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FOR IMMEDIATE RELEASE

CONTINENTAL CAN WINS ANTITRUST APPEAL AGAINST EC COMMISSION

WASHINGTON, DC -- February 22, 1973 -- Continental Can has won its appeal against a decision by the Commission of the European Communities that the American packaging giant had, through its European subsidiary Europemballage, abused a "dominant position" in the EC packaging market. The decision, the first test of the Common Market Treaty's Article 86, was announced in Luxembourg yesterday by the Court of Justice of the European Communities, the Common Market's "supreme court."

The Commission had ruled that Continental Can had abused its dominant position by acquiring control first of a large German metal packaging company, then of the largest Dutch metal packaging company, through Europemballage. The Commission alleged that the last acquisition practically eliminated competition in this sector and thus constituted an abuse of a dominant position within the meaning of Article 86.

Continental Can contended that Article 86 did not intend the acquisition of control in a company to constitute "abuse of a dominant position" in itself, but rather the use of a dominant position for improper practices. (Among the "improper practices" mentioned in Article 86 are: the imposition of inequitable trading conditions; limiting production, markets, or technical development to the prejudice of consumers; imposing unequal terms on parties to identical transactions, or tying sales.)

The Court's Reasoning

The Court reasoned that Article 86, according to the spirit and the letter of the Common Market Treaty, is based on the preservation of fair competition. It commented that Article 85's ban on collusive agreements would have no meaning if the same actions were legal for companies that merged or integrated. The Court said:

- An abuse of a dominant position could occur if the company in the dominant position strengthened its position to the point where it substantially handicapped competing companies, leaving only companies dependent on the dominant enterprise itself.
- The market in question must be clearly defined. The Court held that the Commission's decision on Continental Can did not define the market in which the company was alleged to have held a dominant position. It did not specify whether the market in which competition had allegedly been restricted was the market for metal containers for meat and fish products, the entire metal packaging market, or the entire packaging market including glass and plastic containers. Because of these uncertainties and contradictions, the Commission's decision was overturned.