COMMISSION DECISION

of 10 December 1986

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.614 — The London Meat Futures Exchange Limited)

(Only the English text is authentic)

(87/47/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 24 July 1985 relating to the articles of association and the rules and regulations of the London Meat Futures Exchange Limited,

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 Meat Futures Exchange Limited (LMFEL) 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 and, increasingly, supervision of the members by the Assoiation of Futures Brokers and Dealers Limited (AFBD).

(2) The object of the LMFEL is to set up and to administer a terminal market in London for various meat products. 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 LMFEL 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 LMFEL compared with its most important competitors is shown below :

Annual volumes of trade (lots traded) in pig meat

Year	London [1]	Chicago [2]	Mid-America [3]
1984	24 263	2 169 030	112 877
1985	15 479	1 719 861	74 338

[1] One lot is currently 50 pig carcases.
This LMFEL contract commenced trading on 16. 3. 1984.
[2] One lot is currently 30 000 lbs.
[3] One lot is currently 15 000 lbs.

(5) Two new contracts commenced trading on 2 June 1986 :

(a) A live cattle cash settlement contract for lots of 5 000 kilograms. This contract is for settlement against the meat and livestock commission certified medium steer price.

(b) A pig contract for cash settlement of lots of 3 250 kilograms. This is for settlement against the meat and livestock commission average for all pigs price.

In respect of each contract dealing is generally up to 13 months forward with all months other than December being delivery months.

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

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

(7) There are two classes of membership of the LMFEL. The first class consists of voting members known as floor members who are allowed to trade on the floor of the market. The rules set no limit to the number of floor members and there are at present 20 floor members. The second class of member coinsists of non-voting members known as associate members. Their number is similarly not limited.

(8) The criteria specified in the articles for floor members require an applicant for membership to meet certain financial requirements. A detailed statement of the criteria in force at the time of application may be obtained from the Secretary. To become a floor member the applicant must satisfy the Committee that it is actively interested in the trading of meat and carries on business from a properly established office in the United Kingdom.

(9) All floor members must be members of the ICCH and must register their contracts with the ICCH which, in return for its fee, guarantees the performance of the contracts.

(10) Associate members are companies or firms which have a continuing interest in the production, processing, trading or consumption of meat, or will have a continuing trading interest in the market.

(11) Floor membership may be transferred provided that the transferee is elected in accordance with the articles. Associate membership is not transferable.

(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 a transfer of membership (or determines that a floor member shall transfer its floor membership), or refuses to approve a change in the directorship, partnership, nature of business, legal status or beneficial ownership of a member. The procedure also applies if the Committee suspends a member for more than seven days, or refuses to reinstate a member, or expels a member, or otherwise determines that a membership shall cease. 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 Rules require that a member must generally by 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 obligaiton if he is (a) not a floor member and has no place of business in the United Kingdom, 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 organisations (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 United Kingdom are 'authorized persons' or certain 'exempted persons'. Members of the LMFEL 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) Contracts traded on the floor of the market between floor members may be made free of commission. Commission must be charged on all other contracts between members or between members and non-members, but rates of commission are freely negotiable. Provision is made for an additional commission where meat 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 (which is freely negotiable) is paid to the clearing member in whose name the contract is registered with ICCH.

II. LEGAL ASSESSMENT

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

(16) The rules and regulations of the LMFEL take into account the representations made by the Commission in relation to various other terminal markets in London. The Commission has already granted negative clearance to 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) Accordingly, the rules 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 commission which is to be charged. It follows that complete freedom exists to negotiate the actual commission rates.

(18) Furthermore, as a result of representations by the Commission, amendments have been made to the rules concerning membership so that membership is now open and the criteria by which applications for membership are judged are objective (see Facts, paragraph 8 above). The Committee 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.

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

(20) The articles of association and the rules and regulations of the LMFEL 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 rules and regulations of the London Meat Futures Exchange Limited as notified on 24 July 1985.

Article 2

This Decision is addressed to the London Meat Futures Exchange Limited, whose registered office as 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

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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.