COMMISSION DECISION

of 13 July 1987

relating to a proceeding under Article 85 of the EEC Treaty (IV/31.764 — Baltic International Freight Futures Exchange Limited)

(Only the English text is authentic)

(87/408/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 Spain and Portugal, and in particular Article 2 thereof,

Having regard to the notification and application for negative clearance submitted on 31 December 1985 by the Baltic International Freight Futures Exchange Limited concerning the Articles, 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. THE FACTS

(1) The Baltic International Freight Futures Exchange Limited (BIFFEX) was incorporated on 21 January 1985 by Anderson Man Ltd, Cargill Investor Servieces Ltd, Coley and Harper Ltd, and Merrill, Lynch, Pierce, Fenner & Smith (Brokers and Dealers) Ltd. Its purpose is the establishment and running of a market dealing in freight futures contracts in London which provides facilities for shipowners, charterers and users of shipping transport in general, to protect themselves against adverse price movements in freight rates. BIFFEX enables them to agree to buy or sell standardized freight futures contracts.

Agreements made on the Exchange are based upon, and settlement price is fixed by reference to, the Baltic Freight Index. This index is comprised of 13 of the most important dry-bulk cargo freight routes being chartered on the international market. It provides a continually calculated measure of world freight rate movements weighted to reflect the relative importance of the voyages included. Each day a panel of Baltic Exchange Members submits the spot rate which they consider applicable to each voyage for the relevant cargo. The secrecy of this information allows known fixture rates to be included; the panel members are unaware of each other's contribution. Computerized assessment of the information provides for a daily index which reflects each day's spot market rate movements.

The contract currently traded on the market is on ocean freight rates for dry cargo. A second contract introduced on 10 February 1986, was suspended for an indefinite period on 19 December of the same year. It was based on the Baltic Tanker Index, similarly compiled by taking a number of medium-sized dirty tanker voyages. Bids and offers are quoted in 'index points' of 1,0 with a value of $ 10 per lot. The contract price is a multiple of the minimum price fluctuation, i.e. one-half of one index point. There is no physical delivery of an underlying cash commodity. Contracts can be liquidated by an offsetting purchase or sale at any date prior to maturity. Positions which are held until contract maturity are automatically settled in cash, based on an average of the relevant Baltic Index over the last trading days of the month.

BIFFEX offers a market for trading by the 'open outcry' method. In addition, it provides the advantage that the performance of any transaction concluded on the floor is guaranteed by a clearing house.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 114, 29. 4. 1987, p. 6.

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

(3) The figures annexed set out a comparison of the trading volumes for 1986 for Dry Cargo Contracts which are traded on BIFFEX and INTEX (the International Futures Exchange, situated in Bermuda), and the volumes for the Tanker Freight Contract in 1986.

(4) The operation of the Exchange is administered by a board of directors which is responsible for the supervision of members and the functioning of the Exchange, and which passes resolutions in respect of various technical matters. The board appoints a committee which is responsible for admission to, and the rules of, the association.

The market is furthermore subject to the surveillance of the Bank of England.

(5) There are two classes of membership of the BIFFEX: the first class of members are floor members whose number may not exceed 30. Only floor members may trade on the floor. The second class are ordinary members, with a maximum of 70. A detailed statement of the criteria for each class of membership in force may be obtained from the secretary of the BIFFEX. In order to quality for floor membership, an applicant must be a firm or a company and meet certain financial requirements. It must maintain a properly established office in or sufficiently close to the City of London for the control and execution of its business on the BIFFEX and have a continuing interest in trading on the floor and maintain sufficient trading staff on that floor, to the extent required by the board of directors.

There are, currently, 28 ordinary members. No financial requirements are imposed upon them. These members may be firms, companies or individuals, and must have a continuing interest in the activity of the Exchange.

The fulfilment of the relevant criteria may be continually monitored.

Members may transfer their membership provided that the transferee is elected as a member. Proposed changes in the directorship of a member, like any circumstances that might have the effect of changing the control of the member, must be notified to and accepted by the board.

(6) An appeal procedure applies if the board refuses an application for membership, refuses to grant permission for a transfer of membership, or refuses to approve a change in the directorship, partnership, nature of business, legal status or beneficial ownership of a member.

The board may be requested to reconsider its decision. In case of confirmation, the applicant or member may appeal to a commissioner appointed by the directors of the Baltic Exchange from a list of persons suitably qualified, which list may include the chairmen of the Stock Exchange and the Committee of London Clearing Bankers and others, but excluding persons connected with trades carried on by members of the member associations of the London Commodity Exchange Company Limited, members of BIFFEX or of the Grain and Feed Trade Association Limited.

The board may also expel or suspend a member: the exercise of that power is accompanied by the same safeguards as those mentioned above.

Independently of the rules and in accordance with English law, each member remains free to bring proceedings before the ordinary courts.

(7) Each floor member is entitled to — and must, if the board so requires — apply for a trading licence valid for one calendar year.

No contract may be made on the floor other than by a licensed floor member who is a clearing member or a party to a clearing agreement under the terms of which the clearing member guarantees the performance of all contracts made by the non-clearing floor member or of its obligation in respect of contracts made on the floor and allocated to it.

Any member may become a clearing member upon application to ICCH and to the board, provided that it satisfies specific requirements as to its net worth. The clearing members must register all their contracts with the ICCH and deposit with the ICCH an amount fixed for each open contract ('margin')

and afterwards continually adjusted in consideration of their trading position.

Licensed floor members may nominate individuals as their floor traders, subject to approval by the Membership and Rules Committee, with a possibility of appeal to the board. Contracts may be executed on the floor only by duly-appointed floor traders.

(8) The majority of the members of BIFFEX are either shipping companies, ship brokers or companies involved in the commodity business. Most members will not only use BIFFEX on their own account but will also act as brokers for clients, representing all sections of the international freight and shipping industry, both from the shipowners' and from the charterers' side.

However, the board may limit the trading right of a licensed floor member to transactions with other licensed floor members, if the member's net worth does not exceed a certain amount.

Each contract with a client gives rise to a matching contract on the floor. There is no condition as regards commissions charged to the clients by a member.

II. LEGAL ASSESSMENT

(9) The notified Articles, Rules and Regulations of the Baltic International Freight Futures Exchange Limited are to be considered as agreements within the meaning of Article 85 of the EEC Treaty.

(10) There are clear criteria for membership. Those requirements, together with the disciplinary powers given to the Board, allow members to maintain confidence in the financial and business standing of each other. Any dissatisfied member or applicant has the possibility of requesting consideration and may appeal against the decision which it contests. As an ultimate resort an appellant would have recourse to the ordinary courts under English law.

In order to maintain the ability of the clearing house to guarantee the performance of every transaction carried out on the floor, each licensed floor member entering an exchange contract must be a clearing member or a party to a standard clearing agreement; standard clearing agreements, however, do not cover matters relating to remuneration.

As regards transactions between members and between members and non-members, commissions are freely negotiated.

(11) 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 from third parties.

(12) The notified Articles of Association, Rules and Regulations do not contain any clauses which constitute appreciable restrictions of 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 No 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 Articles, Rules and Regulations of the Baltic International Freight Futures Exchange Limited.

Article 2

This Decision is addressed to the Baltic International Freight Futures Exchange Limited, whose registered office is at 14/20 St Mary Axe, London EC3A 8BU, United Kingdom.

Done at Brussels, 13 July 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission

ANNEX

1986	BIFFEX Baltic Freight Contract	INTEX
Month	Lots registered	Lots registered
January	3 627	6 355
February	2 972	1 827
	6 599	8 182
March	2 450	2 851
	9 049	11 033
April	5 245	3 760
	14 294	14 793
May	4 684	2 768
	18 978	17 561
June	3 722	3 051
1st half	22 700	20 612
July	2 355	2 432
	25 055	23 044
August	3 989	3 189
	29 044	26 233
September	4 735	3 178
	33 779	29 411
October	4 320	1 898
	38 099	31 309
November	4 305	1 183
	42 404	32 492
December	2 507	1 158
Year	44 911	33 650
2nd half	22 211	13 038

1986 Tanker Freight Contract

Month		Lots Registered
January		1 307
February		1 307
March		1 037
		2 344
April		1 046
		3 390
May		806
		4 196
June		795
	1st half	4 991
July		517
		5 508
August		195
		5 703
September		225
		5 928
October		303
		6 231
November		177
		6 408
December		
	Year	6 408
	2nd half	1 417