

COMMISSION DECISION

of 4 December 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/30.439 —
Petroleum Exchange of London Limited)

(Only the English text is authentic)

(87/2/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 by the International Petroleum Exchange of London Limited on 20 August 1981, in relation to the Articles of Association and 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,

Whereas :

I. THE FACTS

- (1) The International Petroleum Exchange of London Limited (IPE) is one of many commodity markets established in London. The commodity markets are self-regulatory organizations run by committees of management or by the Directors of member firms selected by members 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 IPE is to set up and to administer a terminal market in London for petroleum-based 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 IPE provides a market floor for trading and price-making, determines various technical questions such as allowable delivery months and standard contract terms and procedures, and 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'. The business of the IPE is run by the Directors of member firms.
- (4) The International Futures Markets in London are among the principal markets used in international commodity merchandizing, and they contribute to the stability and smooth operation of world trade and to world pricing mechanisms. So far as gas oil and crude oil are concerned, the figures below show the relative size of the IPE compared with its most important competitor, i.e. the futures market for gas oil and crude oil in New York.

Annual volumes of trade (lots traded) in gas oil
1981 to 1985

Year	London	New York (NYMEX)
1981	149 000	995 506
1982	623 308	1 745 526
1983	608 529	1 868 322
1984	535 495	2 091 546
1985	509 886	2 207 733

NB: One lot (IPE) currently 100 tonnes;
One lot (NYMEX) is 1 000 barrels;
1 tonne = 7,46 barrels.

Annual volumes of trade (lots traded) in crude oil
1981 to 1985

Year	London	New York
1981	—	—
1982	—	—
1983	2 783	323 153
1984	4 361	1 840 342
1985	4 233	3 980 867

NB: One lot = 1 000 barrels.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 163, 1. 7. 1986, p. 3.

- (5) There are currently four main types of contract being traded on the IPE:
- (a) A gas oil contract which is for one or more lots of 100 tonnes of gas oil of a quality specification set out in detail in Rule 15.04 of the Gas Oil Contract Number 2 Rules of the IPE. The contracts are for future delivery by the seller to the buyer, generally into barge out of a recognized storage installation or refinery in any of the Amsterdam, Rotterdam or Antwerp areas at the sellers' option, upon a day determined at the buyers option between the 15th and last calendar day of the delivery month. Trading in those contracts is permitted in each of nine consecutive calendar months;
 - (b) a crude oil contract which is for lots of 1 000 barrels of crude oil of current pipeline export Brent Crude for delivery at the Sullom Voe delivery area in the delivery month. Trading in these contracts is permitted for periods of six months at a time.
 - (c) The IPE has introduced two new contracts for gasoline and heavy fuel oil. The contract and administrative procedures are identical to those of the gas oil contract and the contracts are for one or more lots of 100 tonnes of gasoline or heavy fuel oil of a specified quality. These two new contracts are effective as of 7 October 1986.
- (6) All contracts traded on the IPE must be registered with the International Commodities Clearing House Limited (ICCH), an independent service company which provides clearing and settlement facilities for the IPE. ICCH has substantial capital and reserve and is wholly owned by six clearing banks. The principal functions of ICCH are to maintain and organize a 'daily clearing' of all contracts traded and to provide a guarantee of due fulfilment of contracts, in accordance with the Rules of the IPE, to clearing members in whose names such contracts are registered.
- (7) There are three classes of membership of the IPE. The first class (voting members) are Floor Members who are allowed to trade on the floor of the market. The Rules currently allow a maximum of 35 Floor Members. The second two classes of members are non-voting or associate members, known as trade members, and general associate members. Their numbers are not limited. Non-voting members may trade on the IPE but only 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 an application may be obtained from the Secretary of the IPE. An applicant for floor membership must be a firm or company and must satisfy the Directors of the IPE that it will maintain a properly established office in or sufficiently close to the City of London for the control and execution of its business on the IPE, and that it will have a continuing interest in trading on the floor of the IPE and will, if necessary, maintain trading staff on that floor. Membership may be transferred to another firm or company provided that the other also meets the criteria for membership (the same is true for associated membership).
- (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) Applicants for associate membership must also meet certain financial requirements and certain standards of trading. To qualify for trade membership an applicant must satisfy the Directors that he has a *bona fide* continuing interest in the production, manufacture or distribution of physical oil or oil products. To qualify for general associate membership an applicant must satisfy the Directors that he has an interest in trading in oil or oil products and has the ability to bring oil futures business to the market.
- (11) An appeal procedure applies if the Directors refuse an application for membership, refuse to grant permission for a transfer of membership, refuse to approve a change in the directorship, partnership, nature of business, legal status or beneficial ownership of a member, suspend a member for more than seven days, or expel a member, and the applicant or member is dissatisfied with the Directors' decision. An applicant or member can ask the Directors to reconsider their decision, making such representations and supplying such information as it considers relevant.
- (12) The Rules 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 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 organisations (SROs) which it is expected will be recognized by the Securities and Investments Board (SIB), which has been set up in anticipation of the Financial Services Act. Under the current Bill the only persons allowed to carry on investment business in the UK are 'authorized persons' or certain 'exempted persons'. Members of the IPE 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.

- (13) The Articles expressly provide that no regulations will be made (without the consent of all Floor Members) which would prevent Floor Members from dealing with other Floor Members free of all commission on both sides. No such regulations have been made.

II. LEGAL ASSESSMENT

- (14) The notified Articles of Association and Rules and Regulations of the IPE are to be considered as agreements within the meaning of Article 85.
- (15) The Articles, Rules and Regulations of the IPE were drawn up taking 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 Commission Decisions 85/563/EEC (sugar)⁽¹⁾; 85/564/EEC (cocoa)⁽²⁾, 85/565/EEC (coffee)⁽³⁾; 85/566/EEC (rubber)⁽⁴⁾;
- (16) As to the commission that may be charged on transactions concluded on the IPE, the Articles, Rules and Regulations of the IPE contain no restrictions. Membership of the IPE is open and the criteria by which the applications for membership are judged are objective. The Directors are required to give reasons when they take a decision affecting the

members' rights and membership, and there is an adequate appeal procedure.

- (17) 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.
- (18) The notified Articles of Association and Rules and Regulations 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 actions 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 International Petroleum Exchange as notified on 20 August 1981.

Article 2

This Decision is addressed to The International Petroleum Exchange of London Limited, whose registered office is at Cereal House, 58 Mark Lane, London EC 3, United Kingdom.

Done at Brussels, 4 December 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

⁽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.