COMMISSION DECISION

of 13 December 1985

relating to a proceeding under Article 85 of the EEC Treaty (IV/27.593 – London Rubber Terminal Market Association Limited)

(Only the English text is authentic)

(89/566/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 20 May 1985 by the London Rubber Terminal Market Association 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,

Whereas:

I. FACTS

The London Rubber Terminal Market Association (LRTMA) 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 LRTMA is to set up and to administer a terminal market in London for rubber. 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 LRTMA 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 know as 'open outcry'.

The contract currently traded on the Rubber Market is for 5-tonne lots (where delivery is in a single month) or 15-tonne lots (where delivery is in a calendar quarter) (or multiples thereof) of Hevea Braziliensis Plantation Rubber Rubbed Smoked Sheet. Rubber deliverable against the contract must be of a certified quality and the contracts are for delivery at a warehouse approved by the Rubber Trade Association of London in the United Kingdom, the Netherlands, or West Germany at the sellers' option.

All contracts traded on the London Rubber Terminal Market must be registered with International Commodities Clearing House Limited ('ICCH'), an independent service company which provides clearing and settlement facilities for the LRTMA. 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 LRTMA, to clearing members in whose names such contracts are registered.

There are four classes of membership. The first two classes are voting members known as Floor Members and consist of Broker Members and Dealer Members. Their number is limited by the Committee to the practical maximum for the orderly conduct of the business. The present number is 10 Broker Members and 23 Dealer Members. The second two classes are non-voting members: Trade Associate Members and several types of Associate Members. Their number is not limited.

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 rubber 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

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 204, 13. 8. 1985, p. 9.

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.

An appeal procedure applies if the Committee of Management refuses an application for membership, refuses to grant permission for a transfer of 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 Market. 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 rubber 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.

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 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. However, as for rubber the volumes of trade are now very small. There is a significant market in Malaysia for rubber. The figures below show the relative size of the LRTMA compared with the futures market in Kuala Lumpur that opened in 1983.

Annual volumes of trade 1980 to 1984

(in tonnes)

Year	London	Kuala Lumpur
1980	2 307 405	—
1981	1 241 325	—
1982	1 412 600	—
1983	897 205	43 100
1984	151 910	316 875

II. LEGAL ASSESSMENT

1. The notified Rules and Regulations of the LRTMA 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. The rates were cheaper for clearing clients, where the contract was registered in the client's own name with ICCH, than in the case of non-clearing clients, and where a Trade Member was the payer rather than a non-member. The rates were cheapest for Broker Members. Broker Members have the right to deal free of commission but when dealing on behalf of Broker, Dealer or Associate Members, they had in the past to charge at least the minimum rates of commission specified. Broker Members could not trade for their own account. Dealer Members may deal free of commission on the floor but cannot do business for another Floor Member. When dealing on behalf of Associate and non-members, Dealer Members had in the past to charge the relevant minimum rate of Commission. Associate Members may deal direct with each other but must pass all contracts through a Broker or Dealer Member and had in the past to pay the relevant minimum commission. They also had to charge non-members the appropriate minimum commission. The minimum rate of commission charged on all Terminal Contracts traded in a single month of the first delivery quarter was one-third of the usual rate, charged per 5-tonne lot. Subject to certain conditions, a Floor Member could return certain specified sums to any agent who gave orders on behalf of a client. The Commission considered the above-described system of specified minimum commission rates as a form of price-fixing that violated Article 85 (1) of the EEC Treaty. The LRTMA 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 London Rubber Terminal Market Association as last notified on 20 May 1985.

Article 2

This Decision is addressed to The London Rubber Terminal Market Association 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