

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA	)	
	)	Criminal No.: 2003 CR 388 (HGM)
v.	)	
	)	Filed: September 25, 2003
EMPIRE STATE NEWS CORPORATION, INC.,	)	
	)	Violation: 15 U.S.C. § 1
	)	
Defendant.	)	

**INFORMATION**

**COUNT I**

The United States of America, charges:

**DESCRIPTION OF THE OFFENSE**

1. EMPIRE STATE NEWS CORPORATION, INC. (hereinafter "ESNC"), is made a defendant on the charge stated below.
  
2. Beginning at least as early as January 1999 and continuing until the summer of 2000, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by allocating markets for the wholesale distribution of magazines, other periodicals, and books in Western New York State. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

3. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the primary purpose of which was to divide up the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

a. engaged in discussions about the allocation of the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State;

b. agreed with another wholesale distributor and its affiliates during those discussions to allocate the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State; and

c. withdrew from servicing customers for the purpose of implementing the agreed upon allocation of the market for the wholesale distribution of magazines, other periodicals, and books in Western New York State.

#### **DEFENDANT AND CO-CONSPIRATORS**

5. During the period covered by the Counts charged in this Information, ESNC was a corporation organized and existing under the laws of the State of New York with its principal place of business in Cheektowaga, New York. During that time period, ESNC was a wholesale distributor of magazines, other periodicals, and books in Western New York State, Northeast Ohio, and Western Pennsylvania.

6. Various corporations and individuals, not made defendants in this Court, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of it.

7. Wherever this Information refers to any act, deed, or transaction of any corporation, it means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

### **TRADE AND COMMERCE**

8. Wholesale distributors receive magazines, other periodicals, and books directly from publishers and national distributors, and then distribute them to retailers for sale to the general public.

9. During the period covered by this Court, magazines, other periodicals, and books distributed by one or more of the conspirator firms, and equipment and supplies necessary for such distribution, as well as payments for the items, traveled in interstate commerce.

10. During the period covered by this Court, the activities of the defendant and co-conspirators that were the object of the conspiracy that is the subject of this Court were within the flow of, and substantially affected, interstate trade and commerce.

**JURISDICTION AND VENUE**

11. The combination and conspiracy charged in this Count was carried out, in part, in the Northern District of New York within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

**COUNT II**

The United States of America, further charges:

12. Paragraphs 5 through 10 of Count One of this Information are repeated and realleged as if fully set forth in this Count.

**DESCRIPTION OF THE OFFENSE**

13. EMPIRE STATE NEWS CORPORATION, INC. (hereinafter "ESNC") is made a defendant on the charge stated below.

14. Beginning on or about March 2, 1999, and continuing until summer 2000, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition for the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania and in Buffalo in Western New York. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

15. The combination and conspiracy consisted of an agreement, understanding, and concert of action among the defendant and co-conspirators, the primary purpose of which was to

eliminate competition by the defendant refraining from the wholesale distribution of magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania and another wholesale distributor not carrying out the terms of its threat to expand its market share in Buffalo in Western New York.

16. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a. defendant met with a competing wholesaler distributor who urged defendant to refrain from the wholesale distribution of magazines, other periodicals, and books to a customer at the Pittsburgh International Airport in Western Pennsylvania and threatened to expand its market share in Buffalo in Western New York, if the defendant did not so refrain;
- b. defendant agreed with that other wholesale distributor that the defendant would refrain from entering or servicing a subcontract to distribute magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania;
- c. in return, that other wholesale distributor agreed that it would not carry out the terms of its threat to expand its market share in the defendant's home market of Buffalo, New York;

- d. the defendant refrained from entering or servicing a subcontract to distribute magazines, other periodicals, and books at the Pittsburgh International Airport in Western Pennsylvania, in furtherance of the agreed upon conspiracy;
- e. the defendant communicated to the contracting party that it would refrain from entering or servicing that party's subcontract, in furtherance of the agreed upon conspiracy; and
- f. that other wholesale distributor did not carry out its threat to expand its market share in the defendant's home market of Buffalo in Western New York, as it had threatened.

17. The combination and conspiracy charged in this Count was carried out, in part, within the five years preceding the filing of this Information. Defendant has expressly waived

venue as it relates to the filing and disposition of this Count. Defendant agrees that this Information may be prosecuted in the Northern District of New York.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

Dated:

\_\_\_\_\_/s/\_\_\_\_\_  
R. HEWITT PATE  
Assistant Attorney General

\_\_\_\_\_/s/\_\_\_\_\_  
JAMES M. GRIFFIN  
Deputy Assistant Attorney General

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT D. HAMMOND  
Director of Criminal Enforcement

Antitrust Division  
U.S. Department of Justice

\_\_\_\_\_/s/\_\_\_\_\_  
GLENN T. SUDDABY  
United States Attorney for the Northern  
District of New York

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT M. WATSON  
Chief, Cleveland Field Office

\_\_\_\_\_/s/\_\_\_\_\_  
WILLIAM J. OBERDICK  
(2235703--NY)

MICHAEL J. KEANE  
(203489--DC)

JON R. SMIBERT  
(653645--GA)

THERESA M. MAJKRZAK  
(0017318--OH)

RITA M. BRYCE  
(0047384--OH)

Attorneys  
Antitrust Division  
U.S. Department of Justice  
Plaza Nine Building  
55 Erieview Plaza, Suite 700  
Cleveland, Ohio 44114-1836  
Telephone: (216) 522-4070  
Fax: (216) 522-8332  
Email: william.oberdick@usdoj.gov