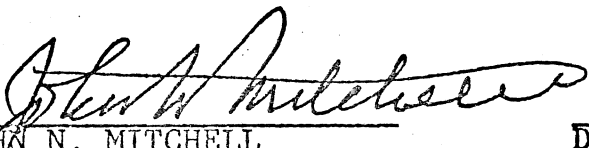
2. That the defendants and all persons acting on their behalf be perpetually enjoined from carrying out the agreement described in paragraph 20, or any similar agreement.

3. That the aforesaid combination and contract between Reynolds and Kidde be adjudged a violation of Section 1 of the Sherman Act, and that the agreement described in paragraph 23 be declared null and void, and be ordered rescinded.


4. That pending final adjudication of this complaint, a preliminary injunction be issued against the defendants and all persons acting on their behalf, preventing and restraining them from taking any action in furtherance of the agreements described in paragraphs 20 and 23, or any similar agreements.

5. That pursuant to Section 15 of the Clayton Act, an order be made herein requiring that RJI be brought before the Court in this proceeding and directing the Marshal of the District of New Jersey to serve summons upon RJI.

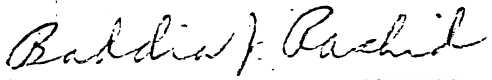
6. That plaintiff recover the costs of this action.

  
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