

COMMISSION DECISION

of 13 December 1985

relating to a proceeding under Article 85 of the EEC Treaty
(IV/27.590 – London Sugar Futures Market Limited)

(Only the English text is authentic)

(85/563/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 on 20 May 1985 by the London Sugar Futures Market 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,

I. FACTS

The London Sugar Futures Market (LSFM) 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 LSFM is to set up and to administer a futures market in London for sugar. 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 LSFM 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 known as 'open outcry'.

There are two basic contracts currently traded under the rules of the LSFM:

- (a) The first contract is for a white beet or cane crystal sugar or refined sugar of any origin, of the crop or season current at the time of delivery, of a quality defined in detail in the contract rules. The contract price is free on board and stowed in hold at one of the following ports: Antwerp, Bremen, Calais, Copenhagen, Dunkirk, Dublin, Elmhaven, Hamburg, Hull, Immingham, Le Havre, Rotterdam, Rouen or Vlissingen.
- (b) The second contract is for raw cane sugar of a quality defined in detail in the rules and originating in certain specified countries. The contract price is free on board and stowed in hold at a United Kingdom port.

Both contracts are for lots of 50 tonnes (or any multiple of 50 tonnes). Trading is up to 15 months forward in the delivery months: March, May, August, October and December.

All contracts traded on the London Sugar Futures Market must be registered with International Commodities Clearing House Limited ('ICCH'), an independent service company which provides clearing and settlement facilities for the LSFM. 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 trades and provide a guarantee for due fulfilment of contracts, in accordance with the rules of the LSFM, to clearing members in whose names such contracts are registered.

There are two main classes of membership, Full Membership and non-voting Membership. The first class is limited to 35 Full Members. The non-voting Membership is sub-divided into two classes: Overseas Affiliated Members and Associate

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 204, 13. 8. 1985, p. 5.

Members. There is no limit to the number in the class of Associate Members. The number of Overseas Affiliated Members is limited to 10 but may be increased.

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 sugar 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 full 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 provided that other also meets the criteria for membership.

All Full 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 a 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 Full 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 Full 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.

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 in London 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. As for sugar the figures below show the relative size of the LSFM compared with its two most important competitors, i.e. the futures markets for sugar in Paris and New York.

**Annual volumes of trade (lots traded)
1979 – 1984 ⁽¹⁾**

Year	London	New York	Paris
1979	885 223	1 792 723	90 907
1980	2 537 015	3 576 662	315 204
1981	1 717 636	2 470 327	218 606
1982	912 984	2 037 020	257 586
1983	1 097 356	3 201 968	336 600
1984	663 750	2 449 549	344 022

⁽¹⁾ One lot is currently 50 tonnes.

II. LEGAL ASSESSMENT

1. The notified Rules and Regulations of the LSFM 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 member was the payer rather than a non-member. Full Members have the right to deal free of commission with other Full Members but when dealing for Overseas, Affiliated or Associate Members or for non-members, they had in the past to charge the minimum rates of commission specified. Associate Members, who may not deal directly with each other but must pass business through a Full Member or Affiliated Member, had in the past to pay the appropriate minimum rate of commission to the Full or Affiliated Member. Where an Associate Member dealt for his own account with a non-member he had in the past to charge the non-member at least the specified rate of commission. 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 LSFM 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 Full 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 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, eighth 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 Sugar Futures Market as last notified on 20 May 1985.

Article 2

This Decision is addressed to the London Sugar Futures Market 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