

## Sec. 8—Powers of Congress

## Cl. 3—Power to Regulate Commerce

Fifth Amendment as is that of the States under the Fourteenth to regulate the prices of commodities in intrastate commerce.”<sup>872</sup>

Other acts regulating commerce and communication originating in this period have evoked no basic constitutional challenge. These include the Federal Communications Act of 1934, providing for the regulation of interstate and foreign communication by wire and radio,<sup>873</sup> and the Civil Aeronautics Act of 1938, providing for the regulation of all phases of airborne commerce, foreign and interstate.<sup>874</sup>

### Congressional Regulation of the Commercial Exchange of Goods

***Limiting the Federal Sphere: The Sugar Trust Case.***—Congress’ early efforts to regulate commerce in the primary sense of “traffic”—the commercial exchange of goods—is embodied in the Sherman Antitrust Act of 1890. The opening section of that act declares “every contract, combination in the form of trust or otherwise,” or “conspiracy in restraint of trade and commerce among the several States, or with foreign nations” to be “illegal,” while the second section makes it a misdemeanor for anyone to “monopolize or attempt to monopolize any part of such commerce.”<sup>875</sup> The act was passed to curb the growing tendency of companies to form industrial combinations, and the first case to reach the Court under it was the famous 1895 case of *Sugar Trust Case, United States v. E. C. Knight Co.*<sup>876</sup> Here the government asked for the cancellation of certain agreements, whereby the American Sugar Refining Company, had “acquired,” it was conceded, “nearly complete control of the manufacture of refined sugar in the United States.”

The question of the validity of the act was not expressly discussed by the Court, but was subordinated to that of its proper construction. The following passage early in Chief Justice Fuller’s opin-

<sup>872</sup> 315 U.S. at 582. Sales to distributors by a wholesaler of natural gas delivered to it from out-of-state sources are subject to FPC jurisdiction. *Colorado-Wyoming Co. v. FPC*, 324 U.S. 626 (1945). See also *Illinois Gas Co. v. Public Service Co.*, 314 U.S. 498 (1942); *FPC v. East Ohio Gas Co.*, 338 U.S. 464 (1950). In *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), the Court ruled that an independent company engaged in one state in production, gathering, and processing of natural gas, which it thereafter sells in the same state to pipelines that transport and sell the gas in other states is subject to FPC jurisdiction. See also *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965).

<sup>873</sup> 48 Stat. 1064, 47 U.S.C. §§ 151 *et seq.* Cf. *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), on the regulation of community antenna television systems (CATVs).

<sup>874</sup> 52 Stat. 973, as amended. The Civil Aeronautics Board has now been abolished, and its functions are exercised by the Federal Aviation Administration, 49 U.S.C. § 106, as part of the Department of Transportation.

<sup>875</sup> 26 Stat. 209 (1890); 15 U.S.C. §§ 1–7.

<sup>876</sup> 156 U.S. 1 (1895).