COMMISSION DECISION

of 10 December 1986

relating to a proceeding under Article 85 of the EEC Treaty

(IV/29.688 — The London Grain Futures Market)

(Only the English text is authentic)

(87/45/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 Article 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 22 August 1978 relating to the articles of association and the regulations of the London Grain Futures Market,

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

(1) The London Grain Futures Market (LGFM) was set up and is run under the auspices of the Grain and Feed Trade Association (GAFTA) and is one of many commodity markets established in London. The commodity markets are self-regulatory organizations run by committees of management, aided by secretariats and using powers given to them by their members in market rule books. The LGFM Committee consists of 13 members of whom four are elected by the members of the LGFM, seven are nominated by the Council of GAFTA (which is in turn largely elected from among the members of GAFTA), and two are nominated annually by the UK Agricultural Supply Trade Association Limited. Although the markets are self-regulating, there is an element of supervision by the Bank of England and, increasingly, supervision of the members by the Association of Futures Brokers and Dealers Limited (AFBD).

(2) The object of the LGFM is to set up and administer a terminal market in London for grain. 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.

(3) The LGFM provides a market floor for trading and price-making, determines various technical questions, such as allowable delivery months and 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 in a ring, making bids and offers through the system known as 'open outcry'.

(4) The International Futures Markets in London are among 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. The relative size of the LGFM compared with its most important competitors is shown below :

Annual volumes of trade in barley (1980 to 1985)

(metric tonnes)

Year	London [1]	Winnipeg [2]
1980/81	5 766 230	
1981/82	3 489 183	
1982/83	3 497 718	
1983/84	3 567 316	9 596 140
1984/85	2 276 438	5 737 400

[1] One tonne contract.
[2] 20 tonnes contract.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 251, 8. 10. 1986, p. 5.

Annual volumes of trade in wheat (1980 to 1985)

(metric tonnes)

Year	London (1)	Winnipeg (2)	Minneapolis (3)	Mid-America (3)	Chicago (3)
1980/81	6 432 448				
1981/82	4 855 147				
1982/83	5 763 182		1 405 016	1 237 736	14 386 624
1983/84	6 810 414	2 270 880	1 252 832	1 497 224	11 010 968
1984/85	6 018 310	2 169 960	1 101 192	1 285 608	7 876 304

(1) One tonne contract.
(2) 20 tonnes contract.
(3) 5 000 bushels contract (one tonne = 36,7437 bushels).

(5) There are currently two contracts being traded on the LGFM:

(a) The barley contract which is for barley of EEC origin, of a standard and quality specified in detail in Regulation 21 of the Regulations of the LGFM, for delivery to the buyer's lorry in bulk from a store registered by the Committee of the LGFM on the mainland of Great Britain;

(b) A wheat contract for grade B wheat of EEC origin, of a standard and quality specified in detail in Regulations 21b of the Regulations of the LGFM, for delivery to the buyer's lorry in bulk from a store registered by the Committee on the mainland of Great Britain.

Unless otherwise determined by the Committee, trading is for delivery in the months of September, November, January, March and May for both barley and wheat and also for July in the case of wheat.

(6) All contracts traded on the LGFM must be registered with the clearing house of GAFTA. The clearing house was set up by GAFTA for the purpose of regulating transactions in futures contracts and its principal purpose is to facilitate the transmission of documents, payments, settlements, notices and other relevant matters between members on the terms of the Regulations of the LGFM. Subject to certain conditions set out in the Articles of GAFTA, GAFTA operates a guarantee system for the due fulfilment of contracts made by members of the LGFM in whose name such contracts are registered.

(7) There are two classes of membership of the LGFM. The first class consists of full members who are allowed to trade on the floor of the market. The Regulations provide that full membership shall be limited to 58 members. The second class of member consists of associate members. Their number is not limited.

(8) The criteria specified in the Regulations for full members require an applicant for membership to meet certain financial requirements. To become a full member the applicant must satisfy the Committee that it is actively interested in the trading of grain and has a genuine place of business, as approved by the Committee.

(9) Associate members must have a genuine place of business, as approved by the Committee, within a Member State of the EEC.

(10) All members must be members of GAFTA, but any person who is engaged (or who has been engaged) in the grain trade and any corporation wheresoever situated, engaged in the grain trade, is eligible for membership of GAFTA and there may be up to 1 000 members of GAFTA at any one time, which number may be increased.

(11) A member may generally sell his membership certificate provided that the purchaser is elected in accordance with the Regulations of the LGFM.

(12) The Committee is now required to give reasons when it takes decisions affecting the members' rights of membership. An appeal procedure applies if the Committee refuses an application for membership, refuses to grant permission for the sale of a membership certificate, suspends a member for more than seven days, expels a member or if a member is deemed to have resigned upon ceasing to meet the criteria for his class of membership. In these cases, if the candidate or member is dissatisfied with the Committee's decision, that candidate or member may ask the Committee to reconsider its decision, making such representations and supplying such information as it considers relevant.

(13) The regulations require that a member must generally be a member of the Association of Futures Brokers and Dealers Limited (AFBD). However, this requirement is not mandatory for all members. A member is excused from this obligation if he is (a) not a full member and has no place of business in the UK, or (b) engages in business exclusively on his own account or on behalf of a related company, or (c) falls within a category of member which is excused membership of the AFBD by the AFBD itself. The AFBD is one of seven self-regulatory organizations (SROs) which it is expected will be recognized by the Securities and Investments Board (SIB), which was set up in anticipation of the Financial Services Act, which stipulates that the only persons allowed to carry on investment business in the UK are 'authorized persons' or certain 'exempted persons'. Members of the LGFM will be so authorized by virtue of being members of the AFBD. In order to become a member of the AFBD, applicants have to fulfil certain qualitative criteria which reflect the AFBD's primary object, i. e. to promote and maintain a system of supervision of the conduct of business by commodity, financial and other futures brokers and dealers, particularly with a view to the protection of the interests of their clients. These criteria relate to the suitability of members' financial and business standing, and eligibility in other respects such as reliability, training, experience and financial resources.

(14) The regulations of the LGFM provide that 'a' charge of commission shall be made by every member in respect of every London grain futures transaction affected for another party, whether or not a member, but the rates of commission are freely negotiable. Both transactions of a 'straddle' may be executed for one commission provided that both are closed simultaneously (a 'straddle' arises where a purchase is made under one contract against a simultaneous sale under another contract for the same kind of grain for a different delivery month or for a different kind of grain for the same or a different delivery month).

II. LEGAL ASSESSMENT

(15) The notified regulations of the LGFM are to be considered as agreements within the meaning of Article 85 of the EEC Treaty.

(16) The regulations of the LGFM take into account the representations of the Commission in relation to various other terminal markets in London. The Commission has already granted negative clearance in respect of the rules of these associations by Decisions 85/563/EEC [1] (sugar), 85/564/EEC [2] (cocoa), 85/565/EEC [3] (coffee) and 85/566/EEC [4] (rubber).

(17) The regulations as originally notified specified the minimum net rates of commission which were chargeable in respect of grain futures. The rules specified rates of commission which varied according to the nature of the client. The rates were higher for associate members than for full members, and were still higher for non-members. A special rate could be obtained where a 'day trade' took place, where the buying and selling trade took place on the same day and was closed out on that day. The regulations prohibited any form of deductions from the minimum commissions, and any arrangement effecting or intended to effect, directly or indirectly, a deduction from the minimum rates was deemed to be a violation of the regulations.

(18) The Commission considered that the above system of specified minimum commission rates was a form of price-fixing that violated Article 85 (1) of the EEC Treaty. The LGFM was requested to abandon the system of fixed minimum rates. The system has now been completely abolished and references to the system in the regulations have been deleted. The regulations no longer contain any form of minimum commission but simply provide that 'a charge' of commission must be made by every member in respect of every contract for third parties (whether or not that third party is a member). Complete freedom exists to negotiate the actual commission rates and accordingly the Commission believes that this obligation is not appreciably restrictive of competition.

(19) Furthermore, as a result of representations by the Commission, amendments have been made to the regulations concerning membership so that membership is now open and that the criteria by which applications for membership are judged are objective. The Committee is 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.

(20) The publications in the *Official Journal of the European Communities,* pursuant to Article 19 (3) of Regulation No 17, did not elicit any representations.

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[1] OJ No L 369, 31. 12. 1985, p. 25.
[2] OJ No L 369, 31. 12. 1985, p. 28.
[3] OJ No L 369, 31. 12. 1985, p. 31.
[4] OJ No L 369, 31. 12. 1985, p. 34.

(21) The articles of association of GAFTA and the regulations of the LGFM as outlined above do not contain 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 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 of association and the regulations of the London Grain Futures Market as notified on 22 August 1978.

Article 2

This Decision is addressed to the London Grain Futures Market, whose registered office is at Baltic Exchange Chambers, 24/28 St Mary Axe, London EC 3A 8EP, United Kingdom.

Done at Brussels, 10 December 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission