COMMISSION DECISION

of 13 December 1985

relating to a proceeding under Article 85 of the EEC Treaty (IV/27.592 – Coffee Terminal Market Association of London Limited)

(Only the English text is authentic)

(85/565/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Greece, and in particular Article 2 thereof,

Having regard to the notification and application for negative clearance submitted on 29 June 1973 and on 20 May 1985 by the Coffee Terminal Market Association of London concerning the Rules and Regulations of the Association,

Having regard to the summary of the notification published [2] pursuant to Article 19 (3) of Regulation No 17,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

I. FACTS

The Coffee Terminal Market Association of London (CTMAL) is one of many commodity markets established in London. The commodity markets are self-regulatory organizations run by Committees of Management selected by members from amongst themselves, aided by secretariats, and using powers given to them by their members in market rule books. Although the markets are self-regulating, there is an element of supervision by the Bank of England.

The object of the CTMAL is to set up and to administer a terminal market in London for coffee. A terminal market or a futures market provides organized facilities for concluding contracts for the purchase and sale of a commodity to be delivered at named future dates. Futures markets have been developed primarily to enable persons involved in commodity trading to protect themselves from the risks of adverse price movements.

The CTMAL provides a market floor for trading and price-making, determines various technical questions such as allowable delivery months and the standard contract terms and procures the provision of clearing and settlement facilities. Trading is done on the floor of the market where dealers face each other with bids and offers being made by the system known as 'open outcry'.

The contract currently traded on the Coffee Market is for 5 tonnes, or a multiple of 5 tonnes, of Sound Robusta CTMAL Standard (i.e. a quality defined in detail in Section 5 of the Rules of the CTMAL) and stored in a warehouse nominated by the CTMAL.

All contracts traded on the London Coffee Terminal Market must be registered with International Commodities Clearing House Limited ('ICCH'), an independent service company which provides clearing and settlement facilities for the CTMAL. ICCH has substantial capital and reserves and is wholly owned by six clearing banks. The principal functions of ICCH are to maintain and organize a 'daily clearing' of all trades and provide a guarantee for due fulfilment of contracts, in accordance with the rules of the CTMAL, to clearing members in whose names such contracts are registered.

The number of Floor Members of the CTMAL, the only category of members permitted to trade on the floor of the market, is limited to 35, although this number may be increased by the Association in General Meeting. There are two other classes of membership: Home Associate Members and Overseas Associate Members. Their number is unlimited. Associate Members do not have the right to attend or vote at general meetings of the CTMAL.

Applicants for membership may be of any nationality but must satisfy certain minimum capital requirements laid down from time to time by the Committee of Management. They must furthermore be carrying on business in the coffee trade and must have done so prior to membership for a period of time also to be laid down from time to time by the Committee. Applicants for floor membership must trade from an office in London established for that purpose. A detailed statement of the criteria for membership in force at any time may be obtained from the Association upon application. Membership may be transferred to another firm or company provided that other also meets the criteria for membership.

All Floor Members must be members ('clearing members') of the ICCH and must register their contracts with the ICCH which in return for its fee guarantees the performance of the contracts.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 204, 13. 8. 1985, p. 8.

An appeal procedure applies if the Committee of Management refuses an application for membership, refuses to grant permission for a transfer of a member's membership or refuses a change in the control or nature of the member's firm or company. The procedure also applies if a member is expelled or suspended and the member is dissatisfied with the Committee's decision. The candidate or member can ask the Committee to reconsider its decision, making such representations and supplying such information as it considers relevant.

Business concluded on the floor of the market between Floor Members may be transacted free of commission. Commission must be charged on all other transactions between members or between members and non-members but rates of commission are freely negotiable. The exemption from the obligation for Floor Members to charge 'a' commission is explained by their ownership of the Markets. This causes a variety of extra costs that the other categories of members do not bear because they have no ownership in the Market. Provision is made for an additional commission (equal to the original commission charged on the sale) where coffee is tendered in fulfilment of a contract by a deliverer who is not a clearing member of ICCH in whose name the contract is registered). This extra commission is paid to the clearing member in whose name the contract is registered with ICCH. In the case of contracts open and closed on the same day, no commission is charged on the closing transaction.

For administrative purposes and on behalf of its members, ICCH may collect a sum on account of any commission payable on any contract registrable with it. For this purpose, ICCH may, from time to time, notify its members of the rates of commission to be applied by ICCH to contracts which are registrable with it.

The international futures markets in London are the principal markets used in international commodity merchandising and they contribute to the stability and smooth operation of world trade and to world pricing mechanisms. They are also very large. As for coffee, the figures below show the relative size of the CTMAL, compared with its two most important competitors, i.e. the futures markets for coffee in Paris and New York.

Annual volumes of trade (lots traded)
1979 – 1984 (1)

Year	London	New York	Paris
1979	1 368 052	449 799	30 569
1980	1 104 739	906 944	13 116
1981	902 531	515 302	38 130
1982	976 373	556 435	34 566
1983	836 789	427 441	9 713
1984	948 117	499 133	12 266

(1) One lot in London is currently 5 tonnes;
one lot in New York is currently 37 500 lb = 17 tonnes;
one lot in Paris is currently 10 tonnes.

II. LEGAL ASSESSMENT

1. The notified Rules and Regulations of the CTMAL are to be considered as agreements within the meaning of Article 85 of the EEC Treaty.

2. The Rules and Regulations as originally notified specified the minimum net rates of commission which could be charged by a member. The Committee had powers to suspend or expel offending members. The minimum commission rates varied according to who was paying and who was receiving the commission and whether or not the contract was registered in the client's own name (as opposed to non-clearing clients). The rates were cheaper if the contract was registered in the client's own name with ICCH, and where a Home Associate Member or Overseas Associate was the payer rather than a non-member. The rates were still lower if a Floor Member was the payer.

Floor Members have the right to deal free of commission but when dealing for House Associate or Overseas Associate Members or for non-members, they had in the past to charge the minimum rates of commission specified. A Floor Member unable at any time to operate on the floor himself, had to place any business he wished to transact through another Floor Member and pay the appropriate minimum rate of Commission laid down in the Regulations. Home Associate and Overseas Associate Members could only deal with each other at or above the stipulated minimum rate of commission. The Commission considered the above described system of specified minimum commission rates as a form of price-fixing that violates Article 85 (1) of the EEC Treaty. The CTMAL was requested to abandon the system of fixed minimum rates. The system has now been abolished as such. References to the system in the Rules and Regulations have been deleted. The rules now provide that business concluded on the floor of the market between Floor Members may be transacted free of commission. Commission must be charged on all other transactions between members or between members and non-members. The Commission believes that this obligation is not appreciably restrictive of competition because it only entails the obligation to charge 'a' commission without any reference to the rate. It follows that complete freedom exists to negotiate the actual commission rates.

3. Furthermore, as a result of the representations by the Commission, other amendments were also made to the rules concerning membership so that it is now made clear on the face of the Articles that membership is open and the criteria by which applications for membership are judged are objective (see Facts, seventh paragraph, above). The Committee of Management is now required to give reasons when it takes decisions affecting the members' rights of membership. To protect the rights of actual or

potential members an appeal procedure has been introduced. As an ultimate resort an appellant would have recourse to the ordinary courts under English law.

4. The publication in the *Official Journal of the European Communities* pursuant to Article 19 (3) of Regulation No 17 did not bring in any representations.

5. The notified Articles of Association and Rules and Regulations, in their amended form, no longer contain any clauses which constitute appreciable restrictions on competition within the common market. Therefore, the Commission, on the basis of the facts in its possession, has no grounds for action under Article 85 (1), Consequently, the Commission is able to issue a negative clearance pursuant to Article 2 of Regulation 17.

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the facts in its possession the Commission has no grounds for action under Article 85 (1) of the EEC Treaty in respect of the Rules and Regulations of the Coffee Terminal Association of London as last notified on 20 May 1985.

Article 2

This Decision is addressed to The Coffee Terminal Market Association of London Limited whose registered office is at Cereal House, 58 Mark Lane, London EC3, United Kingdom.

Done at Brussels, 13 December 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission