

## COMMISSION DECISION

of 10 December 1986

relating to a proceeding under Article 85 of the EEC Treaty  
(IV/30.176 — The London Potato Futures Association Limited)

(Only the English text is authentic)

(87/46/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 <sup>(1)</sup>, 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 16 September 1980 relating to the articles of association and the regulations of the London Potato Futures Association Limited,

Having regard to the summary of the notification published <sup>(2)</sup> 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 Potato Futures Association Limited (LPFAL) 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 Association of Futures Brokers and Dealers Limited (AFBD).
- (2) The object of the LPFAL is to set up and to administer a terminal market in London for potatoes. 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 LPFAL 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 LPFAL compared with its most important competitors is shown below :

Annual volumes of trade (tonnes traded) in potatoes  
1982 to 1985

Year	London <sup>(1)</sup>	New York <sup>(2)</sup>	Paris/Lille <sup>(3)</sup>
1982	113 125		
1983	230 204		
1984	196 581	26 595	123 320
1985	116 819	16 903	294 240

<sup>(1)</sup> This data relates to the 40-tonnes contract mentioned below, as the 10-tonnes contract only started trading in February 1986.

<sup>(2)</sup> One lot is currently 50 000 lbs.

<sup>(3)</sup> One lot is currently 20 tonnes.

- (5) There are currently two contracts being traded on the LPFAL :
- (a) The potato contract, which is for one or more lots of 40 tonnes of potatoes in closed bags of a variety, quality and condition specified in detail in Rules 8.04 and 8.04 A of the rules of the LPFAL, for delivery from a store registered with the LPFAL nominated by the seller, on the mainland of Great Britain ;

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(2)</sup> OJ No C 251, 8. 10. 1986, p. 7.

(b) A cash settlement contract for one or more lots of 10 tonnes of potatoes of the type forming the basis of the Potato Marketing Board weekly average ex-farm price, defined in detail in Rule 12.04 of the rules of the LPFAL. There is no provision for physical delivery but any contract remaining open at the close of trading on the last day of trading is settled cash according to formulae set out in Rules 12.05 and 12.06 of the rules of the LPFAL.

The trading rules provide that delivery months shall be February, April, May and November in each year, except in the case of potatoes subject to cash settlement, where the delivery months are July, August and September in each year.

- (6) All contracts traded on the LPFAL must be registered with the International Commodities Clearing House Limited (ICCH), an independent service company, which provides clearing and settlement facilities for the LPFAL. 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 LPFAL, to clearing members in whose names such contracts are registered.
- (7) There are two classes of membership of the LPFAL. The first class consists of voting members known as floor members, who are allowed to trade on the floor of the market. The articles provide that the number of floor members with which it is proposed to register the Association is three, whereas this number may be increased. The number of floor members is not limited. The second class of members consists of non-voting members known as associate members. Their number is not limited. Non-voting members have to pass all contracts through a floor member.
- (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 potatoes and carries on business from a properly-established office in London. Firms and companies whose principal place of business is not within the member countries of the EEC are not eligible for floor membership.
- (9) All floor members must be members of the ICCH and register their contracts with the ICCH which, in return for its fee, guarantees the performance of the contracts.
- (10) There are two sub-categories of associate members. Trade associate members consist of companies or firms which have a continuing interest in the production, trading or consumption of physical potatoes. General associate members consist of companies or firms which have a continuing trading interest in the LPFAL.
- (11) Floor membership may be transferred provided that the transferee is elected in accordance with the Articles. Associate membership is also transferable, provided that the proposed transferee is elected in accordance with the regulations.
- (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 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 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 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 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 United Kingdom are 'authorized persons' or certain 'exempted persons'. Members of the LPFAL 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 provide that 'a' commission must be charged by every member on every transaction effected for another party (whether or not that other party is a member) but the rates of commission are freely negotiable. Where a member adopts a different position in two adjacent trading months ('a straddle') these may be executed for one commission provided that both positions are closed simultaneously.

## II. LEGAL ASSESSMENT

- (15) The notified regulations of the LPFAL are to be considered as agreements within the meaning of Article 85 of the EEC Treaty.
- (16) The articles and regulations of the LPFAL 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 in respect of the rules of these associations by Decisions 85/563/EEC<sup>(1)</sup> (sugar), 85/564/EEC<sup>(2)</sup> (cocoa), 85/565/EEC<sup>(3)</sup> (coffee) and 85/566/EEC<sup>(4)</sup> (rubber).
- (17) The regulations as originally notified specified the minimum net rates of commission which could be charged by a member. The regulations specified rates of commission which varied according to the client and whether or not the contract was cleared through the clearing house or through a floor member. The rates were lowest for a floor member whose name was disclosed and where the contract was cleared through the clearing house. The rates were higher for associate members and still higher for non-members. In these latter two cases, the rates were higher where the contract was cleared through a floor member than where it was cleared through the clearing house. Where contracts were opened and closed out on the same day through the same broker half the rates of commission had to be charged.

<sup>(1)</sup> OJ No L 369, 31. 12. 1985, p. 25.

<sup>(2)</sup> OJ No L 369, 31. 12. 1985, p. 28.

<sup>(3)</sup> OJ No L 369, 31. 12. 1985, p. 31.

<sup>(4)</sup> OJ No L 369, 31. 12. 1985, p. 34.

- (18) The regulations provided that the minimum commission could not be the subject of any deductions in any form whatsoever. Any arrangement effecting or intended to effect, directly or indirectly, a deduction from the specified minimum commission rates was deemed to be a violation of the regulations. The Committee had power to examine suspected infringements and offending members could be expelled by the Committee.
- (19) The Commission considered this system of specified minimum commission rates to be a form of price-fixing that violated Article 85 (1) of the EEC Treaty. The LPFAL was requested to abandon the system of fixed minimum rates. The system has now been abolished and references to the system in the regulations have been deleted. The regulations now simply provide that 'a' commission must be charged by every member on every transaction effected for another party (whether or not that other party is a member), but the rates of commission are freely negotiable. 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 now exists to negotiate the actual commission rates.
- (20) 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 the criteria by which applications for membership are judged are objective. 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.
- (21) The publications in the *Official Journal of the European Communities*, pursuant to Article 19 (3) of Regulation No 17, did not elicit any representations.
- (22) The articles of association and the regulations of the LPFAL 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 No 17,

HAS ADOPTED THIS DECISION :

Exchange Chambers, 24/28 St Mary Axe, London EC 3A  
8EP, United Kingdom.

*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 Potato Futures Association as notified on 16 September 1980.

Done at Brussels, 10 December 1986.

*Article 2*

This Decision is addressed to the London Potato Futures Association Limited, whose registered office is at Baltic

*For the Commission*

Peter SUTHERLAND

*Member of the Commission*