

2100 M Street Northwest, Suite 707, Washington, D.C. 20037 Telephone: (202) 872-8350
New York Office: 245 East 47th Street, New York, N.Y. 10017 Telephone: (212) 371-3890

No. 9/1978

February 14, 1978

**EUROPEAN COURT OF JUSTICE FINES UNITED BRANDS OVER ONE MILLION
DOLLARS IN ANTITRUST BANANA CASE**

The European Court of Justice in Luxembourg, the supreme court of the nine-nation European Community, ruled today that United Brands Company was guilty of abusing its dominant position on the Community banana market. The court fined the New York-based multinational 850,000 units of account, or about \$1,025,000.*

The judgement ended an appeal brought by United Brands early in 1976 after the Commission of the European Communities, the Common Market's executive branch, levied a fine of 1 million units of account against the world's largest seller of bananas for violation of EEC marketing rules.

The Court of Justice reduced that fine in today's judgement, saying that the Commission had failed to prove its complaint about unfair prices. But the Court upheld the Commission's other charges against United Brands: that the \$2 billion conglomerate had charged prices that differed according to member state; that its distributor/ripeners had been forbidden to resell bananas while they were green; that United Brands had refused, for no objectively valid reason, to sell to a Danish wholesaler.

The Commission had found that banana prices differed in some cases by as much or more than 100 per cent between the ports of Bremerhaven, Germany, and Rotterdam, in the Netherlands.

In its decision, the Court first established the criteria for determining the existence of a dominant position--from a product standpoint, the court said the banana market is sufficiently distinct from other fresh fruit markets; from a geographic point of view, the court found conditions of unrestricted competition in the six member states, which it said were homogeneous enough to be considered in entirety.

* 1 unit of account/IMF parity = \$1.20635 US.

The Court said it had considered United Brands' position, structure and situation from the point of view of competition and had concluded that the cumulative effect of the advantages enjoyed by United Brands ensured its dominant position.

The Court's decision was not based on figures for market share or profitability alone, however. "An undertaking's economic strength is not measured by its profitability," the judgement said. "A reduced profit margin or even losses for a time are not incompatible with a dominant position, just as large profits may be compatible with a situation where there is effective competition."

In contesting the Commission's decision, United Brands had said it had many large competitors and did not hold a dominant position, that it had suffered large losses in recent years, and that its dispute with the Danish wholesaler had been settled before the European Commission opened its inquiry in February 1974.

The Court ordered each party to pay its own costs.